



City of Peoria, Arizona Notice of Request for Proposal



Request for Proposal No: **P09-0031** Proposal Due Date: **November 25, 2008**
 Materials and/or Services: **Public Defender Services** Proposal Time: **5:00 P.M. AZ Time**
 Contact: **Lisa Houg, CPPB**
 Project No: Location: **City of Peoria, Materials Management** Phone: **(623) 773-7115**
 Mailing Address: **8314 West Cinnabar Avenue, Peoria, AZ 85345**

In accordance with City of Peoria Procurement Code competitive sealed proposals for the material or services specified will be received by the City of Peoria Materials Management at the specified location until the date and time cited above. Proposals shall be in the actual possession of the City of Peoria Materials Management on or prior to the exact date and time indicated above. Late proposals will not be considered, except as provided in the City of Peoria Procurement Code. **Proposals shall be submitted in a sealed envelope with the Request for Proposal number and the offeror's name and address clearly indicated on the front of the envelope.** All proposals shall be completed in ink or typewritten. Offerors are strongly encouraged to carefully read the *entire* Request for Proposal Package.

OFFER

To the City of Peoria: The undersigned on behalf of the entity, firm, company, partnership, or other legal entity listed below offers on its behalf to the City a proposal that contains all terms, conditions, specifications and amendments in the Notice of Request for Proposal issued by the City. Any exception to the terms contained in the Notice of Request for Proposal must be specifically indicated in writing and are subject to the approval of the City prior to acceptance. The signature below certifies your understanding and compliance with Paragraph 1 of the City of Peoria Standard Terms and Conditions (form COP 202) contained in the Request for Proposal package issued by the City.

For clarification of this offer contact:

Name: L. James Davis Telephone: (602) 870-8003 Fax: (602) 870-3969
L. James Davis, Attorney at Law L. J. Davis
 Company Name P.L.L.C. Authorized Signature for Offer
340 E. Dunlap Ave L. James Davis
 Address Printed Name
Phoenix AZ 85020 Attorney at Law
 City State Zip Code Title

ACCEPTANCE OF OFFER AND CONTRACT AWARD (For City of Peoria Use Only)

Your offer is accepted by the City, subject to approval of each written exception that your proposal contained. The contract consists of the following documents: 1.) Request for Proposal issued by the City; 2.) Your offer in Response to the City's Request for Proposal; 3.) This written acceptance and contract award.

As the contractor, you are now legally bound to sell the materials and/or services listed by the attached award notice, based on the solicitation of proposals, including all terms, conditions, specifications, amendments and your offer as now accepted by the City. The Contractor shall not commence any billable work or provide any material, service or construction under this contract until the Contractor receives an executed Purchase Order or written Notice to Proceed.

Attested by: Mary Jo Kief
 Mary Jo Kief, City Clerk

City of Peoria, Arizona. Effective Date: 2/1/2009

Approved as to form: Ellen Van Riper, Assistant City Attorney

CC: _____

Stephen M. Kemp, City Attorney

Contract Number: _____

Contract Awarded Date: 01/16/09

A CON 01609

Herman Koebergen, Materials Manager

Official File: _____

A CON 01609





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/03/2009

PRODUCER Sunwest Insurance Brokers P.O. Box 26266 Scottsdale, AZ 85255	480.946.3033	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED L. James Davis 340 E. Dunlap Avenue Phoenix AZ 85020		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURERS AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: Hanover Professionals</td> <td></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Hanover Professionals		INSURER B:		INSURER C:		INSURER D:		INSURER E:	
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INSURER A: Hanover Professionals														
INSURER B:														
INSURER C:														
INSURER D:														
INSURER E:														

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADDL	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GENL. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ. <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC. \$ AGG \$
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A		OTHER Professional Liability	08AZ10167200100	11/24/08	11/24/09	\$1,000,000 limit per claim \$2,000,000 aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER City of Peoria 8401 W. Monroe Peoria, AZ 85345 Attn: Lisa or Jill Faxed to: 623-773-7118	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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REQUEST FOR PROPOSAL

INSTRUCTIONS TO OFFEROR

Materials Management Procurement

8314 West Cinnabar Avenue
Peoria, Arizona 85345-6560

Phone: (623) 773-7115

Fax: (623) 773-7118

1. **PREPARATION OF PROPOSAL:**
 - a. All proposals shall be on the forms provided in this *Request For Proposal* package. It is permissible to copy these forms if required. Telegraphic (facsimile) or mailgram proposals will not be considered.
 - b. The Offer and Contract Award document (COP Form 203) shall be submitted with an original ink signature by a person authorized to sign the offer.
 - c. Erasures, interlineations, or other modifications in the proposal shall be initialed in original ink by the authorized person signing the Vendor Offer.
 - d. If price is a consideration and in case of error in the extension of prices in the proposal, the unit price shall govern. No proposal shall be altered, amended, or withdrawn after the specified proposal due date and time.
 - e. Periods of time, stated as a number of days, shall be calendar days.
 - f. It is the responsibility of all Offerors to examine the entire *Request For Proposal* package and seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a Proposal confers no right of withdrawal after proposal due date and time.
2. **INQUIRIES:** Any question related to the *Request For Proposal* shall be directed to the Buyer whose name appears on the front. The Offeror shall not contact or ask questions of the department for which the requirement is being procured. Questions should be submitted in writing when time permits. The Buyer may require any and all questions be submitted in writing at the Buyer's sole discretion. Any correspondence related to a *Request For Proposal* should refer to the appropriate *Request For Proposal* number, page, and paragraph number. However, the Offeror shall not place the *Request For Proposal* number on the outside of any envelope containing questions since such an envelope may be identified as a sealed proposal and may not be opened until after the official *Request For Proposal* due date and time.
3. **PROSPECTIVE OFFERORS CONFERENCE:** A prospective offerors conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this document. The purpose of this conference will be to clarify the contents of this *Request For Proposal* in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this *Request For Proposal* or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine if any action is necessary and may issue a written amendment to the *Request for Proposal*. Oral statements or instructions will not constitute an amendment to this *Request for Proposal*.
4. **LATE PROPOSALS:** Late Proposals will not be considered, except as provided by the **City of Peoria Procurement Code**. A vendor submitting a late proposal shall be so notified.
5. **WITHDRAWAL OF PROPOSAL:** At any time prior to the specified proposal due date and time, a Vendor (or designated representative) may withdraw the proposal. Telegraphic (facsimile) or mailgram proposal withdrawals will not be considered.
6. **AMENDMENT OF PROPOSAL:** Receipt of a Solicitation Amendment (COP Form 207) shall be acknowledged by signing and returning the document prior to the specified proposal due date and time.
7. **PAYMENT:** The City will make every effort to process payment for the purchase of goods or services within thirty (30) calendar days after receipt of goods or services and a correct notice of amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. Any proposal that requires payment in less than thirty (30) calendar days shall not be considered.
8. **NEW:** All items shall be new, unless otherwise stated in the specifications.
9. **DISCOUNTS:** Payment discount periods will be computed from the date of receipt of material/service or correct invoice, whichever is later, to the date Buyer's payment is mailed. Unless freight and other charges are itemized, any discount provided will be taken on full amount of invoice. Payment discounts of thirty (30) calendar days or more will be deducted from the proposal price in determining the low bid. However, the Buyer shall be entitled to take advantage of any payment discount offered by the Vendor provided payment is made within the discount period.
10. **TAXES:** The City of Peoria is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item.
11. **VENDOR REGISTRATION:** After the award of a contract, the successful Vendor shall have a completed Vendor Registration Form (COP Form 200) on file with the City of Peoria Materials Management Division.
12. **AWARD OF CONTRACT:**
 - a. Unless the Offeror states otherwise, or unless provided within this *Request For Proposal*, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City.
 - b. Notwithstanding any other provision of this *Request For Proposal*, The City expressly reserves the right to:
 - (1) Waive any immaterial defect or informality; or
 - (2) Reject any or all proposals, or portions thereof, or
 - (3) Reissue a *Request For Proposal*.
 - c. A response to a *Request For Proposal* is an offer to contract with the City based upon the terms, conditions and specifications contained in the City's *Request For Proposal* and the written amendments thereto, if any. Proposals do not become contracts unless and until they are accepted by the **City Council**. A contract is formed when written notice of award(s) is provided to the successful Offeror(s). The contract has its inception in the award document, eliminating a formal signing of a separate contract. For that reason, all of the terms and conditions of the procurement contract are contained in the *Request For Proposal*; unless modified by a Solicitation Amendment (COP Form 207) or a Contract Amendment (COP Form 217).



