PROFESSIONAL SERVICES AGREEMENT
PARKS AND RECREATION MASTER PLAN REPLACEMENT
City of Glendale Solicitation No. RFP 19-33

This Parks and Recreation Master Plan Replacement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and GreenPlay, LLC, a Colorado limited liability company, ("Consultant") as of the __ day of ______________, 2019 ("Effective Date").

RECATALS

A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in Exhibit A, Project (the "Project");
B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached Exhibit B, Project Scope of Work ("Scope");
C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
D. City and Consultant desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

1. Key Personnel; Other Consultants and Subcontractors.

1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.

1.2 Project Team.

a. Project Manager.

   (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and

   (2) The City must approve the designated Project Manager.

b. Project Team.

   (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."

   (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.

c. Discharge, Reassign, Replacement.

   (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in Exhibit A.

   (2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.
Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. Subcontractors.
   (1) Consultant may engage specific technical contractors (each a "Subcontractor") to furnish certain service functions.
   (2) Consultant will remain fully responsible for Subcontractor's services.
   (3) Subcontractors must be approved by the City.
   (4) Consultant will certify by letter that all contracts with Subcontractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. Schedule. The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

   3.1 Standard. Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.
   3.2 Licensing. Consultant warrants that:
      a. Consultant and its Subconsultants or Subcontractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
      b. Neither Consultant nor any Subconsultant or Subcontractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
         (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
         (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.
   3.3 Compliance.
      a. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
      b. Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.
   3.4 Coordination: Interaction.
      a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with
any other professionals retained by City on the Project ("Coordinating Project Professionals").

b. Consultant will meet to review the Project, Schedule and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to City, and will cause its Subconsultants or Subcontractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, et seq., and other intellectual work product as may be applicable ("Work Product").

(1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.

(2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.

b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.

c. City Use.

(1) City may reuse the Work Product at its sole discretion.

(2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.

(3) In such case, City will also remove any seal and title block from the Work Product.

4. Compensation for the Project.

4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed $200,000 as specifically detailed in Exhibit D ("Compensation").

4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.

a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.

b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.

c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

4.3 Allowances. An "Allowance" may be identified in Exhibit D only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.
a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in Exhibit D and any unused allowance at the completion of the Project will remain with City.

b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.

c. Consultant will not use any portion of an Allowance without prior written authorization from the City.

d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

4.4 Expenses. City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:

a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement’s execution, and which policies and procedures will be furnished to Consultant;

b. The Reimbursable Expenses in this section are approved in advance by City in writing; and

c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the “not to exceed” amount identified for Reimbursable Services in the Compensation.

5. Billings and Payment.

5.1 Applications.

a. Consultant will submit monthly invoices (each, a "Payment Application") to City’s Project Manager and City will remit payments based upon the Payment Application as stated below.

b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.

b. Payment may be subject to or conditioned upon City’s receipt of:

(1) Completed work generated by Consultant and its Subconsultants and Subcontractors; and

(2) Unconditional waivers and releases on final payment from all Subconsultants and Subcontractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City’s Project Manager will timely review and certify Payment Applications.

a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
6. **Termination.**

6.1 **For Convenience.** City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

   a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.

   b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

6.2 **For Cause.** City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

   a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Sec. 5.

   b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than $1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.** For the duration of the term of this Agreement, Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors.

   a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than $1,000,000 per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

   b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than $1,000,000 per accident for bodily injury and property damage.

   c. Professional Liability. Consultant must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of $2,000,000 for each claim and a $4,000,000 annual aggregate limit.

   d. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than $1,000,000 per accident for bodily injury or disease.
8.2 Indemnification.

a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.

b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.

c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

8.3 Other Insurance Provisions. The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:

a. The City, its officers, officials, employees and volunteers are to be covered as additional insureds of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.

b. For any claims related to this Project, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.

c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

8.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Consultant has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

8.5 Waiver of Subrogation. Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).
8.6 Verification of Coverage. Within 15 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City’s approval of the required insurance policies, certificates or endorsements prior to the City’s agreement that work may commence shall not waive the Consultant’s obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Consultant’s failure to obtain, submit or secure the City’s approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

8.7 Subcontractors. Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.

8.8 Special Risk or Circumstances. The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.

9. E-verify, Records and Audits. To the extent applicable under A.R.S. § 41-4401, the Consultant warrant their compliance and that of its subconsultants with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Consultant or subconsultant’s breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Consultant and subconsultant warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City’s random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

10. No Boycott of Israel. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

11. Attestation of PCI Compliance. When applicable, the Consultant will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Consultant with oversight responsibility.


