



Request for Statement of Qualifications

For

Per- and Polyfluoroalkyl Substances (PFAS) Remediation Study and Recommendations

CIP No. 2208-001

MAYOR AND COUNCIL:

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CITY CLERK:

Sarah M. Siep

PUBLIC WORKS DIRECTOR:

Gwen Rowitsch

Request for Statement of Qualifications

Per- and Polyfluoroalkyl Substances (PFAS) Remediation Study and Recommendations

DESCRIPTION: The City of Prescott, Arizona, solicits interest from qualified persons or firms to perform a study of the city's drinking water supply sources, system configuration and capabilities, and to make recommendations for sustainable, efficient methods to remove concentrations of Per- and Polyfluoroalkyl Substances (PFAS), below the Environmental Protection Agency's (EPA) mandated Maximum Contaminate Level (MCL) of 4 parts per trillion (PPT). Only persons or firms capable of providing the requested Maximum Contaminate Levels (MCLs) of 4PPT discipline categories of professional services will be considered.

MANDATORY PRE-PROPOSAL CONFERENCE: Wednesday, December 18, 2024 at 11:00am, City of Prescott Public Works Department.

PROPOSAL OPENING: Thursday, January 16, 2025 at 2:00pm **City Council Chambers
201 N. Montezuma Street, 3rd Floor, Prescott, Arizona 86301.**

In accordance with local and State law, sealed SOQs will be received by the **Office of the City Clerk at 201 N. Montezuma Street, Suite 302, Prescott, Arizona 86301**, until 2:00pm on the date specified above, for the services specified herein. Statements will be opened and read aloud at the above noted date, time, and location. Any submittals received at or after 2:00pm on the referenced date will be returned unopened.

The City of Prescott reserves the right to accept or reject any or all submittals, and waive any informality deemed in the best interest of the City and to reject the submittals of any persons who have been delinquent or unfaithful in any contract with the City.

Copies of the Request for Statement of Qualifications and Contract Documents are available free of charge on the City's website at <https://prescott-az.gov/budget-and-finance/purchasing/>.

PUBLISH: November 24 and December 1, 2024

Request for Statement of Qualifications

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I. GENERAL INFORMATION

The City of Prescott (hereinafter “City”) invites interested and qualified persons or firms (hereinafter “firms”) to submit a written Statement of Qualifications (SOQ) for Per- and Polyfluoroalkyl Substances (PFAS) Remediation Study and Recommendations.

To be eligible for consideration, firms must submit a single SOQ demonstrating appropriate competence, qualifications, and relevant experience in the service categories for which they apply.

The City will apply a one-step process to select the successful firm under this procurement. The one-step process will involve review and evaluation of the SOQ to establish a final list from which the city’s contractor will be selected.

The City desires analysis and remediation recommendations for up to 10 municipal wells that comprise the City’s supply of drinking water to the service area of the utility system. The Chino Wellfield consists of five (5) active wells and two 5-million-gallon (MG) tanks which are used for blending all the wells before reaching the entry point of the distribution system (EPDS). The Airport Wellfield consists of three (3) active wells and each well acts as an EPDS. Water served from the Chino Well Field is currently blended to achieve compliance with the EPA’s MCL for PFAS. The City would like to explore viable options for treating the full flow and/or treating at individual well sites in the Chino Wellfield.

Some of the City wells are already treated for arsenic through blending and/or filtration and this treatment must be continued or enhanced by the PFAS remediation

The City’s Airport Well #5 is a high production well, but it is currently not in production due to consistent test results that exceed the MCL for PFAS. The City desires to consider viable options and cost benefit analysis for treatment of this well versus drilling at another location.

The final project goal is to deliver a comprehensive report within the agreed upon time that outlines viable options for removal of PFAS from the city’s entire drinking water system. The analysis and report shall include consideration for existing arsenic treatment processes.

Recommendations shall include estimated impacts and costs of the associated capital and operational costs of removal systems or media for 10 years. The report shall also address cost benefit analysis for treatment of Airport Well #5 versus the option of locating additional potable water sources in the vicinity.

A. DESCRIPTION OF WORK

This project consists of a comprehensive study of the city’s water supply sources, system configuration and capabilities to recommend and design the appropriate method/s to remove concentrations of PFAS, to a sustainable level below the EPA’s MCL

The project scope of work includes evaluating the cost-benefit of options for treatment including the implications and cost of operations and maintenance, ease of integration into current facility operations and processes, current and future benefits, and drawbacks to the placement of new equipment and/or infrastructure, and the ease and impact of future expansion and improvements as may be needed for expansion of the system.

The impact and cost of operations shall include the implications and cost of disposal of associated waste/waste products.

Project Limits - Existing Conditions:

- 777 E Rd 1 North, Chino Valley, Water Production Facility and well sites.
- Three supply source sites located in within Prescott Regional Airport area.

B. DELIVERABLES

The City desires a comprehensive report that outlines viable options for removal (below MCL) of PFAS from its drinking water supply from all sources and the associated 10-year capital and operational costs of the proposed removal systems/methods for 10 years.

As a part of that report, the City also desires a comprehensive cost-benefit analysis for proposed treatment options and/or abandonment (Airport Well #5 in favor of locating additional potable water sources in the vicinity).

The selected Engineer/Firm will support and attend at least two public meetings to discuss the findings and recommendations to the Water Issues Sub-committee and/or the City Council.

1. **Project Kick-Off Meeting:** The selected Engineer/Firm will be required to attend a kick-off meeting with City staff. At that meeting, coordinated by the City Project Manager, the Engineer/Firm will be required to provide a detailed, proposed project 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 required contractual submittals.
2. **Project Schedule:** The Engineer/Firm will be required to submit a detailed, proposed project approach and schedule depicting all major tasks and incremental submittal dates for approval by the City. The Engineer/Firm shall assume three (3) weeks for each of the City reviews. Thereafter, the Engineer/Firm shall submit monthly project schedule updates in the same format and shall highlight and provide justification for any changes to the approved schedule.
3. **Preliminary Submission:** The Engineer/Firm will be required to provide a breakdown of the following.
 - Logical Project Phasing and estimated time to complete each phase
 - Proposed methodology for gathering requisite plans, information and data that may include site visits and City staff support
4. **Final Report Submission:** The Engineer/Firm will be required to provide the finalized report with analysis of prioritized, viable options for the City to remove PFAS from its drinking water supply to a sustainable level below regulatory limits. Factors for the analysis shall include efficiency, cost effectiveness, and impact on operations staff to bring each well into compliance with the MCL for PFAS and arsenic. (Arsenic MCL = 10 parts per billion)

