

REQUEST FOR PROPOSAL

FOR

INSURANCE BROKER SERVICES

FOR

THE CITY OF PRESCOTT, ARIZONA

October 19, 2008

1.0	INVITATION TO SUBMIT PROPOSAL.....	3
1.1	PROPOSAL TIMETABLE.....	3
2.0	BACKGROUND.....	3
3.0	MINIMUM QUALIFICATIONS	4
4.0	INSTRUCTIONS FOR PROPOSAL.....	4
5.0	PROPOSAL RESPONSES	4
6.0	60 DAY NOTICE	5
7.0	CANCELLATION/TERMINATION OF CONTRACT.....	5
8.0	FORM AND CONTENT OF PROPOSAL.....	5
9.0	INQUIRIES.....	6
10.0	SELECTION PROCESS.....	6
11.0	NOTICE OF CONTRACT.....	7
12.0	REJECTION OF PROPOSAL.....	7
13.0	BINDING PROPOSALS	7
14.0	HOLD HARMLESS	7
15.0	PROPRIETARY DOCUMENT	7
16.0	VERIFICATION OF RFP RESPONSE.....	8
17.0	INSURANCE REQUIREMENTS	8
18.0	INDEMNIFICATION.....	9
19.0	TABLE OF COVERAGE.....	9
20.0	PROPOSAL REQUIREMENTS.....	9
21.0	CONTRACT ADMINISTRATOR	11
	SAMPLE STANDARD CONTRACT AGREEMENT	13

1.0 INVITATION TO SUBMIT PROPOSAL

The City of Prescott, Arizona is seeking proposals for professional insurance broker services to assist in the management of the City's various insured and self-funded insurance programs. Such services include, but are not limited to the review, analysis, recommendation, and timely placement of all insured and self-funded programs in the areas listed below:

- a) Excess General Liability, including employment practices;
- b) Property;
- c) Excess Workers' Compensation;
- d) Self-Insured Workers' Compensation Bond;
- e) Aviation;
- f) Crime;
- g) Environmental;
- h) Tenant Users Liability Insurance;
- i) Accidental Death and Dismemberment (volunteers, ride-alongs); and
- j) Any other coverages requested by the City of Prescott or recommended by the broker.

Proponents are invited to submit bids for brokerage services for the full range of purchased insurance coverages only. Value added items such as loss control services, technical assistance, claims advocacy, and policy interpretation should be specifically outlined in the response.

1.1 PROPOSAL TIMETABLE

Sunday, October 19, 2008	Release of Proposal
Friday, October 24, 2008	Deadline for Requests for Clarification
Wednesday, October 29, 2008	Addendum Posted to City website
Thursday, November 6, 2008	Proposals Due to City Clerk by 2:00 PM
Friday, November 14, 2008	Evaluation of Written Submittals
Tuesday & Wednesday, November 18 & 19, 2008	Finalist Interviews
Tuesday, December 9, 2008	Notify Selected Broker of Record

2.0 BACKGROUND

The City of Prescott is self-insured for both liability and workers' compensation programs, and fully-insured for property, crime and aviation (current coverages are set forth in more detail in section 19).

The City of Prescott has:

- a population of approximately 42,085
- 573.5 employees
- an adopted operating budget for FY08 of \$85,433,281
- a total budget for FY08 of \$207,845,476
- a Risk Management Division budget for FY08 of approximately \$1.5 m.
- an insurance budget for FY08 of \$586,000

3.0 MINIMUM QUALIFICATIONS

The City of Prescott requires that all respondents:

- a) are licensed as insurance brokers in the State of Arizona;
- b) have at least 5 (five) years of experience in providing brokerage services to municipalities;
- c) have experience with municipalities similar in size, types of exposures to the City of Prescott, and in the types of policies and coverages referenced herein;
- d) ability to place all lines of coverage currently purchased by the City of Prescott, that may be appropriate for the City, or that may be recommended by the broker.
- e) Have a gross premium volume of at least five million dollars excluding life, health, and personal lines premiums.

