

**Request for Statements of Qualifications
Willow Creek Floodplain Delineation Study and Levee
Certification Re-assessment**

**CITY OF PRESCOTT, ARIZONA
PREPARED BY: Public Works Department**

October 26, 2009

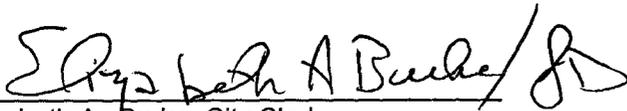
**Request for Statements of Qualifications
Willow Creek Floodplain Delineation Study
and Levee Certification Re-assessment**

The City of Prescott, Arizona, requests statements of qualifications from qualified engineering firms to provide study services for a Willow Creek floodplain delineation study and levee certification re-assessment.

Statements of qualifications will be received prior to 2:00 p.m. on Thursday, November 19, 2009, at the office of the City Purchasing Agent, City of Prescott, 201 S. Cortez St., (PO Box 2059), Prescott, AZ 86302, at which time all proposals will be publicly opened. Any statements received at or after 2:00 p.m. on the above-stated date will be returned unopened. Statements must conform to a prepared scope of work available from the office of the Public Works Director at (928) 777-1130 voice; (928) 778-5680 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.

A pre-proposal meeting will be held on Tuesday, November 3, 2009 at 1:30 pm in the Public Works Conference Room located at 433 N. Virginia Street, Prescott, Arizona 86302.

The outside of the statement envelope shall indicate the name and address of the respondent, shall be addressed to the City Purchasing Agent, City of Prescott at the above address and shall be marked: Request for Statement of Qualification: Willow Creek Floodplain Delineation Study and Levee Certification Re-assessment.



Elizabeth A. Burke, City Clerk

Published: Daily Courier, 2TC, 10/25/09, and 11/01/09

Request for Statements of Qualifications Willow Creek Floodplain Delineation Study and Levee Certification Re-assessment

SECTION 1. PURPOSE

1.1 Purpose

The City of Prescott Public Works Department is soliciting statements of qualifications from qualified consultants to conduct a detailed Floodplain Delineation Study to identify and update the 100-year floodplain and floodways in the Willow Creek watershed from the confluence with Granite Creek to the limit of the City's aerial photography (see attached Figure 1). The detailed restudy will include review of existing hydrologic analysis and topography, develop new hydrologic analysis below Willow Lake, new hydraulic analysis and mapping of the 100-year floodplains and floodways in accordance with FEMA Guidelines available at: http://www.fema.gov/fhm/dl_cgs.shtm. In addition, based on City guidance, significant flood hazards will be identified and alternatives for mitigation analyzed for the channel segment originating at Jack Drive and extending to Willow Creek Road.

In addition to the Floodplain Delineation Study, a Levee Certification Re-assessment shall be completed for the Willow Creek Levee located just upstream of Willow Creek Road, as shown on the effective FEMA map. The levee re-assessment shall not include geotechnical exploration. The levee re-assessment shall include an estimate of residual risk, which shall include a determination of the flood hazard limits with and without the levee. A data collection and levee categorization report will be prepared that includes a summary of data collection/field reconnaissance efforts and an assessment of the data relative to established FEMA levee criteria as outlined in Title 44, Chapter 1 of the Code of Federal Regulations, Section 65.10 (44 CFR 65.10). The report will also include a proposed action plan that describes the additional tasks necessary to determine compliance with established FEMA levee criteria.

1.2 General Submission Information

The City of Prescott Public Works Department intends to award a contract for review of existing hydrologic analysis and topography, new hydrologic analysis downstream of Willow Lake, new hydraulic analysis, floodplain and floodway mapping, determination of significant flood hazards and mitigation alternatives, and an initial levee certification assessment.

Project information and data to be provided by the City includes the following: 1) Project mapping that includes 2-foot contours for project area, with limited 1-foot contour mapping in various areas; 2) Previously completed Willow Creek hydrologic and hydraulic modeling and supporting documentation; and 3) Willow Creek Levee - Provisionally Accredited Levee (PAL) Agreement between City and FEMA and supporting documentation.

The statement of qualification should address the consultant's capabilities for performing all aspects of the project while presenting specific project information and substantiating the consultant's methodologies and approach for completing the work requested. Individual project tasks may be subcontracted.

