

Request for Proposals

Delinquent Account Collection Services

CITY OF PRESCOTT, ARIZONA

PREPARED BY: Budget and Finance Department

September 18, 2013

TABLE OF CONTENTS

NOTICE OF REQUEST FOR PROPOSAL..... 3

SECTION 1: SPECIFICATIONS..... 4

SECTION 2: SPECIAL TERMS AND CONDITIONS 6

SECTION 3: SUBMISSION REQUIREMENTS / SAMPLES..... 9

SECTION 4: OFFER SHEET 10

SECTION 5: PRICE SHEET 11

APPENDIX A – PROFESSIONAL SERVICES AGREEMENT 12

NOTICE OF REQUEST FOR PROPOSAL

The City of Prescott, Arizona, requests proposals from qualified collectors to provide delinquent account collection services.

Sealed proposals will be received before 2:00 p.m. MST (Arizona time) on Thursday, October 17, 2013, at the Office of the City Clerk, 201 South Cortez Street, P. O. Box 2059, Prescott, AZ 86302. Any proposals received at or after 2:00 p.m. on the above-stated date will be returned unopened.

Proposals shall be submitted in a sealed package with “*RFP – FIN14 – COLLECTION SERVICES – 001*” and the Offeror’s name and address clearly indicated on the package.

Proposals must conform to a prepared set of specifications available from the Budget & Privilege Tax Manager at (928) 777-1247 voice; (928) 777-1100 TDD.

The City of Prescott reserves the right to reject any and all proposals, the City reserves the right to waive any irregularity or informality in any proposal received and further reserves to negotiate any and all proposals. The City assumes no liability for the cost of preparing a response to this request.

Lynn Mulhall, City Clerk

Published: 2TC September 22 and 29, 2013

SECTION 1: SPECIFICATIONS

1.1 INTRODUCTION

The City of Prescott (“City”) is soliciting Requests for Proposals from qualified firms or individuals to provide collection agency services as described within this solicitation. As with any accounts receivable billing process, accounts periodically become delinquent requiring collection activity. The proposal covers collection agency services to supplement in house collection efforts to recover monies owed for delinquent utility (water, sewer, and sanitation) accounts, miscellaneous accounts receivables, and transaction privilege and use tax accounts. Accounts will typically be referred to the agency on a monthly basis after in-house collection efforts have been completed. The Vendor shall provide collection procedures to achieve maximum possible recovery. This will include a reasonable number of telephone calls, direct mailing efforts and various skip tracing procedures as well as other procedures outlined by the Vendor, which should be described in response to the proposal.

1.2 BACKGROUND

The City currently has an approximate outstanding volume of unpaid accounts as follows:

Department	Estimated Unpaid Accounts	Estimated Value	Estimated Single Account Value (Top Value)
Utility	1,156	\$245,786	\$1,909
Miscellaneous Receivable	27	\$27,386	\$6,332
Sales Tax	154	\$446,366	\$44,775

The debtors representing these unpaid accounts have been notified by the City of their delinquent balances and have failed to make payment.

It is the City’s intent to have a fully executed agreement in place no later than November 15, 2013.

1.3 SPECIFICATIONS

1.3.1 Collection Agency Services

The Vendor shall provide collection services with respect to accounts referred by the City. The services should be designed to achieve the maximum recovery of debts and shall include without limitation telephone calls, mail efforts and skip tracing procedures. The Vendor shall furnish any and all material, labor and services required to perform and provide collection services as required by and to the satisfaction of the City.

1.3.2 Compliance with Laws and Business Standards

All collection services and related activities shall comply with federal, state and local laws or regulations. All collection services and related activities shall be courteous and businesslike and shall comply with the Fair Debt Practices Act.

Communication with delinquent account holders shall be made under the name of the Vendor. The Vendor shall not represent itself to be an employee or agent of the City. The City shall have the right to approve all standard form letters which are sent to delinquent account holders.

1.3.3 Data Exchange

The Vendor shall provide a secure method of data file exchange. The Vendor shall meet with authorized City representatives to mutually agree upon a method and format to provide data exchange with the City.

1.3.4 Computer Enhancements

The Vendor shall pay all costs associated with any system enhancements, upgrades, or other changes that reasonably need to be performed on the Vendor's computer system for the Vendor to meet the service requirements.