C. REQUESTS FOR INFORMATION

Firms who desire clarification of the procurement terms, selection criteria or submittal requirements shall restrict their inquiries to written communications only. All communications (other than delivery of the proposal as defined below) shall be addressed to the City project representative at the following:

Jaimie Sventek
Contracts Coordinator
City of Prescott – Purchasing
contracts@prescott-az.gov

Requests for information must be received by the project representative prior to 5:00p.m. on Tuesday, January 7, 2025. Responses, or addenda as required, will be issued no later than 12:00p.m. (noon) on Monday, January 13, 2025. Receipt of addenda must be acknowledged on the required form in the firm's submission. It is the submitter's sole responsibility to check the City's website for periodic updates or addenda.

D. MANDATORY PRE-SUBMITTAL CONFERENCE:

This pre-submittal conference is mandatory for potential submitters. Submittals will only be accepted from contractors in attendance as established on the sign-in sheet.

The pre-submittal conference will be held on Wednesday, December 18, 2024, at 11:00a.m., at City of Prescott Public Works Department, 433 N. Virginia Street, Prescott AZ 86301.

II. STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA

Responses to this request must be in the form of a Statement of Qualifications (SOQ), as outlined in this document.

A. GENERAL REQUIREMENTS

Interested firms are required to submit information relative to their qualifications, experience, project delivery approach, ability to meet the project's goals and objectives, and other criteria as listed. All information must be provided as requested for all firm members and their key personnel to be assigned to this project.

The SOQ shall address the evaluation criteria and shall include the following:

- Cover letter indicating interest in providing services. The category or categories that the firm wishes to be considered must be clearly identified in the cover letter.
- Location of the firm.
- Statement of the firm's understanding of the purpose and scope of the applied treatment services.
- Description of specific technical capabilities, qualifications, and years of prior experience for applied treatment services.
- Brief resume for key project team members outlining their credentials and experience for each applied treatment services.
- Description of at least three (3) but no more than five (5) similar projects in which the firm participated for applied treatment services. Describe the firm's

role in the project and scope of work that demonstrates the firm's expertise. Provide the name and contact information for each project.

- Description of how the firm would approach, manage, and complete related projects for applied treatment services.
- List of applicable Arizona professional licenses held, including license numbers, and note whether licenses are held by firms or individuals
- List and provide a brief description of projects currently under contract with other government agencies

The City reserves the right to cancel this request, reject in whole or in part any and all submittals, waive or decline to waive irregularities in any submittals, or determine not to enter into one or more of the multiple contracts as specified if determined by the City to be in the City's best interests. The City assumes no liability for the cost of preparing a response to this request.

B. PROPRIETARY INFORMATION

All materials submitted in response to the solicitation, including samples, shall become the property of the City and are therefore subject to public release, upon request, after the Contract award. Firms shall clearly mark any proprietary information contained in its submittal with the words "Proprietary Information". Firms shall not mark any Solicitation Form as proprietary. Marking all or nearly all of a submittal as proprietary may result in rejection of the submittal.

Firms should be aware that the City is required by law to make its records available for public inspection. All firms, by submission of materials marked proprietary, acknowledge, and agree that the City will have no obligation to advocate for non-disclosure in any form nor will the City assume any liability to the firms in the event that the City must legally disclose these materials.

C. SUBMITTAL REQUIREMENTS

Statements shall be submitted as **one (1) original (not stapled or bound)** along with **one (1) flash drive** with same submittal and must conform to this request.

The SOQ shall be limited to no more than five (5) pages for each applied area of interest within a single response submittal. Pages shall be letter size (8½ x 11 inches), single-sided, with a minimum font size of 12. Combinations of text and graphic material may be used at the firm's discretion to appropriately communicate facts and qualifications. Five (5) additional pages of appendices are allowed per applied category which may include graphs, charts, photos, or additional resumes. Front and back covers, table of contents, and tabbed divider pages will not be counted if they do not contain submittal information.

The cover letter shall not exceed two (2) pages and is exclusive of the page count limitation for the SOQ. The cover letter shall clearly identify the category or categories of service for which the firm wishes to be considered. The letter shall be on the firm's company letterhead and shall be signed by an officer or principal of the firm with contracting authority.

Within the submittal package (preferably on the SOQ cover or within the cover letter), provide all contact information including the firm's name, address(es), email address(es), website address, phone, and name(s) of principals. This information will be utilized for all

correspondence related to this request. Notification of the final list and assignment of contracts will be delivered to the contact information as provided in the SOQ.

Do not include any fees or pricing related to this project with the SOQ submittal. These materials will not be considered at this time and failure to comply with this provision may result in the rejection of the submittal.

D. DELIVERY OF SUBMITTALS

Sealed SOQs will be received **before 2:00p.m. on Thursday, January 16, 2025**, at the **City Clerk's Office, 201 N. Montezuma Street, Suite 302, Prescott, Arizona 86301**, at which time all submittals will be publicly opened in the City Council Chambers.

Any submittals received at or after 2:00p.m. on the above-stated date will be returned unopened. Firms are solely responsible for the delivery of their submittals to the above location by the time and date specified. The City is not responsible for lateness of mail, carrier, etc. The city will not accept delivery of the bid at any other city locations. The time and date stamp in the City Clerk's Office shall be the official time of receipt. Electronic or facsimile submittals will not be considered. Modifications to submittals will not be considered after the 2:00p.m. deadline.

The outside of the submittal 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 clearly marked:

**Statement of Qualifications:
Per- and Polyfluoroalkyl Substances (PFAS)
Remediation Study and Recommendations
Due before 2:00p.m. on January 16, 2025**

E. MINIMUM TEAM QUALIFICATIONS

Firms shall possess the qualifications and Arizona licenses as required by law, in addition to having extensive knowledge, expertise and experience for the professional service categories for which they apply. Selected firms will be required to execute and meet the terms of the City's standard Professional Services Agreement, including insurance requirements, in a form acceptable to the City Attorney. Approval of the City Council may also be required for award of a contract. A sample agreement is provided with this request.

