



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

For

PAVEMENT MANAGEMENT ENGINEERING SERVICES

Public Works Department

Telephone: (928) 777-1130

Fax: (928) 771-5929

Due Date: May 22, 2014

REQUEST FOR STATEMENTS OF QUALIFICATIONS
PAVEMENT MANAGEMENT ENGINEERING SERVICES

The City of Prescott, Arizona, requests Statements of Qualifications from qualified engineering firms to provide pavement management engineering services for Prescott, Arizona. Statements of qualifications will be received before 2:00 PM on May 22, 2014, City Clerk's Office, 201 South Cortez Street, Prescott Arizona 86303, at which time all statements of qualifications will be publicly opened.

Any statements received at or after 2:00 PM on the above stated date will be returned unopened. Statements must conform to a prepared scope of work available from the office of the Public Works Director at (928) 777-1130 voice; (928) 777-1100 TDD or on the City website at www.cityofprescott.net/business/bids. 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, City of Prescott, at the above address and shall be marked: Pavement Management Engineering Services.

A **mandatory** pre-proposal conference will be held at the Public Works conference room, 433 N. Virginia Street, Prescott, AZ 86301 at 10:00 AM on May 7, 2014.



Crista Clevenger, Contract Specialist
Published: 2TC April 20 & 27, 2014

Description of Work

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

Field evaluation and rating of one-third (approximately 100 centerline miles) of the City's street inventory to update and maintain the Pavement Management System data base; provide staff training on the use of the pavement management system. The system will allow for the assessment and prediction of pavement performance based on current conditions and historical trends. The system will allow for efficient and cost-effective planning and coordination of Maintenance, Rehabilitation, and Reconstruction needs. The system will facilitate quantification and reporting of pavement conditions.

Additional information is included in the attached scoping report.

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

SUBMISSION

Sealed Statements of Qualifications will be received before 2:00 PM on May 22, 2014, at the City Clerk's Office, 201 South Cortez Street, Prescott Arizona 86303, at which time all Statements of Qualifications will be publicly opened. Any submittals received at or after 2:00 PM on the above-stated date will be returned unopened.

Statements shall be submitted in seven (7 copies), and must conform to the scope of work available from the office of the Public Works Director at (928) 777-1130 voice; (928) 777-1100 TDD. 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, City of Prescott at the above address and shall be marked: Statement of Qualifications: Pavement Management Engineering Services.

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 pavement evaluation and ratings systems in municipalities within the State of Arizona - 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 and experience with City of Prescott rules, regulations, procedures and local / regional construction conditions including subsurface and geophysical conditions - 15%

STATEMENTS OF QUALIFICATIONS

FORMAT

The statement 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 firm's understanding of the project purpose and scope, and a description of how the firm would approach, manage, and complete the project.

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.

SHORTLIST AND INTERVIEWS

Following evaluation of the Statements of Qualifications, a shortlist of three to five (3-5) firms will be determined based upon the composite score of Review Committee members. A presentation-interview session with each of the three to five (3-5) firms will comprise the second half of the evaluation/selection process. In the presentation-interviews, candidate firms will be required to demonstrate their understanding and familiarity with the scope, location, and other aspects of this project. Criteria and weighting for evaluation of the presentation-interviews are as follows:

- 1) Observation of existing conditions and grasp of key project information - 25%
- 2) Identification of issues or problems that will need to be considered - 25%
- 3) Approach to project reports, information gathering and analysis, report formatting, including innovative ideas - 35%
- 4) Experience and capabilities with public meeting's and community outreach - 15%

The interview segment of the presentation-interview session will follow the presentation, and consist of questions arising from the SOQ and/or presentation.

The City reserves the right to proceed to Final Ranking based on the Statements of Qualifications without conducting Interviews.

FINAL RANKING 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 may also consider information from the Statements of Qualifications. 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 2nd ranked firm. This process will continue until negotiation efforts are successful. The final list will remain in effect for a period of twelve months from the date of issuance by the City.

Approval of the City Council will be required for award of a contract for performance of the services described herein.

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



**Project Scoping Report
4/9/2014**

Project Description

Project Name: Pavement Management Engineering Services
Project Type: Pavement Evaluation Services
Project Account No.(s) 2157810-8930-90036
Funding Sources: One Cent Sales Tax for Streets and Open Space.
Project Budget: \$30,000 per year

Phase Schedule:

	<u>Begin</u>	<u>End</u>
PS&E	FY14	FY15
ROW	N/A	N/A
Construction	N/A	N/A

Project Team

Project Review Team: Project Manager – George Henderson
Capital Program Manager- Tim Burkeen
City Engineer– Scott Tkach
Interim Public Works Director – Scott Tkach
Utilities Engineering - Bruce Canavan
Drainage Engineering - Marc DuBroy
Utilities Operations – Joel Berman, Craig Dotseth

Goal Statement

- The project goal is to deliver a quality project on time that accomplishes the evaluation of existing pavement conditions on approximately of the City's streets. The intention is to evaluate and rate about one third of the City's streets on an annual basis over a three year period to ultimately achieve rating the entire system.

