

***PROJECT NAME* AGREEMENT**

**BETWEEN**

***RECIPIENT***

**AND**

**PHOENIX COMMUNITY DEVELOPMENT AND  
INVESTMENT CORPORATION**

***DATE***

**PROJECT NAME AGREEMENT**

**TABLE OF CONTENTS**

	Page No.
RECITALS.....	1
AGREEMENT .....	1
ARTICLE I - DEFINITIONS .....	1
ARTICLE II - PERFORMANCE BY CONTRACTOR.....	3
<b>2.1 Contractor’s Acceptance and Responsibilities.</b> .....	3
<b>2.2 Professional Competency.</b> .....	3
<b>2.3 Applicable Laws and Applicable Standards.</b> .....	3
<b>2.4 Confidentiality and Data Security.</b> .....	3
<b>2.5 Representations and Warranties of Contractor.</b> .....	5
<b>2.6 Independent Contractor; No Agency; Taxes.</b> .....	7
<b>2.7 Contract Workers Security Inquiries.</b> .....	7
ARTICLE III - SERVICES.....	9
<b>3.1 Services.</b> .....	9
<b>3.2 Changes.</b> .....	10
<b>3.3 Notification of PCDIC.</b> .....	10
ARTICLE IV - CONTRACTOR FEE, BILLING AND PAYMENT .....	11
<b>4.1 Compensation.</b> .....	11
<b>4.2 Billing and Payment.</b> .....	11
<b>4.3 Sole Compensation.</b> .....	11
ARTICLE V - RECORDS REQUIREMENTS .....	11
<b>5.1 Maintenance of Records.</b> .....	12
<b>5.2 Examination of Records of Contractor.</b> .....	12
ARTICLE VI - TERM, TERMINATION, CHANGES AND SUSPENSION.....	12
<b>6.1 Term of Agreement.</b> .....	12
<b>6.2 PCDIC’s Right to Make Changes.</b> .....	12
<b>6.3 PCDIC’s Right to Terminate.</b> .....	12
<b>6.4 PCDIC’s Right to Suspend.</b> .....	13
<b>6.5 Contractor’s Obligations Upon Expiration or Termination.</b> .....	13
ARTICLE VII - NOTICES AND AUTHORIZED REPRESENTATIVES .....	13
<b>7.1 PCDIC’s Authorized Representative(s).</b> .....	13
<b>7.2 Contractor’s Authorized Representative(s).</b> .....	13
<b>7.4 Notices.</b> .....	13
<b>7.4 Change of Address.</b> .....	14
ARTICLE VIII - INSURANCE AND INDEMNITY.....	14
<b>8.1 Indemnification Clause.</b> .....	14

<b>8.2 Insurance.</b>	15
<b>ARTICLE IX - GENERAL EMPLOYMENT</b>	18
<b>9.1 Non-Discrimination and Affirmative Action.</b>	18
<b>9.2 Compliance with Federal Laws.</b>	18
<b>9.3 Legal Worker Requirements.</b>	18
<b>ARTICLE X - MISCELLANEOUS</b>	19
<b>10.1 Modifications.</b>	19
<b>10.2 Continuation During Disputes.</b>	19
<b>10.3 Offset.</b>	19
<b>10.4 Governing Law, Form and Venue.</b>	19
<b>10.5 Severability; Integration.</b>	20
<b>10.6 Indulgences Not Waivers.</b>	20
<b>10.7 No Third Party Beneficiary.</b>	20
<b>10.8 Construction.</b>	20
<b>10.9 Remedies.</b>	20
<b>10.10 Assignment and Subcontracts.</b>	21
<b>10.11 Headings Descriptive.</b>	21
<b>10.12 Survival.</b>	21
<b>10.13 Documents.</b>	21
<b>SIGNATURES</b>	22
<b>EXHIBIT A</b>	23
<b>SCOPE OF SERVICES</b>	23

DRAFT

## ***PROJECT NAME* AGREEMENT**

THIS *PROJECT NAME* AGREEMENT (“Agreement”) is made and entered into as of the \_\_\_ day of *DATE*, (“Effective Date”) by and between *CONTRACTOR*, an Arizona nonprofit corporation (“Contractor”) and PHOENIX COMMUNITY DEVELOPMENT AND INVESTMENT CORPORATION, an Arizona nonprofit corporation (“PCDIC”) (collectively the “Parties”).

### **RECITALS**

- A. PCDIC desires to provide a *\$XXX,XXX* funding match to the *PROJECT* (the “Project”), for the development of a \_\_\_\_\_ coordinated by Contractor and *located within a New Market Tax Credits (NMTC) census tract areas in South Phoenix, Arizona*.
- B. Contractor has the resources and experience to administer the Project and coordinate with other partners and vendors to complete this Project.
- C. Contractor’s proposal and request for funding was approved on *DATE*, by the PCDIC Board.
- D. Contractor and PCDIC desire to enter into this Agreement to provide the Services described herein.