III. EVALUATION CRITERIA

The SOQ shall clearly and accurately display the capability, knowledge, and experience of the firm to meet the technical requirements of the request. Qualifications shall be prepared simply and economically, providing a straightforward, concise description of the firm's ability to meet the requirements of this request. Emphasis shall be on quality, completeness, clarity of content, responsiveness to the requirements, and understanding of the City's needs.

The SOQs will be evaluated by a Review Committee appointed by the City according to the following criteria:

A. GENERAL INFORMATION

5 points possible

- Brief overview of the firm and legal organization of the company
- Applicable licenses held
- Submission requirements met

B. EXPERIENCE AND QUALIFICATIONS OF THE FIRM AND KEY PERSONNEL

40 points possible

- Demonstrated understanding of the purpose and scope of the applied service category
- Demonstrated years of experience, specific technical capabilities, and qualifications for the applied service category
- List of comparable projects for the applied service category with work performed and reference information
- Names and locations of the key personnel proposed for delivering services
- Brief resume for each key team member describing their experience, background, and notable projects

C. PROPOSED PROJECT APPROACH

20 points possible

A key element to successful partnerships is the availability and accessibility of selected firms to City staff and local citizens. Firms must demonstrate that the necessary personnel are available within a reasonable time to attend meetings, conduct field investigations and complete other local services as may be required.

- Description of how the firm would approach, manage, and complete required services. Identify and include a detailed discussion of specific areas that will require special attention and/or innovative approaches.
- Identify the location of the firm's principal office and local office (if applicable)

D. VALUE ADDED KNOWLEDGE AND EXPERIENCE

30 points possible

The firms hired by the City must be familiar with local community needs, standards, historical challenges, local codes, and site conditions.

- Explain why your firm is particularly qualified to perform the required services in the Prescott area. Demonstrate the firm's knowledge of local geology, climate practices, rules, regulations, and procedures as they relate to the applied service categories.
- List of projects currently under contract with other government agencies
- Specific experience of the firm within Arizona
- Specific experience of the firm with the City of Prescott

E. OVERALL EVALUATION

5 points possible

This is to be determined by the Review Committee. No submittal response is required. Information obtained from the SOQ and from any other relevant source, in addition to past experience with the City, may be used in the evaluation and scoring process for this item.

- Overall quality of the SOQ evidencing interest in providing services
- Overall evaluation of the firm and its perceived ability to provide the required services

IV. EVALUATION AND SELECTION PROCESS

To qualify for evaluation, the SOQ must be submitted on time and materially satisfy all requirements identified in this request. If, in the judgment of the City, a SOQ does not conform to the format specified herein, or if any section is absent or significantly incomplete, the City reserves the right to reject the submittal.

A. OVERVIEW

This is a qualifications-based selection process as authorized by A.R.S. § 34-604. The process will involve an evaluation and scoring of each firm's qualifications and relevant experience, as indicated in its SOQ. A Review Committee appointed by the City for this procurement will individually evaluate the SOQs according to the criteria and weighting as indicated for each category. Following evaluation of the SOQs, a final list of the highest ranked firms will be determined for each service area. The final list will remain in effect for a period of up to five (5) years from the date of issuance by the City.

B. FINAL RANKING AND CONTRACT NEGOTIATION

Using the individual Review Committee member's scores from the SOQs, the committee shall rank the firms to generate a final list of at least three (3) but no more than five (5) firms. The City will then notify each of the candidate firms of the final rankings.

The City will determine the value of each contract based on projected City needs, available budget and the selected professional service categories.

Selected firm will be required to execute and meet the terms of the City's standard Professional Services Agreement, including insurance requirements, Exhibit A, in a form acceptable to the City Attorney. Approval of the City Council may also be required for the award of a contract.

Upon successful negotiation of a scope and fee for work, the City will issue an authorization for performing the specified study and recommendations.

C. TERM OF CONTRACT

The term of the contract will be confirmed during contract negotiations with the selected firm.

D. TERMINATION OF CONTRACT

The City reserves the right to terminate any part of or the entirety of any contract that may result from this proposal, without cause and at any time with thirty (30) calendar day written notice. In such case, the consultant shall be paid for services rendered through the date of the termination notice, and the results of all such work through that date shall become the property of the City.

E. COOPERATIVE USE OF CONTRACT

This contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona and as part of the Strategic Alliance for Volume Expenditures (S.A.V.E.) with the approval of the contracted vendor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

F. PROTEST POLICY

Any protest against the solicitation or award must be filed with the City Clerk's Office by 4:00p.m. up to ten (10) days after issuance of the final list. All such protests shall be in writing and contain the following: 1) Name, address, email address and telephone number of the interested party; 2) Signature of the interested party or its representative; 3) Identification of the purchasing department and Project name; 4) Detailed statement of the legal and factual grounds for protest including copies of relevant documents; and 5) Form of relief requested. Protesting parties must demonstrate as part of their protest that they made every reasonable effort within the schedule and procedures of this solicitation to resolve the basis or bases of their protest during the solicitation process, including asking questions, seeking clarifications, requesting addenda, and otherwise alerting the City to perceived problems so that corrective action could be taken prior to the selection of the successful firms. The City will not consider any protest based on items which could have been or should have been raised prior to the deadline for submitting questions or requesting addenda. The filing of a protest shall not prevent the City from executing an agreement with any other proposer.

G. This Agreement shall be construed under the laws of the State of Arizona.

H. This Agreement represents the entire and integrated Agreement between the City and the Contractor 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 Contractor. 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.

I. 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.

J. Indemnification: To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract, Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees that arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

K. 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.

L. Contractor Immigration Warranty

Contractor 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 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 Contractor 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 Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor 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 Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor 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 Contractor 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.

M. Israel: Vendor certifies that it is not currently engaged in and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in Ariz. Rev. Stat. § 35-393, of Israel.

N. Force Labor of Ethnic Uyghurs Certification: Pursuant to A.R.S. § 35- 394, Contractor / Vendor /Firm certifies that the firm does not currently, and agrees for the duration of the contract that it will not, use:

1. The forced labor of ethnic Uyghurs in the People’s Republic of China
2. Any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and
3. Any Contractor / Vendor /Firm, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

If the Contractor / Vendor /Firm becomes aware during the term of the Contract that the company is not in compliance with the written certification, the Firm shall notify the City of Prescott within five business days after becoming aware of the noncompliance. If the Contractor / Vendor /Firm does not provide City of Prescott with a written certification that the Company has remedied the noncompliance within 180 days after notifying the City of Prescott of the noncompliance, this Contract terminates, except that if the Contract termination date occurs before the end of the remedy period, the Contract terminates on the Contract termination date.