STANDARD TERMS AND CONDITIONS

Materials Management Procurement

8314 West Cinnabar Avenue
Peoria, Arizona 85345-6560
Phone: (623) 773-7115
Fax: (623) 773-7118

THE FOLLOWING TERMS AND CONDITIONS ARE AN EXPLICIT PART OF THE SOLICITATION AND ANY RESULTANT CONTRACT.

1. **CERTIFICATION:** By signature in the Offer section of the Offer and Contract Award page (COP Form 203), the Vendor certifies:
 - a. The submission of the offer did not involve collusion or other anti-competitive practices.
 - b. The Vendor shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11456.
 - c. The Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the vendor may be debarred.
2. **GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City with a view toward securing an order, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such order. In the event this contract is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible city government customers shall not be prohibited by this paragraph.
3. **APPLICABLE LAW:** In the performance of this agreement, contractors shall abide by and conform to any and all laws of the United States, State of Arizona and City of Peoria including but not limited to federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this agreement.

Contractor specifically understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989. In addition, if this agreement pertains to construction, Contractor must also comply with A.R.S. § 34-301, as amended (Employment of Aliens on Public Works Prohibited) and A.R.S. § 34-302, as amended (Residence Requirements for Employees).

Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter, "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this agreement and shall subject Contractor to penalties up to and including termination of this agreement at the sole discretion of the City. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any Subcontractors to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

Neither Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or the Subcontractor establishes that it has complied with the employment verification provisions prescribed by §§ 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

The provisions of this Paragraph must be included in any contract Contractor enters into with any Subcontractors who



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provide services under this agreement or any subcontract. "Services" is defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

Contractor warrants, for the term of this agreement and for six months thereafter, that it has fully complied with the requirements of the Immigration Reform and Control Act of 1986 and all related or similar legal authorities.

This contract shall be governed by the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the City. This contract shall be governed by the laws of the State of Arizona and suit pertaining to this contract may be brought only in courts in the State of Arizona.

This contract is subject to the provisions of ARS §38-511; the City may cancel this contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City or any of its departments or agencies, is at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

4. **LEGAL REMEDIES:** All claims and controversies shall be subject to resolution according to the terms of the City of Peoria Procurement Code.
5. **CONTRACT:** The contract between the City and the Contractor shall consist of (1) the Solicitation, including instructions, all terms and conditions, specifications, scopes of work, attachments, and any amendments thereto, and (2) the offer submitted by the Vendor in response to the solicitation. In the event of a conflict in language between the Solicitation and the Offer, the provisions and requirements in the Solicitation shall govern. However, the City reserves the right to clarify, in writing, any contractual terms with the concurrence of the Contractor, and such written contract shall govern in case of conflict with the applicable requirements stated in the Solicitation or the Vendor's offer. The Solicitation shall govern in all other matters not affected by the written contract.
6. **CONTRACT AMENDMENTS:** This contract may be modified only by a written Contract Amendment (COP Form 217) signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.
7. **CONTRACT APPLICABILITY:** The Offeror shall substantially conform to the terms, conditions, specifications and other requirements found within the text of this specific Solicitation. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the City are not applicable to this Solicitation or any resultant contract.
8. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the contract will forthwith be physically amended to make such insertion or correction.
9. **SEVERABILITY:** The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.
10. **RELATIONSHIP TO PARTIES:** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.



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11. **INTERPRETATION-PAROL EVIDENCE:** This contract represents the entire agreement of the Parties with respect to its subject matter, and all pervious agreements, whether oral or written, entered into prior to this contract are hereby revoked and superseded by this contract. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this contract. This contract may not be changed, modified or rescinded except as provided for herein, absent a written agreement signed by both Parties. Any attempt at oral modification of this contract shall be void and of no effect.
12. **ASSIGNMENT-DELEGATION:** No right or interest in this contract shall be assigned by Contractor without prior written permission of the City and no delegation of any duty of Contractor shall be made without prior written permission of the City.
13. **SUBCONTRACTS:** No subcontract shall be entered into by the contractor with any other party to furnish any of the material, service or construction specified herein without the advance written approval of the City. The prime contractor shall itemize all sub-contractors which shall be utilized on the project. Any substitution of sub-contractors by the prime contractor shall be approved by the City and any cost savings will be reduced from the prime contractor's bid amount. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract and if the Subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not Subcontractors are used.
14. **RIGHTS AND REMEDIES:** No provision in this document or in the vendor's offer shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of the City to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the City's acceptance of and payment for materials or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.
15. **INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.
16. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the goods and services used to fulfill the Contract.
17. **FORCE MAJEURE:** Except for payment for sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force Majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without



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its fault or negligence. Without limiting the foregoing, force majeure includes acts of God: acts of the public enemy; war; acts of terror, hate crimes affecting public order; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority; events or obstacles resulting from a governmental authority's response to the foregoing; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Contract.

