



## Agreement

**Arizona Commerce Authority**  
333 North Central Avenue  
Suite 1900  
Phoenix, Arizona 85004  
(602) 845-1200

THIS CONTRACT ("Contract"), made effective as of October \_\_, 2013 (the "**Effective Date**" is made by and between the ARIZONA COMMERCE AUTHORITY, hereinafter the "ACA") and Pima County hereinafter the "County" ). The ACA and County are collectively referred to as the "**Parties**".

### RECITALS:

- A. The ACA's mission is to grow and diversify Arizona's economy and create quality jobs for its citizens by supporting and attracting businesses in targeted, high-growth clusters, with an emphasis on base industries throughout Arizona.
- B. In October of 2012, the ACA was awarded one of ten national awards through The Advanced Manufacturing Jobs Innovation Accelerator Challenge (AMJIAC). The AMJIAC grant is a collaborative grant competition conducted by five federal agencies; Economic Development Administration (EDA), Employment and Training Administration (ETA), Dept of Energy (DOE), Small Business Administration (SBA), and National Institute of Science and Technology/Manufacturing Extension Partnership.
- C. Per its grant proposal, the ACA is taking a regional approach to strengthening the Aerospace and Defense Industries in Arizona by concentrating on three (3) counties; Maricopa, Pinal and Pima Counties. To accomplish the goals set forth in the grant, the ACA will engage partners to maximize the ACA's resources to significantly impact the A&D Industries.
- D. The Federal Workforce Investment Act Program mandated the creation of a centralized, "one-stop" workforce system in each state. The Pima County Workforce One Stop is the state designated local workforce area in Pima County and collaborates with other local One Stops in southern Arizona.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, representations and warranties herein contained, and for other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### AGREEMENT

- 1. **Scope of Work.** County agrees to perform services within the Scope of Work as described in the attached Exhibit A, as assigned and directed by the ACA.
- 2. **Compensation.** The ACA agrees to compensate County for services performed and to reimburse County for approved expenses in accordance with the Price Sheet, attached hereto as Exhibit B.



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3. **Authorized Work.** County shall perform work under this Contract, including tasks set forth in the attached Scope of Work, only upon the direction of the ACA. The ACA's direction to perform work may be provided verbally or in writing. Once a project is assigned to the County by the ACA, the County may perform all tasks reasonably necessary to accomplish the project within the scope of Federal grant requirements and the policies and procedures established for the grant.
4. **Communications as a Representative of the ACA.** The Parties acknowledge that it is critical to the mission of the ACA that messaging about the ACA and the ACA's activities are centrally coordinated. Accordingly, notwithstanding anything herein to the contrary, (a) the County shall not speak to the media or perform or agree to perform public speaking engagements as a representative of the ACA without the express approval of the ACA, and (b) the County shall not purport to speak for or represent the ACA in any context except in respect of projects that have been assigned to the County. All media requests and requests relating to public speaking engagements regarding the ACA or the performance of this Contract should be processed through the ACA's SVP of Marketing and Communications.
5. **Term.** The initial term of this Agreement shall be from the effective date through June 30, 2014. The Parties may exercise up to 2 one-year renewal periods by mutual agreement of the Parties as indicated in written amendments signed by both parties, for a total contract period not to exceed three years.
6. **General.**
  - a. This Contract replaces and supersedes all other agreements, written or verbal, between the Parties.
  - b. This Contract is subject to, and incorporates by this reference, the ACA Special Terms and Conditions, attached as Exhibit C and the ACA's Uniform Terms and Conditions, attached as Exhibit D.
  - c. This Contract incorporates by reference, the County's Proposal and the Solicitation. (See Section 2.3 of the Uniform Terms and Conditions with respect to resolving conflicting terms.)
  - d. By County's signature below, County certifies to the following:
    1. The offer to perform the Scope of Work services did not involve collusion or other anti-competitive practices.
    2. The County 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,



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favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.

- e. This Agreement is binding upon and shall inure to the benefit of the successors, assigns, heirs and personal representatives of the ACA and Pima County.