4.0 INSTRUCTIONS FOR PROPOSAL

All written proposals and any required attachments must be received by the City Clerk for the City of Prescott, 201 South Cortez Street, Prescott, AZ 86303 no later than 2:00 p.m. on Thursday, November 6, 2008, in a sealed envelope. The outside of the envelope shall be clearly marked “**Proposal for Insurance Broker Services**”. From the proposals received, the evaluation team will review the proposals and identify the top finalists. The finalists may be requested to submit to an oral interview and/or provide additional information, based upon their RFP responses or responses during oral interview.

5.0 PROPOSAL RESPONSES

A. Included in the RFP response will be:

- The annual fee including payment schedules for the scope of services outlined in this RFP. Such fee should be a base fee for services and should assume that the Proposer would not be entitled to any commissions for any coverage procured on behalf of the City;
- not to exceed % increase (if any) for each contract renewal period, and a cumulative not to exceed contract amount;
- verification of the carriers available to the brokerage for quotes for each of the lines of coverage;
- whether or not carriers available to the respondent are licensed in the State of AZ;
- whether or not the broker is a licensed broker in the State of AZ;
- schedule and process for takeover of broker of record status for existing policies, and verification that the current policies can be serviced by respondent;
- identify effective date for broker of record services to begin on current policies;
- schedule for underwriting for the renewal period (most policies currently renew on 7/1, with the exception of aviation, which renews

- 10/1);
 - whether or not there are any commissions paid directly to the broker through the carrier(s);
 - verification of the broker's agreement to enter into a form contract with the City of Prescott in the form attached to this RFP as Exhibit B.
- B. One original and three unbound copies of complete responses should be provided.
- C. The initial contract period shall be January 1, 2009 through December 31, 2009, with two (2) optional two-year renewals. All renewals shall be effective January 1st of the renewal years (2010 & 2012). Rate increases, if any, required by the proponent for each renewal period shall be outlined in Paragraph 5.0, as part of the response to the proposal.

6.0 60 DAY NOTICE

The successful respondent is required to provide sixty (60) calendar days advance notice in the event they choose not to exercise the renewal option.

7.0 CANCELLATION/TERMINATION OF CONTRACT

The City of Prescott reserves the right to cancel the contract, with or without cause, with at least ten (10) calendar days written notice. If the contract is terminated, the provider shall be paid in accordance with the terms of the contract.

8.0 FORM AND CONTENT OF PROPOSAL

- A. The complete proposal must consist of the Respondent's answer and all other supporting materials requested in the Request for Proposal (RFP). The original sealed proposal plus three (3) unbound copies shall be submitted to the City of Prescott City Clerk, Elizabeth Burke, on or before 2:00 p.m. November 6, 2008, as outlined in Section 4.0 of this RFP.
LATE OFFER SUBMITTALS WILL NOT BE CONSIDERED UNDER ANY CIRCUMSTANCES.
- B. Respondents are cautioned that proposals which do not follow the form required by the RFP will be subject to limited review and possible vendor disqualification. Respondents may include any additional materials that will support their specific responses.
- C. It is the responsibility of all respondents to examine the entire solicitation and seek clarification of any item or requirement that may not be clear to them and to check all responses for accuracy before submitting an offer.
- D. The City will not reimburse the cost of developing, presenting or providing any proposal response to this RFP.
- E. All bids shall be on vendor letterhead and will include a statement that all

information contained therein is true and accurate and will be an original document signed by an authorized representative of the organization. Unsigned offers will be considered non-responsive and will be rejected.

- F. Telegraphic, electronic or mailgram offers will not be considered.
- G. At any time prior to the specified date and time set for bid opening, the respondent may withdraw their offer.
- H. Proposals must indicate complete pricing. Pricing must include a breakdown of costs, including any fees for added value services, such as RMS access or loss control/safety consulting services.
- I. In all cases, the respondent must specifically outline any additional costs over and above the fee for brokering the City's insurance coverages, such as administrative service fees, equipment or software purchases, training, or any other pricing which is not included in the base price.
- J. Respondents must provide a maximum annual renewal increase, if any, based either upon percentage of the original contract pricing or a specific dollar amount.
- K. Respondents must verify their agreement to enter into a form contract with the City of Prescott in the form attached to this RFP as Exhibit A.