Project Description

Field evaluation and rating of one-third (approximately 100 centerline miles) of the City's street inventory to update and maintain the Pavement Management System data base.

To acquire the pavement ratings, the engineer shall utilize a specialized vehicle that travels the City's streets recording field data and assessing the condition of all roadway and pavement features such as riding comfort, measuring deflections in the pavement, longitudinal cracks, transverse cracks, alligator cracks, edge cracks, potholes and rutting.

The City currently uses a single license Stantec Road Matrix Pavement Management Application to manage pavement assessment data and pavement condition ratings. The City also uses Lucity Utilities for maintenance management of its utility infrastructure and uses CitiTech Systems Inc. Work Management module to management streets maintenance activities; both of which utilize network-based floating licenses.

The City will evaluate proposals and innovative ideas on how to maximize efficiency of its current systems and/or migrate existing and new pavement management data to a new system. Any new system, or upgrade modules to an existing system, will allow for the assessment and prediction of pavement performance based on current conditions and historical trends. The system will allow for efficient and cost-effective planning and coordination of Maintenance, Rehabilitation, and Reconstruction needs. The system will facilitate quantification and reporting of pavement conditions.

Project Limits - Existing Conditions:

- Approximately one-third of the City's street system annually.

Associated Project Studies:

- The City to provide street inventory in Excel format. (available upon request)

Public Involvement:

- Possible Council presentation

Primary Technical / Administrative Issues:

- Possible Council presentation

Design Deliverables

1. **Project Kick-Off Meeting.** The Engineer will be required to attend a kick-off meeting with City staff at a time and on a date amenable to both parties. At that meeting, the Engineer will be required to provide a detailed design schedule, a list of the team members who will be involved in the project, along with their phone numbers and e-mail addresses, an organizational chart showing the relationship of all of the team members and any submittals required contractually.
2. **Design Schedule.** 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 shall submit monthly project schedule updates in the same format and shall highlight and provide justification for any changes to the approved schedule. The Engineer shall include 3 weeks for each of the City review periods.

3. **Public Meetings.** No Public Meeting is anticipated.
4. **Preliminary Design Report and Preliminary Construction Cost Estimate.** Within 60 days of entering into a contract with the City of Prescott, the Engineer will be required to provide a set of preliminary pavement condition assessment and report.
5. **Utility Review.** Not Applicable.
6. **Utility Potholing.** Not Applicable
7. **Geotechnical Investigation and Recommendations.** Not Applicable
8. **Preparation of Preliminary (30%) Design.** Not Applicable
9. **Preparation of Preliminary (60%) Design.** Not Applicable
10. **Preparation of Pre-Final (90%) Plans, Specifications, and Estimate for Submittal to City and Utility Companies.** Engineer to present pavement condition assessment for final review comments.
11. **Regulatory Agency Review.** Not Applicable
12. **Preparation of Easement Legal Descriptions and Map/Drawings.** Not Applicable
13. **Pre-Final (90%) Design Meeting.** Engineer to present pavement condition assessment for final review comments.
14. **Final Concept Stakeholder/Public Meeting.** The Engineer may be required to make a presentation to the City Council on the benefits of possessing and maintaining a pavement management system.
15. **Preparation of Final (100%) Plans, Specifications, Design Report, Bid Schedule and Engineers Estimate.** The final pavement condition assessment and importation of data into the pavement management system to be completed.
16. **Construction Pre-Bid Meeting.** Not Applicable
17. **Pre-Construction Meeting.** Not Applicable
18. **Monthly Progress Meetings.** Not Applicable.
19. **Benchmarks.** Not Applicable
20. **Provision of Post-Design Consultation Services.** Not Applicable

21. **Meeting Minutes.** The Engineer shall be responsible for recording and preparing accurate minutes from all meetings involved with the project. A hard copy and disk of the minutes shall be submitted to the Public Works Department. The disk must be compatible with Microsoft Word.

Post-Design Construction Services

- The Engineer to provide staff training on the use of the pavement management system.

Approvals

City Engineer/

Interim Public Works Director



Date

4-16-14

Scott Tkach, PE

Capital Program Manager



Date

4/16/14

Tim Burkeen



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 either party 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 _____, 2014.

City of Prescott, a municipal corporation

PROFESSIONAL

Marlin D. Kuykendall, Mayor

**

By: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

Dana DeLong, City Clerk

Jon M. Paladini, City Attorney

SAMPLE

Exhibit "A"

SAMPLE