Force majeure shall not include the following occurrences:

- a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
- b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and Condition.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed *Certified-Return Receipt* and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.

18. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
19. **RIGHT TO AUDIT RECORDS:** The City may, at reasonable times and places, audit the books and records of any Contractor as related to any contract held with the City. This right to audit also empowers the City to inspect the papers of any Contractor or Subcontractor employee who works on this contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty made pursuant to Paragraph 3 above.
20. **RIGHT TO INSPECT PLANT:** The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or Subcontractor which is related to the performance of any contract as awarded or to be awarded.
21. **WARRANTIES:** Contractor warrants that all material, service or construction delivered under this contract shall conform to the specifications of this contract. Unless otherwise stated in Contractor's response, the City is responsible for selecting items, their use, and the results obtained from any other items used with the items furnished under this contract. Mere receipt of shipment of the material/service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in the solicitation.
22. **INSPECTION:** All material and/or services are subject to final inspection and acceptance by the City. Materials and/or services failing to conform to the specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. The City may elect to do any or all:



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- a. Waive the non-conformance.
- b. Stop the work immediately.
- c. Bring material into compliance.

This shall be accomplished by a written determination for the City.

23. **TITLE AND RISK OF LOSS:** The title and risk of loss of material and/or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.
24. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach of the Contract as a whole.
25. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment of lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.
26. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.
27. **LIENS:** All materials, service or construction shall be free of all liens, and if the City requests, a formal release of all liens shall be delivered to the City.
28. **LICENSES:** Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.
29. **PATENTS AND COPYRIGHTS:** All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the City and shall not be used or released by the Contractor or any other person except with the prior written permission of the City.
30. **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL:** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.
31. **COST OF BID/PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
32. **PUBLIC RECORD:** All offers submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code. However, subsequent to the award of the contract, any information and documents obtained by the City during the course of an audit conducted in accordance with Paragraph 19 above for the purpose of determining compliance by Contractor or a Subcontractor with the Contractor Immigration Warranty mandated by Paragraph 3 above shall remain confidential and shall not be made available for public review or produced in response to a public records request, unless the City is ordered or otherwise directed to do so by a court of competent jurisdiction.
33. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the City.



STANDARD TERMS AND CONDITIONS

Materials Management Procurement

8314 West Cinnabar Avenue
Peoria, Arizona 85345-6560

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Fax: (623) 773-7118

34. **DELIVERY ORDERS:** The City shall issue a Purchase Order for the material and/or services covered by this contract. All such documents shall reference the contract number as indicated on the Offer and Contract Award (COP Form 203).
35. **FUNDING:** Any contract entered into by the City of Peoria is subject to funding availability. Fiscal years for the City of Peoria are July 1 to June 30. The City Council approves all budget requests. If a specific funding request is not approved, the contract shall be terminated.
36. **PAYMENT:** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or services and correct invoice.



SPECIAL TERMS AND CONDITIONS

Solicitation Number: P09-0031

**Materials Management
Procurement**
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1. **Purpose:** Pursuant to provisions of the City Procurement Code, the City of Peoria, Materials Management Division intends to establish a contract for **Public Defender Services**.
2. **Authority:** This Solicitation as well as any resultant contract is issued under the authority of the City. No alteration of any resultant contract may be made without the express written approval of the City Materials Manager in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the City Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.
3. **Offer Acceptance Period:** In order to allow for an adequate evaluation, the City requires an offer in response to this Solicitation to be valid and irrevocable for sixty (60) days after the opening time and date.
4. **Eligible Agencies:** Any contract resulting from this Solicitation shall be for the exclusive use of the City of Peoria.
5. **Contract Type:** Fixed Price
6. **Term of Contract:** The term of any resultant contract shall commence on the first day of the month following the date of award and shall continue for a period of two (2) years thereafter, unless terminated, cancelled or extended as otherwise provided herein.
7. **Contract Extension:** By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of thirty-six (36) months.
8. **Affirmative Action Report:** It is the policy of the City of Peoria that suppliers of goods or services to the City adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, and promote regardless of race, color, religion, gender, national origin, age or disability.
9. **Proposal Format:** Proposals shall be submitted in one (1) original and five (5) copies on the forms and in the format as contained in the Request for Proposal. Proposals shall be on 8 1/2" & 11" paper with the text on one side only.
10. **Interview Guidelines:** During any requested interview, which would be scheduled in the future, be prepared to discuss your firm's proposal, staff assignments, project approach and other pertinent information. The presentation shall be approximately 30 minutes, allowing 15 minutes for a question and answer session.
11. **Evaluation:** In accordance with the City of Peoria Procurement Code, awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.
 - a. Capabilities and Assignments.
 - b. Experience.
 - c. Conformance to Request for Proposal.
12. **Discussions:** In accordance with the City of Peoria Procurement Code, after the initial receipt of proposals, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award.
13. **Proposal Opening:** Proposals shall be submitted at the time and place designated in the request for proposals. All information contained in the proposals shall be deemed as exempt from public disclosure based on the City's need to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The proposals shall not be open for public inspection until after contract award. **PRICES SHALL NOT BE READ.** After contract award, the successful proposal and the evaluation documentation shall be open for public inspection.