### **AGREEMENT**

#### **ARTICLE I - DEFINITIONS**

Unless otherwise defined herein or the context otherwise requires, capitalized terms appearing in this Agreement will have the following meanings:

“**Applicable Laws**” means all local, State and federal laws, ordinances, codes, and regulations, as the same may be amended, extended or supplemented from time to time, that are applicable to the Services or to other actions, events or circumstances as the context may require.

**“Applicable Standards”** means that level of care and skill ordinarily exercised by members of Contractor's business or profession currently practicing in the same industry under similar conditions.

**“Authorized Representative”** means any person authorized and designated by a Party in accordance with this Agreement to act on behalf of that Party with respect to any action required or permitted to be taken by that Party under this Agreement.

**“Board”** means the Board of Directors of PCDIC.

**“Business Day”** means (i) a day the New York Stock Exchange is not closed, and (ii) a day other than a day banks located in the State of Arizona, the City of New York, New York, or the cities in which the principal offices of the custodian for securities are located, are required or authorized by law or executive order to close.

**“City”** means the City of Phoenix, Arizona, a municipal corporation organized and existing under the laws of the State of Arizona.

**“Client”** means the organization receiving services provided by Contractor pursuant to the Program.

**“Conflict of Interest”** means any activity or relationship with another Person that results in (i) Contractor being unable or potentially unable to render impartial assistance or advice to PCDIC or any Client, or (ii) Contractor's objectivity in performing the Services is or might otherwise be impaired, or (iii) Contractor's use of Data would actually or potentially benefit such third persons adverse to the interests of PCDIC or any Client.

**“Data”** means all information gained by Contractor in the performance of this Agreement, whether electronic, written or verbal, including studies, audits, specifications, analyses, records, reports, calculations, memos of telephone conversations, internal memos, meeting minutes, work product, proposals and any other similar documents or information prepared by or obtained by Contractor in the performance of this Agreement.

**“Effective Date”** means the date on which the terms and provisions of this Agreement become effective, and is the date stated in the first paragraph of this Agreement.

**“Instructions”** means written instructions manually signed by any Authorized Representative(s) designated by PCDIC hereunder, or Instructions Received by Any Other Means, if the parties hereto have agreed in writing to the form, the means of transmission and the means of identification of such Instructions.

“**Instructions Received by Any Other Means**” includes, but is not limited to, (i) oral instructions, and (ii) instructions received by electronic mail, electronic instruction system or telecommunications terminals (including telex, TWXS, facsimile transmission or bank wire).

“**Program**” means the *PROJECT NAME*

“**Project Manager**” means the PCDIC staff member that is responsible for administering the program and contract herein.

“**Services**” means the scope of the services Contractor is required to perform pursuant to as described in Appendix A attached hereto.

“**State**” means the State of Arizona.

“**Term**” means the term of this Agreement, which commences on the Effective Date and continues to *EXPIRATION DATE*.

## ARTICLE II - PERFORMANCE BY CONTRACTOR

**2.1 Contractor’s Acceptance and Responsibilities.** Contractor represents that it is fully qualified to perform the Services, accepts the duties and obligations imposed upon Contractor by this Agreement, and agrees to observe and perform those duties and obligations as set forth in this Agreement. Contractor will be responsible for the professional quality, accuracy, and timely completion of the Services.

**2.2 Professional Competency.** Contractor represents that it is familiar with the nature and extent of this Agreement, the Services, and any conditions that may affect its performance under this Agreement. Contractor further represents that it is fully experienced and properly qualified; is in compliance with all applicable license requirements; and, is equipped, organized, and financed to perform the Services.

**2.3 Applicable Laws and Applicable Standards.** All Services performed by Contractor or its Authorized Representative(s) pursuant to this Agreement must be performed in strict compliance with the Applicable Laws, in a manner consistent with the Applicable Standards. Acceptance or approval by PCDIC of Contractor's work will not relieve Contractor of liability to PCDIC for damages suffered or incurred arising from the failure of Contractor to adhere to the aforesaid standard of professional competence.

### **2.4 Confidentiality and Data Security.**

(a) Contractor may not publish, release, disclose or announce to any member of the public, press, official body, or any other third party (1)

any information concerning this Agreement, the Services, or any part thereof, or (2) any documentation or the contents thereof, without the prior written consent of PCDIC, except as required by law. The name of any site on which the Services are performed may not be used in any advertising or other promotional context by Contractor without the prior written consent of PCDIC

(b) Contractor recognizes that in the performance of this Agreement it will have access to Data, either provided by City, Clients or PCDIC or first generated during Agreement performance, of a sensitive or confidential nature. Therefore, all Data, including originals and reproductions prepared by, obtained by, or transmitted to Contractor in connection with Contractor's performance of this Agreement is considered confidential and proprietary information of PCDIC and/or the Client to whom the information pertains and is not subject to voluntary disclosure by Contractor without the prior written consent of PCDIC.

