

Request for Statement of Qualifications

For

An Architecture/Engineering Firm

And

A Construction Manager at Risk

For

The Hangar Development Program

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**REQUEST FOR STATEMENT OF QUALIFICATIONS
FOR AN ARCHITECTURE/ENGINEERING FIRM
AND
A CONSTRUCTION MANAGER AT RISK (CMAR)**

THE HANGAR DEVELOPMENT PROGRAM

DESCRIPTION: The City of Prescott, Arizona, solicits interest from qualified Architecture/Engineering Firms and Contractor/Teams to provide complete design and Construction Manager at Risk (CMAR) services for the Hangar Development Program Construction Project.

NON-MANDATORY PRE-PROPOSAL CONFERENCE: January 16, 2025, at 2:00pm, City of Prescott Airport Administration Building, 6630 Airport Ave, Prescott, AZ 86301. Or, virtually via Microsoft Teams (Meeting ID:24913486439 Passcode:4P3NL3bC)

PROPOSAL OPENING: Thursday, February 6, 2025, at 2:00pm **City Council Chambers 201 N. Montezuma Street, 3rd Floor, Prescott, AZ 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 2:00p.m. 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 2:00p.m. 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: January 5th and 12th, 2025

**Request for Statement of Qualifications
For An Architecture/Engineer Firm And A Construction Manager at Risk
For The Hangar Development Program**

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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 the architecture/engineering design services and Construction Manager at Risk (hereinafter “CMAR”) to provide design phase assistance and complete construction services for the Hangar Development Program Construction Project.

The estimated construction cost for the project is between **\$5.6M and \$6.0M**, with the initial phase one (1) estimated between **\$1.15M and \$1.35M** and is anticipated to be funded by the Federal Aviation Administration (FAA) through a Bipartisan Infrastructure Law (BIL), Airport Infrastructure Grants (AIG). **No cost estimate for CMAR services fees or construction cost estimates should be given with the Statement of Qualification.**

The Phoenix Airports District Office (PHX ADO) has approved the City of Prescott (COP), Prescott Regional Airport – Ernest A. Love Field for concurrence of an Alternative Project Delivery Method (APDM) for the proposed Hangar Development Program. Pursuant to Federal Aviation Administration (FAA) Order 5100.38D (AIP Handbook), Table U-9 AIP Handbook Clarification of 49 CFR § 18.36(d)(3) (2 CFR § 200.320(d) procurement by competitive proposals) an airport sponsor shall “Obtain ADO Concurrence Prior to Award. Per 49 USC § 47142, the sponsor must not award AIP funded design build proposals prior to obtaining ADO concurrence. Per FAA policy, this also applies to construction manager-at-risk proposals...”.

The initial phase of the proposed Hangar Development Program consists of constructing a four (4) unit hangar building approximately 14,880 square feet, an 8,600 square foot wash rack facility and additional hangar development in later phases.

The project will include the following components:

- Hangar Building with restroom facilities
- AC pavement taxiway improvements
- Utilities and other supporting infrastructure construction
- Aircraft wash rack

The Buy American Preferences under 49 U.S.C. § 50101 require that all steel and manufactured goods be produced in the United States. Grant recipients must certify that all steel or manufactured products used on any portion of the project are produced in the United States and are of 100 percent U.S. materials. A waiver may be issued through the PHX ADO if the total project is at least 60% American Made. More information may be obtained at https://www.faa.gov/airports/aip/buy_american.

The City of Prescott (City) on behalf of the Prescott Regional Airport (PRC) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City has received Federal financial assistance from the DOT, and as a condition of receipt of funding, the City has signed an assurance that it will comply with 49 CFR Part 26. It is the City of Prescott’s policy to ensure

that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in U.S. DOT-assisted contracts. The City's policy also includes the following:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts.
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The City will apply a one-step process to select the successful firms under this procurement. The one-step process will involve review and evaluation of the SOQ to establish a final list of three (3) but no more than five (5) architecture/engineering firms and CMARs. The City will then notify each of the candidate firms of the final rankings. There will be one architecture/engineering firm and one construction firm chosen to be awarded a contract. These firms may need to work together on the design and construction process.

