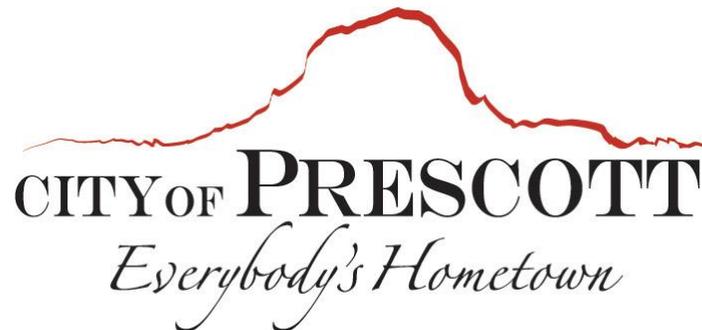


**REQUEST FOR
STATEMENTS OF QUALIFICATIONS
("SOQ")**

**PRESCOTT MUNICIPAL AIRPORT
DESIGN & ENGINEERING SERVICES
FOR FISCAL YEARS 2014 - 2018**

SOQ # 13AIR0516



Date Offered: April 15, 2013
Closing Date & Time May 16, 2013 by 2:00 P.M. Local Time

Contact Person: Jeffrey S. Tripp, Airport Manager
Jeffrey.tripp@prescott-az.gov

PRESCOTT MUNICIPAL AIRPORT
6546 CRYSTAL LANE
PRESCOTT, AZ 86301
(928) 777-1114
www.prescott-az.gov

SECTION I
SCOPE OF PROJECT

In accordance with the City of Prescott Procurement Code and Federal Grant requirements, the City of Prescott is accepting Statements of Qualifications to provide design and engineering services in support of City staff for the proposed Airport Capital Improvement Projects listed below. The ideal candidate will have substantial experience consisting of at least ten (10) years conducting airport design and engineering services involving the FAA and/or ADOT similar to those listed below. The initial term of this contract will be three (3) years, which can be extended up to two additional years (in 1-year increments) at the sole discretion of the City of Prescott.

A general scope of work and fee schedule will be developed during contract negotiations with the selected firm. The scope will include, but is not limited to, providing airport design and engineering services for the City of Prescott such as identifying future federal or state grant projects; the preparation of federal and state grant applications and documentation; the preparation of design and project plans and specifications for federal and state grant projects; providing assistance in the bid process; and serving as grant manager and project manager during the construction phase of airport design and construction projects in support of City staff.

The projects listed below that may be accomplished during FY2014 through FY2018 are:

- Design and construction of Airport Perimeter Roads (Phases 1, 2 & 3)
- Design and construction of Runway 12/30 Relocation
- Design and construction of Runway 3R/21L - Runway 12/30 intersection grade modification
- Design and construction of new RSAT projects identified by the Runway Safety Action Team identified during the contract period
- Design and construction of runway guard lights on TWYs A, C, E, & F
- Design and construction of Airport Security Upgrades
- Design and construction of additional Taxiway A exits
- Design and construction of Taxiway C realignment.
- Design and construction of Taxiway E lighting system, replacement airfield emergency generator, and airfield electrical vault relocation
- Design and construction Taxiway F realignment
- Design and construction of Airport Pavement Preservation Program projects
- Design and construction of a replacement ARFF station
- Design and construction of an airport maintenance facility
- Design and construction of an aircraft wash rack facility
- Design and construction of an airport fuel storage facility expansion
- Design and construction of Storm Water Pollution Prevention Program projects
- Design and construction of replacement Airport Traffic Control Tower
- Perform airspace obstruction analysis and mitigation project(s)
- Conduct miscellaneous projects to include Tower Line of Sight Study(s), Airport Survey(s), Electrical Improvements, Airfield Lighting & Signage preventative maintenance program, etc., as necessary.
- Provide surveys and mapping services for leasehold development
- Land Acquisition

The projects are funded through the Airport Capital Budget with additional assistance from the City of Prescott Capital Improvement Fund as well as grants from both the State of Arizona and the Federal Aviation Administration. The amount allocated for engineering fees will be negotiated with the firm found best qualified. A detailed scope of work and cost for each project will be negotiated on an individual project basis through an Authorization for Service once funding has been approved.

The projects will be conducted within the parameters and requirements of a negotiated contract. All projects will be subject to the availability of funding and nothing shall obligate the City to proceed with any or all of the projects. All work shall be accomplished in compliance with all State, Federal and local guidelines and regulations including the Environmental Protection Agency and Arizona Environmental Statutes.

1. MINIMUM QUALIFICATIONS.

Only those submittals received on time and in proper form will be accepted. Firms who provide evidence that they are fully competent, have the necessary experience, organization and financial capacity to fulfill the requirements of this SOQ, and who can provide evidence of all necessary certificates and licenses, will be considered. After receipt of the submittals, the City will rank the eligibility of each Submittal to be considered under section V of this RFP.