9.0 INQUIRIES

Any questions regarding this RFP shall be directed to:
sheri.swain@cityofprescott.net

Any requests for clarification (RFC) of the information contained in this RFP must be submitted to the Risk Manager in writing by brief e-mail at least ten (10) days before responses are due to be submitted to the Clerk. The original question(s) and any response will be posted as an addendum on the City's website at www.cityofprescott.net/business/bids at least five (5) days before responses are due to be submitted to the Clerk.

10.0 SELECTION PROCESS

- A. Proposals will be evaluated according to the following criteria:
 - a) Understanding of Scope and ability to provide services as requested;
 - b) Firm/Personnel qualifications;
 - c) References;
 - d) Cost of services;
 - e) Experience with projects or programs similar in scope and nature to those being bid, specifically all lines of brokerage services;
 - f) Municipal or government insurance experience;
 - g) Local office or ability to provide personnel and services on a timely

- basis;
- h) Additional services available from broker including the base fee.

B. Any and all respondents may be asked to further explain or clarify, in writing, areas of their proposal before or during the evaluation process. The City will enter into negotiations with the respondent receiving the highest rating as determined by the total points assigned by all members of the evaluation committee. If such negotiations are not successful, the City will then enter into negotiations with the respondent receiving the next highest overall rating.

11.0 NOTICE OF CONTRACT

The selected vendor for the City of Prescott will be notified of the contract award recommendation on or about December 15, 2008. The successful respondent's RFP response, as well as the selection committee recommendation, will be forwarded to the City Attorney for preparation of a final contract and submission to the City Council for final approval. A draft format of the City's standard contract is provided at the end of this document.

12.0 REJECTION OF PROPOSAL

The City reserves the right to:

- a) make an award on the basis of accepting the proposal that is most advantageous to the City based on services and price;
- b) reject all proposals;
- c) reject any proposals that do not comply with any of the RFP requirements.

13.0 BINDING PROPOSALS

All proposals submitted shall be binding in all respects for a period of ninety (90) calendar days following the date for submission of proposals, as outlined in Section 4.0.

14.0 HOLD HARMLESS

Respondents understand that the City solely will determine which proposal, if any, is accepted. Respondent waives any right to claim damages by any nature, whatsoever, based on the selection process, the data included in this RFP and/or any communications associated with the final selection of the successful respondent.

15.0 PROPRIETARY DOCUMENT

A. By law, everything in a proposal, including the response, is considered public record. The confidentiality of the information submitted by each respondent, including pricing, in response to any portion of the proposal will be maintained until after negotiations are completed and a contract is recommended to the City Council. At that time, any information submitted in response to the proposal is subject to open record requests.

- B. The respondent shall clearly identify and provide written instructions regarding what part, if any, of the proposal is a trade secret and should not be subject to public disclosure.
- C. All portions of the RFP response not identified as a trade secret will become part of the contract with the City of Prescott.

16.0 VERIFICATION OF RFP RESPONSE

The evaluation team for the City of Prescott will consist of Risk Management staff members, staff members from departments or divisions that are closely associated with risk management functions, and/or outside vendors that specialize in areas of Risk Management.

Methods of evaluation may include review of written RFP responses, phone or in-person interviews, verification of services provided to other clients or possible on-site inspection of the work site.

17.0 INSURANCE REQUIREMENTS

The successful respondent shall maintain during the term of this contract the following insurance policies issued by companies licensed in Arizona with an A.M. Best rating of A-VII or better. Prior to commencing services, the respondent shall furnish the Risk Manager with Certificate(s) of Insurance evidencing the required coverage, conditions and limits outlined below. The Certificate(s) of Insurance for General Liability shall be endorsed to name the City of Prescott as an additional insured, to the fullest extent allowable by law.

The insurance policies shall be endorsed stating that they shall not expire, be cancelled, suspended, voided or materially changed without 30 calendar days written notice by certified mail to the Risk Manager. The respondent's insurance must be primary and any insurance or self-insurance maintained by the City shall not contribute to it. If any part of the contract for these services is sub-contracted, these insurance requirements also apply to all sub-contractors:

COMMERCIAL GENERAL LIABILITY: Minimum \$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, property damage, personal injury, products and completed operations and blanket contractual coverage.

