



Request for Proposals
Time and Attendance Software

CITY OF PRESCOTT, ARIZONA
PREPARED BY: The Prescott Payroll Department

November 2, 2014

TABLE OF CONTENTS

NOTICE OF REQUEST FOR PROPOSAL3

SECTION 1: SPECIFICATIONS4

SECTION 2: SPECIAL TERMS AND CONDITIONS6

SECTION 3: SUBMISSION REQUIREMENTS / SAMPLES8

SECTION 4: OFFER SHEET9

SECTION 5: PRICE SHEET10

APPENDIX A – STANDARD CITY AGREEMENT10

NOTICE OF REQUEST FOR PROPOSAL

The City of Prescott, Arizona, requests proposals from qualified vendors for time and attendance software, hardware, maintenance and customer support.

Scaled proposals will be received before 2:00 p.m. MST (Arizona time) on Thursday, November 13, 2014, 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 –Time and Attendance Software, Hardware, Maintenance and Customer Support– 001***" and the Offeror's name and address clearly indicated on the package.

Proposals must conform to a specifications/scope of services which are incorporated into this RFP.

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.



Dana R. DeLong, City Clerk

Published: 2TC Sunday, Nov. 2 and Nov. 9, 2014

SECTION 1: SPECIFICATIONS

1.1 INTRODUCTION

The City of Prescott (“City”) is soliciting Requests for Proposals from qualified firms, vendors or individuals to provide time and attendance software, hardware, maintenance and customer support for same as described within this solicitation.

The Prescott Payroll Department is responsible for calculating the time and attendance of approximately 700 employees. With the advent of the Affordable Care Act, the City must comply with tracking and reporting of all regular, temporary, seasonal and part-time employees.

For the purpose of this RFP and the anticipated agreement, “City” means the City of Prescott, and “Services” means the provision of time and attendance software, hardware and maintenance agreements as described in this RFP.

1.2 BACKGROUND

People are drawn to Prescott not only by its surroundings, but also by its small town atmosphere. “Everybody’s Hometown” is an easygoing place where making friends comes naturally. The friendly atmosphere demonstrates the legacy of its pioneer past, when words were few and actions mattered. Prescottonians cherish their history. With a population of about 40,000 there are 637 buildings and more than 60 objects in Prescott listed in the National Register of Historic Places, more than any other community its size in Arizona.

With its quality of life, near perfect four-season climate and small-town atmosphere, Prescott is a highly desirable place to live and work. Residents enjoy the benefits of small-town living while taking advantage of many positive amenities of large metropolitan areas. Very low crime rates, easy commuting a full range of house types and prices, excellent air quality and a variety of recreational choices all combine to create a low-stress lifestyle.

Yavapai County is the second fastest growing county in Arizona. The City of Prescott is the largest urban area within the county. The city's growth has been a steady 4 percent per year for the past decade and is expected to continue at that rate. More than 100,000 people reside within the tri-city area, which includes Prescott, Prescott Valley and Chino Valley. The majority of these residents live within a 10-mile radius of downtown Prescott.

The City is a full service community that provides police, fire, public works and water purification services for the safety and enjoyment of our residents and visitors. In addition, the City offers a myriad of exciting special events including the nationally recognized Prescott Frontier Days Celebration. The City is also designated as “Arizona’s Christmas City.”

The City employs approximately 700 people.

1.3 SCOPE OF SERVICES

The City of Prescott (<http://www.prescott-az.gov>) is a full service municipal government located in the mountains of northern Arizona with approximately 700 employees.

The City of Prescott is seeking to purchase a Time & Attendance System with the following core requirements:

- Must be compliant with Affordable Care Act (ACA) and ACA reporting capabilities
- Must provide two-way integration with the Tyler MUNIS payroll application used at the City of Prescott
- Must address a diversity of government business units including public safety (police and fire) divisions
- Must have an option for 24/7 support and maintenance services
- Must have an option for vendor provided implementation and training services
- Must have options for time clock hardware, desktop software client, and mobile/remote client options

Desired Time & Attendance System capabilities/features:

- Track FMLA hours with reporting capabilities
- Provide for multiple pay codes and job codes (MUNIS integration item)
- Process unlimited (or near unlimited) payroll rules, particularly for the City of Prescott fire department whose cycles and FLSA overtime must be tracked
- Provide a detailed audit trail for both payroll and supervisory staff for attendance records, changes, etc., related to any individual or group timekeeping records.
- Provide multiple level workflow flexibility for supervisory approvals to match groups within our organization
- Provide user based security to control access to specific departments, groups, and levels of specific employee and departmental information
- Provide scheduling capabilities for multiple shifts including fire, police, and dispatch shifts
- Time clocks must be able to collect employee time in the event that terminals cannot communicate with the Time and Attendance and serve and retain the information until communication is restored
- Populate exempt (salaried) employee hours automatically and reduce when accruals are used
- Flexible reporting capabilities for payroll, business unit supervisors, etc.
- Ability to broadcast messages to employees on time clock screens
- Establish rounding policies for clock in/out usage
- Comply with all Fair Labor Standards Act and City of Prescott payroll policies and procedures
- Allow employees to electronically “approve” their timesheets, verifying accuracy of hours
- Allow for supervisor approved shift trades between employees
- The City shall receive the benefit of manufacturer’s warranties for system components

- City retains the option at its sole discretion, to require finalists to provide City personnel with a demonstration of its product's capabilities.

1.3.1 Vendor requirements

The selected Vendor must submit with its proposal, proof of certification and license to operate within the State of Arizona. The Vendor must also demonstrate that it has successfully installed and supported similar municipal time and attendance systems by providing names and contact information for its other municipal clients.