The following minimum experience criteria have been established as a basis for qualifying the eligibility of a Firm as shown below:

- a) Demonstrated success (5 completed projects within the last 10 years) in airport design and construction including the preparation of grant documents for similar projects for the Western-Pacific Region of the FAA and the State of Arizona.
- b) Recent (3 completed projects in the last 5 years) experience in permitting, bid preparation and bid analysis support of airport development and/or planning projects comparable to the proposed project.
- c) Experience of key personnel and availability of these individuals for these projects.
- d) Knowledge of applicable FAA regulations, policies, and procedures.
- e) Recent experience with public information and community involvement programs and/or public hearings related to airport development and planning projects.
- f) Reputation for personal and professional integrity and competence.
- g) Current workload and ability to meet project schedules or deadlines.
- h) Evidence that the consultant has made good faith efforts in meeting Disadvantaged Business Enterprise (DBE) goals (49 CFR, § 26.53).

2. RESPONSIBILITY OF SUCCESSFUL FIRM.

Within **THIRTY (30) CALENDAR** days of being notified by the City of Prescott, the successful Firm shall enter into the Standard City Professional Services Agreement. Upon Notification to Proceed, the successful Firm shall conduct, prepare, and provide the appropriate documents

and all associated tasks for the proposed airport improvements at the Prescott Municipal Airport identified above in accordance with the previously stated agreement.

3. SCHEDULE

SOQ Published04/15/2013
Receive Submittals05/16/2013
Interview Top 3 Firms.....06/2013
Select One Firm06/2013
Negotiate with Firm thru07/2013
Approval of Contract by City Council.....08/2013

The Schedule above is provided for reference only. The City reserves the right to amend the schedule above as deemed necessary or appropriate by the City staff.

4. STANDARD CITY PROFESSIONAL SERVICES AGREEMENT

A sample Standard Professional Services Agreement, attached as Exhibit “B”, which includes City insurance requirements, etc., is attached for reference. This Exhibit does not need to be submitted with the response to the SOQ. The final contract agreement shall incorporate the negotiated Scope of Work and Engineering fees and may have alternate or additional provisions than the sample. The City will manage the consultant contract and has appointed the Airport Manager to facilitate the coordination effort and direct the exchange of information related to the work performed. All work performed by the consultant and sub-consultants shall be submitted directly to the Airport Manager.

5. REQUIRED FEDERAL AND STATE CONTRACT CLAUSES

The mandatory Federal Contract Clauses for the Professional Services Agreement are attached as Exhibit “C”. The respondent is also required to comply with Arizona Revised Statutes, Title 34, Chapter 6 - Architect Services, Assayer Services, Construction Services, Engineer Services, Geologist Services, Landscape Architect Services and Land Surveying Services as well as the State Travel Policy (<http://www.gao.az.gov/travel/>).

These Exhibits do not need to be submitted with the response to the SOQ. The final contract agreement shall incorporate all mandatory Federal and State Contract Clauses.

6. PRE-SUBMITTAL CONFERENCE

A pre-submittal conference will be held at **10:00 a.m. on Tuesday, April 30, 2013 at the Prescott Municipal Airport Administration Office**. The Administration Office is located at 6546 Crystal Lane, Prescott, Arizona. At this meeting, City staff will discuss the scope of work, general issues and goals of this qualifications-based selection (QBS) process, and respond to questions from the attendees. Attendance at the pre-submittal conference is not mandatory and interested firms may submit a Statement of Qualifications whether or not they attend the conference.

All interested firms are encouraged to attend the Pre-Submittal Conference since City staff will not be available for meetings or to respond to individual inquiries regarding the project scope outside of this conference. In addition, there will not be meeting minutes or any other information published from the Pre-Submittal Conference. The City may elect to publish only a list of the attendees.

7. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM/SMALL BUSINESS ENTERPRISE (SBE) PROGRAM**

The City of Prescott - Prescott Municipal Airport has an established Disadvantaged Business Enterprise (DBE) program and a Small Business Enterprise (SBE) program in accordance with regulations of the U.S. Department of Transportation, 49 CFR Part 26. It is the policy of the City and Prescott Municipal Airport to ensure that DBEs and SBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

The consultant (and all sub-consultants) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the sponsor deems appropriate.

The City of Prescott encourages all interested firms to take active race/gender neutral steps to include DBEs/SBEs in this and other airport contracts. Race/gender neutral steps include: unbundling large contracts, subcontract work the prime contractor may otherwise self-perform, provide bonding or financing assistance, provide technical assistance, etc.

Only DBE/SBE firms listed in the Arizona Department of Transportation Unified Certification Program at the time of Qualification Statement or Proposal submittal will be considered. The ADOT DBE Directory is available at <http://www.azdot.gov/azdbe>

SECTION II

GENERAL TERMS AND CONDITIONS

1. **INSURANCE REQUIREMENTS:**

Prior to commencement of operation, the successful Firm shall procure and maintain insurance as specified by the City for all activities to be conducted by the Firm.

2. **BINDING OFFER:**

A Firm's submittal shall remain valid for a period of ninety (90) days following the Submittal deadline and will be considered a binding offer to perform the required services, assuming all terms are satisfactorily negotiated. The submission of a submittal shall be taken as prima facie evidence that the Firm has familiarized itself with the contents of the SOQ.