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14. **Investigation of Conditions:** The Contractor warrants and agrees familiarity of the work that is required, is satisfied as to the conditions under which is performed and enters into this contract based upon the Contractor's own investigation.
15. **Compensation:** Compensation for services shall be based upon fees negotiated, including all approved costs and expenses incurred in connection with the project; including but not limited to, telephone and other communications, reproduction of documents, special consultants (as approved by the City) and computer costs.
16. **Acceptance:** Determination of the acceptability of work shall be completed in a responsive and professional manner and in accordance with the specifications, schedules, or plans which are incorporated in the Scope of Work.
17. **Payments:** The City shall pay the Contractor monthly, based upon work performed and completion to date, and upon submission of invoices. All invoices shall document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.
18. **Insurance Requirements:** The Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of A-, or approved unlicensed in the State of Arizona with policies and forms satisfactory to the City.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the City, constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance as respects the City, and any insurance or self-insurance maintained by the City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. The Contractor shall be solely responsible for the deductible and/or self-insured retention and the City, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

The City reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Contractor's obligations under this Contract.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

19. **Required Insurance Coverage:**
 - a. Commercial General Liability



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Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacements thereof. The coverage shall not exclude X, C, U.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

Any Contractor subletting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

b. Automobile Liability

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

c. Workers' Compensation

The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case any work is subcontracted, the Contractor will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

d. Professional Liability

The Contractor retained by the City to provide the work or service required by this Contract will maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the work or services performed by the Contractor, or any person employed by the Contractor, with a limit of not less than \$1,000,000 each claim.

- 20. Certificates of Insurance:** Prior to commencing work or services under this Contract, Contractor shall furnish the City with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.



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In the event any insurance policy(ies) required by this contract is(are) written on a "Claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the City fifteen (15) days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. A \$25.00 administrative fee will be assessed for all certificates received without the appropriate bid serial number and title.

21. **Cancellation and Expiration Notice:** Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City.

22. **Independent Contractor:**

a. General

- i. The Contractor acknowledges that all services provided under this Agreement are being provided by him as an independent contractor, not as an employee or agent of the City Manager or the City of Peoria.
- ii. Both parties agree that this Agreement is nonexclusive and that Contractor is not prohibited from entering into other contracts nor prohibited from practicing his profession elsewhere.

b. Liability

- i. The City of Peoria shall not be liable for any acts of Contractor outside the scope of authority granted under this Agreement or as the result of Contractor's acts, errors, misconduct, negligence, omissions and intentional acts.
- ii. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

c. Other Benefits

The Contractor is an independent contractor, therefore, the City Manager will not provide the Contractor with health insurance, life insurance, workmen's compensation, sick leave, vacation leave, or any other fringe benefits. Further, Contractor acknowledges that he is exempt from coverage of the Comprehensive Benefit and Retirement Act (COBRA). Any such fringe benefits shall be the sole responsibility of Contractor.



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23. **Key Personnel:** It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions.
- The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City.
 - If key personnel are not available for work under this contract for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.
24. **Unifier Project Management System:** Awarded vendors may be required to utilize the City's Project Management System, Unifier, for the management of business processes and information regarding the awarded contract. Unifier is an on-line application and will be made available to awarded vendors at no additional charge. Vendors will utilize Unifier to submit and process information to the City such as: Field Change Order Requests, RFI's, Submittals, Payment Applications, Meeting Minutes, etc. Training will be offered to the vendors at no additional charge.
25. **Confidential Information:**
- If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld, a statement advising the Materials Supervisor of this fact shall accompany the submission and the information shall be identified.
 - The information identified by the person as confidential shall not be disclosed until the Materials Supervisor makes a written determination.
 - The Materials Supervisor shall review the statement and information and shall determine in writing whether the information shall be withheld.
 - If the Materials Supervisor determines to disclose the information, the Materials Supervisor shall inform the bidder in writing of such determination.
26. **Confidentiality of Records:** The contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that information contained in its records or obtained from the City or from others in carrying out its functions under the contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of contractor as needed for the performance of duties under the contract.
27. **Ordering Process:** Upon award of a contract by the City of Peoria, Materials Management Division may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate contractor. The award of a contract shall be in accordance with the City of Peoria Procurement Code and all transactions and procedures required by the Code for public bidding have been complied with. A purchase order for the awarded material and/or service that cites the correct contract number is the only document required for the department to order and the contractor to delivery the material and/or service.

Any attempt to represent any material and/or service not specifically awarded as being under contract with the City of Peoria is a violation of the contract and the City of Peoria Procurement Code. Any such action is subject to the legal and



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contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

28. **Billing:** All billing notices to the City shall identify the specific item(s) being billed and the purchase order number. Items are to be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the requesting agency shall refer to the contract number resulting from this solicitation.
29. **Licenses:** Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.
30. **Cancellation:** The City reserves the right to cancel the whole or any part of this contract due to failure by the contractor to carry out any obligation, term or condition of the contract. The City will issue written notice to the contractor for acting or failing to act as in any of the following:
- The contractor provides material that does not meet the specifications of the contract;
 - The contractor fails to adequately perform the services set forth in the specifications of the contract;
 - The contractor fails to complete the work required or to furnish the materials required within the time stipulated in the contract;
 - The contractor fails to make progress in the performance of the contract and/or gives the City reason to believe that the contractor will not or cannot perform to the requirements of the contract.

Upon receipt of the written notice of concern, the contractor shall have ten (10) days to provide a satisfactory response to the City. Failure on the part of the contractor to adequately address all issues of concern may result in the City resorting to any single or combination of the following remedies:

- Cancel any contract;
 - Reserve all rights or claims to damage for breach of any covenants of the contract;
 - Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis find a material non-compliant with the specifications, the actual expense of testing shall be borne by the contractor;
 - In case of default, the City reserves the right to purchase materials, or to complete the required work in accordance with the City Procurement Code. The City may recover any actual excess costs from the contractor by:
 - Deduction from an unpaid balance;
 - Any combination of the above or any other remedies as provided by law.
31. **Project Travel Reimbursable Expenses:** If travel expenses are allowed as part of the contract the reimbursable expenses will be as follows. All expenses will be billed to the City at cost without markup. Copies of bills for expenses are to be submitted with the invoice. Travel time to and from job site is excluded from this contract. There will be no allowances for parking or personal car mileage. No incidentals for travel of any kind are allowed under this contract.

The following is a list of allowable travel expenses under this contract agreement:

- Transportation:



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- i. Air Transportation – coach class fares, minimum 14 days advanced purchase, unless otherwise agreed upon.
 - ii. Car Rental – mid size car, gas for rental car (City assumes no liability regarding additional insurance costs).
- b. Lodging and Meals:
- i. Meals – three meals per day, at the current federal per diem rate for Maricopa County.
 - ii. Lodging – not to exceed the current federal rate for Maricopa County. Vendors are encouraged to stay in hotels located within the City of Peoria when practical. A listing of accommodations within Peoria can be found on the following website: <http://visitpeoriaaz.com/accommodations.php>



SCOPE OF WORK

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1. BACKGROUND

The City of Peoria intends to provide Public Defender Services in Peoria's Municipal Court as required by the United States Constitution, the Arizona Constitution and the Rules of Criminal Procedure for the State of Arizona. To accomplish this, the City anticipates designating two (2) attorneys as the principal public defenders and one (1) attorney as an alternate public defender to be appointed in all cases where the principal public defenders may have a conflict of interest, where multiple defendants require the appointment of separate counsel or where caseload assignments so dictate.