O. Contracting with small and minority firms, women’s business enterprise and labor surplus area firms:

1. The Company will take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps shall include:
 - a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists
 - b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources.
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises.
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises.
 - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

V. ATTACHMENTS

A. INSURANCE REQUIREMENTS

B. SAMPLE PROFESSIONAL SERVICES AGREEMENT



Professional Services Insurance Requirements Exhibit 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

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 | (if applicable) |
| Personal and Advertising Injury | \$ 1,000,000 | (if applicable) |
| Each Occurrence | \$ 1,000,000 | |
| Fire Legal Liability (Damage to Rented Premises) | \$ 100,000 | (if applicable) |

The policy shall be endorsed to include the following additional insured language:

“The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Professional.”

2. Professional Liability (Errors and Omissions Liability)

| | |
|------------------|--------------|
| Each Claim | \$ 1,000,000 |
| Annual Aggregate | \$ 2,000,000 |

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Professional 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 |
|-----------------------------|--------------|

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 A.R.S. § 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.



Additional Insurance Requirements: The policies shall include, or be endorsed to include the following provisions:

1. On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

**Additional Insured:
City of Prescott
201 N. Montezuma Street
Prescott AZ 86301**

2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

All certificates required by this Contract shall be emailed directly to coi@prescott-az.gov. The City contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

Any Renewal of insurance certificates with endorsements will need to be emailed to the above emails at least two weeks prior to expiration.

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.

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 A.R.S. § 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

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.

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.

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.



PROFESSIONAL SERVICES AGREEMENT

****Project Title**

Contract No. **-*****

WHEREAS the City of Prescott (hereinafter referred to as “City”) is in need of certain professional services; and

WHEREAS the City completed the procurement process for professional services in accordance with the City’s Procurement Code and Arizona law; and

WHEREAS ** (hereinafter referred to as “Professional”), has expertise in providing ** services and is willing and able to provide professional services to the City for the project known and described as ** Project, Project No. ** (hereinafter referred to as “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:

- I. **PROJECT STANDARDS:** The City has adopted standards which apply to all design and engineering for construction-related projects contracts that are entered into by the City. These standards assist in the orderly development of property to protect the public’s health, safety, and welfare, in addition to improving the long-term value of the City’s infrastructure assets. The following standards shall govern all public and private improvements related to the project, including the professional services provided pursuant to this Agreement: Prescott City Code, City of Prescott General Engineering Standards, City of Prescott and Quad City Standard Details, Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction (“MAG”), City of Prescott Supplement to MAG, and other supporting documents and publications as noted within each standard (hereinafter collectively referred to as “Standards”).
- II. **SCOPE OF SERVICES:** Professional shall provide the “Services” set forth on the attached Exhibit A Scope of Services in accordance with the terms and conditions of this Agreement. Services provided by the Professional shall include any and all services reasonably contemplated, normally included, and necessary to complete the Scope of Services in a professional manner with due diligence and in a timely manner. The Professional shall perform the Services required by, and as outlined in Exhibit A to the satisfaction of the City Public Works Director (hereinafter referred to as “Director”), exercising the same degree of care, skill, diligence and judgment that a professional experienced in the performance of such Services for design, construction, and/or facilities of a similar scope, function, size, quality,

complexity and detail to other municipal projects within the State of Arizona, would ordinarily possess and exercise at such time, under similar conditions.

- A. The Professional is responsible to the extent necessary to perform the Services and at no additional charge to the City, to be fully familiarized with the special, unique qualities and requirements of the Services, the Project, the Project site, and the City. However, the Professional may be required to undertake or perform a geotechnical investigation, materials sampling or testing, construction cost estimating, or other special investigation of existing conditions if the same is included in the Scope of Services.
- B. The Professional shall, at all times, perform the required services consistent with the Standards and generally accepted engineering principles and design practices. In addition, the Professional shall:
 - 1. Prepare the detailed Scope of Services for the Project as more specifically described in Exhibit A.
 - 2. If requested by the City, attend Project meetings, Project workshops, construction document reviews, public meetings and partnering sessions. The Professional's attendance at design or other meetings in which the Professional is provided the opportunity to but does not actively participate and/or is not properly prepared, is not acceptable. Repeated instances of non-participation and/or lack of preparedness shall be grounds for termination of this Agreement for default. The Professional, when requested by the City, shall attend, make presentations, and participate as may be appropriate in public agency and or community meetings relevant to the Project. The Professional shall provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such public agency meetings.
 - 3. Schedule and conduct a field review of the proposed improvements, as necessary, with the City Engineer, or their designee.
 - 4. If requested by the City, prepare, and submit a detailed estimate of probable cost for the Project through completion in such detail and format as required by the City.
 - 5. If requested by the City, provide post-design services and/or contract administration during construction of the Project. Services may include inspections, meeting attendance, response to requests for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the City. All post-design Services provided by the Professional shall comply with and be consistent with the Standards.
 - 6. If requested by the City, provide the City with "Record" Drawings (i.e., As-Built Drawings) within ninety (90) calendar days of the completion of the Project, unless otherwise approved by the Director, in such detail and format as required by the City.
 - 7. Perform all subordinate tasks not specifically referenced but necessary to the full and effective performance of the tasks specifically referenced.
 - 8. Promptly provide, at no additional cost to the City, any and all corrections, modifications, additional documents, or other items that may be necessary to correct

any errors and/or omissions in the documents, designs, specifications, and/or drawings, provided by the Professional.