A. DESCRIPTION OF WORK

DESIGN

The Architectural and Engineering team will design the project to 60% completion. At which then the CMAR team will start their initial review for constructability based upon construction means and methods that may provide cost savings, efficiencies and time reductions. The Architect and Engineering team will review the comments and suggestions provided by the CMAR and coordinate them into the 90% plan review process. Then take the plan set to 100% final submission.

Design phase services provided by the Architect/Engineer may include, but are not limited to the following:

1. Initial Design and plan development of a 4-unit Hangar and Wash Rack and supporting infrastructure.
2. Plan submittals at 30%, 60%, 90% and final submittal.
3. Probable Cost of Construction at 30%, 60%, 90% and final submittal.
4. Review GMP from CMAR.
5. Coordination with utility companies.

6. Obtain all Permits from City, State and Federal.
7. Provide Construction Phase Services.
8. Submit “As-Construction” Plans per City requirements.
9. Coordinate Facility Start up.

All Respondents are advised that some of the services identified above may not be required, and that the City reserves the right to initiate an additional procurement action for any of the services included in this procurement.

CONSTRUCTION MANAGER AT RISK (CMAR)

The CMAR will begin in an agency support role for design phase services and may hold the construction contract with the City for construction of the projects. Prior to construction, the CMAR will assume the risk of delivering the project through a Guaranteed Maximum Price (GMP) contract. The CMAR will be responsible for construction means and methods and will be required to solicit bids from pre-qualified subcontractors to perform the work using an approved subcontractor selection process. The CMAR may also compete to self-perform work.

Design phase services by the CMAR may include but are not limited to the following:

1. Provide detailed cost estimating and knowledge of marketplace conditions
2. Provide project planning and scheduling
3. Provide construction phasing and scheduling that will minimize interruption to Airport Tenant Operations
4. Provide possible alternate site evaluation and constructability review
5. Advise City of ways to gain efficiencies in project delivery
6. Provide long-lead procurement review
7. Coordinate with the City to obtain the appropriate Davis-Bacon Wage Determination required for construction services
8. Coordinate with the City to confirm compliance with the Buy American requirements of the contract in all materials packages
9. Select subcontractors/suppliers for this project (see Attachment B - Subcontractor Selection Plan)
10. Provide GMP cost proposal(s) for the project

Construction phase services by the CMAR may include, but are not limited to the following:

1. Construction of a 4-unit Hangar and Wash Rack and supporting infrastructure
2. Coordinate with various City departments, other agencies, utility companies, airport tenants, etc.
3. Arrange for procurement of materials and equipment

4. Schedule and manage site operations
5. Bid, award, and manage all construction-related contracts
6. Provide quality controls
7. Bond and insure the construction
8. Assist with federal, state and local permitting requirements
9. Maintain a safe work site for all project participants
10. Provide Project Warranty – 2 Years
11. Coordinate Facility Start up
12. Assist in receiving and preparing all closeout documents including, without limitation, warranties, record drawings, operating and maintenance manuals
13. Provide the services listed above on a Phase II (2) Hangar Development project to begin within one (1) year of Phase I (1) completion

All respondents are advised that some of the services identified above may not be required, and that the City reserves the right to initiate an additional procurement action for any of the services included in this procurement.

B. 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 Friday, January 24, 2025**. Responses, or addenda as required, will be issued no later than **12:00pm (noon) on Thursday, January 30, 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.

All firms/contractors/teams interested in this project (including the firms/contractors/teams employees, representatives, agents, lobbyists, attorneys, subcontractors and subconsultants) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department Heads and other staff. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public and to protect the integrity of the selection process. All contact on this selection process should be addressed to the authorized representative identified above.

C. NON-MANDATORY PRE-SUBMITTAL CONFERENCE:

This pre-submittal conference is non-mandatory for potential submitters but is strongly suggested.

The pre-submittal conference will be held on **Thursday, January 16, 2025, at 2:00p.m.**, at the City of Prescott Airport Administration Building, 6630 Airport Avenue, Prescott, AZ 86301.

Virtual attendance will be an option via Microsoft Teams Meeting (ID: 249 134 864 39 with a Passcode: 4P3NL3bC) at the same time as listed above.

D. PROPOSED PROJECT SCHEDULE

The following tentative schedule has been prepared for this project. These milestones are earliest dates for planning purposes only. They are subject to change and shall not represent any contractual commitment whatsoever on the part of the City.