1.3 Questions

Questions regarding the project shall be submitted to:

Greg Toth, Drainage Engineer; or
Jeff Low, Capital Projects Manager
City of Prescott Public Works
433 N. Virginia Street
Prescott, AZ 86302
(928) 777-1130
greg.toth@prescott-az.gov
jeff.low@prescott-az.gov

1.4 Preparation Costs

The City shall not be responsible for statement preparation costs, or for costs including attorney fees associated with any challenge (administrative, judicial or otherwise) to the determination of the highest-ranked Proposer, award of contract or rejection of any statement of qualification. By submitting a statement of qualification each Proposer agrees to be bound in this respect and waives all claims to such costs and fees.

SECTION 2. RULES GOVERNING COMPETITION

2.1 Examination of Statements of Qualifications

Proposers should carefully examine the entire request for statements of qualifications, any addenda thereto, and all related materials and data referenced in the statements of qualifications. Proposers should become fully aware of the nature of the work and the conditions likely to be encountered in performing the work.

2.2 Statement of Qualifications Acceptance Period

Vendor selection will be announced within thirty (30) calendar days although all offers must be irrevocable for ninety (90) days following the submission date.

2.3 Confidentiality

The content of all proposals will be kept confidential until the selection of the Contract is publicly announced. At that time the selected proposal is open for review. After the award of the Contract, all proposals will then become public information.

2.4 Proposal Format

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of the consultant's capabilities to satisfy the requirements of the statement of qualification. Emphasis should be placed on:

- Experience with similar projects
- Familiarity with project issues
- Approach and methodology
- Conformance to the instructions
- Responsiveness to the requirements
- Overall completeness and clarity of content

2.5 Signature Requirements

All statement of qualification submittals must be signed. An officer or other agent of a corporate firm, if authorized to sign Contracts on its behalf; a member of a partnership; the owner of a privately-owned firm; or other agent if properly authorized by a Power of Attorney or equivalent document may sign the proposal. The name and title of the individual(s) signing the proposal must be clearly shown immediately below the signature.

2.6 Statements of Qualifications Submission

Six (6) copies of the statements of qualifications must be received by the City prior to 2:00 p.m. on Thursday November 19, 2009. All copies of the statements of qualifications must be plainly identified as "Request for Statement of Qualifications: Willow Creek Floodplain Delineation Study and Levee Certification Re-assessment" and delivered or mailed to:

Dawn Foster
City Purchasing Agent
201 S. Cortez Street (P.O. Box 2059)
Prescott, AZ 86302

2.7 News Releases

News releases pertaining to the award resulting from request for statements of qualifications shall not be made without prior written approval of the Public Works Director.

2.8 Disposition of Statements of Qualifications

All materials submitted in response to this request for statement of qualification become the property of the City of Prescott. One copy shall be retained for the official files of Public Works and will become public record after award of the Contract.

2.9 Modification/Withdrawal of Statements of Qualifications

A respondent may withdraw a response to this request for statement of qualification at any time prior to the final submission date by sending written notification of its withdrawal, signed by an agent authorized to represent the agency. The respondent may thereafter submit a new or modified statement of qualification prior to the final submission date. Modifications offered in any other manner, oral or written, will not be considered. A final statement of qualification cannot be changed or withdrawn after the time designated for receipt, except for modifications requested by Public Works after the date of receipt.

2.10 Oral Change/Interpretation

No oral change or interpretation of any provision contained in this request for statements of qualifications are valid whether issued at a pre-proposal conference or otherwise. Written addenda will be issued when changes, clarifications, or amendments to proposal documents are deemed necessary by Public Works.

2.11 Late Submissions

STATEMENTS OF QUALIFICATIONS RECEIVED AFTER 2:00 P.M. ON NOVEMBER 19th WILL NOT BE CONSIDERED AND WILL BE RETURNED UNOPENED.

2.12 Rejection of Statements of Qualifications

The City reserves the right to reject any or all statements of qualifications if determined to be in the best interest of the City.

SECTION 3. DRAFT SCOPE OF WORK

The tasks for this project are summarized in Table 3-1. The subsections that follow Table 3.1 describe the specific tasks, Consultant's responsibilities, deliverables and standards and guidelines that must be met. Final scope will be negotiated with the selected consultant.