Attorneys submitting on this proposal shall be licensed to practice law in the State of Arizona, a member of good standing in the State Bar of Arizona and otherwise professionally qualified to provide the desired services.

2. SCOPE OF SERVICE

- 2.1 Attorney shall provide legal representation to Defendants when appointed to do so by a judge of the Court.
- 2.2 Attorney shall appear personally for Defendants who they represent in all matters set in the Court including, but not limited to: pre-trial dispositions; motions; hearings; witness/expert interviews; trials; sentencings; sentence reviews; court sessions, appeals and special actions, unless the personal appearance by the Attorney is excused by the judge before whom the matter is to be heard or decided. Attorney shall use reasonable diligence in maintaining personal contact with each Defendant until Defendant's case is Attorney terminated and shall use reasonable diligence in notifying Defendant of official court action.
- 2.3 Attorney shall conduct the defense of his or her clients in a professional, skilled manner consistent with standards set forth in the Arizona Rules of Professional Conduct and case law defining the duties of defense counsel in criminal cases.
- 2.4 Attorney shall maintain an office that is located in Maricopa County and which is capable of receiving clients and telephone calls and taking messages during regular business hours.
- 2.5 Attorney shall at all times remain an active member in good standing of the State Bar of Arizona. Attorney must immediately inform Contract Administrator of any changes in Attorney's active membership status.
- 2.6 Attorney shall maintain current case logs, disposition records, time sheets and provide written reports containing sufficient and pertinent information requested and required by the presiding judge for the purpose of audit and evaluation.
- 2.7 Attorney shall provide for substitution of counsel when Attorney is unable for any reason to appear in court. Substitute counsel shall not be used routinely in cases assigned to Attorney. Attorney shall provide name, address, telephone and bar number of substitute counsel who will be responsible to the same effect and extent as Attorney for the performance of the services required. Attorney shall be responsible for compensation to substitute counsel.

3. FEES

- 3.1 Compensation for work done for the Public Defender shall be set on a per hour basis. Public Defender shall bill the City on a monthly basis by the 15th day of the month following. A separate statement shall be prepared for each case, case number and applicable charges for each case individually noted. The bill shall be signed by the assigned attorney whose signature shall indicate that the charges are accurate. If requested, Attorney shall attach invoices for third-party services.



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3.2 The hourly billable rate should be calculated to include all overhead and internal charges. The City shall not pay for administrative or clerical services, or opening and closing file charges. The City shall not pay for travel time for commuting from the public defender's office to the municipal court or any other court. Additionally, the City shall not pay for any court costs or attorney fees awarded against Public Defender out of any court proceeding.

3.3 Incidental charges shall be billed to the City as follows:

- a. Photocopies at actual cost in no event to exceed \$.20 per page.
- b. Telephone charges for long distance calls at the actual rate charged by the service provider.
- c. Legal research services at actual rate charged by service provider. Legal research services in excess of one hour must be pre-authorized by the presiding judge in order to be eligible for payment.
- d. Investigative services only upon petition to and approval by municipal judge.
- e. Travel time other than commuting from the public defender's office to the court, only to the extent such time is not billed to other clients and pre-approved by the court.
- f. Witness fees, process service fees, transcript fees for appeals and costs for interpreters shall be billed at the amounts authorized by the municipal court for such services.

4. SUBMITTAL REQUIREMENTS

Attorney shall respond to each of the following requirements. The response shall be specific and complete in every detail.

4.1 Attorney shall list current and prior professional employment (list partners, associates and dates) since completion of formal education.

4.2 Attorney shall list all courts (or administrative bodies which require special admission to practice) in which they have been admitted to practice law. Include dates of admission.

4.3 Attorney shall state if they have ever been denied admission to the Bar of any state and explain why.

4.4 Attorney shall describe the nature of present law practice. List and describe any prior experience representing persons charged with criminal offenses.

4.5 Attorney shall describe any special skills or knowledge that they possess relative to the defense of criminal charges.

4.6 Attorney shall list any memberships or professional organizations currently active in. Include any additional information which would qualify attorney's service to the Court's recognition.

4.7 Attorney shall provide name, address, telephone and bar number of substitute counsel who will be responsible to the same effect and extent as Attorney for the performance of the services required.

4.8 HOURLY RATE: \$ 90.00



QUESTIONNAIRE

Solicitation Number: P09-0031

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Please list a minimum of three (3) professional references for similar services whom the Materials Management Division may contact:

1. Company: Gilbert Municipal Court
Contact: Hon. John E. Hudson - Presiding Judge
Address: 55 E. Civic Center Dr.
Gilbert, AZ 85296-0001
Phone: 480-635-7800
2. Company: Maricopa County Superior Court
Contact: Hon. Teresa A. Sanders
Address: 222 E. Javalina Ave., Suite 4A
Mesa, AZ 85210-6201
Phone: 602-506-4791
3. Company: The Maasen Law Firm
Contact: Scott Maasen - Founder
Address: Maasen Law Building
13825 N. Northright, Suite 201, Scottsdale, AZ
Phone: 480-778-1500 85260.0001



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Please list a minimum of three (3) professional references for similar services whom the Materials Management Division may contact:

1. Company: City of Goodyear Prosecutor
Contact: Michael G. Parascondola
Address: 986 S. Litchfield Rd.
Goodyear, AZ 85338-0001
Phone: 623-932-3014
2. Company: Town of Paradise Valley - Town Attorney
Contact: Andrew M. Miller
Address: 6401 E. Lincoln Dr.
Paradise Valley, AZ 85253-4328
Phone: 480-348-3691
3. Company: Town of Paradise Valley Municipal Court
Contact: John L. Auran - Associate Presiding Judge
Address: 6401 E. Lincoln Dr.
Paradise Valley, AZ 85253-4328
Phone: 480-948-7620



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Please list a minimum of three (3) professional references for similar services whom the Materials Management Division may contact:

1. Company: Law Office of John Tatz, P.C.
Contact: John Tatz
Address: 10040 N. 25th Ave., Suite 110
Phoenix, AZ 85021
Phone: 602-253-6889

2. Company: _____
Contact: _____
Address: _____

Phone: _____

3. Company: _____
Contact: _____
Address: _____

Phone: _____



QUESTIONNAIRE

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Has your firm been certified by any jurisdiction in Arizona as a minority or woman owned business enterprise? Yes _____, No X.

