



**Request for Statements of Qualifications  
Engineering Design Services**

For

**Park Avenue Retaining Wall Supplement Design**

**Public Works Department**

**Telephone: (928) 777-1130**

**Fax: (928) 771-5929**

**Due Date: June 13, 2013 @ 2:00 pm**

## REQUEST FOR STATEMENTS OF QUALIFICATIONS

### Park Avenue Retaining Wall Supplement Design

The City of Prescott, Arizona, requests Statements of Qualifications from qualified engineering firms to provide design services for the design of 3 Retaining Walls and a small box culvert.

Statements of qualifications will be received before **2:00 p.m. on June 13, 2013 at the City Clerk's Office, 201 S. Cortez Street, Prescott Arizona 86303**, at which time all statements of qualifications will be publicly opened.

Any statements received at or after 2:00 p.m. on the above stated date will be returned unopened. Statements must conform to the Request for Statement of Qualifications available at the office of the Public Works Director, 433 N. Virginia Street, Prescott, AZ 86301 (928) 777-1130 or email [crista.clevenger@prescott-az.gov](mailto:crista.clevenger@prescott-az.gov). The City of Prescott reserves the right to reject any and all statements and the City assumes no liability for the cost of preparing a response to this request.

The outside of the statement envelope shall indicate the name and address of the respondent, shall be addressed to the City Clerk, at the above address and shall be marked: **Statement of Qualifications: Park Avenue Retaining Wall Supplement Design.**



Crista Clevenger, Contract Specialist  
Published: 2TC June 2 & June 9, 2013

## Description of Work

The City of Prescott will be reviewing the qualifications of engineering design firms for the purpose of entering into contracts for the following services:

**The project** includes the design of 3 Retaining Walls and a small box culvert as a supplement to the Park Avenue Improvements Project. Additional information is as follows;

- Retaining Wall No. 1 is located along Park Avenue and Leroux Street in the northeast quadrant. This wall is approximately 160-feet in length and varies in height from approximately 6-feet to 12-feet with an additional 34-inches of height for a vehicle barrier including a hand rail on top of the wall.
- Retaining Wall No. 2 is located between South Hassayampa Drive and North Hassayampa Drive on the east side of Park Avenue. This wall is approximately 20-feet in length and will be approximately 5-feet high. This wall may have a hand rail on top of the wall depending upon landowner/City agreements.
- Retaining Wall No. 3 is located along Park Avenue and North Hassayampa Street in the northeast quadrant. This wall is approximately 162-feet long and varies in height from 5-feet to 7.5-feet. This wall may have a hand rail on top of the wall depending upon landowner/City agreements.
- The small box culvert is located on the west side of Park Ave. just north of Country Club Drive. The box culvert is approximately 31-feet long and the interior dimensions are 4-inches tall by 21-inches wide. This box culvert will connect to an existing box of similar dimensions and outlet through a curb opening along Park Avenue. The box culvert crosses under a residential driveway and sidewalk with minimal cover.

The City is searching for an Engineer who is qualified to provide the following services and reports:

1. Pre-Design Meeting. A Pre-Design Meeting will be held to discuss the execution of work, scheduling, expectations, approach, special conditions, contract documents, etc. At the meeting the Engineer shall submit, for approval by the City, a list of sub-consultants, if any, he will employ.
2. Design Schedule. Following this meeting the Engineer will be required to submit a detailed schedule depicting all major tasks and primary submittal dates, for approval by the City. Thereafter, the Engineer will be responsible for notifying the City on a weekly basis of any changes to this schedule and their justification. The Engineer shall include a minimum of 1 week for each of the City review periods. It is anticipated that the final plans and specifications should be completed within 3 weeks.
3. Preliminary Project Evaluation. The Engineer will be provided with Park Avenue Improvement project plans as necessary, geotechnical evaluation, design reports, and any necessary elements related to the design to assist the Engineer in providing a preliminary

analysis of the project. Preliminary evaluation shall include sufficient analysis to determine if designed walls will provide a smaller footing and/or be less expensive than standard retaining walls (i.e. ADOT B18.10). Findings shall be submitted in a summary report prior to full design of any retaining walls.

4. Preparation of Preliminary Design. The Engineer shall review the Ninyo & Moore geotechnical report and rippability assessment and make a determination of wall foundation bearing capacities and lateral earth pressures. The design submittal shall include a detailed construction cost estimate and specifications. Aesthetic treatment of exposed surfaces of retaining walls shall be contemplated and included in the specifications.

In generating the specifications, the Engineer shall adhere to the City's boilerplate for technical specifications unless conditions require Special Provisions. ALL bid items SHALL be addressed in the technical specifications. Items NOT required for the project SHALL be deleted from the text. Any deviation(s) from the boilerplate shall be brought to the City's attention.