Table 3-1. Project Tasks

Task
Task 1 – Reconnaissance and Coordination
Task 2 – Field Surveys and Topographic Data Verification
Task 3 – Hydrologic Analysis Review
Task 4 – Hydraulic Analysis
Task 5 – Floodplain Mapping and FEMA Submittal
Task 6 – Flood Hazard Identification and Mitigation Alternatives Analysis
Task 7 – Levee Certification Re-assessment
Task 8 – Public Outreach

3.1 Task 1 – Reconnaissance and Coordination

- A. Responsible Party:** Consultant
- B. Scope:** The Consultant shall conduct a detailed field reconnaissance of the study area to determine conditions along the floodplains, types and numbers of hydraulic structures, locations of cross-sections or areas to be surveyed and other parameters needed for the hydrologic and hydraulic analyses. This task shall also include all coordination, communication and research required to comply with FEMA standards. Of particular importance is the need for the following: 1) coordination in verifying topographic information, 2) communication of intermediate and final study results, and 3) research of existing data.
- C. Standards:** All work under Task 1 shall be performed in accordance with the most recent standards specified in Section 3.8.
- D. Deliverables:** The Consultant shall make the following product available to the City of Prescott:
- A report summarizing the findings of the field reconnaissance and coordination.

3.2 Task 2 – Field Surveys and Topographic Data Verification

- A. Responsible Party:** Consultant
- B. Scope:** The Consultant shall conduct field surveys, including obtaining channel and floodplain cross-sections, transects, identifying or establishing permanent bench marks, and obtaining the physical dimensions of hydraulic structures. The Consultant shall utilize project topographic data (2-foot contour mapping of project area and limited 1-foot contour mapping in various areas) and conduct field surveys, as necessary, to verify the project mapping and tie it into the other field collected data. The Consultant shall establish a minimum of 10 permanent benchmarks at locations to be determined and approved by the City (see Attached - City of Prescott Survey Datum Requirements).
- C. Standards:** All work under Task 2 shall be performed in accordance with the most recent standards specified in Section 3.8.
- D. Deliverables:** The Consultant shall make the following products available to the City of Prescott:
- Report sealed by a registered land surveyor, summarizing methodology and results;
 - Identification of data voids and methods used to supplement data voids;
 - National Geodetic Survey data sheets for Network Control Points used to verify mapping and ground surveys;
 - Survey notebook containing cross-section, transect, benchmark, Arizona State Monument Record Form along with location map for benchmarks and structural data. 2 copies of the completed survey notebook shall be provided to the City along with one digital copy.

3.3 Task 3 – Hydrologic Analyses for Area Below Willow Lake

- A. Responsible Party:** Consultant
- B. Scope:** The Consultant shall complete a hydrologic analysis below Willow Lake to the confluence of Granite Creek. The consultant shall utilize the existing City hydrologic report completed by Arroyo Engineering and shall ensure the hydrology is adequate for production of FEMA-compliant floodplain maps (see standards specified in Section 3.8) and the range of discharges computed are sufficient for subsequent hydraulic analyses under Tasks 4 and 5. Flood discharges for the 5-, 10-, 25-, 50-, 100- and 500-year events at key concentration points identified by the Consultant and approved by the City shall be required for the project.
- C. Standards:** All work under Task 3 shall be performed in accordance with the most recent standards specified in Section 3.8.
- D. Deliverables:** The Consultant shall make the following products available to the City of Prescott:
- Draft and final Hydrologic Analyses Review Report (both hardcopy and electronic) summarizing methodology and results of hydrologic modeling review. 5 hard copies of the final hydrologic analysis report and 1 digital copy shall be provided to the City.

3.4 Task 4 – Hydraulic Analyses

- A. Responsible Party:** Consultant
- B. Scope:** The Consultant shall perform hydraulic analyses for FEMA flood hazard area mapping of Willow Creek from the confluence with Granite Creek to the limit of the City's aerial photography (see Attached Figure 1). FEMA mapping shall be based on the 100-year peak discharges and hydrographs obtained from existing hydrology (see Task 3).