- III. COORDINATION OF SERVICES: The Professional shall be responsible for coordinating the Services, and all designs, drawings, and/or specifications developed in relation thereto, with the City Public Works Department and other departments within the City, other design professionals, and other contractors involved in the Project, as well as the other designs, drawings, and/or specifications for the Project. The Professional shall also cooperate with the City in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity, regulatory agency, or private utility company, including participation in any hearings or meetings.
- IV. KEY PERSONNEL: The Professional shall provide sufficient qualified personnel to perform the Services, including but not limited to inspections and preparation of reports, as reasonably requested by the City. The Professional shall utilize the key personnel listed in the Professional's proposal to the City. The Professional shall not change key personnel, not utilize the listed key personnel, or substitute key personnel without the prior written approval of the Director. Any substituted personnel shall have the same or higher qualifications as the personnel being replaced.
- V. SUBCONTRACTORS: During performance of this Agreement, the Professional may engage such additional subcontractors or sub-consultants (hereinafter collectively referred to as "Subcontractors") as may be required for the timely completion of the Services. The addition of any Subcontractors shall be subject to prior written approval by the City. In the event of sub-contracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with the Professional.
- VI. CONTRACT DOCUMENTS: The Request for Qualifications (if applicable), Scope of Work, Statement of Qualifications, Exhibit A including but not limited to the Professional's Proposal, Detailed Scope of Work, Task and Fee Estimate, and Project Schedule as accepted by the Mayor and Council per the Council Minutes of **, 20**, Exhibit B- Certificates of Insurance and Required Endorsements, Additional Exhibits, Contract Modifications including but not limited to Task Orders, Allowance Authorizations, Task Reallocations, and Contract Amendments, are by this reference made a part of this Agreement to the same extent as if set forth herein in full.

For On-Call Professional Service Contracts, the Professional shall provide a project-specific Scope of Work, Task and Fee Estimate, Project Schedule, availability of staff and an updated Certificate of Insurance with Endorsements per Section XVII, for each Task Order issued, and these documents are also incorporated by reference into this Agreement.

- VII. TIME OF COMPLETION; TERM: The Project involves the health, safety, and welfare of the general public; therefore, delivery time is of the essence. All Services shall be completed to the satisfaction of the City and shall be performed in compliance with the Professional's approved project schedule identified in Exhibit A. Any request by the Professional for an extension in time shall be in writing and include a revised project schedule, which will be considered for approval by the City. Neither Party shall be bound by any change in project schedule unless mutually agreed upon in writing and mutually signed by the authorized representatives of the Parties.

A. The Professional shall complete all Services by **(date). Or **(The Professional shall complete all Services within ** Calendar Days from the Contract Execution Date

(located just before the signature page)). If a further or more detailed schedule is set forth in Exhibit A, the Professional shall strictly comply with said schedule and failure to do so, without the prior written agreement of the City, shall be a material breach of this Agreement. The Professional shall promptly respond (and in no event more than ten (10) calendar days after receiving the request) to any requests for approvals, information, or clarification within sufficient time to allow the City to timely respond to contractors or other parties involved in the Project, so as to not delay the Project.

- B. Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made, and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of this Agreement.
- C. The Professional has thirty (30) calendar days from final approval of all Services or submittals to submit the Professional's final invoice to the City for payment. The time allotted for in Section VII.(A). includes these thirty days.

VIII. CONTRACT AMOUNT: The Contract Amount to be paid by the City to the Professional shall not exceed ** dollars and ** cents (\$**), based on the negotiated rates and actual cost reimbursement schedule as defined in Exhibit A.

A. PAYMENTS: The Professional shall be paid in installments based upon monthly progress reports and detailed invoices submitted by the Professional in such form as approved by the City, and subject to the following limitations:

1. Monthly progress reports shall include a summary of costs billed by labor category and tasks and shall be formatted to permit comparison of actual-to-proposed costs and a breakdown of costs incurred by each Subcontractor.
2. Prior to the approval of preliminary documents (i.e., 30% plans), the billed amount shall not exceed 40% of the total Contract Amount.
3. Prior to approval of the final design documents deliverable under the Services, the billed amount shall not exceed 90% of the total Contract Amount.
4. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed 90% of the total Contract Amount prior to submittal of the final report deliverables including final as-builts.

B. ADDITIONAL SERVICES: Additional services as approved, shall be paid for based on the actual completed services. Payment for additional services shall be made only if such additional services are expressly approved, in writing, by the City prior to the additional services being performed. The City shall issue a written Contract Modification for any approved additional services and the City will not pay for any costs not expressly designated as reimbursable in this Agreement or the written approval for the additional services.

C. SUBCONTRACTORS: The Contract Amount includes payment for any and all Services to be rendered by the Professional or Subcontractors which the Professional may employ for this Agreement. 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 Subcontractors retained by the Professional.

D. REIMBURSEABLE EXPENSES: No reimbursable expenses or costs of any kind (such as travel expenses) shall be paid by the City unless expressly approved by the City in writing as part of the accepted rates and reimbursement schedule. Any approved reimbursable expenses will be paid at the actual cost without any markup applied by the Professional and will be paid only after they are incurred.

IX. PAYMENT: The Professional shall bill the City monthly for the fees and reimbursable costs due to the Professional. Subject to the limitations set forth in Section VIII(A) above, the City shall make payments within thirty (30) days of the City's approval of the Professional's invoice.

A. As a necessary precondition to any payment under this Agreement, the City may require the Professional to provide such certifications; lien waivers (in statutory form); and proofs of performance, costs, and/or percentage of completion, as may be reasonably required by the City, to ensure that payment is then due and owing pursuant to the payment terms set forth in this Agreement.

B. If a dispute over payment arises, and during all claims resolution proceedings, including mediation and arbitration, the Professional shall continue to render the Services in a timely manner.

C. Payment by the City does not constitute acceptance by the City of the Services or the Professional's performance, nor does payment constitute a waiver of any rights or claims by the City.

D. Payment of the total amount provided for under Section VIII shall not relieve the Professional of its obligation to complete the performance of all Services.

E. Should the City request in writing Additional Services beyond those specified in this Agreement and Exhibit A, then charges and payments will be made in accordance with Section XI.

F. The Professional shall be solely responsible for any and all tax obligations which may result out of the Professional's performance of this Agreement. The City shall have no obligation to pay any amounts for taxes, of any type, incurred by the Professional.

G. In the event of Agreement termination, the City shall pay to the Professional only such compensation, including reimbursable expenses, due for Services properly performed on the Project prior to the termination date, minus any offsets due the City for any reason. Upon any termination, no payments shall be due from the City to the Professional unless and until the Professional has delivered to the City full sized and usable copies (including any and all CAD, BIM, and/or computer files) of all documents, designs, drawings, and specifications generated by the Professional in relation to the Project.