AUTOMOBILE LIABILITY (OWNED, NON-OWNED AND HIRED): CSL for bodily injury and property of a minimum of \$1,000,000 per occurrence.

WORKERS' COMPENSATION: Statutory limits, and Employer's Liability minimum of \$100,000 per accident, \$100,000 disease per employee and \$500,000 disease policy limit.

PROFESSIONAL LIABILITY: Minimum of \$10,000,000 per occurrence for any

acts, errors, mistakes and omissions arising out of the work or services performed by the contractor, or any person employed by the contractor.

18.0 INDEMNIFICATION

The successful respondent shall agree to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the successful respondent's negligence or willful misconduct, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or his/her agents. The successful respondent will release and discharge the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which the successful respondent may have against the City, its agents or employees, arising out of or in any way connected with the successful respondent's activities as set forth herein, other than those acts which occur due to the negligence or willful misconduct of the City, its employees or agents.

19.0 TABLE OF COVERAGE

General information regarding all lines of purchased insurance:

CARRIER	COVERAGE	POLICY PERIOD	SIR/DEDUCTIBLE
AIG	Excess Liability to \$15 million (primary)	7/1/08 – 6/30/09	\$350,000 SIR
Midwest Employers	Excess Workers' Compensation	7/1/08 – 6/30/09	\$500,000 SIR \$1 m emp. liability
The Hartford	Crime \$1 m/\$50,000	7/1/08 – 6/30/09	\$10,000 Emp. Theft, \$1,000 Theft
The Traveler's Indemnity Company	Property, Boiler/Machinery, Inland Marine, Auto Physical Damage	7/1/08 – 6/30/09	\$5,000 and \$10,000 for Auto Physical Damage
ACE	Airport Liability and Non-owned Aircraft \$50 m aggregates	10/1/08 -09/30/09	
Everest National Insurance Company	Tenant User Liability	9/12/08 -09/11/09	\$1m aggregate \$50,000 fire damage

Information regarding specific claim information will be provided to respondents upon request.

SPECIFICATIONS

20.0 PROPOSAL REQUIREMENTS

Respondents shall provide full written responses to each of the questions included below. The proponent must identify the differences between the responses and the Minimum Requirements as outlined in Section 3.0 and provide an explanation.

20.1 GENERAL INFORMATION

A. Name, Address and Telephone number of the vendor.

- B. Type of organization (individual, partnership, corporation, joint venture or other).
- C. Principals of the vendor.
- D. Broker License number.
- E. A list of at least three governmental entities, preferably municipalities, (including names, addresses, phone numbers and e-mail addresses) for whom you have provided the same or similar services. Because preference will be given to vendors that have provided similar services to other public entity organizations, such services should be completely and objectively described. Please provide the following information for each client:
 - Client name
 - Month and year service was initiated and ended, if applicable;
 - Name of client staff member(s) who managed the account (include phone number)
 - A summary of your services, coverages, and performance record with this client, including problem areas and solutions. (Although the specific coverages or policies obtained for each individual municipality is useful information for evaluating the proposal, if confidentiality or proprietary concerns exist, such coverages for individual municipalities need not be disclosed but may be generally described separately as part of the proponent's general experience.)

20.2 BROKERAGE SERVICES

- A. The City of Prescott will not assign markets. Please provide a listing of the carriers you will be able to approach, by line, for a quote for the City of Prescott's coverage.
- B. Please advise which, if any, of the carriers that currently write the City's coverage you would not have access to as the broker of record.
- C. Please explain your views regarding the appropriateness of claims made vs. occurrence coverage, as it relates to the City of Prescott lines of coverage.
- D. Provide the number of accounts currently being handled by the account representatives who would be assigned to the City of Prescott.
- E. What is the average turnover of account managers and representatives in the office that will be assigned to manage this account?
- F. What is the established process for claims reporting if the coverage is likely to extend to an event or occurrence?
- G. The City of Prescott retains all settlement authority, and in most cases, is represented by the Legal Department on any litigated claims. Provide detailed information regarding your procedures for coordinating claims activity and settlement negotiations with the carrier, the Legal Department and the Risk Management Division.