1.3.5 Account Representation

The Vendor shall assign an Account Representative (AR), who shall be the primary contact person for monitoring and coordination of all aspects of the contract. In the absence of assigning an AR, the authorized signer of this Proposal will become the appointed AR.

The City shall perform periodic audits to ensure that all amounts collected and adjusted are accurately reported and remitted, and compliance with all contract requirements. The Vendor shall release or make available all necessary records for the City to conduct these audits.

1.3.6 Remittance of Payments Received

All payments made to Vendor on the City's referred accounts shall be remitted once per month, in the month following the month in which the payments are received.

Appropriate mechanisms for verifying and tracking all payments shall be maintained.

1.3.7 Reports

The Vendor shall remit the following required reports and any other reports considered necessary by the City:

1.3.7.1 Monthly Cash Receipt Report

This report shall be due by the fifteenth (15th) of the month following the month collected and consist of a listing of all payments by debtor name, account number, date of payment, gross payment amount, and remaining account balance.

1.3.7.2 Quarterly Statistical Performance Analysis

A report which shows recovery percentages by month listed and the month in which successful collection occurred.

1.3.7.3 Annual Status Report

A summary of collection activity performed. At a minimum, the report shall consist of skip-tracing efforts, resources used and the effectiveness, the total number and type of outgoing notices sent by the agency with a rate for return/undeliverable, mail and rate or contact resulting from the mailing, the volume and verbal contact initiated by the agency staff and the volume of incoming activity from the debtor and aging status by type and date of last contact with debtor.

SECTION 2: SPECIAL TERMS AND CONDITIONS

2.1 INCORPORATION BY REFERENCE

All responses shall incorporate by reference the standard professional services agreement, specifications, special terms and conditions, general instructions, and any attachments. The Standard Professional Services Agreement applicable to this solicitation is attached as Appendix A. Offerors are advised to review all provisions of the Professional Services Agreement for this solicitation.

2.2 RETURN OF OFFER

Four (4) entire sets of the proposal response shall be submitted, with one (1) hard copy marked as "original" and one (1) CD-ROM containing all original documents.

The Offeror shall complete all sections of the solicitation in the format given in the space provided. If additional space is needed than what is given, enter "See attachment for detail."

2.3 PREPARATION OF OFFER PACKAGE

Only the following items shall be completed and returned. Failure to include all the items may result in an offer being rejected. Offer packages shall be submitted in the following order:

2.3.1 **OFFER SHEET**, Section 4

2.3.2 **PRICE SHEET**, Section 5

2.3.3 **ADDENDUM**, Return all addenda (if applicable)

2.3.4 **SUBMISSION REQUIREMENTS / SAMPLES**, Section 3

2.4 ALTERNATE OFFERS/EXCEPTIONS

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

2.5 EVALUATION CRITERIA

The criteria are listed with their relative weights.

2.5.1 Method of Approach 40%

The Vendor shall provide a descriptive outline of the method of approach to be followed to include but not be limited to reasonable number of telephone calls, direct mail, various skip tracking procedures and other procedures your firm will follow to notify delinquent account holders of collection;

Include firm's methodology regarding record keeping, and electronic document transfer capabilities;

Describe firm's communication methods to the City, including notification of payments received.

2.5.2 Work Capacity 25%

Provide descriptive information regarding firm's capability to obtain, manage and perform a high volume of work and collection rate history;

Provide a narrative as to how collection service for the City will be handled.

2.5.3 Cost 25%

The Vendor must completely fill out the Price Sheet, Section 5, relating to its proposed fee for providing collection services.

2.5.4 Firms Experience Providing Collection Service 10%

Provide a brief description of firm's qualifications and experience working with municipalities, demonstrating firm's qualifications to provide the service described herein;

Provide a narrative of all personnel, including key personnel to be assigned to this contract, identifying personnel performing work on all aspects of the contract, including job title, length of service with firm, experience in performing specific work associated with collection services and amount of time dedicated to this contract.

2.6 EVALUATION PANEL

Submittals will be evaluated by an evaluation panel. Award shall be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the City.

2.7 PANEL CONTACT

Offeror shall have no exclusive meetings, conversations or communications with an individual evaluation panel member on any aspect of the RFP, after submittal.