3. **COMPLIANCE.**

Firm shall comply with all local, State and federal directives, orders and laws as applicable to this submittal and subsequent agreement including completion of Company's work.

4. **CANCELLATION AND NON-EXCLUSIVITY OF AGREEMENT:**

The successful Firm understands and agrees that any resulting contractual relationship is non-exclusive and may be cancelled at any time. The City of Prescott reserves the right to cancel the agreement at any time at its sole discretion and/or seek similar or identical services (subject to minimum development and performance standards) elsewhere if deemed in the best interests of the City.

5. **COLLUSION:**

Submittals may be rejected if there is reason for believing that collusion exists among Firms, and no participant in such collusion will be considered in any future submittals for the operation of any concession for the next six (6) months following the date of the Submittal submission.

6. **HOLD HARMLESS:**

The Firm 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 participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or his/her agents. The Firm 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 Firm has or may have against the City, its agents or employees, arising out of or in any way connected with the Firm's activities as set forth below, other than those acts which occur due to the negligence of the City, its employees or agents.

7. **GOVERNANCE:**

If any of the language or information in this Submittal conflicts with language in the Agreement as prepared by the City of Prescott, the language of the final Agreement, as executed, will govern.

8. PUBLIC DISCLOSURE:

All Submittals and other materials or documents submitted by Firm in response to this SOQ will become the property of the City of Prescott and will not be released to the public until after the selection or rejection of any or all submittals.

9. CONFLICT OF INTERESTS

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

SECTION III
SUBMITTAL REQUIREMENTS AND SUBMITTAL

Firms are advised to carefully follow the instructions listed below in order to be considered fully responsive to this SOQ. Submittals sent by facsimile (FAX) or electronic mail will **NOT** be accepted. Any Submittal received after ***2:00pm on May 16, 2013*** shall be deemed unresponsive and will be returned to Firm unopened.

Firm shall carefully review and address all of the evaluation factors previously outlined in this SOQ as well as responding to *all* questions contained here-in. In order to be considered, Firm must be able to demonstrate that it meets the minimum qualifications established in the SOQ and has the resources, both staff and financial, to satisfactorily meet the requirements of this SOQ.

1. **NUMBER OF SUBMITTALS:** **One (1) Original** (clearly marked "ORIGINAL") and **Five (5) Copies** (clearly marked "CITY"). All submittals shall be marked as **AIRPORT ENGINEERING SERVICES SOQ #13AIR0516**. The maximum size of the submittals, including all attachments, diagrams, or other information shall not exceed twenty (20) pages.

2. **DELIVERY OF SUBMITTALS:**

The delivery of the submittal to the City of Prescott prior to the deadline is solely and strictly the responsibility of the Firm. **The delivery deadline is May 16, 2013 at 2:00 pm local time.** The City of Prescott will in no way be responsible for delays caused by the United States Postal Service or for delays caused by any other occurrence.

2.1 **Hand Delivery:** City of Prescott
Attn: City Clerk
AIRPORT ENGINEERING SERVICES
SOQ #13AIR0516
201 S. Cortez Street
Prescott, AZ 86303

2.2 **Mail or Courier Delivery:** City of Prescott
Attn: City Clerk
AIRPORT ENGINEERING SERVICES
SOQ #13AIR0516
201 S. Cortez Street
Prescott, AZ 86303

3. **EXECUTION OF SUBMITTAL:**

Firm shall execute the Submittal, or an official of Firm's firm authorized to do so as stated in this SOQ under - Acknowledgement of Submittal Required.

4. **REJECTION OF SUBMITTALS:**

The SOQ shall in no manner be construed as a commitment on the part of the City to award a contract. The City of Prescott reserves the right to reject any or all submittals; to waive minor

irregularities in the SOQ process or in the responses thereto; to re-advertise this SOQ; to postpone or cancel this process; and to change or modify the SOQ schedule at any time.

Additionally, any of the following causes may be considered as sufficient reason for disqualification and/or rejection of a prospective applicant's submittal:

- a. Submission of more than one (1) submittal by an individual, firm, partnership, or corporation under the same or different names.
- b. Submission of an incomplete submittal.
- c. Firm's failure to satisfactorily perform any present or previous obligation to the City.
- d. Any other conduct or circumstance which by law requires rejection of a submittal.

5. COST OF PREPARATION:

The cost of preparing a submittal to this SOQ shall be borne entirely by the Firm.

6. SOQ COMPLIANCE:

It is the responsibility of each Firm to examine carefully this SOQ and to judge for itself all of the circumstances and conditions which may affect its submittal and subsequent performance, operation and management pursuant to the Agreement. Any data furnished by the City is for informational purposes only; Firm's use of any such information shall be at Firm's own risk. Failure on the part of any Firm to examine, inspect, and to be completely knowledgeable of the terms and conditions of the Agreement, operational conditions, or any other relevant documents or information shall not relieve the selected Firm from fully complying with this SOQ. Submittals submitted early by Firms may be withdrawn or modified prior to the Submittal deadline. Such requests must be in writing. Modifications received after the Submittal deadline will not be considered.