The Consultant shall perform hydraulic analyses for evaluation of flood hazard mitigation alternatives identified under Task 6. Alternatives analyses will consider the 25-, and 100-year peak discharges and hydrographs obtained from existing hydrology or discharges that have been approved by the City Drainage Engineer (see Task 3).

The Consultant shall perform hydraulic analyses for evaluation of residual risk associated with the Willow Creek Levee (see Task 7). Residual risk analyses shall be performed using the 100-year peak discharges and hydrographs obtained from existing hydrology (see Task 3).

The Consultant shall use the provided mapping and field data collected under Task 2 to perform the hydraulic analyses. The hydraulic analyses will be used to establish flood elevations and regulatory floodways for the subject reach of Willow Creek. In addition, hydraulic analyses will be used to identify flood hazards and recommend mitigation alternatives. Two dimensional hydraulic analyses shall also be used to

estimate residual risk associated with the Willow Creek Levee and the area upstream to Jack Drive.

The Consultant shall document automated data processing and modeling algorithms for GIS-based modeling and provide them to FEMA for review to ensure they are consistent with FEMA standards. Digital datasets are to be documented and provided to FEMA for approval before performing the hydraulic analyses to ensure the datasets meet minimum requirements.

- C. Standards:** All work under Task 4 shall be performed in accordance with the most recent standards specified in Section 3.8.
- D. Deliverables:** The Consultant shall make the following products available to the City of Prescott:
- Digital profile for the 100-year water surface elevations representing existing conditions;
 - Digital and hardcopy versions of the Floodway Data Table that is compatible with the DFIRM database;
 - Digital and hardcopy versions of all hydraulic modeling (input and output) files;
 - Digital and hardcopy versions of table with range of Manning's n-values;
 - Explanations for unresolved messages from the CHECK-2 and CHECK-RAS as appropriate;
 - Digital and hardcopy versions of all backup data used in the hydraulic analyses;
 - Digital and hardcopy versions of draft and final Hydraulic Analyses reports. 5 copies of the final hydraulic report shall be provided to the City.
 - For GIS-based modeling, deliverables include all input and output data, intermediate data processing products, GIS data layers, and final products in the format of the DFIRM database structure.

3.5 Task 5 – Floodplain Mapping

- A. Responsible Party:** Consultant
- B. Scope:** The Consultant shall delineate the 100-year floodplain boundaries and the regulatory floodway boundaries for the flooding sources for which detailed hydrologic and hydraulic analyses were performed. The Consultant shall incorporate all new and revised hydrologic and hydraulic modeling and topographic information provided or acquired under Task 2 to delineate the floodplain and regulatory floodway boundaries on a digital work map. The consultant shall make a letter of map revision (LOMR) submittal to FEMA and address all questions regarding the LOMR until the submittal has been approved by FEMA.
- C. Standards:** All work under Task 5 shall be performed in accordance with the most recent standards specified in Section 3.8.
- D. Deliverables:** The Consultant shall make the following products available to the City of Prescott:

- Complete Technical Data Notebook (TDN) ready for submittal to FEMA in accordance with the requirements set forth in *Guidelines and Specification for Flood Hazard Mapping Partners*. 5 copies of the TDN shall be provided to the City.
- Digital (in ESRI-compatible format) work maps showing the 100-year event floodplain boundary delineations, regulatory floodway boundaries, cross-sections, BFEs, flood insurance risk zone labels, and all applicable base map features. The consultant will be required to work with City GIS staff to get the flood hazard layers onto the City GIS system.
- DFIRM mapping files, prepared in accordance with the requirements in *Guidelines and Specification for Flood Hazard Mapping Partners*.
- Metadata files describing the DFIRM data, including all required information shown in *Guidelines and Specification for Flood Hazard Mapping Partners*.
- Complete set of plots of DFIRM panels showing all detailed flood hazard information at a suitable scale.
- An explanation for the use of existing topography for the detailed studied reaches, if appropriate.
- If automated GIS-based models are applied, all input data, output data, intermediate data processing products, and GIS data layers shall be submitted.
- Letter of Map Revision submittal to FEMA with approval letter.