Pre-submittal Conference:	January 16, 2025, at 2:00p.m.
Request for Information Deadline	January 24, 2025, at 5:00p.m.
SOQ Submittal Deadline:	February 6, 2025, at 2:00p.m.

Award of Contract (if negotiations are successful): March 11, 2025

The firm selected for this project will be notified directly by the City. Notification to all other firms on the status of contract award for this project will be posted on the City's website at: <https://prescott-az.gov/budget-and-finance/purchasing/>.

Firms wishing to respond to a disqualification or a procurement outcome may refer to the protest policy referenced herein.

II. STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA

The City will apply a one-step process to select the successful Architecture/Engineering Design firm and the successful CMAR under this procurement.

Firms/Contractors/Teams 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/contractors 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/contractor 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
- Location of the firm
- Description of specific technical capabilities, qualifications, and years of prior experience.

- Brief resume for key project team members outlining their credentials and experience.
- Description of at least three (3) but no more than five (5) similar projects in which the firm participated. 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 the project.
- 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 of Qualifications (SOQ) 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 cover letter shall not exceed one (1) page and is exclusive of the page count limitation for the SOQ. 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.

A maximum length of twenty (20) pages to address the SOQ criteria (excluding resumes, organizational chart, and DBE documentation). Resumes for each key team member shall be limited to a maximum length of one (1) page and should be incorporated as an appendix as the end of 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, February 6, 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:
Architecture/Engineering Firm
or
Construction Manager At Risk
For The Hangar Development Program
Due before 2:00p.m. on February 6, 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. The selected firms will be required to execute and meet the terms of the City's standard Professional Services Agreement and/or Pre-Construction Services Agreement and/or Construction Contract, including insurance requirements, in a form acceptable to the City Attorney. Approval of the City Council may also be required for award of contracts. Sample Agreements and/or Contracts are provided with this request.

III. EVALUATION CRITERIA

The SOQ shall clearly and accurately display the capability, knowledge, and experience of the firm/contractor to meet the technical requirements of the request. Qualifications shall be prepared simply and economically, providing a straightforward, concise description of the firm's/contractor'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. EXPERIENCE AND CAPABILITIES FOR PERFORMING CMAR DESIGN AND CONSTRUCTION PHASE SERVICES AT PUBLIC COMMERCIAL SERVICE AIRPORTS

25 points possible

- Provide a Resume of experience with CMAR Design and Construction Phase Services at Public Commercial Service Airports.
- Highlight all experience at Regional or Non-Hub Commercial Service Airports.
- Highlight all Hangar Construction projects using CMAR and/or Design, Bid, Build (DBB) delivery methods.

B. OBSERVATION OF EXISTING CONDITIONS AND GRASP OF KEY PROJECT ELEMENTS

15 points possible

- Provide details of your observation of the existing conditions
 - Describe the existing conditions of the site.
 - What site constraints or challenges do you see with the existing site?
- Describe your understanding of the Key Project Elements
 - Grading and Utilities
 - Horizontal, surface and underground improvements

C. APPROACH TO PLANNING AND CONSTRUCTION INCLUDING INNOVATING IDEAS

20 points possible

- Describe your firm's project management approach and team organization during design and construction phase services. Describe systems used for planning, scheduling, estimating, and managing construction. Briefly describe the firm's experience on quality control, dispute resolution, and safety management.
- The project has a critical deadline for the design phase completion. Describe your firm's approach to provide cost estimating, value engineering, and GMP development services during the design phase without impacting the schedule. Provide actual examples from your firm's past projects.
- Discuss how the firm's planning and innovative ideas will be utilized to overcome the site constraints or challenges that have been noted above.
- Describe the firm's understanding of FAA-related issues relating to construction; and the firm's approach to address those issues.

D. EXPERIENCE AND QUALIFICATIONS OF CONTRACTOR'S PROJECT MANAGER

10 points possible

- Discuss the firm's past project management experience with similar projects.
- Outline the experience and qualification for the firm's project manager anticipated for this project.
- Reference information (two current names with telephone numbers per project)

E. EXPERIENCE OF OTHER KEY PERSONNEL ASSIGNED TO PROJECT

10 points possible

- For each key person identified, list their length of time with the contractor and comparable projects in which they have played a primary role. Provide the following:
 - Description of project
 - Role of the person
 - Project's original contracted construction cost and final construction cost
 - Construction completion dates
 - Project owner

- List any proposed consultants, including DBE's, and key staff names with the experience and qualifications of these individuals.