7. REQUESTS FOR INTERPRETATION OR CLARIFICATION:

If any prospective Firm finds discrepancies or omissions or there is doubt as to the true meaning of any part of the SOQ, a written request for a clarification or interpretation must be submitted in writing, addressed to the Airport Manager at the address listed on the cover of this SOQ. E-mail requests for interpretations will also be accepted for this project at jeffrey.tripp@prescott-az.gov.

It is the responsibility of the Firm to verify the City has received the written or e-mail request. To be given consideration, such requests must be received at least fifteen (15) business days prior to the due date set for the submission of submittals. All such interpretations and any supplemental instructions will be in the form of a written addendum which, if issued, will be posted on the City website no less than 10 calendar days prior to the date fixed for the deadline for Submittals. Failure of any Firm to receive any such addendum or interpretation shall not relieve said Firm from any obligation contained therein. Any objection to the specifications and requirements as set forth in this SOQ must be filed in writing with the City of Prescott not less than fifteen (15) business days prior to the Submittal deadline.

8. WARRANTY:

The Firm warrants that the Submittal is not made in the interest of or on behalf of any undisclosed party; that the Firm has not, directly or indirectly, induced any other Firm to submit a false Submittal; or that Firm has not paid or agreed to pay to any party, either directly or indirectly, any money or other valuable consideration for assistance or aid rendered or to be rendered in attempting to procure the contract for the privileges granted herein.

9. **OPENING:**

All submittals will be opened and evaluated, after the published ***Submittal deadline of 2:00pm on Thursday, May 16, 2013*** at the City of Prescott City Hall by the City Clerk, 201 S. Cortez Street, Prescott, AZ. See Section V, Evaluation and Selection Process, for further information.

10. **SUPPLEMENTAL INFORMATION:**

The City of Prescott reserves the right to request any supplementary information it deems necessary to evaluate Firm's experience or qualifications. This may include: supplemental financial information, schedule interview(s) and/or additional presentations by the Firm.

SECTION IV
SUBMITTAL FORM

Submittals shall be typed, double-spaced with each page numbered at the bottom, and using one side of the paper only on 8 ½ x 11 sheet size paper. Firm shall respond to all questions and requirements below in the following format. All questions must be completed in full, as a condition of the SOQ. Submittals shall be stapled or otherwise bound, and assembled in organized sections that include a table of contents and TABS with each section title. Resumes and relevant project descriptions may be included in two (2) appendices (Appendix A - Resumes and Appendix B - Project Descriptions). Submittals shall not exceed **twenty (20) pages** maximum (single sided) including all maps, diagrams or other materials.

DO NOT INCLUDE PRICE INFORMATION IN YOUR SUBMITTAL. Selection will be based on qualifications; negotiations of contract prices will occur only after the selection of the top Firm is made.

Firms are asked to pre-qualify themselves by completing the following information. The City requests that submittals be formatted and sequenced in the following order:

A. FIRM'S COMPANY BACKGROUND:

1. Legal name of entity, entities or joint venture.
2. Contact information to include mailing address, phone, fax and email.
3. Attach a description or organizational chart of the Firm's proposed management structure depicting project staff personnel and their responsibilities, including sub-contractors, if any. Identify the individual that will be the primary day-to-day contact on this project and include their contact information including email. Indicate the process that will be implemented to maintain awareness and interaction between project team members.
4. Identify in the Statement all other firms on the team and their role including any DBE firms and their responsibilities. The selected firm will have to comply with the City and DOT Regulations 49 CFR Part 26. The consultant may be required to submit monthly status reports to the FAA and ADOT.
5. Appropriate State of Arizona design professional registration, licensure and construction contracting licenses.

B. FIRM'S COMPANY EXPERIENCE:

1. List the number of years of experience Firm has had in airport design and construction projects.
2. Provide a list and brief description of relevant airport design and construction projects completed and associated work performed by the Firm within the last ten (10) years to include:

- a) Project Name
- b) Project Location
- c) Contact Person, Title, Phone number and/or email
- d) Date of project (year)
- e) A description of project scope provided.

Complete project descriptions may be included in Appendix B.

3. Describe the specific level of involvement of your firm and individual team members, focusing on key personnel. Also, indicate the issues that were dealt with, relevance to the proposed projects, and the outcome.

C. PROPOSED PROJECT APPROACH AND SCHEDULE:

1. Project Approach.
 - a) Demonstrate the team's understanding of the primary components of the proposed projects and their potential issues.
 - b) Identify methodologies and approaches to be used to address the following: analysis and resolution of environmental issues; public scoping process; public hearings; proposed process for coordinating with the FAA, the City, and other consultants' work efforts; community education and stakeholder outreach, including production of web site content (not web design) for public information; and NEPA documentation schedule.
 - c) Identify specific responsibilities of each of the proposed staff/team members and sub-consultants.
2. Project Schedule.
 - a) Discuss your team's approach to completing projects on time and within budget, while maintaining deliverable quality.