3.6 Task 6 – Floodplain Hazard Identification and Mitigation Alternatives Analysis

- A. Responsible Party:** Consultant with guidance from City of Prescott floodplain administrator.
- B. Scope:** Using the hydraulic modeling and floodplain mapping discussed in Tasks 4 and 5, the Consultant, with guidance from the City, will identify and recommend flood hazards for further evaluation. The existing condition of the selected flood hazards will be evaluated based on the 25- and 100-year peak discharges and hydrographs obtained from existing hydrology (see Task 3). Evaluation of up to three (3) alternatives (or less if agreed to by the City of Prescott and demonstrated by initial findings) to mitigate flood hazards will be performed by the Consultant. Alternatives shall be evaluated based on the 25- and 100-year flood events. Alternatives analyses will include performance evaluation for the varying flow events, costs comparison, maintenance assessment, impacts to community and constructability assessment.
- C. Standards:** All work under Task 6 shall be performed in accordance with the most recent standards and guidelines specified in Section 3.8.
- D. Deliverables:** The Consultant shall make the following products available to the City of Prescott:
- Draft and final Flood Hazard Mitigation Alternatives Analyses Report (both hardcopy and electronic) summarizing methodology and results of analyses, including selection of recommended alternative(s). 5 hard copies and 1 digital copy of the Floodplain Hazard Mitigation Alternatives Analysis Report shall be provided to the City.
 - Conceptual level plan sheet(s) and construction costs for recommended alternative(s). 5 sets of plans and 1 electronic copy.

3.7 Task 7 – Initial Levee Certification Re-assessment

A. Responsible Party: Consultant

B. Scope: The Consultant shall coordinate with FEMA on behalf of the City of Prescott during the initial levee certification re-assessment. The Willow Creek PAL agreement between the City and FEMA expired October 18, 2009. The Consultant shall collect all readily available data and information related to the Willow Creek Levee, which includes hydrologic and hydraulic modeling performed under Tasks 3 - 6. A field reconnaissance of the structure will be performed to assess existing conditions as they pertain to 44 CFR 65.10. The field reconnaissance will not include evaluation of geotechnical related criteria per 44 CFR 65.10, which includes foundation stability and settlement assessment. A detailed review of collected data, site reconnaissance information and modeling results will be completed, with findings documented in a *Data Collection and Levee Categorization Report*. Based on the compilation of available data and information, the structure will be designated with one of the following three categories;

Category 1: All (or significant amount of) data to complete the certification process is available and the field condition of the levee appears to be favorable. Minor additional analyses may be required to determine its compliance with 44CFR65.10 certification requirements.

Category 2: Some data is available for the structures under this category; however, the validity and the completeness of the available data are not sufficient to determine its compliance with 44 CFR 65.10 certification requirements. Additional analyses/testing will be required to determine whether these structures are certifiable.

Category 3: This category would include structures for which the data review/field reconnaissance indicates these structures are in poor condition and will not confirm to 44 CFR Section 65.10 certification requirements without improvements to the structure. This category would also include structures which do not need certification, i.e., the structures that are not acting as levees because the water surface elevation is lower than the ground elevation on the dry side of the structures.

The Consultant shall prepare an action plan to detail additional work (analyses, survey, geotechnical testing, etc.) that will/may be needed to determine the structure's compliance with 44 CFR 65.10. The action plan, including an engineering fee estimate for the additional certification work, will be presented in the *Data Collection and Levee Categorization Report*.

C. Standards: All work under Task 7 shall be performed in accordance with the most recent standards and guidelines specified in Section 3.8.

D. Deliverables: The Consultant shall prepare and submit 5 hard copies and 1 digital copy of the *Data Collection and Levee Categorization Report*.

3.8 Standards and Guidelines

Various standards and guidelines relevant to Tasks 1 through 7 are provided in Table 3-2. The Consultant is responsible for identifying additional standards and guidelines that may be applicable and ensuring the correct volume, appendix, section, or subsection is referenced and utilized. In addition, the Consultant is responsible for checking and using the most recent updates for each identified standard or guideline.

3.9 Task 8 - Public Outreach

The consultant shall create and distribute (through mailings) Public Service Announcements/News Releases/Brochures regarding the project to residence impacted by the study area. The City will provide the mailing list and the consultant will coordinate mailings, website updates, and a minimum of two public meetings regarding the study.