20.3 CONTRACT MANAGEMENT

- A. What are the underwriting requirements and information timeframes required to be met by the City of Prescott in order to be able to write all lines of coverage, including having all recommendations for renewal and/or purchase of new coverages to the Risk Manager by at least the last week in May?
- B. How often are client meetings held to discuss the progress of writing coverage and discuss risk finance and risk transfer strategies appropriate for the City of Prescott?
- C. Verify that you will provide a copy of the declarations page and a certificate of insurance, with the City of Prescott named as an additional insured, for all of the coverages outlined in Section 18.0 of this document, if awarded the contract.
- D. Provide complete payment deadlines for receipt of initial premium payments, and subsequent premium adjustments.
- E. Provide a detailed description of all procedures and timeframes for notification of the City of Prescott of the following:
 - recommendations for binding coverage for all lines currently in place, as well as any additional lines which the City of Prescott has requested, including a breakdown of all quotes which were obtained for each line of coverage;
 - copies of all policies;
 - certificates of insurance for all of the City's additional insureds;
 - added value services, such as loss adjustment/safety consulting services, claims advocacy, training and consultation on difficult insurance and claims issues.

20.4 REPORT FORMATS

- A. Provide samples of all report formats, including policy summaries, loss histories, certificates of insurance and any other information available through the corporate systems.

21.0 CONTRACT ADMINISTRATOR

Sheri D. Swain
Risk Manager
Legal Department/Risk Management Division
City of Prescott
P.O. Box 2509
Prescott, AZ 86302
Office (928) 777-1257
Fax (928) 777-1325
E-Mail sheri.swain@cityofprescott.net

AGREEMENT
PROPERTY AND CASUALTY
INSURANCE AGENT/BROKERAGE SERVICE

WHEREAS the City of Prescott (hereinafter referred to as "City") is in need of certain services; and

WHEREAS the City has solicited proposals in accordance with the City Charter and City Code; and

WHEREAS _____, (hereinafter referred to as "Consultant") has expertise as an insurance agent and broker for municipal coverages and has submitted the best and most qualified proposal to the City.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. SCOPE OF WORK

(A) That Consultant shall provide those services to the City as more particularly set forth in the Consultant's "Response to Request for Proposal for Insurance Broker Services" dated **[to be completed per proposal or parties' agreement]**, 2008 (hereinafter referred to as the "Proposal", which is attached hereto as "Exhibit B"), on an as-needed basis, as requested by the City Attorney and/or City's Risk Manager, hereinafter jointly referred to as the Project Director.

(B) In addition to those services identified in Paragraph 1, the Consultant shall also perform all subordinate tasks not specifically referenced in Paragraph 1, but necessary to the full and effective performance of the tasks specifically referenced.

(C) Consultant shall provide sufficient qualified personnel upon reasonable notice to perform any and all services as required herein, including but not limited to inspections and preparation of reports, as reasonably requested by representatives of the City.

2. CONTRACT TERM

(A) The term of this Agreement shall be from January 1, 2009 through December 31, 2009. All services identified in Paragraphs 1 and 2 above shall be completed to the satisfaction of the City in a timely manner.

(B) The parties may, by mutual consent, extend this contract for two (2) additional two year periods, under the same terms and conditions as contained herein.

(C) The Consultant shall provide sixty (60) calendar days advance notice to the City in the event it chooses not to agree to renew the contract.

(D) Notwithstanding the foregoing, this Agreement may be terminated by the City upon at least ten (10) days written notice, with or without cause. If this Agreement is terminated, the Consultant shall be entitled to payment for all services rendered up to and through the effective date of termination.

3. INCORPORATION OF DOCUMENTS

It is agreed by and between the parties that this Agreement incorporates the City's Request for Proposals (Exhibit "A") and the Consultant's response thereto (Exhibit "B") as a part of this Agreement, and that the terms thereof shall be binding between the parties.

4. SUBROGATION

In the event of a discrepancy between this Agreement and Exhibits "A" and "B", this Agreement shall control over Exhibits "A" and "B"; and in the event of a discrepancy between Exhibits "A" and "B", Exhibit "A" shall control over Exhibit "B".