(c) Contractor may not divulge Data to any third party nor use the Data for any purpose except to perform the Services without prior written consent of PCDIC. These prohibitions do not apply to the following Data provided Contractor has first given PCDIC prior written notice.

(i) Data that was known to Contractor prior to its performance under this Agreement or any other agreement with PCDIC, unless such Data was acquired in connection with work performed for PCDIC;

(ii) Data that is required by Contractor in its performance under this Agreement that is disclosed to Contractor by a third party, who to the best of Contractor's knowledge and belief, has the legal right to make such disclosure and Contractor is not required to hold such Data in confidence; or

(iii) Data that is required to be disclosed by virtue of law, regulation, or court order to which Contractor is subject.

(d) Should Contractor be contacted by any third party requesting information relative to the Services provided under any agreement between Contractor and PCDIC, Contractor must promptly inform PCDIC in writing giving the particulars of the information sought and Contractor may not disclose such information without the prior written consent of PCDIC.

(e) Contractor may not discuss with any third party any Data unless PCDIC has first reviewed such Data and specifically authorized Contractor in writing to discuss the Data with the third party.

(f) Personal identifying information, financial account information, or restricted PCDIC information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Contractor must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

(g) When personal identifying information, financial account information, or restricted PCDIC information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. The foregoing notwithstanding, Contractor may keep copies of those documents needed to prove its compliance with professional standards, such as audit and tax compliance work papers.

(h) In the event Data collected or obtained by Contractor in connection with this Agreement is believed to have been compromised, Contractor must notify PCDIC immediately. Contractor agrees to reimburse PCDIC for any costs incurred by PCDIC to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

(i) Contractor agrees the requirements of this Section 2.4 will be incorporated into all subcontractor/subcontractor agreements entered into by Contractor. It is further agreed a violation of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section 2.4 may result in immediate termination of this Agreement without notice.

(j) The obligations of Contractor under this Section 2.4 will survive the termination of this Agreement.

**2.5 Representations and Warranties of Contractor.** Contractor hereby represents and warrants to PCDIC that:

(a) Contractor will perform the Services in accordance with the terms and conditions set forth in this Agreement;



(b) Contractor has the full power and authority to enter into, and be bound by, the terms and conditions of this Agreement;

(c) Contractor has the experience, expertise, personnel and financial resources to perform its obligations under this Agreement;

(d) Contractor is familiar with the nature and extent of this Agreement, the Services and any conditions that may affect its performance under this Agreement;

(e) Contractor will use experienced and qualified employees or subcontractors at all times in the performance of the Services under this Agreement;

(f) As of the Effective Date, Contractor has no Conflict of Interest and, to the best of its knowledge, has no potential Conflict of Interest. If an actual or potential Conflict of Interest is identified by Contractor during the Term of this Agreement, Contractor must immediately and fully disclose all pertinent details in writing to PCDIC. This disclosure must include a description of actions which Contractor has taken or proposes to take, after consultation with PCDIC, to avoid, mitigate, or neutralize the actual or potential Conflict of Interest. Contractor must continue performance until notified by PCDIC of any contrary action to be taken;

(g) No person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and to the best of Contractor's knowledge, based on diligent inquiry no member of the PCDIC Board or any employee of the City has any interest, financially or otherwise, in Contractor's business. For breach or violation of this warranty, PCDIC will have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee; and

(h) No gifts or gratuities were provided by Contractor, or any agent or representative of Contractor, to any officer or employee of PCDIC or the City as an inducement to enter into this Agreement. Upon a finding by PCDIC that gratuities in the form of entertainment, gifts or inducements were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of PCDIC or the city of Phoenix for the purpose of securing this Agreement, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, PCDIC may, upon one (1) calendar day's written notice to Contractor, terminate this Agreement.

In the event of such termination, PCDIC will be entitled to the same remedies against Contractor as would be available to remedy a default by Contractor.

**2.6 Independent Contractor; No Agency; Taxes.** This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and the obligations of PCDIC and Contractor will be only those expressly set forth in this Agreement. Contractor and its subcontractors will be independent contractors in the performance of all activities and functions pursuant to this Agreement. The Contractor is providing the Services required under this Agreement on a part-time and/or temporary basis. At all times during the term of this Agreement, neither Contractor nor any of Contractor's agents, employees, helpers and subcontractors may be deemed to be the employee, agent, or servant of PCDIC or any of its affiliates, officers, directors, or members, or of the City. PCDIC will have the right to control Contractor and its subcontractors only insofar as relates to the Services; the manner, means and mode of completing the same are under the sole control of the Contractor. Contractor's agents, employees, helpers and subcontractors will have no authority, express or implied, pursuant to this Contract to bind PCDIC or any of its affiliates, officers, directors, or members, or of the City to any obligation whatsoever. As an independent contractor, Contractor must pay and report, and must cause its subcontractors to pay and report, all federal and state income tax withholding, social security taxes, and unemployment insurance applicable to them. Contractor and Contractor's agents, employees, helpers and subcontractors will not be entitled to participate in health or disability insurance, retirement benefits, or other welfare or pension benefits (if any) to which employees of PCDIC or any of its affiliates, officers, directors, or members, or the city of Phoenix, may be entitled. The Contractor hereby agrees not to represent to anyone that the Contractor is an agent of PCDIC or has any authority to act on behalf of PCDIC.