Table 3-2. Applicable Standards and Guidelines for Project Tasks

Applicable Standards	Tasks
<i>Guidelines and Specifications for Flood Hazard Mapping Partners</i> , April 2003	1 - 6
American Congress on Surveying and mapping (ACSM) procedures	1 - 2
Global Positioning System (GPS) Surveys: National Geodetic Survey (NGS-58), "Guidelines for Establishing GPS-Derived Ellipsoid Heights," Nov 1997	1 - 2
EM 1000-1-1000, <i>Photogrammetric Mapping</i> , Mar 31, 1993	1
EM 1110-2-1003, <i>Hydrographic Surveys</i> , Oct 31, 1994	1
Numerical Models Accepted by FEMA for NFIP Usage, Jan 11, 2002	3 - 4
Content Standards for Digital Geospatial Metadata (Federal Geographic Data Committee, 1998)	5
Title 44, Chapter 1 of the Code of Federal Regulations, Section 65.10, <i>Mapping of Areas Protected by Levees</i>	7

4.0 Proposal Format

The statement of qualification shall be limited to no more than 5 pages. The statement of qualification should include the following:

- The firm's location.
- The names of the members of the project team.
- A brief description of projects of a similar nature which the project team has been involved in.
- A brief resume of each of the project team members describing their experience and background.
- Project team member's availability.
- A listing of all sub-consultants to be utilized on the project, and a description of their role (percentage of work, tasks to be completed, etc.).
- A brief description of what the firm understands their role to be on the project.
- A brief statement of the firm's understanding of the project purpose(s) and scope(s) and a description of how the firm would approach, manage and complete the project. Candidate firms are encouraged to use this opportunity to describe any innovations they feel might help to expedite the project or make it more cost effective.

An additional five pages of appendices is allowed and may include graphs, charts, photos, and additional resumes. The letter of transmittal shall not exceed two pages and is exclusive of the 5/5 page limitation for the proposal submittal. Evaluation shall be based on the points indicated in Section 5.

Candidate firms shall submit six (6) copies of the proposal for review.

5.0 Evaluation And Ranking Of Statements of Qualifications

Proposals 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 projects involving 1 and 2-dimensional hydraulic modeling in other municipalities similar to the City of Prescott - 30%
- 2) Experience of the proposed project team and availability, within current and anticipated workload, for this project - 30%
- 3) Proposed project approach, to include a detailed discussion and identification of areas that will require special attention - 25%
- 4) Overall quality of the Proposal, evidencing interest in the project - 5%
- 5) The prime or subconsultant is located within the Prescott area – 10%

6.0 FINAL RANKING AND CONTRACT NEGOTIATION

The City will appoint a review committee to evaluate the statements, generate a shortlist of qualified firms and conduct presentation-interviews with selected firms. Interviews will generally be allotted forty-five minute with an additional 15 minutes for questions and answers. Candidate firms will be notified in advance of their interview of the time allotted and should budget their time wisely during their presentation. If selected for an interview, the candidate firms will be evaluated on each of these points.

- 1) Observation of existing conditions and grasp of key project information - 10%
- 2) Identification of issues or problems that will need to be considered - 25%
- 3) Approach to project planning, and design including innovative ideas - 30%
- 4) Experience and capabilities of the firm specific to the nature of this project - 25%
- 5) Define why they believe their firm should be engaged. 10%

Following the presentation interviews, the review committee will provide a ranking of candidate firms for the project. The City will enter into negotiation with the top ranked firm for the project. If negotiations are unsuccessful, the City will terminate negotiation efforts and will open negotiations with the next ranked firm. This process will continue until negotiation efforts are successful.

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

It will be necessary for Council to approve the award of any individual contract in the amount of \$10,000 or more. The City may, at its discretion, extend the short list for an additional one (1) year period.