### PIMA COUNTY:

### ARIZONA COMMERCE AUTHORITY:

\_\_\_\_\_  
Chair, Board of Supervisors                      Date

\_\_\_\_\_  
Sandra Watson, President & CEO                      Date

ATTEST:

\_\_\_\_\_  
Clerk of the Board                      Date

APPROVED AS TO CONTENT:

Art Eckstrom, Director, Community Services,  
Employment and Training

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen S. Friar, Deputy County Attorney

## EXHIBIT A: SCOPE OF WORK

### Background: Arizona Commerce Authority/AMJIA Grant

The ACA received a \$1.8 million multi-agency federal grant through the Advanced Manufacturing Jobs and Innovation Accelerator. The grant will help catalyze and leverage private capital needed to advance Southern Arizona's well-established A&D cluster to fuel job creation through public-private partnerships.

The overall goal of the Employment and Training Administration ("ETA") portion of the grant is to target resources to help prepare workers for occupations eligible to be filled by H-1B Visa workers, thus reducing the need for foreign workers and increasing the utilization of Arizona workers.

#### i. Nature of Services

ACA and County shall work collaboratively to advance the ETA goals of the AMJIA Grant.

##### 1. ACA will:

- a. Provide general direction and oversight of AMJIA Grant activities.
- b. Be responsible for compliance with the terms and conditions of the AMJIA Grant not specifically assigned to County under this Agreement.
- c. Reimburse County for the costs associated with training eligible workers.

##### 2. County will:

- a. Assign a project manager to oversee implementation of program, manage partner activities and ensure completion of County responsibilities under the Agreement.
- b. Provide, or secure, training for existing A&D workers pursuing career pathways requiring higher skill levels. Workers must be 18 years or older and possess a High School Diploma or GED.
- c. Develop sector strategies to help strengthen entry-level "on-ramps" through OJT or apprenticeship models. Target such entry-level training for WIA participants using formula grants.

#### ii. AMJIA Grant Objectives and activities

**Objective 1: – To strengthen the Aerospace and Defense Industry Sector Partnerships in Pima County and across the region.**

##### 1. County will :

- a. Work with ACA and local Sector Strategy partners to strengthen sustainable relationships among A&D Industry Stakeholders and identified defense subcontractors.
- b. Collaborate with Pima Community College and with A&D company partners to review existing curriculum and align the curriculum with industry-specified performance outcome needs.

##### 2. ACA will consult and collaborate with County to:

- a. Carry out Sector Strategy/industry partner outreach in Pima County.

## EXHIBIT A: SCOPE OF WORK

- b. Identify current gaps in training and education leading to decreased worker advancement opportunities in the A&D industries.
  - c. Identify curriculum and needs to provide training and education to meet A&D industry needs and ensure a pathway to occupations that are eligible for H1-B visas.
  - d. Align curriculum with appropriate community college degree and/or industry certification program.
3. ACA, County and Sector Strategy partners will meet **quarterly**, at a time mutually agreeable to ACA and County, to monitor progress towards implementing curriculum changes.

### **Objective 2: - To increase the supply of skilled A&D workers. County will:**

1. Work with A&D companies to identify incumbent workers who would benefit from the above-described curriculum.
2. Develop a training plan for each worker based on the company's staffing patterns, attainment of industry-recognized credentials and advancement of each worker into higher-skilled, technical positions.
3. Place incumbent workers into the appropriate training environment.
4. Ensure a dollar-for-dollar match, half of which will be in the form of cash (direct tuition or employee training wages) from each company.
5. Track progress of each worker pursuant to the training plan.
6. Report incumbent worker training outcomes quarterly, as directed by ACA, in a format provided by ACA.

### **Objective 3: – Create OJT and apprenticeship/internship models for A&D Sector.**

1. ACA and County will work together to identify the need and opportunities for work-based learning, including apprenticeship programs and OJT opportunities in areas that further workers' opportunities and transfer to other industries.
2. County will:
  - a. Identify and recruit WIA-eligible job seekers to participate in the internships, OJTs and/or apprenticeship programs.
  - b. Distribute the ETA training funds provided under this Agreement, subject to availability, to eligible individuals to accomplish this in accordance with WIA and other applicable regulations.