If yes, please provide details and documentation of the certification.

L. James Davis, Attorney at Law, P.L.L.C.

340 East Dunlap Ave
Phoenix, Arizona 85020

L. James Davis, P.L.L.C.
Attorney at Law

(602) 870-3969: fax

(602) 870-8003: ph
(602) 460-4148: c

Ms. Lisa Houg, CPPB
City of Peoria
Materials Management
8314 W. Cinnabar Avenue
Peoria, Arizona 85345

VIA HAND DELIVERY

November 25, 2008

**RE: Response to Request for Proposal P09-0031
Public Defender Services**

Dear Ms. Houg:

I hereby propose to provide public defender services to the City of Peoria. I have read the entire Request for Proposal and agree to abide by all of its terms if I am awarded a contract under the terms and price I have proposed. I also attest that I meet all of the qualifications necessary to fulfill the duties of the contract as outlined in the solicitation. Please accept this letter and attached resume as an indication of my strong interest in providing public defender services for the City of Peoria. I believe my eleven year career in criminal law makes me an ideal candidate for this position and I am very excited about the opportunity to assist the City with its indigent criminal defense representation. The following is the required response to the inquiries concerning my background outlined in Section 4 under the Submittal Requirements of the solicitation.

4.1 Attorney shall list current and prior professional employment (list partners, associates and dates) since completion of formal education.

L. James Davis, Attorney at Law, P.L.L.C., Phoenix, Arizona

Criminal Defense Attorney

September 2008 – Present

Recently started own law practice as the sole member, focusing almost exclusively on the representation of criminal defendant clients.

Maasen Law Firm, Scottsdale, Arizona

Criminal Defense Attorney

February 2008 – September 2008

As an associate with the firm, provided representation to criminal defendants in a wide array of criminal cases including both misdemeanor and felony offenses. The majority of the matters handled at the firm were DUI related offenses. Handled upwards of 80 cases at any given time around the local Phoenix area including, importantly, several matters in the Peoria Municipal Court. Other members of the firm included Scott Maasen, Paul Ramos, Tait Elkie, Jay Brown, and Kurt Altman.

Town of Paradise Valley, Paradise Valley, Arizona

Town Prosecutor/Deputy Town Attorney

September 2002 – June 2007

As the Town Prosecutor, assumed sole and ultimate responsibility for all criminal prosecutions within the Town. Represented the State at all pretrial conferences, hearings, and trials. Responsible for all motion practice, victim notification, case management, discovery, appeals, special actions, code enforcement, and supervision of paralegal staff. As the Deputy Town Attorney, performed various functions, including police legal advisor, police officer training, contract review and drafting, legal advisor to various Town departments as well as Town Council, Board of Adjustment, and Planning Commission. The only other attorney with the Town was the Town Attorney, Andrew Miller.

Maricopa County Attorney's Office, Phoenix, Arizona

Deputy County Attorney

August 1996 – June 1999; March 2000 – October 2002

As a prosecutor with this office, prosecuted a wide array of offenses ranging from misdemeanor DUI to 2nd degree Murder. After initial stint in trial group prosecuting offenses such as Theft, Aggravated Assault, Kidnapping, and Armed Robbery, was promoted to the Family Violence Bureau, where charged and prosecuted domestic violence and child abuse related offenses exclusively. Concluded tenure with this office as a mentor, responsible for supervision of newly hired attorneys. Numerous Deputy County Attorneys prosecuted in this office of 200 plus attorneys; however, supervisors include Hon. Teresa A. Sanders, Hon. Karen L. O'Connor, and Vince Imbordino.

Law Offices of Goering & Belknap, Phoenix, Arizona

Attorney

June 1999 – March 2000

As an associate with this firm, was responsible for representing clients in civil litigation, primarily defending individuals insured by Farmer's Insurance Company against personal injury claims. The two partners with this firm were Teresa Goering and Douglas Belknap.

4.2 Attorney shall list all courts (or administrative bodies which require special admission to practice) in which they have been admitted to practice law. Include dates of admission.

I am authorized to practice law in Arizona state courts, and have been since October 1995.

I am authorized to practice law in Arizona federal district courts, and have been since November 1999.

4.3 Attorney shall state if they have ever been denied admission to the Bar of any state and explain why.

I have never been denied admission to the Bar of any state, and I am a member in good standing with the State Bar of Arizona.

4.4 Attorney shall describe the nature of present law practice. List and describe any prior experience representing persons charged with criminal offenses.

I have recently started my own solo law practice and intend to focus almost exclusively on the representation of those charged with criminal offenses. In addition to seeking this contract, I am currently building a client base of private clients in the area of criminal defense. In addition to my 10-plus years of experience in the criminal justice system in Arizona as a prosecutor, this past year I have engaged in the active and vigilant representation of criminal defendant clients while employed at the Maasen Law Firm, where I carried a large caseload primarily dedicated to the representation of those charged with DUI related offenses.

4.5 Attorney shall describe any special skills or knowledge that they possess relative to the defense of criminal charges.

The vast majority of my career has been dedicated to the practice of criminal law. I began my career as a Deputy County Attorney with the Maricopa County Attorney's Office where I prosecuted felony offenses, first as a member of a trial group, and later in the Family Violence Bureau. During this two and half year period, I had the opportunity to try numerous felony jury trials and handle hundreds of felony cases to completion.

After almost one year of practice in civil litigation, I returned to the County Attorney's Office and the Family Violence Bureau, where I continued to handle serious domestic

violence offenses such as Child Abuse, Aggravated Assault, Kidnapping, and Murder. For the final year and half of my tenure at the County Attorney's Office, I had the opportunity to mentor and supervise the newly hired attorneys in the office.

For the better part of the past six years, I served as the Paradise Valley Town Prosecutor and Deputy Town Attorney. As the Town of Paradise Valley Prosecutor, I was responsible for managing all criminal filings within the Town. This responsibility included reviewing police submittals for charging decisions, ensuring witness attendance, victim contact and consultation, police contact and consultation, discovery compliance, disclosure statements, motion practice, pretrial conferences, hearings, trials and appeals. In addition, as the Deputy Town Attorney, I had the opportunity to work on a wide range of municipal law issues, including those related to my position as police legal advisor. Also, while with the Town, I gained valuable experience both in prosecuting Town Code violations and also drafting and editing the Town Code, and made presentations to the Town Council pertaining to those Code revisions, including drafting and proposing the adoption of a home detention program.