12.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

   a. The Notice is in writing; and

   b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).

   c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:

      (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or

      (2) As of the next business day after receipt, if received after 5:00 p.m.
d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

12.2 Representatives.

a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:
GreenPlay, LLC
c/o Teresa L. Penbrooke, PhD
CEO and Founding Managing Member
1021 E. South Boulder Road, Suite N
Louisville, CO 80027
Tel: (303) 870-3884
Email: teresap@greenplayllc.com

b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:
City of Glendale
c/o Tim Barnard, Assistant Director
Public Facilities, Recreation and Special Events
5959 W Brown Street
Glendale, Arizona 85302

With required copy to:
City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

Concurrent Notices.

(1) All notices to City's representative must be given concurrently to City Manager and City Attorney.

(2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.

(3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

d. Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

13. Financing Assignment. City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

14. Entire Agreement; Survival; Counterparts; Signatures.

14.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.

c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as Exhibit A, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

14.2 Interpretation.
a. The parties fairly negotiated the Agreement’s provisions to the extent they believed necessary and with the legal representation they deemed appropriate.

b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.

c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

14.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

14.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

14.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

14.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.

14.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

15. Term.

15.1 Renewals. The term of this Agreement commences upon the effective date and continues for a one (1)-year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional four (4) years, renewable on an annual basis. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and will be a determining factor for any renewal. There are no automatic renewals of this Agreement.

15.2 Extension for Procurement Process. Upon the expiration of the Term of this Agreement, including the initial term and any renewals, at the City’s sole discretion, this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City to complete its procurement process to select a vendor to provide the services/materials similar to those provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension provided under this subsection will continue under the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

16. Dispute Resolution. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association’s Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

17. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.
   - Exhibit A: Project
   - Exhibit B: Scope of Work
   - Exhibit C: Schedule
   - Exhibit D: Compensation

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,
an Arizona municipal corporation

By: Kevin R. Phelps
Its: City Manager

ATTEST:

Julie K. Bower  (SEAI)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

GreenPlay, LLC,
a Colorado limited liability company

By: Teresa L. Penbrooke, PhD
Its: CEO and Founding Managing Member
EXHIBIT A
Professional Services Agreement

PARKS AND RECREATION MASTER PLAN REPLACEMENT

PROJECT

GreenPlay, LLC will create a new Parks and Recreation master plan for the City of Glendale. The Consultant shall review and analyze the existing master plans from Parks and Recreation, Thunderbird Conversation Park, and Open Space and Trails, update the information based on the analysis, and combine and replace all plans into one new master plan as per the Scope of Work of RFP 19-33.
EXHIBIT 2: SPECIAL TERMS AND CONDITIONS

By signing on the Offer/Bid page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Offerors are certifying that they understand the following notices and agree to comply with all required terms and conditions. The following terms are found on the City’s Website and are applicable to Request for Proposal: https://www.glendaleaz.com/purchasing/terms.cfm#Requests

Standard Terms and Conditions, Request for Proposal – Revised 04-24-2009

1. TYPE OF AWARDS The City reserves the right to make multiple awards or to award by individual line items, by group of line items, or to make an aggregate award, whichever is deemed most advantageous to the City. If the City determines that an aggregate award to one offeror is not in the City's best interest, "all or none" offers shall be rejected.

2. ALTERNATE OFFERS Offers submitted as alternates, or on the basis of exceptions to specific conditions of purchase and/or required specifications, must be submitted as an attachment referencing the specific paragraph number(s) and adequately defining the alternate or exception submitted. Detailed product brochures and/or technical literature, suitable for evaluation, must be submitted with the offer. If no exceptions are taken, City will expect and require complete compliance with the specifications and all Conditions of Purchase.