<b>EXHIBIT B: PRICE SHEET</b>
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Payment

This is a Cost Reimbursement Contract. ACA will pay County in arrears for the costs of training incumbent workers pursuant to Paragraph A(2) and any reimbursable expenses (see Special Terms and Conditions, Paragraph 2).

1	Training	Not to exceed \$235,000
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Reimbursement to County shall not exceed **\$235,000.00**.

County will submit invoices and reports to the ACA as required by the terms of the grant and in compliance with requirements provided by the ACA.

## **EXHIBIT C: SPECIAL TERMS AND CONDITIONS**

### **ARIZONA COMMERCE AUTHORITY (ACA)**

#### **SPECIAL TERMS AND CONDITIONS FOR SOLICITATIONS**

1. Unless otherwise expressly provided in the Contract, County (i) is an independent contractor to the ACA, (ii) shall be responsible for all taxes, all employee related expenses and other standard costs of doing business, including but not limited to health insurance, normal telecommunications, normal business postage and delivery, any leases, bank charges, auditors, and office supplies, (iii) shall specifically not be entitled to any severance pay in the event this Contract is terminated or not renewed, and (iv) shall be entitled to reimbursement of expenses only to the extent that such expenses are approved in writing and in advance by the ACA and are consistent with ACA policies.
2. The ACA shall have the right to modify, change, or delete any part of the County's deliverables. All deliverables of the County to the ACA are the property of the ACA.
3. Travel time to and from the County's domicile or office to Phoenix, Arizona or company offices shall not be billable.
4. Initial performance period will be from the Effective Date through June 30, 2014. The Parties may exercise up to 2 one-year renewal periods for a total contract period not to exceed three years by written amendment signed by both parties.

## EXHIBIT D: UNIFORM TERMS AND CONDITIONS

### ARIZONA COMMERCE AUTHORITY (ACA) UNIFORM TERMS AND CONDITIONS

#### 1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. "ACA" means the Arizona Commerce Authority.
- 1.2. "ACA Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.3. "Attachment" means any item a Solicitation requires an Offeror to submit as part of an Offer.
- 1.4. "Contract" has the meaning set forth in the preamble on the first page of this Contract.
- 1.5. "Contract Amendment" means a written document signed by the parties that is issued for the purpose of making changes in the Contract.
- 1.6. "County" has the meaning set forth in the preamble on the first page of this Contract.
- 1.7. "Days" means calendar days unless otherwise specified.
- 1.8. "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.9. "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.10. "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.11. "Offer" means an offer to provide the goods and/or services specified in a Solicitation, such as a bid, proposal or quotation.
- 1.12. "Offeror" means the County.
- 1.13. "Services" means the furnishing of labor, time or effort by a County or County's subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.14. "Solicitation" means an Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").



## EXHIBIT D: UNIFORM TERMS AND CONDITIONS

- 1.15. "*Solicitation Amendment*" means a written document that is signed by the ACA and issued for the purpose of making changes to the Solicitation.
- 1.16. "*Subcontract*" means any Contract, express or implied, between the County and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

### 2. Contract Interpretation

- 2.1. Arizona Law. Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the ACA of Arizona. (Please note: The ACA is exempt from Title 41, Chapter 23 of the Arizona Revised Statutes (the Procurement Code)).
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict between the terms of the various Contract sections and documents, the sections and documents shall prevail in the following order;
  - 2.3.1. The "Agreement" section commencing on the first page of this document.
  - 2.3.2. Special Terms and Conditions;
  - 2.3.3. Price Sheet;
  - 2.3.4. Statement or Scope of Work;
  - 2.3.5. Uniform Terms and Conditions;
  - 2.3.6. Solicitation; and
  - 2.3.7. Proposal.
- 2.4. Relationship of Parties. The County under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

## EXHIBIT D: UNIFORM TERMS AND CONDITIONS

- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### 3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the County shall retain and shall contractually require each of its subcontractors to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the ACA at reasonable times. Upon request, the County shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Parties agree to comply with all provisions and requirements of Arizona Executive Order 2009-09 including **flow down of all provisions and requirements to any subcontractors.** Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website:

These orders are hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, Contractor shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the County's or any of its subcontractors' books and records shall be subject to audit by the ACA and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The County agrees to permit access to its facilities, processes, or services at reasonable times for inspection of the facilities or materials covered under this Contract. The ACA shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the County's facilities nor materials testing shall constitute final acceptance of the materials or services. If the ACA determines non-compliance of the materials, the County shall be responsible for the payment of all costs incurred by the ACA for testing and inspection.
- 3.5. Notices. Any notices required by this Contract shall be made to the following personnel:
- |                              |                                 |
|------------------------------|---------------------------------|
| Pima County: Arthur Eckstrom | ACA: Kirsten Hall               |
| 2797 D. Ajo Way              | 333 N. Central Ave., Suite 1900 |
| Tucson, AZ 85713             | Phoenix, AZ 85004               |
- 3.6. Advertising, Publishing and Promotion of Contract. The County shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the ACA.

## EXHIBIT D: UNIFORM TERMS AND CONDITIONS

- 3.7. Property of the ACA. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the ACA. The County is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. . In the event of a public records request, the County shall notify ACA of said request and allow 10 days before releasing the requested information.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property") shall be work made for hire and the ACA shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the ACA of Arizona requesting the issuance of this contract shall own (for and on behalf of the ACA) the entire right, title and interest to the Intellectual Property throughout the world. The ACA shall have sole responsibility to take all acts and execute any documents necessary to assure ownership of the Intellectual Property vests in the ACA. County shall take no action that might have the effect of vesting all or part of the Intellectual Property in any entity other than the ACA.
- 3.9. Federal Immigration and Nationality Act. The Parties shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the Parties shall flow down this requirement to all of its subcontractors utilized during the term of the contract. Either Party shall retain the right to perform random audits of the other party's and the other party's subcontractors' records or to inspect papers of any employee thereof to ensure compliance. Should it be determined that a party and/or any of its subcontractors are noncompliant, the all remedies allowed by law may be pursued, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment.
- 3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, the Parties warrant compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11 Offshore Performance of Work Prohibited.  
Any services that are described in the specifications or scope of work that directly serve the ACA of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United ACAs. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

### 4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. County shall submit a complete and accurate invoice for payment from the ACA by the 20th day of each month for the previous month's activities.

## EXHIBIT D: UNIFORM TERMS AND CONDITIONS

- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
  - 4.3. Applicable Taxes.
    - 4.3.1. Payment of Taxes. The County shall be responsible for paying all applicable taxes.
    - 4.3.2. State and Local Transaction Privilege Taxes. The ACA is subject to all applicable state and local transaction privilege taxes. .
    - 4.3.3. Tax Indemnification. County shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the County. County shall require each subcontractor to pay all Federal, state and local taxes applicable to its operation and any persons employed by the subcontractor.
    - 4.3.4. IRS W9 Form. In order to receive payments the County shall have a current I.R.S. W9 Form on file with the ACA of Arizona unless such filing is not required by law.
  - 4.4. Availability of Funds for the Next ACA fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the ACA for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
  - 4.5. Availability of Funds for the current ACA fiscal year. Should the Arizona State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the ACA may take any of the following actions:
    - 4.5.1. Accept a decrease in price offered by the County;
    - 4.5.2. Cancel the Contract; or
    - 4.5.3. Cancel the contract and re-solicit the requirements.
- 5. Contract Changes**
- 5.1. Amendments. The Contract may be modified only through a written Contract Amendment signed by the parties. Changes to the Contract, including without limitation the addition of work or materials, the revision of payment terms, or the substitution of work or materials, purported to be made by a person who is not specifically authorized by the ACA to execute the Contract Amendment shall be void and without effect, and the County shall not be entitled to any claim under this Contract based on those changes.
  - 5.2. Subcontracts. The County shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the ACA. The County shall



## EXHIBIT D: UNIFORM TERMS AND CONDITIONS

clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

- 5.3. Assignment and Delegation. The County shall not assign any right nor delegate any duty under this Contract without the prior written approval of the ACA. The ACA shall not unreasonably withhold approval.