D. QUALIFICATION/AVAILABILITY OF KEY PERSONNEL

1. Describe the Project Manager's experience and expertise, particularly related to any other airport projects this person has been responsible for. Include length of time with the current firm, and if less than three (3) years, provide previous management experience to demonstrate the Project Manager's commitment to the project as a first priority, and describe their ability to manage staff and sub-consultants.
2. Detail your team's knowledge, experience, and capabilities relevant to successful completion of airport improvement projects. Describe the technical experience and expertise of all key personnel to be assigned to the project. (Resumes of all key personnel, listing special qualifications applicable to the project shall be included in Appendix A.)

Include relevant airport experience and ability to address controversial public issues for each team member. Also include any experience and expertise related to applicable technical disciplines, demonstrated writing skills, experience with NEPA, and other applicable regulatory or interagency coordination and/or consultation that will be important to consider for the proposed projects.

3. Provide information as to planned staffing for public meetings. Describe the public speaking background of responsible personnel and their experience with airport projects. Include dates and details of the past 3-5 public presentations/ meetings conducted. Describe this person's approach to dealing with potentially controversial projects and/or hostile environments.
4. Address the time availability and commitment of the Project Manager and key personnel relative to their involvement with other on-going or expected projects.
5. Demonstrate an ability and commitment to undertake this work immediately and dedicate the necessary personnel and resources to the project to meet the proposed schedule.

E. REFERENCES AND ADDITIONAL INFORMATION:

Provide three (3) professional references including their title, organization, contact phone number, email address, and the most recent project completed for their organization. Attach any other background information about the qualifications and experience of Firm's organization or personnel that may be useful to the City in evaluating your capabilities.

G. INSURANCE AND INSURABILITY:

Firm shall attach hereto a current insurance certificate outlining limits and a letter from Firm's current insurance company stating that the insurance company would provide insurance at the limits required by the City.

H. EXCEPTIONS AND ASSUMPTIONS NOTED:

Firm shall request any changes or exceptions to any part of this SOQ in writing as part of their submittal. List all assumptions upon which the response to the SOQ is based. Assumptions may be related to available data, schedule, interim and final work products, or other aspects of the requested work effort.

SECTION V

EVALUATION AND SELECTION PROCESS

1. **OBJECTIVE:**

It is the City's intention to solicit Submittals from potentially qualified Firms; to evaluate their Submittals; and to award a contract to the Firm whose Submittal is determined to serve in the best interest of the City of Prescott.

2. **EVALUATION AND RECOMMENDATION:**

An evaluation committee, consisting of City staff, will review and evaluate all qualified Submittals received by the submittal date as set forth in this SOQ, or as amended by addenda. The City reserves the right to request additional information and clarification of any information submitted, including any omission from the original Submittal. After receipt of the submittals the City will rank the eligibility of each Submittal to be considered. All Submittals will be treated equally with regard to this item. Based on its review, the committee will prepare a tabulation of all firms, indicating the top three (3) scoring firms.

In order to achieve maximum scores, Firms must demonstrate to the City's Evaluation Team that they are fully qualified to provide the services required by this SOQ. Fully qualified Submittals will have the qualifications (financial resources, expertise and skills) and experience (documented, successful, and relevant) necessary to meet the requirements of the SOQ.

The City and FAA will follow the selection procedures outlined in FAA *Advisory Circular AC 150/5100-14D*. The firm considered by the Selection Committee to be the most highly qualified will be selected for the project, after which discussions will be initiated with that firm to finalize the scope of services and negotiate a contract. The Statements of Qualifications (SOQs) submitted will be reviewed and ranked by the Selection Committee using the following selection criteria:

- | | |
|---|------------|
| a) Demonstrated success (minimum 5 completed projects within the last 10 years) in Airport design and construction including the preparation of grant documents for similar projects for the Western-Pacific Region of the FAA and/or the State of Arizona. | 40% |
| b) Recent (minimum 3 completed projects in the last 5 years) experience in permitting, bid preparation and bid analysis support of airport development and/or planning projects comparable to the proposed project. | 30% |
| c) Experience of key personnel and availability of these individuals for this project. Reputation for personal and professional integrity and competence. | 10% |
| d) Recent experience with public information and community involvement programs and/or public hearing related to airport development and planning projects. | 10% |
| e) Current workload and ability to meet project schedules or deadlines. | 5% |

- f) Evidence that the consultant has made good faith efforts in meeting Disadvantaged Business Enterprise (DBE) goals (49 CFR, § 26.53). **5%**

3. CONFLICT OF INTEREST

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 a 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.

4. CONTRACT EXECUTION:

Contingent upon successful negotiations with the selected Firm, the City of Prescott will transmit to the Firm copies of the actual Agreement for execution. The Firm agrees to deliver three (3) duly executed Agreements to City within **THIRTY (30)** calendar days from the date of receipt of said notice and Agreements. Upon receipt of the executed agreement from the Firm, the City will seek authorization from the City Council to execute the agreement within thirty (30) calendar days. The agreement shall have no force or effect on the City unless and until it is approved by formal action of the Prescott City Council.