2.8 BEST AND FINAL OFFERS

The City may request best and final offers if deemed necessary, and will determine the scope and subject of any best and final request.

2.9 PRICE

All prices quoted shall be firm and fixed for the specified contract period.

2.10 TERM OF AGREEMENT

The initial term of the contract shall be five (5) years upon approval by the City Council.

2.11 OPTION TO EXTEND

The City may, at its option and with the approval of the Vendor, administratively extend the term of this agreement five (5) additional years in one (1) year increments based on satisfactory Vendor performance. Vendor shall be notified in writing by the City Finance Director or designee of the City's intention to extend the contract period at least thirty (30) calendar days prior to the expiration of the original contract period. Price adjustments will only be reviewed during contract renewal.

2.12 INSURANCE

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, Vendor 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.

2.13 NOTICE OF INTENT TO AWARD

Information about the recommended award for this solicitation will be posted on the Internet. The information will be available for review on the City's purchasing web page, <http://www.cityofprescott.net/business/bids/>, immediately after the City has completed its evaluation process of the offers received. If you have any questions, or would like further information about an intended award, contact the Purchasing Specialist immediately at (928) 777-1236. Any protest must be submitted to the Purchasing Specialist no later than seven (7) calendar days from the date of award posting on the Internet.

2.14 PERMITS AND LICENSES

The Vendor shall be responsible for determining and securing, at his/her expense, any and all licenses and permits that are required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction in any manner connected with providing operations and maintenance of the facility. Such fees shall be included in and are part of the total proposal cost. During the term of the contract, the Vendor shall notify the City in writing, within two (2) working days, of any suspension, revocation or renewal.

SECTION 3: SUBMISSION REQUIREMENTS / SAMPLES

3.1 REFERENCES FROM SIMILAR PROJECTS

3.1.1 Vendor shall submit references from a minimum of three (3) clients completed or ongoing similar projects within the last five (5) years (municipalities preferred).

References shall include:

- Name of government agency or corporation.
- Contact person's name, position and current telephone number.
- Dates, cost and scope of service.

3.1.2 Vendor shall provide sample reports used to communicate statistical information to the City. Please include three (3) pages or less of each report as listed herein:

- Monthly cash receipt report
- Quarterly statistical performance analysis
- Annual status report

SECTION 5: PRICE SHEET

5.1 PROPOSAL FEE

The City intends to award this contract to the Agency that it deems most responsive and will provide the most comprehensive and high quality service to the City. The proposal fee shall be presented in one or both of the following options:

5.1.1 The Vendor shall propose a percentage fee for collecting payments for each assigned account that has been placed for collection. The responses to the Request for Proposal shall determine and standardize the percentage for the agency selected. All fees shall be based upon the amount of money actually collected and remitted to the City, less the proposal fee. The amount of the fee/commission is not commissionable.

Percentage of collected funds to be paid to the Vendor: _____%

5.1.2 The Vendor shall propose their preferred fee structure accompanied by detailed information about the fees. All fees must be listed. Attach an additional sheet if necessary.

5.2 PAYMENT

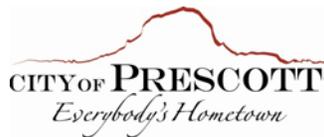
The Vendor shall provide monthly statements of itemized services. Payment will be reviewed and approved by the Finance Director or designee. The itemized statement shall not exceed the proposal fee in Section 5.1.1 or 5.1.2.

5.3 TAX AMOUNT

Do not include any use tax or federal tax in your proposal. The City is exempt from the payment of federal excise tax and will add use tax as applicable.

OFFEROR NAME: _____

APPENDIX A – PROFESSIONAL SERVICES AGREEMENT



Professional Services Agreement
Debt Collection Services

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 debt collection

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 debt collection services 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 Finance 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:

Finance Director	**
City of Prescott	**
201 S. Cortez St.	**
Prescott, AZ 86303	**

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, or **percentage (**%) of debts collected by the professional 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 there from 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 Finance 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 Finance 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 Finance 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 Finance 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 Finance 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 Finance 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 therefore upon receipt of an accepted Contract Amendment or other written order of the Finance Director and in the absence of such Contract Amendment or other written order of the Finance 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 Finance Director to proceed with the work. All Contract Amendments must be approved by the Finance 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

(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 "A"

*To consist of accepted offer package as outlined in section 2.3.