**2.7 Contract Workers Security Inquiries.** The Parties acknowledge and agree that Contractor shall undertake and confirm with any third party hired in connection with performing the scope of services under this Agreement the following security requirements:

(a) **Contract Worker Background Screening.** Contractor agrees that all contract workers and subcontractors (collectively "Contract Worker(s)") that Contractor employs, engages or retains to perform services under this Agreement, if any, will be subject to background and security checks and screening (collectively "Background Screening") at the sole cost and expense of the Contractor's and/or any third party hired by Contractor to perform the services herein. This Background Screening must comply with all applicable laws, rules and regulations. The Background Screening requirements set forth in this Section are the minimum

requirements for this Agreement. PCDIC in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of Contractor's services under this Agreement or Contractor's failure to comply with this Section.

(b) **Background Screening Requirements and Criteria.** Contractor agrees that any Contractor Worker and/or third party retained by Contractor to perform services under this Agreement shall conduct the following screening requirements of all those individuals under their employ or control:

(i) As required under Arizona Revised Statutes §41-4401, et seq., verify legal Arizona worker status.

(ii) A background check for real identity/legal name, including felony and misdemeanor records from any county in the United States, the State of Arizona, plus any other jurisdiction where the Contract Worker or third party employee, agent or subcontractor has lived preceding the proposed date of hire.

(c) **Contractor Certification; PCDIC Approval of Background Screening.** By executing this Agreement, Contractor certifies and warrants that Contractor has read the Background Screening requirements and criteria in this Section, understands them and that all Background Screening information furnished to PCDIC is accurate and current. Also, by executing this Agreement, Contractor further certifies and warrants that Contractor has satisfied all such Background Screening as required. Contractor must furnish to Project Manager, confirmation that the background screening requirements set forth herein have been completed with regard to all Contractor Worker's and all employees, agents, or subcontractors of any third party vendor retained by Contractor to carry out the services of this Agreement. PCDIC may, in its sole, absolute and unfettered discretion, accept or reject any or all of the Contract Workers and/or third party vendor proposed by Contractor for performing work under this Agreement. A Contract Worker or third party vendor rejected for work under this Agreement may not be proposed to perform work under other PCDIC contracts or engagements without PCDIC's prior written approval.

(d) **Additional PCDIC Rights Regarding Security Inquiries.** In addition to the foregoing, PCDIC reserves the right but not the obligation to: (i) require an employee/prospective employee of the Contractor and or Subcontractor/third party vendor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice

information pursuant to A.R.S. § 41-1750(G)(4); (ii) act on newly acquired information whether or not such information should have been previously discovered; (iii) unilaterally change its standards and criteria relative to the acceptability of Contractor's and/or Subcontractors' employees and/or prospective employees; and, (iv) object, at any time and for any lawful reason, to an employee of Contractor or Subcontractor performing work (including supervision and oversight) under this Agreement.

(e) Terms of This Section Applicable to All of Contractor's Contracts and Subcontracts. Contractor must include the terms of this Section, Contract Worker Security Inquiries, in all contracts and subcontracts for work performed under this Agreement including, but not limited to, supervision and oversight services.

(f) Materiality of Background Screening Requirements; Indemnity. The Background Screening requirements of this Section are material to PCDIC's entry into this Agreement and any breach of this Section by Contractor will be deemed a material breach of this Agreement and may, at PCDIC's option, sole and unfettered discretion, be considered to be a breach of sufficient magnitude to terminate this Agreement. Such termination will subject Contractor to liability for its breach of contract. In addition to the indemnity provisions set forth in Section 8.1 of this Agreement, Contractor must defend, indemnify and hold harmless PCDIC and the City for any and all Claims (as defined in Section 8.1) arising out of this Contract Workers Security Inquiries Section including, but not limited to, the disqualification of a Contract Worker by Contractor or PCDIC for failure to satisfy this Section.

(g) Continuing Duty; Audit. Contractor's obligations and requirements that Contract Workers satisfy this Background Screening Section will continue throughout the entire term of this Agreement. Contractor must notify PCDIC immediately of any change to the Background Screening of a Contract Worker or any third party vendor and their employees contracted to provided services under this Agreement and previously approved by PCDIC. Contractor must maintain all records and documents related to all Background Screenings and PCDIC reserves the right to audit Contractor's compliance with this Section pursuant to Section 5.2.