Most recently, I have had the opportunity to work for the Maasen Law Firm. During my time with the firm, I had the opportunity to represent hundreds of criminal defense clients on a wide array of matters. My most significant experience while with the Maasen Law Firm was related to the representation of the DUI defendant. Importantly, several of my cases were in the City of Peoria Municipal Court, and I have thus gained valuable experience practicing in this Court. I have been very happy with my career decision to practice criminal defense and find it very rewarding.

Turning to my practice in general, I lease office space from Mr. Thomas Parascandola, Esq. at his office located at 340 E. Dunlap Ave. in Phoenix. This office is equipped with all of the amenities and is fully equipped for private and professional consultation with clients. Additionally, Mr. Parascandola will undoubtedly prove a valuable resource for information and insight into successfully fulfilling the responsibilities associated with indigent representation, as he has done so in Phoenix for approximately the past 10 years.

4.6 Attorney shall list any memberships or professional organizations currently active in. Include any additional information which would qualify attorney's service to the Court's recognition.

As the Deputy Town Attorney for Paradise Valley, I was the primary police legal advisor. This function entailed regularly providing advice to both police officers and command staff, police officer training in 4th Amendment law and other topics, sitting on Sergeant and Lieutenant promotion panels, coordinating grant funding related to the police department, and reviewing and drafting Intergovernmental Agreements and other contracts involving the police department. As a result of my role as police legal advisor, I was invited to become an honorary member of the Arizona Law Enforcement Legal Advisors Association, and participated with that group in an effort to provide the best possible advice to the police department. It is my philosophy that having a good working

knowledge of police department operations and structure can be a valuable asset to the criminal defense practitioner.

I am a member of the Arizona Attorneys for Criminal Justice (AACJ) and have attended that organization's 2-day Tucson seminar related to the defense of DUI offenses.

4.7 Attorney shall provide name, address, telephone and bar number of substitute counsel who will be responsible to the same effect and extent as Attorney for the performance of the services required.

In terms of securing back up for court coverage, as a sole practitioner, I obviously must remain self sufficient and solely responsible for seeing that court cases are always covered. Despite being a sole practitioner, I don't anticipate any problems with attending all court appearances in a timely fashion. As the sole prosecutor for Paradise Valley, with no back up attorneys, I was naturally responsible for attending all court appearances, and did so consistently, having not one single unscheduled court absence in my entire tenure with Paradise Valley. However, should an emergency arise, Mr. Thomas J. Parascandola, Bar #016991, 340 E. Dunlap Ave., (602)943-7239, an experienced defense attorney, has agreed to assist with coverage if needed.

4.8 HOURLY RATE: \$90.00

In sum, I believe that my experience, coupled with my broad knowledge of the criminal justice system, would be a benefit to the City of Peoria and would make me an ideal candidate to fill one of the Public Defender positions. While the majority of my career has been dedicated to the prosecution side of criminal law, I have recently shifted my practice to the representation of the criminal defendant and find it very rewarding. In addition, my prosecutorial experience easily translates to an ability to provide professional and competent criminal defense representation, as both prosecution and defense equally require a solid knowledge of the law and an ability to persuade and advocate on behalf of the client. Most importantly, throughout my career, whether as a prosecutor or defense attorney, I have always emphasized maintaining quality relationships with the courts in which I have appeared and with the attorneys that I have opposed, a fact that definitely has helped serve my client's best interests. Finally, in an effort to

become familiar with the operation of the Peoria Public Defender contract, I have recently assisted Mr. John Tatz with the coverage of his contract, and having done so, I am confident that not only am I capable of performing the contract, but importantly, that it will be a professionally rewarding experience.

Thank you for your time and attention to this matter. I would welcome the opportunity to meet with you to review my qualifications. Should you have any questions, or if you would like any additional information, please do not hesitate to contact me.

L. JAMES DAVIS, P.L.L.C.

A handwritten signature in black ink, appearing to read 'L. James Davis', written over a horizontal line.

L. James Davis
Attorney at Law

Enc.

RESUME

L. James Davis, Attorney at Law, P.L.L.C.
340 East Dunlap Ave
Phoenix, Arizona 85020

L. James Davis, P.L.L.C.
Attorney at Law

(602) 870-3969: fax

(602) 870-8003: ph
(602) 460-4148: c

EDUCATION

Georgia State University College of Law, Atlanta, Georgia
Juris Doctor Degree, June 1995

Arizona State University, Tempe, Arizona
Bachelor of Arts Degree, December 1991
Major: Political Science; Minor: History

LICENSURE

Arizona State Bar, October 1995

EMPLOYMENT

L. James Davis, Attorney at Law, P.L.L.C, Phoenix, Arizona
Criminal Defense Attorney – Sole Practitioner, September 2008 – present

- Represent criminal defendant clients.

Maasen Law Firm, Scottsdale, Arizona
Criminal Defense Attorney, February 2008 –September 2008

- Represent criminal defense clients in a variety of misdemeanor and felony criminal matters, primarily in the area of Driving Under the Influence offenses.

Town of Paradise Valley, Paradise Valley, Arizona
Town Prosecutor/Deputy Town Attorney; September 2002 – June 2007

Criminal

- Sole responsibility for all criminal prosecution within the Town.
- Represent State at all pretrial conferences, hearings, and trials.
- Extensive motion practice.
- Ultimate responsibility for victim notification, case management, discovery, and office efficiency.
- Responsible for appeals and special actions.
- Civil traffic hearings and appeals.
- Code Enforcement Prosecution.
- Supervision of paralegal staff.

Municipal

- Police Department Legal Advisor.
- Police Department training in report writing, testimony skills, and 4th Amendment law.
- Contract review, revision and drafting.

- Advise Town departments and staff on wide range of legal issues, including employment law, contract law, land use law, public records law, open meeting law, and municipal liability law.
- Advise members of Board of Adjustment, Planning Commission, and Town Council.
- Draft, review and revise Town Code.
- Presentations to Town Council.

Maricopa County Attorney's Office, Phoenix, Arizona
Deputy County Attorney; August 1996 – June 1999; March 2000 – October 2002

Mentor Preliminary Hearing Bureau; July 2001 – October 2002

- Supervise new attorneys.
- Attend court with new attorneys to ensure appropriate disposition of felony and misdemeanor case and second chair preliminary hearing and trials.
- Accountable for ensuring efficient resolution of cases at Regional Felony Center.
- Submit monthly memorandum to Bureau Chief evaluating new attorney performance.