F. DEMONSTRATE DISADVANTAGE BUSINESS ENTERPRISE (DBE) GOOD FAITH INITIATIVE
10 points possible

- Discuss what Good Faith initiatives the firm intends to deploy to encourage DBE participation.
- Outline past DBE experience, highlighting participation success.

G. GENERAL INFORMATION

10 points possible

- Provide a general description of the contractor/team that is proposing to provide construction management services and general construction services. Explain the legal organization of the proposed contractor/team. Provide an organization chart showing key personnel.
- Provide the following information:
 - List the Arizona professional and contractor licenses held by the contractor/team and the key personnel who will be assigned to this project. Provide the license numbers and explain if held by an individual or the contractor.
 - Provide a statement of the Company's bonding capacity.
 - If selected for this project, the firms will be required to provide a statement from an "A" or better surety company describing the Company's bonding capacity.

STATEMENT OF QUALIFICATION EVALUATION (100 POINTS TOTAL)

Experience and Capabilities for Performing CMAR Design and Construction Phase Services at Public Commercial Service Airports	25
Observation of Existing Conditions and Grasp of Key Project Information	15
Approach to Planning and Construction Including Innovative Ideas	20
Experience and Qualifications of Contractor’s Project Manager	10
Experience of Key Personnel Assigned to Project	10
Demonstrate Disadvantage Business Enterprise (DBE) Good Faith Initiative	10
General Requirements	10
Total Points	100

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/contractor’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. Following evaluation of the SOQs, a final list of the highest ranked firms/contractors will be determined. 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/contractors to generate a final list of at least three (3) but no more than five (5) architectural/engineering firms and at least three (3) but no more than five (5) CMAR. The City will then notify each of the candidate firms/contractors of the final rankings.

The selected firms/contractors will be required to execute and meet the terms of the City’s standard Professional Services Agreement and/or Pre-Construction Services Agreement and/or Construction Contract, including insurance requirements, in a form acceptable to the City Attorney. Approval of the City Council may also be required for the award of a contract.

C. TERM OF CONTRACT

The term of each of the contracts shall be confirmed during contract negotiations with the firms/contractors. If contract renewals result in changes of the terms or conditions, such changes shall be in writing as an amendment to the contract(s) and such amendment shall not become effective until fully executed by both parties.

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. 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.

F. This Agreement/Contract shall be construed under the laws of the State of Arizona.

G. This Agreement/Contract represents the entire and integrated Agreement/Contract between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement/Contract may be amended only by written instrument signed by both the City and the Firm/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.

H. In the event any provision of this Agreement/Contract 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.

I. Indemnification: To the fullest extent permitted by law, the Firm/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 Firm/Contractor, its employees, agents, or any tier of subcontractors in the performance of this Agreement/Contract, Firm/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/Contract including any employee of the Firm/Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Firm/Contractor may be legally liable.

J. 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/Contract, and none of the provisions of this Agreement/Contract 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.

K. 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.

L. 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.

M. 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.

N. 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. SUBCONTRACTOR SELECTION PLAN**
- C. SAMPLE CONTRACTS**
- D. SITE LOCATIONS**
- E. DBE REQUIREMENTS/FORMS**
- F. FEDERAL REQUIREMENTS**

**ATTACHMENT A
INSURANCE REQUIREMENTS**

Professional Services 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
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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.

Construction Insurance Requirements

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

ADDITIONAL INSURANCE REQUIREMENTS:

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

2. 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**

3. 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 name/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.

NOTICE OF CANCELLATION:

With the exception of a ten (10) day notice of cancellation for non-payment of premium, and 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. General liability, automobile liability, and worker's compensation insurance is to be placed with an insurer admitted in the state in which operations are taking place.

VERIFICATION OF COVERAGE:

Contractor 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.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project and warranty period as set forth in the warranty letter. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

MAG Specifications, Sections 103.1 through 103.8, including: Unless otherwise specifically required by the Special Conditions, the minimum limits of public liability and property damage liability shall be as follows:

1. Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a following form basis.

Commercial General Liability – Occurrence Form –

Policy shall include bodily injury, property damage, broad form, contractual liability and XCU coverage.