X. NON-AVAILABILITY OF FUNDS: Fulfillment of the payment 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 section.

- XI. CHANGES IN SERVICES / WORK: The City may order additional/extra services / work, or make changes by altering, or deleting any portion of the services / work as specified herein, as deemed necessary or desirable by the Director. All such services / work changes shall be executed under the conditions of the original Agreement except that any request by the Professional for extension of time and additional cost caused thereby shall be made at the time of ordering such change or additional/extra services / work.
- A. Additional/extra services / work shall be that services / work not indicated or detailed on the Professional's Scope of Work and/or not specified herein this Agreement. Such services / work shall be governed by all applicable provisions of the Contract Documents.
 - B. In giving instructions, the Director shall have authority to make minor changes in the services / work, not involving additional/extra cost, and not inconsistent with the purposes of the services / work. No additional/extra services / 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 Contract Amount shall be valid unless so ordered by the Director.
 - C. Payment for any change ordered by the Director which involves services / work essential to complete the Agreement, but for which no basis of payment is provided for herein, shall be subject to agreement and fully executed amendment prior to said services / work being performed.
 - D. Adjustments to the Contract Amount and/or Contract Term which are agreed upon shall be incorporated in the written change amendment issued by the Purchasing Division, which shall indicate acceptance on the part of the Professional as evidenced by its signature, in a fully executed amendment. In the event prices cannot be agreed upon, the City reserves the right to terminate the Agreement as it applies to the items in question and make such arrangements as it may deem necessary to complete the services / 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's fee proposal.

If the Professional claims that any instructions involve additional/extra cost, 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 services / work. No such claim shall be valid unless so made. The Professional shall do such additional/extra services / work upon receipt of an accepted Contract Amendment or other written order of the Director. In the absence of such Contract Amendment or other written order of the Director, the Professional shall not be entitled to payment for such additional/extra services / work. In no case shall services / work be undertaken without written notice from the Director to proceed with the services / work. All Contract Amendments must be approved by the Director. Contract Amendments that go over \$50,000.00 or if the contract in total goes over fifty thousand dollars must be approved by the City Council.

- XII. INFORMATION PROVIDED BY THE CITY: The City shall provide to the Professional information regarding requirements for the Project including relevant budget information, overall Project schedules, identities of other Project participants, and related designs, drawings, and specifications. The Professional shall be entitled to rely on such information furnished by the City, provided that the Professional shall promptly notify the City, in writing, of any information that the Professional believes is missing, unclear or insufficient for the successful completion of the Project and the Services.

XIII. INTELLECTUAL PROPERTY: All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative services / works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, services / work product and other materials that are delivered to City under this Agreement or prepared by or on behalf of Professional in the course of performing the Services (collectively, the "Deliverables") shall be owned exclusively by City. Professional agrees and will cause its personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for City. To the extent that any of the Deliverables do not constitute a "work made for hire," Professional hereby irrevocably assigns and shall cause its personnel to irrevocably assign to City all Intellectual Property Rights worldwide in the Deliverables. The Professional shall cause its personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables.

- A. All Intellectual Property Rights in all documents, data, know-how, methodologies, software, and other materials provided by or used by Professional in performing the Services and developed or acquired by the Professional prior to or independently of this Agreement (collectively, "Pre-Existing Materials") shall be owned exclusively by Professional and its licensors. Professional hereby grants City an irrevocable, perpetual, fully paid-up, royalty-free, worldwide, non-exclusive license to use, display, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell and otherwise exploit any Pre-Existing Materials to the extent incorporated in or otherwise necessary for the use of the Deliverables. All other rights in and to the Pre-Existing Materials are expressly reserved by Professional. The Professional understands that the Intellectual Property and Pre-Existing Materials may be used by the City for the purposes of construction and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof, or for construction of the same type of project at other locations, by the City and others retained by the City for such purposes. The Professional may re-use any standard specifications and details included in the Intellectual Property that were not developed by the Professional specifically for the Project.
- B. This license shall extend to those parties retained by the City for Project purposes, including other professionals.
- C. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Professional shall obtain, in writing, similar non-exclusive licenses from its design professionals, and Subcontractors. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project.
- D. Upon completion of the Project and/or termination of the Agreement for any reason, the Professional shall deliver to the City full sized and usable copies (including any and all CAD, BIM, and/or computer files) of all data documents, designs, drawings and

specifications generated by the Professional, including those generated by any suppliers, or Subcontractors.

E. The City shall retain all rights and ownership of all documents, designs, drawings, maps, studies, specifications, other information and/or styles, including copies thereof, provided to the Professional by the City in relation to this Agreement and the Project. The Professional shall not utilize any such material in relation to any other services / work or project and such materials are to be returned to the City on request or at the completion of the Services.

XIV. INDEPENDENT CONTRACTOR: Professional is an independent contractor of the City, and, as such, the Professional is not a City employee, and is not entitled to payment or compensation from the City, or to any fringe benefits to which City employees are entitled. As an independent contractor, the 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, the 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, 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. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the Professional and the City.

XV. COMPLIANCE WITH FEDERAL AND STATE LAWS: All Services performed by Professional shall be performed in compliance with all applicable federal, state, county, or city laws, rules, regulations, and ordinances, including, without limitations, those set forth on the attached Exhibit C, if applicable. Professional, at Professional's expense, shall be responsible for obtaining all necessary licenses, permits and governmental authorizations required to perform the Services. Professional understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

A. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY: The Professional and any Subcontractors are required to comply with all applicable provisions of Title VII of the Civil Rights Act, Sections 501 and 505 of the Rehabilitation Act, Section 109 of the Housing and Community Development Act, the Age Discrimination Act, the Americans With Disabilities Act, the Equal Pay Act, the Genetic Information Non-Discrimination Act, the Vietnam Era Veterans Readjustment Act, and all applicable federal regulations or executive orders related to these laws. Additionally, the Professional and any Subcontractors are required to comply with Arizona law on nondiscrimination and equal employment opportunity, including the Arizona Civil Rights Act and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09, as amended. The Professional agrees not to discriminate on the grounds of age, race, color, national origin, religion, sex, disability, pregnancy, veteran, familial status, or any other protected status in the selection and retention of employees and subcontractors, including procurement of materials and leases of equipment.