EXHIBIT "A" Project Site Map

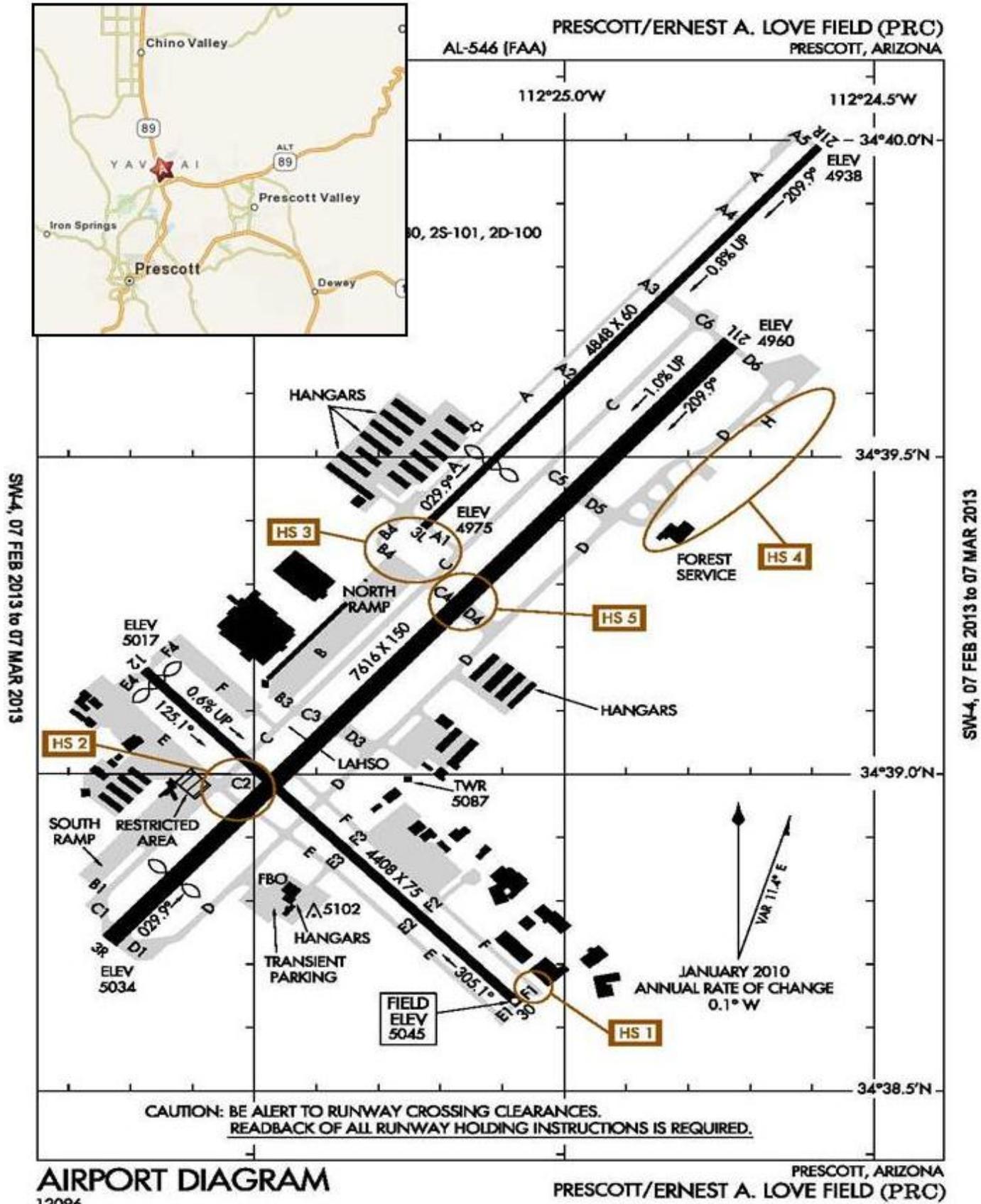


EXHIBIT "B"
Professional Services Agreement

**

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

WHEREAS, the City has solicited Requests for Qualifications in accordance with State Law; and

WHEREAS, ** (hereinafter referred to as "Professional"), has expertise in **

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. That Professional shall provide the services to the City in relation to ** as indicated in Exhibit "A" (Request for Statements of Qualifications and Scope of Work, Task and Fee Estimate, and Project Schedule) and as requested by the City of Prescott ** Director.
2. In addition to those services identified in Paragraph 1 above, the Professional 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.
3. The Professional shall provide sufficient qualified personnel 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.
4. All services identified in Paragraphs 1 and 2 above shall be completed to the satisfaction of the City and shall be performed in compliance with the Professional's project schedule identified in the attached Exhibit "A".
5. The term of this Agreement shall be _____ to _____.
6. Notwithstanding the foregoing, this Agreement may be terminated by both parties upon ten (10) days written notice, with or without cause or upon completion of services. If this Agreement is terminated, the Professional shall be paid for authorized services satisfactorily performed to the date of the Professional's receipt of such termination notice.
7. It is agreed by and between the parties that this Agreement incorporates the attached Exhibit "A" thereto as a part of this Agreement, and that the terms thereof shall be binding between the parties.
8. 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 a Professional 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.
9. Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage, at the following addresses:

** Director	**
City of Prescott	**
**	**
Prescott, AZ 86301	

10. It is expressly agreed and understood by and between the parties that the Professional is an independent Contractor, and, as such, Professional 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, Professional 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, Professional 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, worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.
11. This Agreement is non-assignable by the Professional unless by sub-contract, as approved in advance by the City.
12. (A) The City shall pay to Professional a total sum of **dollars and no cents (\$.00) for all services specified in Sections 1 and 2 of this Agreement, as specified in Exhibit "A".
(B) The foregoing sum includes payment for any and all services to be rendered Professional or sub-contractors, which the Professional may employ for this Contract. It is expressly agreed by and between the parties that the Professional is solely responsible for any and all payment to such any other Professionals or sub-contractors retained by the Professional.
(C) Payment of the total amount provided for under Section 12 (A) shall not relieve Professional of its obligation to complete the performance of all those services specified in Sections, 1, 2, and 3. Should the City request in writing additional services beyond that specified in Sections 1, 2, and 3, then Professional shall charge and City shall pay Professional in accordance with Exhibit "A".
(D) Prior to the final payment to the Professional, the City shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid monies due the City from the Professional, and shall apply to those monies to the appropriate accounts. Professional shall provide to the City any information necessary to determine the total amount(s) due.
(E) The Professional shall bill the City monthly for the fee due the Professional, based upon an hourly rate for work completed for each itemized task pursuant to this Agreement and Exhibit "A" during the billing period. City shall pay such billings within thirty (30) days of the date of their receipt.
13. 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 negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.
14. This Agreement shall be construed under the laws of the State of Arizona.
15. All work products of the Professional for this Project are instruments of service for this Project only and shall remain the property of the City whether the Project is completed or not. All plans, drawings, specifications, data maps, studies and other information, including all copies thereof, furnished by the City shall remain the property of the City. They are not to be used on other work, and, with the exception of this Agreement, are to be returned to the City on request or at the completion of the work.
16. 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 the Court. The Professional further agrees that this provision shall be contained in all sub-contracts related to the project, which is the subject of this Agreement.
17. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Agreement, pursuant to A.R.S. Section 12-341.01(A) and (B), or pursuant to any other state or federal

statute, court rule, case law or common law. The Professional further agrees that this provision shall be contained in all sub-contracts related to the project, which is the subject of this Agreement.

18. This Agreement represents the entire and integrated Agreement between the City and the Professional and supersedes 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 Professional. 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.
19. 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 provision, 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.
20. The Professional 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 Professional's negligent acts, errors, or omissions, pursuant to this Agreement, except to the extent said claims, liabilities, expenses or lawsuits arise by the negligent acts or omissions of the City or his/her agents. The Professional 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 Professional has or may have against the City, its agents or employees, arising out of or in any way connected with the Professional's activities as set forth below, other than those acts which occur due to the negligence of the City, its employees or agents.
21. 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 modification shall be introduced in any proceeding.
22. (A) Changes in Work: The City, without invalidating the Contract, may order extra work, make changes by altering, or delete any portion of the work as specified herein, or as deemed necessary or desirable by the ** Director. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time and additional cost caused thereby shall be made at the time of ordering such change or extra work.

(B) Extra work shall be that work not indicated or detailed on the Scope of Work and not specified. Such work shall be governed by all applicable provisions on the Contract Document.

(C) In giving instructions, the ** Director shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the work. No extra work or change shall be made unless in pursuance of a written order by the ** Director and no claim for an addition to the total amount of the Contract shall be valid unless so ordered.

(D) Payment for any change ordered by the ** Director which involves work essential to complete the Contract, but for which no basis of payment is provided for herein, shall be subject to agreement prior to said work being performed.

(E) Adjustments to price and/or Contract Time which are agreed upon shall be incorporated in the written order issued by the ** Director, which shall be written so as to indicate acceptance on the part of the Professional as evidenced by its signature. In the event prices cannot be agreed upon, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as it may deem necessary to complete the work, or it may direct the Professional to proceed with the items in question to be reimbursed pursuant to the unit prices in the Professional fee proposal.

(F) If the Professional claims that any instructions involve extra cost under this Contract, it shall give the ** Director written notice thereof within forty-eight (48) hours after the receipt of such instructions, and in any event before proceeding to execute the work. No such claim shall be valid unless so made. The Professional shall do such extra work therefor upon receipt of an accepted Contract Amendment or other written order of the ** Director and in the absence of such Contract Amendment or other written order of the ** Director, the Professional shall not be entitled to payment for such extra work. In no case shall work be undertaken without written notice from the ** Director to proceed with the work. All Contract Amendments must be approved by the ** Director. Contract Amendments over \$10,000.00 must be approved by City Council.