### **ARTICLE III - SERVICES**

**3.1 Services.** Contractor must diligently perform the Services more particularly described in Exhibit A in accordance with the terms and conditions set forth

in this Agreement. Contractor must perform only those services as directed by PCDIC's Authorized Representative(s).

**3.2 Changes.** Whenever an addition, deletion or alteration to the Services substantially changes the scope of work thereby materially increasing or decreasing the cost of performance, a supplemental agreement must first be approved in writing by PCDIC and Contractor before such addition, deletion or alteration may be performed. Changes to the Services may be made and the compensation to be paid to Contractor may be adjusted by mutual agreement, but in no event may the compensation exceed the maximum amount stated in Section 4.1 without further authorization by the PCDIC Board. It is specifically understood and agreed that no claim for extra work done or materials furnished by Contractor will be allowed except as provided herein, nor may Contractor do any work or furnish any materials not covered by this Agreement unless first authorized in writing. Any work or materials furnished by Contractor without prior written authorization will be at Contractor's risk, cost and expense, and Contractor agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

**3.3 Notification of PCDIC.** Consistent with Article VII hereof, Contractor must notify Project Manager, in writing upon acquiring knowledge that the occurrence of any of the following events has occurred or is likely to occur:

- (a) Any material change in the financial condition of Contractor;
- (b) Any action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the best of the knowledge of Contractor or its Authorized Representative(s), threatened against or affecting Contractor or its Authorized Representative(s) where an adverse decision, ruling or finding would materially adversely affect the financial condition of Contractor or would in any way adversely affect the ability of Contractor to perform its obligations in accordance with the provisions of this Agreement;
- (c) A decision by Contractor which would adversely affect Contractor providing any Services required by this Agreement, whether such action would become effective immediately or in the future;
- (d) Subject to Section 7.2 hereof, a change or proposed change by Contractor in the Authorized Representative(s) or any of the other key management or operations personnel who oversee, supervise, perform or are otherwise responsible for any of the Services Contractor is required to perform under this Agreement;

(e) A change by Contractor in any of the policies or procedures which it utilizes to provide the Services required by this Agreement, and Contractor must provide PCDIC no less than 20 business days' notice before implementing any such change; and

(f) Any actual or apparent Conflict of Interest.

#### **ARTICLE IV - CONTRACTOR FEE, BILLING AND PAYMENT**

**4.1 Compensation.** For satisfactory and complete performance of the Services, PCDIC will pay Contractor an amount not to exceed **\$XXX,XXX** in the aggregate.

**4.2 Billing and Payment.** Disbursement of PCDIC matching funds will follow the schedule noted below subject to the Contractor submitting to PCDIC detailed invoice requesting payment for each of the following:

- 1)
- 2)
- 3)
- 4)

**Total cost of project: \$XXX,XXX**

All invoices submitted must indicate the following: (i) describe in reasonable detail the Services provided; (ii) the date of the expense; (iii) the total amount of the expense with a breakdown of both Contractor's and PCDIC's 50% match; (iv) the name of the Client for whose benefit the payment was made and the total expense. Invoices must be accompanied with copies of expense receipts or other supporting documentation. The invoice for each reporting period may include a Program Administration Fee of up to five percent (5%) of the reimbursement amount. The invoices must be sent to: PCDIC Project Manager, 200 W. Washington Street, 20<sup>th</sup> Floor, Phoenix, AZ 85003. Upon approval of such payment, PCDIC will prepare immediate payment to Contractor or vendor if requested by the Contractor.

**4.3 Sole Compensation.** The Contractor Fee will be the sole compensation paid to Contractor by PCDIC for the Services provided and expenses incurred by Contractor hereunder.

#### **ARTICLE V - RECORDS REQUIREMENTS**



**5.1 Maintenance of Records.** During the Term and for seven (7) years after the last payment to Contractor by PCDIC for the Services, Contractor must maintain all books, documents, papers and records evidencing or relating to this Agreement or the Services, and all accounting records and vouchers in support of all cost billings to PCDIC (collectively, the “**Records**”) in accordance with generally accepted accounting principles. If any litigation, claim negotiation, audit or other action involving the Records has begun before the expiration of the seven (7)-year period, the Records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular seven (7) year period

**5.2 Examination of Records of Contractor.** During the Term and for seven (7) years thereafter, the PCDIC Board, its officers, employees, agents and representatives, any independent accountant(s) selected by PCDIC and any governmental entity responsible for auditing PCDIC and/or the NMTC Program will have the right of reasonable access (without charges or fees) to all books, documents, papers and records of Contractor related to this Agreement for the purposes of auditing, examining, taking excerpts and transcriptions of all such books, documents, papers and records, and monitoring all Services. Contractor may be reimbursed for its reasonable costs, if it is required to provide photocopies, supervision or other administrative support in connection with a request by any entity other than PCDIC. At PCDIC’s request, Contractor must produce and make available such records, at Contractor’s expense, for PCDIC’s inspection and audit in mutually agreed upon location.