B. EMPLOYEES ON PUBLIC WORKS CONSTRUCTION PROJECTS; E-VERIFY REQUIREMENT:

1. The Professional shall comply with A.R.S. § 34-301, “Employment of Aliens on Public Works Prohibited”, and A.R.S. § 34-302, “Residence Requirements for Employees”, as amended.
2. Under the provisions of A.R.S. § 41-4401, the Professional hereby warrants to the City that the Professional and each of its 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 referred to as “Professional Immigration Warranty”). The Professional further understands and acknowledges that:
 - a. A breach of the Professional Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Professional to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - b. The City retains the legal right to inspect the papers of any Professional or Subcontractors’ employee to ensure that the Professional or Subcontractor is complying with the Professional Immigration Warranty. Professional agrees to assist the City in regard to any such inspections.
 - c. The City may, at its sole discretion, conduct random verification of the employment records of the Professional and any of Subcontractors to ensure compliance with the Professional Immigration Warranty. Professional agrees to assist the City in regard to any random verification performed.
 - d. Neither the Professional nor any Subcontractor shall be deemed to have materially breached the Professional Immigration Warranty if the Professional 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(A).
 - e. The provisions of this Article shall be included in any contract the Professional enters into with any and all of its Subcontractors who provide Services under this Agreement. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a professional or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement of real property.

C. ISRAEL: Professional certifies that it is not currently engaged in and agrees for the duration of this Agreement that it will not engage in a “boycott”, as that term is defined in A.R.S. § 35-393, of Israel.

D. FORCE LABOR OF ETHNIC UYGHURS CERTIFICATION: Pursuant to A.R.S. § 35-394, Firm certifies that the firm does not currently, and agrees for the duration of the contract that it will not, use:

1. The forced labor of ethnic Uyghurs in the People’s Republic of China
2. Any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and

3. Any firms, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

If the Firm becomes aware during the term of the Contract that the company is not in compliance with the written certification, the Firm shall notify the City of Prescott within five business days after becoming aware of the noncompliance. If the Firm does not provide City of Prescott with a written certification that the Company has remedied the noncompliance within 180 days after notifying the City of Prescott of the noncompliance, this Contract terminates, except that if the Contract termination date occurs before the end of the remedy period, the Contract terminates on the Contract termination date.

E. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS:

1. The Contractor will take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps shall include:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists
 - b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources.
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises.
 - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

XVI. **NOTIFICATIONS:** Notice shall be deemed effective five (5) business days after deposit for delivery or at time of receipt, whichever is earlier. Any notices to be given by either party to the other shall be in writing, and personally delivered or mailed by prepaid postage, at the following addresses:

| | |
|--|----|
| City of Prescott | ** |
| 201 N Montezuma Street | ** |
| Prescott, AZ 86301 | ** |
| contracts@prescott-az.gov | ** |

XVII. **INSURANCE:** The Professional shall provide and maintain insurance coverage at its sole cost and expense as set forth in Exhibit B hereto.

XVIII. **GENERAL PROVISIONS**

A. **INTEGRATION AND AMENDMENT:** This Agreement represents the entire and integrated Agreement between the City and the Professional regarding the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written

or oral. Any prior understandings, commitments, or representations, expressed or implied, written or verbal, between the Parties shall not be construed to alter or waive any part of this Agreement. 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 herein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary. In the event a conflict exists between this Agreement and any other Contract Documents or Exhibits, the order of precedence, listed in descending order shall be as follows: 1) change orders or amendments, 2) this Agreement, and 3) any Exhibits.

- B. **INTERPRETATION:** Although it has been drafted by the Prescott City Attorney's Office, this Agreement is the result of negotiations by and between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.
- C. **NO THIRD-PARTY BENEFICIARIES:** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Professional.
- D. **SEVERABILITY:** 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. However, performance under this Agreement or applicable Scope of Work is not divisible for the purposes of enforcement under the remainder of the Agreement with respect to the subject matter of the Agreement or applicable Scope of Work.
- E. **FORCE MAJEURE:** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, epidemic, pandemic, computer virus, power outage, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
- F. **WAIVER:** 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. 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.
- G. **ASSIGNMENT:** The Professional shall not assign or subcontract this Agreement nor any performance hereunder, in whole or in part, nor delegate any monies which shall become due to Professional under this Agreement, without the prior written consent of the City.

Any assignment or delegation by Professional without City's prior written consent shall be void and not merely voidable.

- XIX. **TERMINATION:** 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.
- A. Pursuant to A.R.S. § 38-511, the City 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 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 from any other party to the Agreement arising as a result of this Agreement.
 - B. Either party may terminate this Agreement, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach; (b) becomes insolvent; (c) admits its inability to pay its debts generally as they become due; (d) becomes subject to any bankruptcy proceeding which is not dismissed or vacated within 30 days after filing; (e) is dissolved or liquidated; (f) makes a general assignment for the benefit of creditors; or (g) has a receiver, trustee, custodian, or similar agent appointed by court order to take charge of or sell any material portion of its property or business. In case of default by the Professional, the City may, by written notice, cancel this Agreement and repurchase from another source and may recover the excess costs by deduction from an unpaid balance due to Professional, or may use any other remedies as provided by law.
 - C. Upon receipt of a written notice of termination, the Professional shall stop all services / work as directed in the notice, notify all Subcontractors of the effective date of the termination, and minimize all further costs to the City. The Professional shall also promptly deliver to City all preliminary materials, draft services / work products, or deliverables which have been completed as of the termination date or are in progress as of the termination date.
 - D. All representations and warranties of Professional made herein shall survive the termination of this Agreement.
- XX. **DISPUTE RESOLUTION:** The parties 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 and agrees to submit to a trial before the Court. The parties agree that venue shall be in Yavapai County Superior Court or the federal court for the District of Arizona, if jurisdiction is proper there. This Agreement shall be construed under the laws of the State of Arizona, without reference to its choice of law provisions. The Professional further agrees that this provision shall be contained in all subcontracts related to the Project which is the subject of this Agreement.