5. Pre-final Design Meeting. A meeting shall be held between the City and Engineer to discuss any revisions or additional work required for generation of final plans and specifications.
6. Preparation of Final Plans, Specifications, Design Report, Bid Schedule and Engineer's Estimate. The final plans shall be prepared incorporating any adjustments or corrections made during the review of the preliminary plans. A set of final reproducible plans shall be provided on 3 mil Mylar and on disk (compatible with AUTOCAD \*.DXF). All Design plans (hard copy and digital) must be submitted in the Plate I plan-profile format. The format of the plan deliverable for inclusion into the planset shall be agreed upon during the pre-design meeting.

A hard copy and disk of specifications, bid schedule and engineer's estimate, shall be submitted (compatible with Microsoft Word). The Engineer will be responsible for the special provisions, technical specifications, and engineer's estimate. The City will prepare the formal contract documents.

The final plans and specifications shall be sealed by a **Structural Engineer** registered in the State of Arizona.

7. Construction Pre-Bid Meeting. The Engineer shall attend the construction pre-bid meeting held by the City of Prescott to answer questions from prospective bidders. In the event an addendum is required, the Engineer shall prepare the necessary changes to the plans and specifications.
8. Pre-Construction Meeting. The Engineer shall attend the pre-construction meeting held by the City of Prescott to answer questions from the construction contractor. The Engineer shall be prepared to address any design questions presented by the contractor.
9. Provision of Post-design Consultation Services. The Engineer will be retained to provide consultation assistance during construction, relative to questions pertaining to their design. Construction meeting attendance, technical submittals, RFI's, as-built coordination and preparation, quality assurance/control, project closeout, certification, and other construction phase engineering services shall be anticipated functions of the engineer of record.

## **EVALUATION AND RANKING OF STATEMENTS OF QUALIFICATIONS; INTERVIEWS, CONTRACT NEGOTIATION AND AWARD**

### **EVALUATION**

Statements of Qualifications will be evaluated by a Review Committee appointed by the City for this project according to the following criteria, with weighting as indicated:

- 1) Specific experience of the firm with comparable subsurface infrastructure in municipalities within or proximate to Yavapai County - 20%
- 2) Experience of the proposed project team and availability, within current and anticipated workload, for this project - 25%
- 3) Proposed project approach, to include a detailed discussion and identification of areas that will require special attention - 25%
- 4) Overall quality of the SOQ, evidencing interest in the project - 15%
- 5) Knowledge of and experience with City of Prescott rules, regulations and procedures and local/regional construction conditions including subsurface and geophysical conditions. - 15%

### **FIRM SELECTION AND CONTRACT NEGOTIATION**

The Review Committee members will individually evaluate the presentation-interviews of each of the candidate firms and rate them according to the aforementioned criteria. The Review Committee will then formulate a consensus ranking, notify each of the candidate firms of the final rankings and meet with the top-ranked firm for the purpose of initiating contract negotiations. If negotiations are unsuccessful, the City will terminate negotiation efforts and open negotiations with the 2<sup>nd</sup> ranked firm. This process will continue until negotiation efforts are successful. The shortlist will remain in effect for a period of twelve months from the date of issuance by the City.

The City reserves the right to perform final ranking from the shortlist for the project and enter directly into contract negotiations with or without conducting an interview in accordance with state statutes at its discretion.

It is highly recommended that candidate firms visit the project site.

### **STATEMENTS OF QUALIFICATIONS**

#### **FORMAT**

The statement of qualifications shall be limited to no more than 5 pages, and include the following:

- Location of the firm
- Names of the team members proposed for the project

- A list of similar projects in which the team has participated, and contact information
- A brief resume of each of the team members describing their experience and background
- A summary of the current workload of key team members and list of their notable projects
- A list of all sub-consultants proposed to be utilized on the project and a description of their roles
- A tentative schedule for accomplishment of the project
- A statement of the submitting firms understanding of the project purpose and scope, and a description of how the firm would approach, manage, and complete the project. Candidate firms are encouraged to describe any innovative approaches they envision might help to expedite the project design, construction, acceptance, or make it more cost effective; and may also point any omissions, concerns, or issues that may not have been recognized or detailed above

Five (5) additional pages of appendices are allowed and may include graphs, charts, photos, or additional resumes. The letter of transmittal shall not exceed two pages and is exclusive of the 5/5 page limitation for the statement.

#### **SUBMISSION**

Sealed Statements of Qualifications will be received before **2:00 p.m. on June 13, 2013 at the City Clerk's Office, 201 S. Cortez Street, Prescott, Arizona 86303**, at which time all Statements of Qualifications will be publicly opened. Any submittals received at or after 2:00 p.m. on the above-stated date will be returned unopened.