3. EFFECTIVE PERIOD OF OFFER Offers shall be valid for a minimum of 120 days following the deadline for submitting offers. If an award is not made during that period, all offers shall be automatically extended for another 120 days. Offers will be automatically renewed until either an award is made, or proper notice is given to the Contract Analyst of Offeror's intent to withdraw its offer. Offers may only be withdrawn by submitting Notice at least 15 days before the expiration of the then current 120-day period.

4. PAYMENT TERMS If payment terms are not indicated, terms of NET 30 days shall be applied by the City. Payment terms to apply after receipt of invoice or final acceptance of the products/services, whichever is later. Payment terms offering less than 20 days for payment will not be considered.

5. UNIT PRICE TO PREVAIL In the event of a price disparity between the unit and extended price, the unit price shall prevail unless judged obviously in error by the City.

6. OFFER ERRORS OMISSIONS AND CORRECTIONS The City will not be responsible for any offeror errors or omissions. All prices and notations shall be written in ink or typed. Changes or corrections made on the offer form must be initialed in ink by the individual signing the offer. No corrections will be permitted after the offers have been opened.

7. BRAND NAME REFERENCES AND TECHNICAL SPECIFICATIONS Brand names or manufacturer's references shall be construed as a quality or performance level and does not indicate the item cited is mandatory. Technical specifications define the acceptable standard.

8. RESTRICTIVE OFFER PROVISIONS If specifications preclude an otherwise qualified offeror from submitting an offer, a written request for modification must be received by the Buyer at least seven (7) calendar days prior to the proposal due date. All offerors will be notified by a written addendum to the solicitation of any approved changes.

9. DEFAULT In case of default by the contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid
balance due; (2) collection against the bid and/or performance bond; or (3) a combination of the aforementioned remedies or other remedies as provided by law.

10. TERMINATION FOR CONVENIENCE The City reserves the right to terminate any order or contract upon thirty days written notice. The City will be responsible only for those standard items which have been delivered and accepted. If the items are unique and not salable or usable for any other application, the City will reimburse the Seller for actual labor, material, and burden costs, plus a profit not to exceed 8%. Title to all materials, work-in-process, and completed but undelivered goods will pass to the City after costs are claimed and allowed.

11. SUB-CONTRACTING The contract or any portion thereof, shall not be sub-contracted without the prior written approval of the Materials Manager. No such approval will be construed as making the City a party of or to such sub-contract, or subjecting the City to liability of any kind to any subcontractor. No sub-contract shall, under any circumstances, relieve the contractor of liability and obligation under this contract; and despite any such subletting the City shall deal through the contractor. Sub-contractors will be dealt with as workmen and representatives of the contractor.

12. M.S.D.S. Contractor is to supply Materials Safety Data Sheets (M.S.D.S.) in accordance with Federal requirements. Contractor entering the City workplace with hazardous materials will supply the City with a M.S.D.S. covering those particular products the contractor may expose City employees or the general public to while working at the site.

13. GENERAL INDEMNIFICATION: Contractor shall indemnify, defend, save and hold harmless the City of Glendale and its officers, officials, agents, and employees (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 Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, 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, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the City.

14. RESPONSIBILITY FOR COMPLIANCE WITH LEGAL REQUIREMENTS The offeror's products, services, and facilities shall be in full compliance with all applicable Federal, State, and local health, environmental, and safety laws, regulations, standards, and ordinances, regardless of whether or not they are referred to by the City.

15. RESPONSIBILITY FOR CORRECTION It is agreed that the offeror shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance. In the event of a call back, Offeror agrees to give the City first priority. Offeror agrees that if the product or service offered does not comply with the written specification, the Materials Manager has the right to cancel the sale at any time with full refund within thirty (30) calendar days after notice of
noncompliance and offeror further agrees to be fully responsible for any consequential damages suffered by the City.

16. **WARRANTY** Unless otherwise specified, all items shall be guaranteed for a minimum period of one year against defects in material and workmanship. During the period, if a defect should occur, that item shall be repaired or replaced by the Seller at no obligation to the City, except where it be shown that the defect was caused by misuse and not by faulty manufacture. The offeror expressly warrants all items to be new, free from defects in design, materials, and workmanship, and to be fit and sufficient for their intended purpose. Any sample submitted shall create an expressed warranty that the whole of the goods shall conform to the sample or model.