- XXI. RECOVERY OF ATTORNEY FEES: The parties 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. § 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 subcontracts related to the Project which is the subject of this Agreement.
- XXII. INDEMNIFICATION: Subject to the limitations of A.R.S. § 34-226, the Professional hereby agrees to indemnify, defend, and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, damages, losses, costs, fines, judgements, expenses or lawsuits, including reasonable attorneys' fees and court costs, arising out of or resulting from the Professional's negligent, reckless, or intentional acts, errors, or omissions, pursuant to this Agreement. 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 under this Agreement, other than those acts which occur due to the negligence of the City or its employees.
- XXIII. REPRESENTATIONS AND WARRANTIES: Professional represents and warrants to City that: (a) it shall perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and in compliance with all applicable laws, and shall devote adequate resources to meet its obligations under this Agreement; (b) the Services and Deliverables shall conform in all respects with the specifications and will be performed to City's satisfaction; and (c) the Services and Deliverables, and City's use thereof, do not and will not infringe any intellectual property right of any third party.
- XXIV. EXHIBITS:
- A. Scope of Services
 - B. Insurance Requirements
 - C. Unique Compliance with Specific Government Provisions (if applicable)

DATED: _____ day of _____, 20____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their duly authorized representatives and bind their respective entities as of the Contract Execution date above.

**Company/Firm

City of Prescott, a municipal corporation

(Authorized Signature)

Philip R. Goode, Mayor

By: _____
(Printed Name)

Title: _____

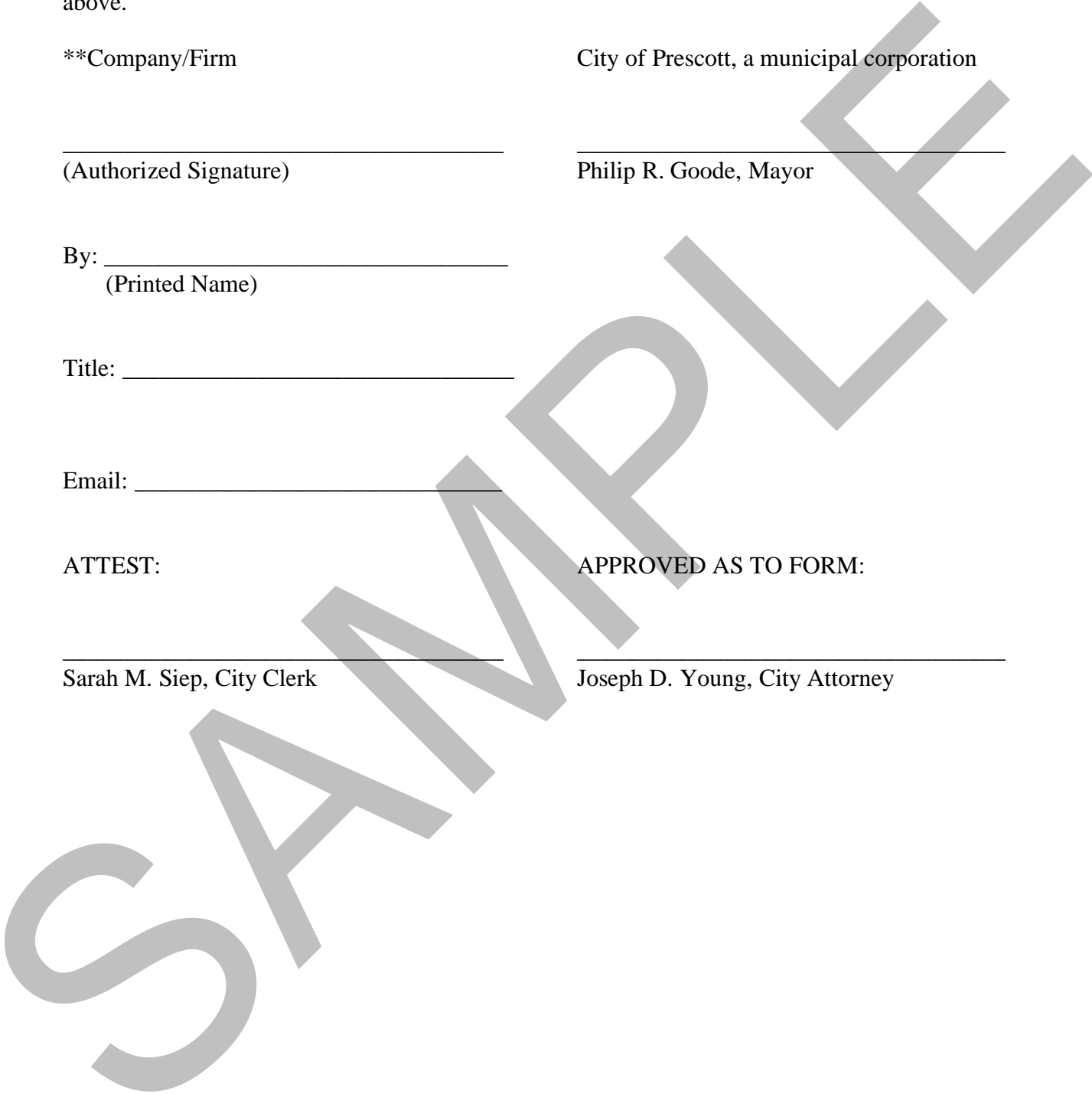
Email: _____

ATTEST:

APPROVED AS TO FORM:

Sarah M. Siep, City Clerk

Joseph D. Young, City Attorney



Professional Services Agreement
Exhibit A – Scope of Services

SAMPLE

Professional Services Agreement

Exhibit B – Insurance Requirements

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

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 | (if applicable) |
| Personal and Advertising Injury | \$ 1,000,000 | (if applicable) |
| Each Occurrence | \$ 1,000,000 | |
| Fire Legal Liability (Damage to Rented Premises) | \$ 100,000 | (if applicable) |

The policy shall be endorsed to include the following additional insured language:

“The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Professional.”

2. Professional Liability (Errors and Omissions Liability)

| | |
|------------------|--------------|
| Each Claim | \$ 1,000,000 |
| Annual Aggregate | \$ 2,000,000 |

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Professional 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 |
|-----------------------------|--------------|

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 A.R.S. § 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

Additional Insurance Requirements: The policies shall include, or be endorsed to include the following provisions:

1. On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

**Additional Insured:
City of Prescott
201 N. Montezuma Street
Prescott AZ 86301**

2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

All certificates required by this Contract shall be emailed directly to coi@prescott-az.gov. The City contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

Any Renewal of insurance certificates with endorsements will need to be emailed to the above emails at least two weeks prior to expiration.

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.

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 A.R.S. § 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

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.

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.

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.

Professional Services Agreement
Exhibit C – Unique Compliance with
Specific Government Provisions

If the City must comply with specific government provisions (e.g. Federal or State terms or provisions) that must be included in subcontracts, please attach here as Exhibit C.

SAMPLE