Six copies (6 copies) of the statements shall be submitted and must conform to the Request for Statement of Qualifications. The City of Prescott reserves the right to reject any and all statements and the City assumes no liability for the cost of preparing a response to this request.

The outside of the statement envelope shall indicate the name and address of the respondent, shall be addressed to the Public Works Director, City of Prescott at the above address and shall be marked: **Statement of Qualifications: Park Avenue Retaining Wall Supplement Design.**

# City of Prescott

## CIP Design Submittal Requirements

In order to maintain a consistent and effective review of the plans, it is important for the necessary information to be provided as follows:

### **30% Submittal**

1. Preliminary water design report
2. Preliminary sanitary sewer design report
3. Preliminary drainage design report
4. Preliminary geotechnical report
5. Environmental permits and schedule for submittals
6. Preliminary pavement recommendations
7. Aerial photograph with catch points & preliminary right-of-way superimposed (1:50) scale
8. Preliminary plan & profile for all required facilities – road, water, sanitary, storm sewer
9. Preliminary intersection layout
10. Preliminary catch points
11. Alternative drainage analysis, conceptual drainage layout
12. Conceptual wall locations
13. Conceptual storm water control facility location
14. Conceptual wetland mitigation location
15. Preliminary Right of Way plans including parcel and owner information.
16. Preliminary land acquisition estimate
17. Preliminary utility conflicts and relocations (dry & wet utilities)
18. Preliminary typical sections
19. Preliminary erosion control sheets
20. Total Estimated Quantities and Engineer's Estimate
21. Value Engineering Study (projects > 1 million or State or Federal funding)

### **60% Submittal**

1. Draft final water design report
2. Draft final sanitary sewer design report
3. Draft final drainage design report
4. Draft final geotechnical report
5. Preliminary structural design report
6. Draft environmental permits for review
7. Final pavement recommendations
8. Preliminary pavement mix design
9. Final plan & profile for all required facilities – road, water, sanitary, storm sewer
10. Final Intersection horizontal layout (including curb return and curb ramp info.)
11. Draft final wall locations – Plan & Profile
12. Catch points
13. Draft final drainage layout including pipe profiles
14. Draft final water quality facility design
15. Draft final wetland mitigation plan
16. Preliminary striping and signing plans

17. Preliminary signal design layout
18. Updated utility locations/relocations
19. R/W purchase plans, contact summary – including property owners for water, sanitary, storm water facility easements, and wetland mitigation areas
20. Roadway typical sections
21. Preliminary detail sheets
22. Draft construction notes
23. Erosion control plan sheets
24. Cross Section sheets
25. Draft Specifications, Special Provisions, including landscape requirements and slope stabilization
26. Total Estimated Quantities and Engineer's Estimate
27. Variance modification requests (as required)

### **90% Submittal**

1. Final water design report
2. Final sanitary sewer design report
3. Final drainage design report
4. Final geotechnical report
5. Final structural design report
6. Final pavement recommendations
7. Final pavement mix design
8. Final plan & profile for all required facilities – road, water, sanitary, storm sewer
9. Final Intersection horizontal layout (including curb return and curb ramp info.)
10. Final wall locations – Plan & Profile
11. Catch points
12. Final drainage layout including pipe profiles
13. Final water quality facility design
14. Final wetland mitigation plan
15. Final striping and signing plans
16. Final signal design layout
17. Final utility locations/relocations
18. Roadway typical sections
19. Final detail sheets
20. Final construction notes
21. Final Erosion control plan sheets
22. Final Cross Section sheets
23. Final Specifications and Special Provisions
24. Total Estimated Quantities and Engineer's Estimate
25. Submit plans to all agencies required for permitting

### **Final P.S. & E**

1. Final Civil plans (Mylar & Digital)
2. Submittal of all final Technical reports
3. Final Technical Specifications and Special Provisions
4. Final Total Estimates Quantities and Engineer's Estimate
5. Approved permits (DEQ, COE, etc.)

## Definitions

- Conceptual:** General design idea or plan based upon experience and judgment from other comparable work. Cursory plan view illustrations; calculations not required.
- Preliminary:** Introductory, but reasonably accurate, design element or feature. General consistency with design standards. Plan view illustration. Rough calculations and notes. First run models.
- Final:** Complete and ultimate design element or feature. Full consistency with design standards (or road modifications). Complete plan, profile and section views, as applicable. Thorough and complete engineering calculations and notes. Finished run models.
- Alternative analysis:** Study of all (at least two) viable options which satisfies a given transportation plan or design need. Analysis to include, but not limited to, comparisons of: safety, scope, cost, functionality, efficiency, compliance to standards and environmental effects.



## 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)

Professional Services Agreement

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

(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.

Professional Services Agreement

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 "A"**

SAMPLE