17. **REJECTION OF OFFERS** The City reserves the right to reject any or all offers, or any part thereof; to accept any offer or any part thereof; or to waive any informalities when it is deemed to be in the City's best interest.

18. **DELAY IN EXERCISING CONTRACT REMEDY** Failure or delay by the City to exercise any right, power, or privilege shall not be deemed a waiver thereof.

19. **TAX EXEMPTION** The City is exempt from paying Federal Excise Taxes and will furnish an exemption certificate upon request.

20. **ORDER OF PRECEDENCE** In the event of conflict, the following precedence shall prevail: (1) Special Terms and Conditions incorporated by attachment; (2) Special Terms and Conditions; (3) Drawings and Specifications; (4) referenced documents; and (5) the Standard Terms and Conditions.

21. **CHANGES** The City reserves the right to make changes in any of the following: (a) specifications; (b) methods of shipment; (c) place of delivery; (d) time of delivery; (e) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within thirty days from receipt of the change. Price increases or extensions of delivery time shall not be binding on the City unless in writing and approved by the Materials Manager prior to the institution of the change.

22. **LATE SUBMISSION OF CLAIM** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.

23. **PROTEST OF AWARD** Any person who has an objection to the awarding of a solicitation by the City, pursuant to competitive solicitation procedures, shall lodge that protest, in writing, with the Materials Manager. The protest should specifically identify the objection to the award, pursuant to the formal purchase procedure. The protest must be submitted no later than seven (7) calendar days after the notice of intent to award is posted on the City's Materials Management, Internet home page at www.glendaleaz.com/purchasing. Untimely protests will not be considered.

24. **REMEDIES** City shall have, in addition to the remedies provided herein, all remedies afforded by the Uniform Commercial Code as adopted by the State of Arizona. Contractor shall have, subject to the limitation imposed by the terms of this agreement, all remedies afforded by the Uniform Commercial Code as adopted by the State of Arizona.

25. **ASSIGNMENT** Neither an order nor monies due thereunder shall be assigned in whole or in part without the City's prior written consent.
26. ADDENDA Any change to the proposal will be in the form of a numbered addendum issued by Materials Management. The addendum will be furnished to all who received the proposal. The City will not be responsible for any oral or written instructions made by any employees, officers, contracted consultant or agent of the City in regard to the proposal. The City will not be responsible for offerors adjusting their offer based on oral or written instructions.

27. SPECIAL ACCOMMODATIONS Please contact Procurement at 930-2862 at least 3 days prior to the meeting for special accommodation. Hearing impaired persons, please use the Arizona Relay Service (1-800-367-8939).

28. OFFER IDENTIFICATION The City is not responsible for the pre-opening or, post-opening of, or the failure to open, an offer not properly addressed or identified.

29. OFFER TABULATION An electronic copy of the scoring may be requested by e-mailing the Procurement office at materialsmanagement@glendaleaz.com and referencing the proposal title and number. The information will be available for distribution when the City has completed its evaluation process of the offers received.

30. LIABILITY Except for the sole negligence of the City, its officers, managers, employees, or agents, Contractor shall be liable to the City for any physical damage to City property or for the death of, or personal injury to, City personnel arising out of Contractor's occupancy, maintenance, repair, replacement, installation and/or any other work performed pursuant to the contract. Contractor agrees to indemnify, defend and hold the City harmless from any claim or loss arising from such damage or injury.

31. OSHA GUIDELINES The contractor shall be familiar with and operate within the guidelines set forth by the Occupational Safety and Health Act.

32. PATENTS Seller agrees to defend City at seller's own expense, in all suit, actions, or proceedings in which City is made a defendant for actual or alleged infringement of any United States of America or foreign letters patent resulting from City's use of the goods purchased as a result of this RFP. Seller further agrees to pay and discharge any and all judgments or decrees, which may be rendered in any such suit, action or proceedings against City. Seller agrees to indemnify and hold harmless the City from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of City's purchase and use of goods supplied by the seller. It is expressly agreed by seller, that these covenants are irrevocable and perpetual.