## **ARTICLE VI - TERM, TERMINATION, CHANGES AND SUSPENSION**

**6.1 Term of Agreement.** This Agreement will commence on the Effective Date and continue in effect until *EXPIRATION DATE* unless PCDIC at its sole election terminates the Agreement pursuant to the provisions of this Agreement.

**6.2 PCDIC’s Right to Make Changes.** PCDIC reserves the right to make or to direct any changes in the Services including the performance of additional work for which Contractor will be compensated. Contractor must not perform Services in such a manner that applicable professional standards and regulations are potentially violated.

**6.3 PCDIC’s Right to Terminate.** PCDIC reserves the right, in its sole and absolute discretion, to terminate this Agreement at any time or abandon the Services or abandon any portion of the Services, without cause, by providing Contractor with a written Notice of Termination. Immediately upon receiving a written Notice of Termination, the Contractor must:

- (a) Discontinue providing Services or any part that is described in the Notice of Termination.

(b) Deliver to PCDIC, if applicable, all collected raw data, draft reports, preliminary reports, working papers, estimates and forecasts entirely or partially completed, together with all unused materials supplied by the PCDIC.

(c) Appraise the value of the Services it has completed and submit its appraisal to PCDIC for evaluation.

(d) Be paid in full the pro rata value for the Services performed prior to the date of its receipt of the Notice of Termination, including reimbursement for all reasonable costs and expenses incurred by Contractor in terminating the work, including demobilization of field service. No payment will be made for loss of anticipated profits or unperformed Services.

**6.4 PCDIC's Right to Suspend.** PCDIC may, by written notice, direct Contractor to suspend performance on all or any part of the Services for such period of time as may be determined by PCDIC to be necessary or desirable for its convenience.

**6.5 Contractor's Obligations Upon Expiration or Termination.** Within thirty (30) calendar days after the date this Agreement expires or is terminated, Contractor must deliver to or as directed by PCDIC, any and all Data compiled or obtained by Contractor or its Authorized Representative(s) in the performance of the Services from the Effective Date through the date any such expiration or termination becomes effective, which have not been previously provided to PCDIC or the Board.

## **ARTICLE VII - NOTICES AND AUTHORIZED REPRESENTATIVES**

**7.1 PCDIC's Authorized Representative(s).** PCDIC hereby designates the PCDIC President, or his or her designee, and the Project Manager, or his or her designee, as its Authorized Representative(s).

**7.2 Contractor's Authorized Representative(s).** Contractor hereby appoints *AUTHORIZED REPRESENTATIVE*, as Authorized Representative(s) hereunder.

**7.3** Such designations may be amended, revoked or supplemented at any time by additional Instructions directed to the other Party's Authorized Representative and such amendment, revocation or supplement will become effective upon the later of (i) the date such Instructions are deemed given as provided in this Article or (ii) the effective date, if any, specified in the Instructions.

**7.4 Notices.** Except as otherwise provided herein, any notices, designations, information and other communications required or permitted under this Agreement, must be in writing and will be deemed given when personally served or on



the day it is sent by facsimile transmission to the facsimile number below, or, if mailed, three (3) Business Days after it is deposited in the United States mail, certified, return receipt requested, postage prepaid and addressed as follows:

If mailed to Contractor:

*XXXXXXXXXXXX*

If faxed to Contractor:

Phone: *XXX-XXX-XXXX*

Fax: *XXX-XXX-XXXX*

If mailed to PCDIC:

Phoenix Community Development & Investment Corporation  
Attn: Project Manager  
200 W. Washington Street, 20<sup>th</sup> Floor  
Phoenix, AZ 85003

If faxed to PCDIC:

Phone: *XXX-XXX-XXXX*

Fax: 602-495-5097

**7.4 Change of Address.** Upon ten (10) days prior written notice to the other party as provided in Section 7.3, Contractor may designate a different address or facsimile number for itself and PCDIC may designate a different address or facsimile number for itself. Notwithstanding the foregoing, notices or communications sent by facsimile transmission also must be sent by certified mail to the recipient at the above address. This requirement for duplicate notices is not intended to change the effective date of the notice sent by facsimile transmission.

## **ARTICLE VIII - INSURANCE AND INDEMNITY**

**8.1 Indemnification Clause.** Contractor must indemnify, defend, save and hold harmless the City, PCDIC and their respective officers, officials, agents, employees, and Board (hereinafter referred to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners,

officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee must, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, PCDIC and their respective officers, officials, agents, employees and Board for losses arising from the work performed by the Contractor for PCDIC.