5. CANCELLATION

Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or an consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the foregoing event, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of this Agreement.

6. NOTIFICATION

Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage and certified mail, at the following addresses:

City of Prescott
City Attorney
PO Box 2059
Prescott, AZ 86302

With copies to: City of Prescott
Risk Management Division
PO Box 2059
Prescott, AZ 86302

Consultant:

7. It is expressly agreed and understood by and between the parties that Consultant is an independent contractor, and as such Consultant shall not become a City employee, and is not entitled to payment or compensation from the City or to any fringe benefits to which other City employees are entitled. As an independent contractor, Consultant further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, Consultant further agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out nor claim to be an officer or employee of the City by reason thereof, and that it will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

8. NON-ASSIGNMENT

This Agreement is non-assignable by the Consultant, except to affiliates of the Consultant.

9. COMPENSATION

(A) The City shall pay to Consultant a total sum not to exceed \$,000.00 for the first 2-year period, for the complete performance of all services specified in Sections 1, 2 and 3 of this Agreement.

(B) In the event that the parties elect to renew this Agreement in accordance with Section 4(B) of this Agreement, then and in that event the compensation to be paid to the Consultant shall increase by **[to be completed per proposal or parties' agreement]**.

(C) Each annual fee will be paid **[to be completed per proposal or parties' agreement]**.

10. This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

11. VENUE

This Agreement shall be construed under the laws of the State of Arizona.

12. PROPERTY RIGHTS

All works of authorship, including but not limited to analyses, designs, plans, specifications, programs, forms, reports, findings, recommendations, data and memoranda of every description, and every innovation, conception, improvement,

discovery, process, method or invention, and any intellectual property rights associated therewith (collectively referred to as “work product”) created or developed by Consultant in connection with this Agreement, whether alone or jointly with the City, is and remains the property of Consultant; provided, however, that the City shall have and is hereby granted a perpetual, non-exclusive, non-transferable worldwide license to use and exploit, solely for the purposes of the City’s legitimate risk management or insurance-related affairs, any such work product revealed to the City in connection with this engagement. Notwithstanding the foregoing, Consultant shall acquire no rights of ownership in any intellectual property rights subsisting in any material provided by the City to Consultant during the course of this Agreement.

15. This Agreement and the Proposal represent the entire and integrated Agreement between the City and the Consultant and supersede all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Consultant. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

16. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

17. INDEMNIFICATION

The Consultant hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the Consultant's negligence or willful misconduct, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or his/her agents. The Consultant further releases and discharges the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which the Consultant has or may have against the City, its agents or employees, arising out of or in any way connected with the Consultant's activities as set forth herein, other than those acts which occur due to the negligence or willful misconduct of the City, its employees or agents.

18. MODIFICATIONS

No oral order, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modifications shall be introduced in any proceeding.

19. DISCRIMINATION

The Consultant, with regard to the work performed by it after award and during its performance of this contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Order 99-4.

20. LITIGATION

The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before any Court of competent jurisdiction. The parties hereto further expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

21. COMPLIANCE WITH FEDERAL AND STATE LAWS

The Consultant understands and acknowledges the applicability to it of the American with disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

Under the Provisions of A.R.S. 41-4401, Consultant hereby warrants to the city that the Consultant and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. 23-214(A) (hereinafter “Contractor Immigration Warranty”).

A breach of the Contractor Immigration Warranty shall constitute a material breach of this contract and shall subject the Contractor to penalties up to and including termination of this contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Consultant or Subcontractors employee who works on this Contract to ensure that the Consultant or Subcontractor is complying with eh Contractor Immigration Warranty. Consultant agrees to assist the city in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Consultant and any subcontractors to ensure compliance with Contractor’s Immigration Warranty. Consultant agrees to assist the City in regard to any random verification performed.

Neither the Consultant nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Consultant or Subcontractor establishes that it has complied with the employment verification provisions prescribed by

sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. 23-214, Subsection A.

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this ____ day of _____, 2008.

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE
City Clerk

GARY D. KIDD
City Attorney

DATED this ____ day of _____, 2008.

Consultant

By: _____