The selected Vendor will provide 24/7/365 repair and support services for the newly installed time and attendance system.

The selected Vendor shall provide the initial training required to instruct the City personnel on the use of the installed software and equipment, and must supply manuals (electronic and two (2) hard copies) and instructional material for the periodic training staff will need from time to time.

1.3.2 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.

1.3.3 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.

SECTION 2: SPECIAL TERMS AND CONDITIONS

2.1 INCORPORATION BY REFERENCE

All responses shall incorporate by reference the standard 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 Agreement for this solicitation as it contains material terms that are incorporated into the overall RFP process.

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

Award shall be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the City. Award will not be based solely on the lowest quoted proposal, but on the proposal that best meets the needs of the City. The determination of the best needs of the City will be solely determined by the City.

In addition to price, the following is a partial list of criteria that will be used in the valuation process:

- A. Vendor experience and future commitment.
- B. The ability, capacity, and skill of the Vendor to perform the Contract and provide the service required.
- C. Whether the bidder can perform the Contract or provide the service required promptly, or within the time specified, without delay or interference.
- D. The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- E. The quality of performance of previous contracts or service.
- F. The ability of the bidder to provide future maintenance and service.
- G. The disaster recovery procedures available in case of extended hardware and software failure.
- H. The sufficiency of financial resources.
- I. The ability to provide same day support during instances of critical system failure.

2.6 TERM OF AGREEMENT

The initial term of the contract shall be negotiated by the parties, after staff review of the proposals and be subject to final City Council approval.

2.7 INSURANCE

The City's standard insurance provisions are contained in Appendix A (standard City Agreement).

2.8 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 Sandy Bigelow at the City of Prescott Payroll Department, immediately at (928) 777-1279. Any protest must be submitted to the Purchasing Specialist (Sandy Bigelow) no later than three (3) business days from the date of award posting on the Internet.

2.9 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.

2.10 COOPERATIVE USE OF CONTRACT

In addition to the City of Prescott, and with approval of the Contracted Vendor, this Contract may be extended for use by other municipalities, school districts, and governmental agencies of the state. Any such usage by other entities must be in accordance with its code, charter, and/or procurement rules and regulations.

SECTION 3: SUBMISSION REQUIREMENTS / SAMPLES

3.1 REFERENCES FROM SIMILAR PROJECTS

3.1.1 Vendor shall submit references from a minimum of (2) municipal clients or other governmental entities completed or ongoing similar projects within the last five (5) years.

References shall include:

- Name of municipal corporation or other governmental entity.
- Contact person's name, position and current telephone number.
- Dates, cost and scope of service.

SECTION 5: PRICE SHEET

5.1 PROPOSAL FEE

The City intends to award this contract to the Vendor that it deems most responsive and responsible, and will provide the most comprehensive and highest quality service to the City. Award of Contract will not be based on lowest price quoted alone. City reserves the right to offer a contract to a Vendor that the City, in its sole discretion, will provide the best possible software and ancillary services for its needs.

5.2 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 – (Standard Contract)



Service Provider 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 "Service Provider"), 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider'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 Service Provider shall be paid for authorized services satisfactorily performed to the date of the Service Provider'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 Service Provider 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 Service Provider is an independent Contractor, and, as such, Service Provider 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, Service Provider 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, Service Provider 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 Service Provider unless by sub-contract, as approved in advance by the City.
12. (A) The City shall pay to Service Provider 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 Service Provider or sub-contractors, which the Service Provider may employ for this Contract. It is expressly agreed by and between the parties that the Service Provider is solely responsible for any and all payment to such any other Service Provider or sub-contractors retained by the Service Provider.
- (C) Payment of the total amount provided for under Section 12 (A) shall not relieve Service Provider 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 Service Provider shall charge and City shall pay Service Provider in accordance with Exhibit "A".

(D) Prior to the final payment to the Service Provider, 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 Service Provider, and shall apply to those monies to the appropriate accounts. Service Provider shall provide to the City any information necessary to determine the total amount(s) due.

(E) The Service Provider shall bill the City monthly for the fee due the Service Provider, 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider. 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 Service Provider 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 Service Provider'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 Service Provider 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 Service Provider has or may have against the City, its agents or employees, arising out of or in any way connected with the Service Provider'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 Service Provider 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 Service Provider to proceed with the items in question to be reimbursed pursuant to the unit prices in the Service Provider fee proposal.
- (F) If the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider.”

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

Combined Single Limit (CSL)	\$ 1,000,000
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(B) City and Service Provider 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 Service Provider 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: Service Provider 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 Service Provider, 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 Service Provider 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

Service Provider 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 Service Provider 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 Service Provider or Sub-contractors employee who works on this Contract to ensure that the Service Provider or Sub-contractor is complying with the Professional Immigration Warranty. Service Provider 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 Service Provider and any of sub-contractors to ensure compliance with Service Provider's Immigration Warranty. Service Provider agrees to assist the City in regard to any random verification performed.

Neither the Service Provider nor any Sub-contractor shall be deemed to have materially breached the Professional Immigration Warranty if the Service Provider 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 Service Provider 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 Service Provider or sub-contractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

- 26. Service Provider 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 Service Provider.
- 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.

Dated this _____ day of _____, 2014.

City of Prescott, a municipal corporation

SERVICE PROVIDER

Marlin D. Kuykendall, Mayor

**

By: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

Dana R. DeLong, City Clerk

Jon M. Paladini, City Attorney

Exhibit "A"