**8.2 Insurance.** Contractor and subcontractors must procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. PCDIC in no way warrants that the minimum limits contained herein are sufficient to protect Contractor from liabilities that might arise out of the performance of the work under this Contract by Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

**1. Commercial General Liability – Occurrence Form**

Policy must include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

a. The policy must be endorsed to include the following additional insured language: Phoenix Community Development and Investment Community and the city of Phoenix must be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

**2. Worker's Compensation and Employers' Liability**

Workers' Compensation Statutory	Employers' Liability
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

a. Policy must contain a waiver of subrogation against Phoenix Community Development and Investment Corporation and the city of Phoenix.

b. This requirement must not apply when Contractor or subcontractor is exempt under A.R.S. 23-901, AND when Contractor or subcontractor executes the appropriate sole proprietor waiver form.

**B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies must include, or be endorsed to include, the following provisions:

1. On insurance policies where PCDIC and/or the city of Phoenix are named as additional insureds, PCDIC and/or the city of Phoenix each must be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

2. The Contractor's insurance coverage must be primary insurance and non-contributory with respect to all other available sources.

**C. NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to PCDIC, except when cancellation is for non-payment of premium, then ten (10) days prior

notice may be given. Such notice must be sent directly to PCDIC, Attn: Project Manager, 200 W. Washington Street, 20<sup>th</sup> Floor, Phoenix, AZ 85003.

**D. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**E. VERIFICATION OF COVERAGE:** Contractor must furnish PCDIC with certificates of insurance (ACORD form or equivalent approved by PCDIC) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

1. All certificates and any required endorsements are to be received and approved by PCDIC before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

2. All certificates required by this Agreement must be sent directly to PCDIC, Attn: Project Manager, 200 W. Washington Street, 20<sup>th</sup> Floor, Phoenix, AZ 85003. PCDIC’s project/contract number and project description must be noted on the certificate of insurance. PCDIC reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

**F. SUBCONTRACTORS:** Contractor’s certificate(s) must include all subcontractors as additional insureds under its policies or Contractor must furnish to PCDIC separate certificates and endorsements for each subcontractor. All coverages for subcontractors must be subject to the minimum requirements identified above.

**G. APPROVAL:** Any modification or variation from the insurance requirements in this Agreement must be made by PCDIC in consultation with the City of Phoenix Law Department, whose decision will be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

## ARTICLE IX - GENERAL EMPLOYMENT

### 9.1 Non-Discrimination and Affirmative Action.

(a) Contractor must not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. In addition, if Contractor employs more than 35 people, Contractor further agrees to include sexual orientation and gender identity or expression in their equal employment opportunity policies.

(b) Contractor will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action must include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract.

(c) Contractor may be required to provide additional documentation to PCDIC affirming that a nondiscriminatory employment policy is being utilized.

**9.2 Compliance with Federal Laws.** Contractor understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 (IRCA), the Drug Free Workplace Act, and the Americans with Disabilities Act. Contractor agrees to comply with these federal laws in performing under this Agreement and to permit PCDIC inspection of Contractor's personnel records to verify such compliance.

**9.3 Legal Worker Requirements.** Pursuant to Arizona Revised Statutes § 41-4401, PCDIC may not award a contract to any Contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes §23-214-A. That statute requires that employers verify the employment eligibility of their employees through the federal E-verify system. An “employer” is an independent contractor, a self-employed person, the State of Arizona or any of its political subdivisions, or any individual or type of organization that transacts business in the State of Arizona, or that has a license issued by an agency in the State and that employs one or more employees in

the State (See A.R.S. §23-211). Therefore, in signing or performing any Contract for PCDIC, the Contractor fully understands that:

(a) It warrants that both Contractor and any subcontractors it may use comply with all federal immigration laws and with A.R.S. § 23-214(A), which requires that employers verify the employment eligibility of their employees through the federal E-verify system;

(b) Any breach of the warranty made in Section 9.3(a) is material and is subject to penalties up to and including termination of the Contract; and

(c) PCDIC or its designee is authorized by law to randomly inspect the records relating to an employee of Contractor or any of its subcontractors who works on the Contract to ensure compliance with the warranty made in Section 9.3(a).

## **ARTICLE X - MISCELLANEOUS**

**10.1 Modifications.** This Contract may not be amended, supplemented, or modified, or any provision waived, except by an instrument in writing signed by PCDIC and Contractor.

**10.2 Continuation During Disputes.** Contractor and PCDIC agree that notwithstanding the existence of any dispute between the parties, and insofar as it is possible under the terms of this Contract, each party must continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by an Arizona court of competent jurisdiction.

**10.3 Offset.** Contractor recognizes and agrees that PCDIC will not make payment to any Contractor as long as there is any outstanding obligation due from Contractor to PCDIC, and directs that any such obligation of Contractor be offset against the payments due Contractor under this Contract.