### 6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

- 6.2. Liability: Each party shall be legally responsible for the acts, errors and omissions of its respective officers, departments, employees, agents, contractors and subcontractors and for any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or damages of any kind or nature, including consequential damages, liability, interest, attorneys' and accountants' fees or costs, and expenses of whatsoever kind and nature, which are in any manner directly or indirectly caused, occasioned or contributed to by its officers, departments, employees, agents, contractors or subcontractors, or anyone acting under its direction, control or on his behalf, in connection with or incident to the performance of this Agreement. The mutual liability provision set forth herein is not intended to and does not preclude any party from claiming against another party for breach of this Agreement.

### 6.3. Force Majeure.

- 6.3.1 Except for payment of 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 its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions- intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

- 6.3.2. Force majeure shall not include the following occurrences:

- 6.3.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.3.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or



## EXHIBIT D: UNIFORM TERMS AND CONDITIONS

6.3.2.3. Inability of either the County or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.3.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be 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 when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.3.4. 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.

6.4. Third Party Antitrust Violations. To the extent allowed by law, the County assigns to the ACA any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the County, toward fulfillment of this Contract.

### 7. Warranties

7.1. Compliance with Applicable Laws. The services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the County shall maintain all applicable licenses and permit requirements.

7.2. Survival of Rights and Obligations after Contract Expiration or Termination. County's Representations and Warranties. All representations and warranties made by the County under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, neither Party is subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

### 8. The ACA's Remedies in the Event of Default

8.1 Right to Assurance. If the ACA in good faith has reason to believe that the County does not intend to, or is unable to perform or continue performing under this Contract, the ACA may demand in writing that the County give a written assurance of intent to perform. Failure by the County to provide written assurance within the number of Days specified in the demand may, at the ACA's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

## EXHIBIT D: UNIFORM TERMS AND CONDITIONS

### 8.2. Stop Work Order.

8.2.1. The ACA may, at any time, by written order to the County, require the County to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the County. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the County shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the County shall resume work. The ACA shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the Parties under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the ACA may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset. The ACA shall be entitled to offset against any sums due the County, any expenses or costs incurred by the ACA, or damages assessed by the ACA concerning the County's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9. **Contract Termination**

9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, either party may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of either party is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to the other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when either party provides written notice of the cancellation to the other.

9.2. Gratuities. Either party may, by written notice to the other, terminate this Contract if the terminating party determines that employment or a gratuity was offered or made by the other party to any officer or employee of the terminating party for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. .

## EXHIBIT D: UNIFORM TERMS AND CONDITIONS

- 9.3. Suspension or Debarment. The ACA may, by written notice to the County, immediately terminate this Contract if the ACA determines that the County has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the County is not currently suspended or debarred. If the County becomes suspended or debarred, the County shall immediately notify the ACA.
- 9.4. Termination for Convenience. The ACA reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the ACA, without penalty or recourse. Upon receipt of the written notice, the County shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the ACA. In the event of termination under this paragraph, all documents, data and reports prepared by the County under the Contract shall become the property of and be delivered to the ACA upon demand. The County shall be entitled to receive full compensation for all work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5. Termination for Default.
- 9.5.1. In addition to the rights reserved in the contract, either party may terminate the Contract due to the failure of the other party to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The terminating party shall provide written notice of the termination and the reasons for it to the other.
- 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the County under the Contract shall become the property of and be delivered to the ACA on demand.
- 9.5.3. The ACA may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract.
- 9.6. Non-Appropriation. Notwithstanding any other provision in this Contract, County may termination this Contract if, for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract.
- 9.7. Continuation of Performance through Termination. The parties shall continue to perform in accordance with the requirements of the Contract up to the date of termination, unless otherwise agreed to in writing by the parties.

## EXHIBIT D: UNIFORM TERMS AND CONDITIONS

### 10. Contract Claims

- 10.1. A claimant shall file a contract claim with the ACA within 180 days after the claim arises. The claim shall include the following:
  1. The name, address, and telephone number of the claimant;
  2. The signature of the claimant or claimant's representative;
  3. Identification of the purchasing agency and the solicitation or contract number;
  4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
  5. The form and dollar amount of the relief requested.
- 10.2. The ACA has the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.
- 10.3. The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration pursuant to A.R.S. § 12-1518 after exhausting all reasonable informal efforts to resolve the dispute, except as may be required by other applicable statutes.