Firms asked to submit a Scope and Fee Proposal for the project may submit in the format generally used by the firm however should generally include but is not limited to a narrative

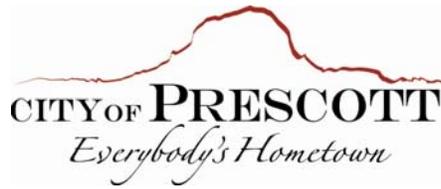
description of each task, a fee schedule breakdown and a proposed project schedule. Tasks shall include at a minimum the following:

- 100 Reconnaissance and Coordination
- 200 Field Surveys and Topographic Data Verification
- 300 Hydrologic Analysis and Review
- 400 Hydraulic Analysis
- 500 Floodplain Mapping
- 600 Flood Hazard Identification and Mitigation Alternatives Analysis
- 700 Initial Levee Certification Assessment
- 800 Public Outreach

Subtasks may be included at the consultant's discretion

The firm selected to negotiate scope and fee shall not be allowed to alter the project team as proposed without the express written consent of the Public Works Director.

Upon successful negotiations and Council award, the City and the Engineer will enter into a contract for Professional Services as attached herein and the Engineers Scope and Fee Proposal and Schedule shall become Exhibit A of the contract:



Professional Services Agreement
For
Willow Creek Floodplain Delineation Study
and Levee Certification Re-assessment

WHEREAS, the City of Prescott (hereinafter referred to as "City") is in need of certain services; and
WHEREAS, the City has solicited Requests for Proposals in accordance with State Law; and
WHEREAS, **Company Name, Incorporated, (hereinafter referred to as "Consultant") has received the highest ranking of potential proposers for this project.

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 Consultant shall provide those services to the City on an as-needed basis, as more particularly identified in the attached Exhibits "A", and "B" (Request for Proposals, Consultant's Scope of Work and Project Task and Fee Estimate, and Project Schedule), and as requested by the City of Prescott Public Works Department Director, hereinafter referred to as the City.
2. In addition to those services identified in the attached Exhibits "A" and "B", the Consultant shall also perform all subordinate tasks not specifically referenced in Exhibits "A" and "B", but necessary to the full and effective performance of the tasks specifically referenced.
3. In the event of a discrepancy between this Agreement and Exhibits "A" and "B", this Agreement shall control over Exhibits "A" and "B" and in the event of a discrepancy between Exhibits "A" and "B", Exhibit "B" shall control over Exhibit "A".
4. Consultant shall provide sufficient qualified personnel, upon reasonable notice 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
5. (A) 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 Consultant's project schedule identified in the attached Exhibit "B".

(B) Notwithstanding the foregoing, this Agreement may be terminated by the City upon ten (10) days written notice, with or without cause. If this Agreement is terminated, the Consultant shall be paid for services performed to the date of Consultant's receipt of such termination notice.
6. It is agreed by and between the parties that this Agreement incorporates the attached Exhibits "A" and "B" as a part of this Agreement, and that the terms thereof shall be binding between the parties.
7. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the City is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other party to the agreement in any capacity or a consultant to any other party of the agreement with respect to the subject matter of the

agreement. In the foregoing event, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this agreement on behalf of the City of Prescott from any other party to the agreement arising as a result of this agreement.

8. 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:

City of Prescott Public Works	**Company Name
PO Box 2059	Address
Prescott, AZ 86302	City, State, Zip

9. It is expressly agreed and understood by and between the parties that Consultant is an independent contractor, and as such Consultant 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, Consultant 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, Consultant 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.
10. This Agreement is non-assignable by the Consultant unless by subcontract, as approved in advance by the City.
11. (A) The City shall pay to Consultant a total sum of ** dollars and ** cents (\$**), payable in accordance with the services actually performed, in accordance with Exhibits "A" and "B".
- (B) The foregoing sum includes payment for any and all services to be rendered by consultants or subcontractors, which the Consultant may employ for this Contract. It is expressly agreed by and between the parties that the Consultant is solely responsible for any and all payment to such any other consultants or subcontractors retained by the Consultant.
- (C) The Consultant shall bill the City monthly for the percentage of actual services, which have been performed during the billing period. City shall pay such billings within thirty (30) days of the date of their receipt.
- (D) Payment of the total amount provided for under Section 10 (A) shall not relieve Consultant 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 Consultant shall charge and City shall pay Consultant in accordance with Exhibit "B"
- (E) Prior to the final payment to the Consultant, the City shall deduct there from any and all unpaid privilege, license and other taxes, fees and any and all other unpaid moneys due the City from the Consultant, and shall apply to those moneys to the appropriate account. Consultant shall provide to the City any information necessary to determine the total amount(s) due.
12. This agreement shall be construed under the laws of the State of Arizona.
13. (A) All original and/or sealed drawings, specifications, and other work product of the Consultant 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. Consultant shall not be responsible for any damages resulting from unapproved modification of such work products by the City or its agents, or from their use for any purpose other than that for which they were intended and furnished. 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.