**10.4 Governing Law, Form and Venue.** This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) will govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Agreement, or otherwise relating to or arising from this Agreement, must be commenced and maintained in the state or federal courts of the State of Arizona and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.



**10.5 Severability; Integration.** Inapplicability or unenforceability of any provision of this Agreement will not limit or impair the operation or validity of any other provision of this Agreement. This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party hereto will be bound by or liable for any alleged misrepresentation, promise, inducement or statement of intention not so set forth.

**10.6 Indulgences Not Waivers.** Neither the failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. Payments by PCDIC will not constitute a waiver of contract rights.

**10.7 No Third Party Beneficiary.** Nothing contained in this Agreement is intended to benefit or confer any rights on any person not a party to this Agreement, and no such other person will have any right or cause of action hereunder.

**10.8 Construction.** This Agreement is intended to express the mutual intent of the parties and, irrespective of the identity of the party preparing this Agreement or any document or instrument referred to herein, no rule of strict construction against the party preparing a document may be applied. Defined terms may be used in the singular or plural as the context requires. Any neuter pronoun used herein will include the masculine or feminine as the context may require.

**10.9 Remedies.** In the event of a breach of this Agreement or any covenant, the other party will have all rights and remedies available at law, in equity, or under the terms of this Agreement, including, without limitation, the right to seek injunctive relief and specific performance of any party's obligations hereunder. In the event PCDIC elects to treat any such breach on the part of Contractor as a discharge of this Agreement, PCDIC may nevertheless maintain an action to recover damages arising out of such breach. All rights and remedies of either party hereto will be cumulative and the exercise of any right or remedy by any party will not be deemed a waiver, relinquishment or abandonment of any other right or remedy, and will not affect or limit in any way the future assertion of the same, or any other right or remedy. This Section 10.9 is not intended as a limitation of such other remedies as may be available to PCDIC under law or equity.

**10.10 Assignment and Subcontracts.** Contractor may not subcontract, assign or delegate any right, duty or obligation hereunder without the prior written consent of PCDIC, which PCDIC may grant or withhold in its sole and absolute discretion. Any attempted or purported subcontract or assignment of any right, duty or obligation under this Agreement without such consent will automatically be void and of no force and effect and will constitute a material breach of this Agreement.

**10.11 Headings Descriptive.** The headings of the several sections of this Agreement are inserted for convenience only and will not in any way affect the meaning of or construction of any provision of this Agreement.

**10.12 Survival.** The obligations of Contractor will survive termination of this Agreement.

**10.13 Documents.** This Agreement includes the following exhibits:

- (a) Exhibit A – Scope of Services

[Signature Page follows]



**SIGNATURES**

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed in triplicate by their duly authorized officers as of the Effective Date.

PHOENIX COMMUNITY DEVELOPMENT  
AND INVESTMENT CORPORATION, an  
Arizona nonprofit corporation

By: \_\_\_\_\_  
Roberto E. Franco  
Its President and Chief Executive Officer

*NAME OF ORGANIZATION*, an Arizona  
nonprofit corporation

By: \_\_\_\_\_  
*NAME OF REPRESENTATIVE*  
Its *TITLE*:

**AUTHORITY AND INCUMBENCY CERTIFICATION**

I, \_\_\_\_\_, the Secretary of *NAME OF ORGANIZATION* (the “Corporation”), a nonprofit corporation organized and existing under the laws of the State of Arizona, do hereby certify that *NAME OF REPRESENTATIVE* is the *TITLE* of *NAME OF ORGANIZATION*, and as such is empowered and authorized by the Board of Directors of the Corporation to execute contracts on behalf of the Corporation.

IN WITNESS WHEREOF the undersigned has affixed his/her signature this \_\_\_\_ day of *DATE*.

\_\_\_\_\_  
Secretary

## EXHIBIT A

***PROJECT NAME***

### SCOPE OF SERVICES

***ORGANIZATION TO INSERT SCOPE HERE***

#### **Reporting Requirements**

In accordance with the Reporting Requirements of the Standard Terms & Conditions, Contractor must ensure the timely submission of all required documentation, reports, and compliance with all contractual requirements. Contractors must submit the following reports:

1. Financial
  - a. Every month, or more often as desired by PCDIC, Contractor will submit to PCDIC detailed invoices for costs incurred since the last Reporting Period. The Contractor will submit its final invoice to PCDIC no later than thirty (30) days following the Program conclusion. Each invoice will:
    - i. Reference the PCDIC Agreement number and Agreement name.
    - ii. Include date when services were provided.
    - iii. Itemize expenses in accordance with the requirements set forth in Article IV, Paragraph 4.2 of the Agreement.
    - iv. Be accompanied by any and all supporting documentation.
2. Program
  - a. Upon request, Contractor will provide information regarding overall program effectiveness and outcomes to assist PCDIC with Department of Treasury, CDFI Division, reporting requirements and/or other PCDIC reporting needs.

DRAFT