33. VENDOR PERFORMANCE Prior offeror performance in regard to product, service, or representation of/from the offeror may be used in evaluation of this offer. Unsatisfactory performance to the City may be considered sufficient grounds for rejection of this offer. No offer will be awarded to any offeror who is in default on any contract with the City.

34. PERFORMANCE SURETY REQUIREMENTS The performance sureties shall be in the form of a bond, cashier's check, certified check or money order. Personal or company checks are not acceptable unless certified. Letters of credit are not acceptable. Individual sureties are not acceptable.

PERFORMANCE SURETY The successful proposer shall, at the time of entering into the contract, furnish a performance surety in the form of a bond, money order or certified or cashier's check, in the amount of 10 percent of the contract amount guaranteeing the faithful performance of the contract by the proposer.
If a bond is submitted, it shall be written on the form provided by the City as an attachment to the proposal documents. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney. The bond must be written by a surety with a Best Rating no less than an A and must be authorized and licensed to do business in this State by the Arizona Department of Insurance. Individual sureties and letters of credit are not acceptable.

35. FUND APPROPRIATION CONTINGENCY The contractor and the City recognize that the continuation of any contract after the close of any given fiscal year of the City; which ends on June 30, shall be subject to the approval of the budget of the City providing the contract item is an expenditure therein. The City does not guarantee that the budget item will be actually adopted, as it is the determination of the City Council at the time of the adoption of the budget.

36. NOTIFICATION OF AWARD The successful offeror(s) will be notified that their offer has been accepted by the City Council as recommended for award.

37. COOPERATIVE USE OF CONTRACT This agreement may be extended for use by other governmental agencies and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City. For a list of SAVE members, click on the following link: http://www.mesaaz.gov/business/purchasing/save

38. PROHIBITIONS - Contractor, and on behalf any subcontractor, certifies, to the extent applicable under A.R.S. §§ 35-391 et seq and 35-393 et seq, that neither has "scrutinized" business operations, as defined in the proceeding statutes, in the countries of Sudan or Iran.

39. IMMIGRATION LAW COMPLIANCE Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program. Any breach of warranty described above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement. City of Glendale ("City") retains the legal right to inspect the papers of Contractor or subcontractor employee who performs work under this Agreement to ensure that Contractor or any subcontractor is compliant with the warranty described above. City may conduct random inspections, and upon request of the City, Contractor shall provide copies of papers and records demonstrating continued compliance with the warranty described above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section. Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City. Contractor’s warranty and obligations under this Section I to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement. The “E-Verify Program” above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.
40. **CONTRACT ADMINISTRATOR** The staff member identified as the Contract Administrator for a solicitation serves as the liaison between Materials Management, the city and the successful contractor. The Contract Administrator manages the contract, overseeing the daily operations, scheduling, performance and compliance of the agreement by all parties. The Contract Administrator is responsible for:
   a. Establishing and maintaining records and documentation
   b. Monitoring the contractor’s performance
   c. Handling issues and disputes
   d. Exercising extension options
   e. Initiating contract modifications
   f. Initiating rebids or new solicitations

41. **OFFICIAL TIME CLOCK** The official time clock used to verify the date and time an offer is received is located at the City of Glendale, Procurement office. An offer is considered to be in the actual possession of Procurement upon being stamped by the official time clock, before the official due date and time.
EXHIBIT 3: Insurance Requirements

By signing on the Offer/Bid page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Offerors are certifying that they understand the following notices and agree to comply with all required terms and conditions.

1) **INSURANCE REQUIREMENTS.** OFFEROR shall procure and maintain for the duration of the License, insurance against claims for injury to persons or damage to property that may arise from or in connection with this License. The insurance requirements herein are minimum requirements for this License and in no way limit the indemnity covenants contained in this License. The City of Glendale in no way warrants that the minimum limits contained herein is sufficient to protect the OFFEROR from liabilities that might arise out of this License. OFFEROR is free to purchase such additional insurance as OFFEROR determines necessary.

a) **Minimum Scope and Limits Of Insurance:** OFFEROR shall provide coverage with limits of liability not less than those stated below.

i) **Commercial General Liability – Occurrence Form**

   Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage. The policy shall be endorsed to include coverage for sexual molestation and abuse.