(B) Plan sets shall be provided to the City on 3 mil mylar and in electronic format compatible with either MicroStation *.DGN or AUTOCAD *.DXF.

14. This Agreement and Exhibits "A" and "B" represent the entire and integrated Agreement between the City and the Consultant and supersede 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 Consultant. 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.
15. 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 provisions, 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.
16. The Consultant shall, within ten (10) calendar days after the execution of the Agreement and before awarding any subcontract, furnish the City with a list of proposed subcontractors, and shall not employ any that the City may object to as incompetent or unfit.
17. The Consultant hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the Consultant's 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. The Consultant further releases and discharges the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the negligent acts or omissions of the City, from any and all claims which the Consultant has or may have against the City, its agents or employees, arising out of or in any way connected with the Consultant's activities as set forth below, other than those acts which occur due to the negligence of the City, its employees or agents.
18. 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 modifications shall be introduced in any proceeding.
19. (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 Public Works 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 Public Works 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 Public Works Director and no claim for an addition to the total amount of the Contract shall be valid unless so ordered.

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

(E) The prices agreed upon and any agreed upon adjustment in Contract time shall be incorporated in the written order issued by the Public Works Director, which shall be written so as to indicate acceptance on the part of the Consultant as evidenced by his 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 Consultant to proceed with the items in question to be reimbursed pursuant to the unit prices in the Consultant proposal.

(F) If the Consultant claims that any instructions involve extra cost under this Contract, he shall give the Public Works 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 Consultant shall do such extra work therefore upon receipt of an accepted Contract Amendment or other written order of the Public Works Director, and in the absence of such Contract Amendment or other written order of the Public Works Director, the Consultant shall not be entitled to payment for such extra work. In no case shall work be undertaken without written notice from the Public Works Director to proceed with the work. All Contract Amendments must be approved by the Public Works Director. Contract Amendments over \$10,000.00 must be approved by City Council.

20. (A) The Consultant 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 limits of \$1,000,000. Liability insurance shall provide the following coverages:

- 1) Commercial General Liability (“explosion, collapse, and underground”, and “products/completed operations” coverage may be excluded.);
- 2) Errors and Omissions (professional malpractice);
- 3) Automobile Liability.

(B) City and Consultant waive all rights against each other and their directors, officers, partners, commissioners, officials, agents, subcontractors and employees for damages covered by property insurance during and after completion of the Services. If the Services result in a construction phase of the Project, a similar provision shall be incorporated into all construction phase contracts entered into by City and shall protect City and Consultant to the same extent. All Project contractors shall be required to include City and Consultant as Additional Insurance on their General Liability insurance policies and shall be required to indemnify City and Consultant to the same extent.

(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 Consultant shall provide City with evidence that s/he is either a “self-insured employer” or a “carrier insured employer” for Workers’ Compensation as required by ARS 23-901 et seq., or that s/he employs no persons subject to the requirement for such coverage.

21. The Consultant, 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 subcontractors, including procurement of materials and leases of equipment. The Consultant 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.

22. The Consultant 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 Consultant 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, Consultant hereby warrants to the City that the Consultant and each of its subcontractors ("Subcontractors") 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 Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Consultant 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 Consultant or Subcontractors employee who works on this Contract to ensure that the Consultant or Subcontractor is complying with the Contractor Immigration Warranty. Consultant 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 Consultant and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Consultant agrees to assist the City in regard to any random verifications performed.

Neither the Consultant nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Consultant or Subcontractor 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 Consultant enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

23. 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 Consultant further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of this Agreement.
24. 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's fees, either pursuant to the Contract, pursuant to ARS section 12-341.01 (A) and (B), or pursuant to any other state or federal statute. The Consultant further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.
25. Consultant 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 engineer under similar circumstances.
26. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Consultant.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed by their duly authorized representatives as of this _____ day of _____, 2009

Company Name

By:

Title

City of Prescott, a municipal corporation

Jack D. Wilson, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

Exhibits "A" and "B"