- General Aggregate \$ 3,000,000
- Products – Completed Operations Aggregate \$ 3,000,000
- Personal and Advertising Injury \$ 1,000,000
- 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 Contractor agrees to endorse the City of Prescott as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors, or CG2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement in combination with the additional endorsement of GC2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations shall be required to provide back coverage for the contractor’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard.”

Business Automobile Liability: 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

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

“The City of Prescott shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles, owned, leased, hired, or borrowed by the Contractor.”

Worker's Compensation and Employer's Liability

Workers' Compensation Employer's Liability	Statutory
• Each Accident -	\$1,000,000
• Disease – each employee -	\$1,000,000
• Disease – policy limit -	\$1,000,000

Policy shall contain a waiver of subrogation against the City of Prescott for losses arising from work performed by or on behalf of the Contractor.

Professional Liability (Errors and Omissions Liability) – *if applicable*

• Each Claim	\$ 1,000,000
• Annual Aggregate	\$ 2,000,000

1. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years at the time work under this contract is completed.
2. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

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.

Such policy shall not exclude coverage for the following:

1. Injury to or destruction of any property arising out of the collapse of/or structural injury to any building or structure due to grading of land, excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work.
2. Injury to or destruction of wires, conduits, pipes, mains, sewers, or other similar property or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating, drilling; or injury to or destruction of any property at any time resulting there from.
3. Injury to or destruction of any property arising out of blasting or explosion.
4. Motor vehicle public liability and property damage insurance to cover each automobile, truck, and other vehicle used in the performance of the Contract in an amount of not less than \$1,000,000.00 for one person, and \$1,000,000.00 for more than one person, and property damage in the sum of \$1,000,000.00 resulting from any one accident which may arise from the operations of the Contractor in performing the work provided for herein.

The Contractor shall carry and maintain fire and extended coverage with an endorsement for vandalism and malicious mischief in Contractor's name and also in the name of the City in an amount of at least ONE HUNDRED PERCENT (100%) of the Contract amount (if applicable).

The Contractor shall secure "all risk"-type builder's risk insurance for work to be performed. Unless specifically authorized by the City, the amount of such insurance shall not be less than ONE HUNDRED PERCENT (100%) of the contract price. Such policy shall include coverage for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship, during the contract time and until final acceptance of work by the City (if applicable).

ATTACHMENT B

SUBCONTRACTOR SELECTION PLAN

The firm shall submit a proposed subcontractor selection plan based on the following guidelines. The final approved subcontractor selection plan may be amended as agreed to by both the City and the CMAR.

1.1 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

1.1.1 The selection of major subcontractors and major suppliers may occur prior to submission of a GMP proposal. Major subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major subcontractors and suppliers is the responsibility of the CMAR. In any case, the CMAR is solely responsible for the performance of the selected subcontractors and suppliers.

1.1.1.1 The CMAR will prepare a subcontractor/supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be selected by qualifications only per Section 1.1.2 and those subcontractor trades anticipated to be selected by qualifications and competitive bid in accordance with Section 1.1.3. This plan will also identify those subcontractors that will not be selected through a formalized qualifications-based selection process. The subcontractor selection plan must be consistent with the selection requirements included in this Contract.

1.1.2 Selection by qualifications only: The City may approve the selection of a subcontractor(s) or suppliers(s) based only on their qualifications when the CMAR can demonstrate it is in the best interest of the Project.

1.1.2.1 Qualification based selection of a subcontractor(s) or supplier(s) should only occur during the design phase to achieve maximum benefit of the subcontractors' involvement prior to the submittal of the GMP proposal.

1.1.2.2 The CMAR shall apply the approved subcontractor selection plan in the evaluation of the qualifications of a subcontractor(s) or supplier(s) and provide the City with its review and recommendation.

1.1.2.3 The CMAR must receive City approval of the selected subcontractor(s) and supplier(s).

1.1.3 The CMAR will negotiate costs for services and supplies from each subcontractor and supplier selected under this method.

1.1.4 Selection by qualifications and competitive bid: The CMAR shall apply the subcontractor selection plan in the evaluation of the qualifications of a subcontractor(s) or supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major subcontractors and major suppliers shall then be competitively bid to the prequalified subcontractors unless a subcontractor or supplier was selected

pursuant to paragraph 1.1.2 above. Competitive bids may occur prior to or after the GMP proposal(s).