   General Aggregate $2,000,000
   Products – Completed Operations Aggregate $1,000,000
   Personal and Advertising Injury $1,000,000
   Each Occurrence $1,000,000
   Damage to Licensed Premises $ 500,000

   (1) The policy shall be endorsed to include the following additional insured language: “The City of Glendale, and its departments, officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the property subject to this License. Such additional insured shall be covered to the full limits of liability purchased by the OFFEROR, even if those limits of liability are in excess of those required by this License.

   (2) Policy shall contain a waiver of subrogation endorsement in favor of the “City of Glendale, and its departments, officers, officials, agents, employees and volunteers” for losses arising from License. This provision applies regardless of whether or not the City of Glendale has received a waiver of subrogation endorsement from the insurer.

   (3) The policy shall include coverage for sexual abuse and molestation. The limits may be included within the General Liability limit or provided by separate endorsement or provided as separate coverage included with the professional liability. OFFEROR must provide the following statement on their certificate(s) of insurance: “Sexual Abuse/Molestation coverage is included.”

ii) **Business Automobile Liability**

   Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement. Combined Single Limit (CSL) $1,000,000.
(1) The policy shall be endorsed to include the following additional insured language: “The City of Glendale, and its departments, officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the OFFEROR, involving automobiles owned, Licensed, hired or borrowed by the OFFEROR." Such additional insured shall be covered to the full limits of liability purchased by the OFFEROR, even if those limits of liability are in excess of those required by this License.

(2) Policy shall contain a waiver of subrogation endorsement in favor of the “City of Glendale, and its departments, officers, officials, agents, employees and volunteers” for losses arising from work performed by or on behalf of the OFFEROR. This provision applies regardless of whether or not the City of Glendale has received a waiver of subrogation endorsement from the insurer.

iii) Worker's Compensation and Employers' Liability

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(1) Policy shall contain a waiver of subrogation endorsement in favor of the “City of Glendale, and its departments, officers, officials, agents, employees and volunteers” for losses arising from OFFEROR activities. This provision applies regardless of whether or not the City of Glendale has received a waiver of subrogation endorsement from the insurer.

iv) Property Insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision

(1) Policy shall contain a waiver of subrogation endorsement in favor of the “City of Glendale, and its departments, officers, officials, agents, employees and volunteers” for losses arising from the License. This provision applies regardless of whether or not the City of Glendale has received a waiver of subrogation endorsement from the insurer.

v) Professional Liability (Errors and Omissions Liability)

Policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services.

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(1) In the event that the professional liability insurance required is written on a claims-made basis, any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

vi) Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

(1) Policies shall stipulate that the insurance afforded by the organization shall be primary insurance and that any insurance carried by the City of Glendale shall be excess and not contributory insurance.
SCOPE OF WORK

Consultant shall present a methodology and potential framework for creating a new master plan that addresses issues related to Parks and Recreation, Thunderbird Conservation Park, Open Space and Trails, and program and facility equity. The submittal should include, but not be limited to, the following categories:

- Facility/Asset Inventory and Program/Service Delivery Assessment
- Data Review and Analysis
- Public Input Process
- Equity of Programming and Facilities
- Master Plan Updates/Replacements, Strategies, Action Items and Recommendations
- Deliverables

GENERAL REQUIREMENTS - For this Master Plan Replacement project, the Consultant shall:

- Work closely with City staff in preparing the Parks and Recreation Master Plan.
- Create a final document for distribution to the public;
- Schedule progress meetings as often as necessary until the final plan is approved by the City Council for progress reporting.
- The consultant shall supply the City Project Manager with at least one (1) copy of all completed or partially completed reports, studies, forecasts, maps or plans as deemed necessary by the City Project Manager at least three (3) working days before each progress meeting.
- The Consultant shall schedule the meetings, as necessary, at key times during the development of the Master Plan.
- Provide a replacement master plan for Parks, Recreation and Special Events with additional emphasis on incorporating and updating the existing master plans for trails, open space and conservation area management and operations in the new plan;
- Insure that the replacement plan addresses current City of Glendale’s Envision 2040 General Plan goals and policies when applicable, specifically those in sections 5. Connectivity, Bicycling and Pedestrian Elements, and 6. Public Facilities, Open Space and Recreation elements;
- Review and analyze copies of pertinent existing studies, plans, programs and other data including but not limited to: department master/strategic plans; infrastructure replacement schedules/inventories; facility/infrastructure/maintenance records; program/service delivery policies and providers; contractual agreements and lease agreements;
- Assess and compile a list of existing community inventory including assets and infrastructure that is managed and maintained by the City of Glendale as well as private and/or non-profit resources that exist within and near the City’s boundaries, such as fitness and wellness facilities and operations, homeowners’ association parks and infrastructure, pools and recreational facilities that provide public access, and any additional items;
- Assess existing parks maintenance, recreation, special event, open space, trails and conservation area financial resources (budget and staffing) and programming and service delivery. Compare existing data versus current standards, trends and best practices, and provide a clear and detailed comparative analysis;
- Conduct a City-wide survey of Glendale residents to assess current use and needs for programs, events and service delivery and gather resident input on current condition and use of capital assets/amenities.
- Conduct an analysis to determine if any income, race, or age disparities in access to public parks, open space, recreation facilities and recreation programming exists in the City of Glendale.
MASTER PLAN DELIVERABLES – Consultant shall

- Schedule and attend meetings with department subject matter expert or City designee on an as needed basis;
- Provide a detailed plan of work for the master plan;
- Facilitate and asset survey and comparison with benchmark and trend data;
- Summarize existing conditions, inventories, and analysis;
- Identify and describe the conditional assessment methodology;
- Provide a citywide statistically-valid community assessment survey covering residents use of and need for parks, recreation, special events, open space, trails use/need programs and services. Final report to include relevant data, cross tabulations and summary/analysis.
- Provide all appropriate materials and graphics needed for public presentation(s) as proposed;
- Create a draft detailed master plan executive summary that includes appropriate and easily readable concepts and detail for residents to comprehend the approach and key goals/objectives.
- Create a final master plan that addresses all requirements including details of the public involvement and community engagement processes, recommendations for future needs of parks, infrastructure/amenities, open space, trails, and program/service delivery; a thorough description of the rational for the recommendations; and a detail of the estimated costs of priority improvements using current year dollar values.
- Upon City approval, Consultant shall provide a final master plan with digital copies on a flash drive. All submittals must be in a Microsoft Office format that can accept updates and changes as they occur over time, and a digital copy in a searchable, bookmarked Adobe PDF format.
- Provide usable and workable definitions and recommendations for designated park and open space with acreages and parameters defined as appropriate
- Identify opportunities for available funding and acquisition alternatives
- Provide additional recommendations within the plan;

RESPONSIBILITY OF THE CITY

- Project Manager designee
- Copies of all existing studies, plans, programs, maps and other data and access to all applicable records
- Assistance with on-going community meetings
EXHIBIT C
Professional Services Agreement
PARKS AND RECREATION MASTER PLAN REPLACEMENT
SCHEDULE

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<td>DRAFT PLAN</td>
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Meeting With City Project Team And/Or Committees
SKO (also for Add Alternate 1)
Public Meeting #1
Public Meeting #2
Findings and Visioning Workshop
Draft Plan Presentation/Public Meeting #1
Final Plan Delivered
EXHIBIT D
Professional Services Agreement

PARKS AND RECREATION MASTER PLAN REPLACEMENT

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION
The method of payment is provided in Section 5 of the Agreement.

NOT-TO-EXCEED AMOUNT
The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed $200,000.

DETAILED PROJECT COMPENSATION

<table>
<thead>
<tr>
<th>TASKS</th>
<th>GreenPlay</th>
<th>J2</th>
<th>RRC</th>
<th>Total</th>
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<tr>
<td>A. Project Coordination Strategic Kick-Off and Determination of Critical Success Factors</td>
<td>$9,975</td>
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<td>B. Values, Vision, and Mission Workshop</td>
<td>$3,675</td>
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<td>C. Public Engagement</td>
<td>$15,750</td>
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<td>Statistically-Valid Survey</td>
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<td>E. Findings and Visioning Strategies</td>
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<td>G. Draft and Final Plans, Presentations, and Deliverables</td>
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This project is billed as Firm-Fixed Fee, meaning that all travel, reimbursables, and deliverables are built into the per task.