23. (A) The Professional shall obtain and maintain in effect during the term of, and until final acceptance of all work under this Agreement, a policy or policies of liability insurance with the following coverage:

1) Commercial General Liability – Occurrence Form (if applicable)

Policy shall include bodily injury, property damage, personal injury, broad form contractual liability, and XCU coverage.

General Aggregate	\$ 2,000,000
Products – Completed Operations Aggregate	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Fire Legal Liability (Damage to Rented Premises)	\$ 100,000

The policy shall be endorsed to include the following additional insured language:

“The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Professional.”

2) Professional Liability (Errors and Omissions Liability)

Each Claim	\$ 1,000,000
Annual Aggregate	\$ 2,000,000

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

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

3) Business Automobile Liability (if applicable) Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$ 1,000,000
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(B) City and Professional waive all rights against each other and their directors, officers, partners, commissioners, officials, agents, sub-contractors and employees for damages covered by property insurance during and after completion of the Services.

(C) All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as

defined in ARS Section 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

(D) Prior to commencing work under this Agreement, the Professional shall provide City with evidence that it is either a “self-insured employer” or a “carrier insured employer” for Workers’ Compensation as required by ARS 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

(E) Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

(F) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott Risk Management Division. All insurance is to be placed with an insurer admitted in the state in which operations are taking place.

(G) Verification of Coverage: Professional shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Please note the contract number on the Certificate.

24. The Professional, 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 sub-contractors, including procurement of materials and leases of equipment. The Professional 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, the Americans With Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09 as amended.

25. Contractor Immigration Warranty

Professional 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. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, “Employment of Aliens on Public Works Prohibited”, and A.R.S. § 34-302, as amended, “Residence Requirements for Employees”.

Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its sub-contractors (“Sub-contractors”) 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 Professional Immigration Warranty shall constitute a material breach of this Contract and shall subject the Professional 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 Professional or Sub-contractors employee who works on this Contract to ensure that the Professional or Sub-contractor is complying with the Professional Immigration Warranty. Professional 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 Professional and any of sub-contractors to ensure compliance with Professional’s Immigration Warranty. Professional agrees to assist the City in regard to any random verification performed.

Neither the Professional nor any Sub-contractor shall be deemed to have materially breached the Professional Immigration Warranty if the Professional or Sub-contractor establishes that it has complied with 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 Professional enters into with any and all of its sub-contractors who provide services under this Contract or any sub-contract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Professional or sub-contractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

- 26. Professional shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances.
- 27. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Professional.
- 28. In the event of a discrepancy between this Agreement and Exhibit "A", this Agreement shall control over Exhibit "A".
- 29. Non-Availability of Funds: Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.
- 30. Pursuant to A.R.S. Sections 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section, the term "scrutinized business operations" shall have the meanings set forth in A.R.S. Section 35-391 and/or 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

Dated this _____ day of _____, 2013.

City of Prescott, a municipal corporation

PROFESSIONAL

Marlin D. Kuykendall, Mayor

**

By: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

Lynn Mulhall, City Clerk

Jon M. Paladini, City Attorney

EXHIBIT "C"

SUPPLEMENTARY PROVISIONS FOR PROFESSIONAL SERVICES (A/E) CONTRACTS

These Supplementary Provisions amend and/or supplement the General Terms and Conditions of the Contract and other provisions of the Contract Documents as indicated herein. All contract provisions that are not so amended or supplemented remain in full force and effect.

FEDERAL PROVISIONS

CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS: (49 CFR Part 21)

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- 1.1 Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- 1.2 Nondiscrimination. The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 1.4 Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 1.5 Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The Contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982: (Section 520 - General Civil Rights Provisions)

The Contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. In the case of Contractors, this provision binds the Contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

DISADVANTAGED BUSINESS ENTERPRISES: (49 CFR Part 26)

Contract Assurance (§26.13) - The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than *[specify number]* days from the receipt of each payment the prime Contractor receives from *[Name of recipient]*. The prime Contractor agrees further to return retainage payments to each subcontractor within *[specify the same number as above]* days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the *[Name of Recipient]*. This clause applies to both DBE and non-DBE subcontractors.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES: (49 CFR Part 20)

- (1) No Federal appropriated funds shall be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

ACCESS TO RECORDS AND REPORTS: (49 CFR Part 18.36(i))

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

BREACH OF CONTRACT TERMS: (49 CFR Part 18.36)

Any violation or breach of terms of this contract on the part of the Contractor or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

RIGHTS TO INVENTIONS: (49 CFR Part 18.36(i)(8))

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

TRADE RESTRICTION CLAUSE: (49 CFR Part 30)

The Contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- (a) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- (b) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- (c) has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the Contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The Contractor shall provide immediate written notice to the sponsor if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

TERMINATION OF CONTRACT: (49 CFR Part 18.36(i)(2))

- (a) The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- (b) If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- (c) If the termination is due to failure to fulfill the Contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- (d) If, after notice of termination for failure to fulfill contract obligations, it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.
- (e) The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION: (Title 49 CFR Part 29)

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.