Family Violence Bureau Prosecuting Attorney; May 1998 – June 1999; March 2000 – July 2001

- Review law enforcement investigative reports for prosecution.
- Represent State in grand jury proceedings.
- Represent State in felony jury trials involving family violence and child abuse.
- Advise local law enforcement agencies regarding compliance with state laws.
- Respond to and assist in law enforcement investigations.

Trial Bureau Prosecuting Attorney; August 1996 – May 1998

- Represent State in felony jury trials.
- Motion practice.
- Maintain a caseload exceeding 60 active and varied felony files.
- Negotiate case resolutions.
- Trial Bureau Attorney of the Month for October 1997.

Law Offices of Goering & Belknap, Phoenix, Arizona
Attorney; June 1999 – March 2000

- Represent clients in Civil Litigation.

PROFESSIONAL ORGANIZATIONS

Arizona Law Enforcement Legal Advisors Association,
Honorary Member; October 2002 – June 2007

Arizona Attorneys for Criminal Justice; April 2008 - present



CONTRACT AMENDMENT

Materials Management Procurement

9875 N. 85th Ave., 2nd Fl.
Peoria, AZ 85345
Telephone: (623) 773-7115
Fax: (623) 773-7118

Solicitation No. P09-0031 Page 1 of 1

Description: Public Defender Services

Amendment No. One (1) Date: 10/11/10

Buyer: Lisa Houg, CPPB

In accordance with the Contract Special Terms and Conditions, Contract Extension, the above referenced contract shall expire on 1/31/11.

The New Contract Term:

Contract Term: 2/1/11 to 1/31/12

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.


Signature

11-30-10
Date

L. James Davis, Attorney at Law
Typed Name and Title

L. James Davis PLLC
Company Name

340 E. Dunlap Ave.
Address

Phoenix
City

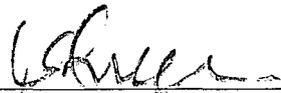
AZ
State

85020
Zip Code

Attested By:



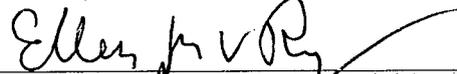
City Clerk



Director: George Anagnost, Presiding Judge



Department Rep: Brenda Jordan, Court Administrator



Approved as to Form: Stephen M. Kemp, City Attorney
Ellen Van Riper, Assistant City Attorney

The above referenced Contract Amendment is hereby Executed

December 16, 2010, at Peoria, Arizona


Herman F. Koebergen, Materials Manager



City Seal

Copyright 2003 City of Peoria, Arizona
(Rev 01/05/09)

Official File

A CON 01609A



CONTRACT AMENDMENT

Materials Management Procurement
 9875 N. 85th Ave., 2nd Fl.
 Peoria, AZ 85345
 Telephone: (623) 773-7115
 Fax: (623) 773-7118
 Buyer: Lisa Houg, CPPB

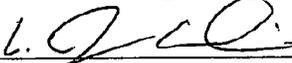
Solicitation No. P09-0031 Page 1 of 1
 Description: Public Defender Services
 Amendment No. Two (2) Date: 11/2/11

In accordance with the Contract Special Terms and Conditions, **Contract Extension**, the above referenced contract shall expire on 1/31/12.

The New Contract Term:

Contract Term: 2/1/12 to 1/31/13

Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

	12-9-11	L. James Davis, Attorney at Law	L. James Davis PLLC
Signature	Date	Typed Name and Title	Company Name
340 E. Dunlap Ave.		Phoenix	AZ
Address		City	State
			85020
			Zip Code

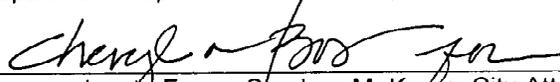
Attested By:



Wanda Nelson, City Clerk


 Director: George Anagnost, Presiding Judge


 Department Rep: Brenda Jordan, Court Administrator

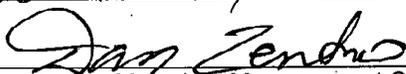

 Approved as to Form: Stephen M. Kemp, City Attorney



CC Number
 ACON01609B
 Contract Number

The above referenced Contract Amendment is hereby Executed

 , at Peoria, Arizona


 Dan Zenko, Materials Management Supervisor

City Seal
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 (Rev 01/05/09)

Official File

A CON 01609B



CONTRACT AMENDMENT

Materials Management Procurement

9875 N. 85th Ave., 2nd Fl.
Peoria, AZ 85345
Telephone: (623) 773-7115
Fax: (623) 773-7118

Solicitation No. P09-0031 Page 1 of 1

Description: Public Defender Services

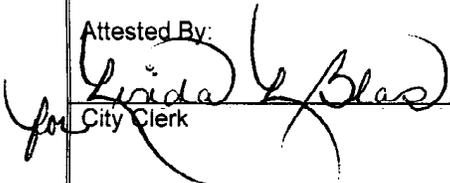
Amendment No. Three (3) Date: 12/13/2012

Buyer: Lisa Houg, CPPB

In accordance with the Contract Special Terms and Conditions, **Contract Extension**, the above referenced contract shall expire on 1/31/13. The New Contract Term is **2/1/13 - 1/31/14**.

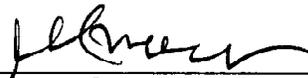
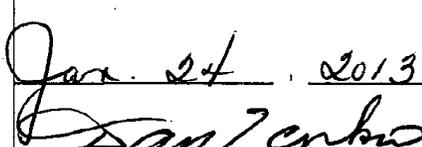
Contractor hereby acknowledges receipt and agreement. A signed copy shall be filed with the City of Peoria, Materials Management Division.

	<u>12-15-12</u>	L. James Davis, Attorney at Law	L. James Davis PLLC
Signature	Date	Typed Name and Title	Company Name
<u>14001 N. 7th Street, Suite B-104</u>		<u>Phoenix</u>	<u>AZ</u>
Address		City	State
			<u>85022</u>
			Zip Code

Attested By: 
City Clerk



CC Number
ACON01609C
Contract Number

	Director: George Anagnost, Presiding Judge
	Department Rep: Brenda Jordan, Court Administrator
	Approved as to Form: Stephen M. Kemp, City Attorney
The above referenced Contract Amendment is hereby Executed	
<u>Jan. 24, 2013</u>	at Peoria, Arizona
	Dan Zenko, Materials Management Supervisor

City Seal
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