- 1.1.4.1 If the City objects to any nominated subcontractor or supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute subcontractor or supplier that is acceptable to the City.
- 1.1.4.2 The CMAR will distribute Drawings and Specifications, and when appropriate, conduct a pre-bid conference with prospective subcontractors and suppliers.
- 1.1.4.3 If the CMAR desires to self-perform certain portions of the Work, it will request to be one of the approved subcontractor bidders for those specific bid packages. The CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and the City concurs that in order to ensure compliance with the Project Schedule and/or cost, the CMAR may self-perform Work without bidding or re-bidding the Work.
- 1.1.4.4 The CMAR shall request the prequalified subcontractors to provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. The CMAR shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of subcontractor and supplier bids will be done with the City in attendance to observe and witness the process. The CMAR will resolve any subcontractor or supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.
- 1.1.5 The CMAR will be required to prepare two different reports on the subcontracting process.
 - 1.1.5.1 Within fifteen (15) calendar days after each major subcontractor and supplier bid opening process, the CMAR will prepare a report for the City's review and approval identifying the recommended subcontractors or suppliers for each category of Work. The report will provide: 1) the name of the recommended subcontractor or supplier and the amount of the subcontractor or supplier bid for each sub-agreement, 2) the sum of all recommended subcontractor and supplier bids received, 3) a copy of the bids received from each subcontractor, and 4) trade work and its cost that the CMAR intends to self-perform, if any.
 - 1.1.5.2 Upon completion of the subcontractor and supplier bidding process, the CMAR shall submit a summary report to the City of the entire subcontractor and supplier selection process. The report will indicate, by bid process, all subcontractors and suppliers contacted to determine interest, the subcontractors and suppliers solicited, the bids received, and costs negotiated, and the recommended subcontractors and suppliers for each category of Work.

- 1.1.6 The approved subcontractors and suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- 1.1.7 If after receipt of sub-bids or after award of subcontractors and suppliers, the City objects to any nominated subcontractor or supplier or to any self-performed work for good reason, the CMAR will nominate a substitute subcontractor or supplier, preferably if such option is still available, from those who submitted subcontractor bids for the Work affected. Once such substitute subcontractor and supplier are consented to by the City, the CMAR's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 1.1.8 Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre- award conference with the CMAR and other project team members. At the pre-award conference, the CMAR will (a) review the nominated slate of subcontractors and suppliers and discuss any concerns with or objections that the City has to any nominated subcontractor or supplier; (b) discuss City concerns relating to any proposed self-performed work; (c) review the CMAR's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CMAR Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of Commencement of the Contract Time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

ATTACHMENT C



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 Airport 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:
 - f. Placing qualified small and minority businesses and women's business enterprises on solicitation lists
 - g. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources.
 - h. 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.
 - i. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises.
 - j. 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

SAMPLE

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:

4. 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.”

5. 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.

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

Combined Single Limit (CSL)	\$ 1,000,000
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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:

4. 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



**PRE-CONSTRUCTION SERVICES AGREEMENT
CONSTRUCTION MANAGER AT RISK**

****Project Title**

Contract No. **-*****

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

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

WHEREAS ** (hereinafter referred to as “CMAR”), has expertise in providing pre-construction services and is willing and able to provide said 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:

THIS AGREEMENT, made and entered into this ** day of **, 20**, by and between ** of the city of **, county of **, state of **, hereinafter designated “CMAR”, and the City of Prescott, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated “City”.

WITNESSETH: That the said CMAR, for and in consideration of the sum to be paid him by the said City, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds provided, hereby agrees for himself, his heirs, executors, administrators and successors, and assigns the following: (The following sections prescribe the services and responsibilities required for the proper execution and completion of the Work by the CMAR. They are not organized in any specific order

and may pertain to all phases of the Work. The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.)

ARTICLE I - SCOPE OF WORK: The CMAR shall provide the “Services” set forth on the attached Exhibit A Scope of Services in accordance with the terms and conditions of this Agreement. The CMAR shall furnish any and all labor, materials (other than those listed as supplied by the City), equipment, transportation, utilities, services and facilities required to perform all work for the CMAR of the ** Project, to completely and totally design and construct the same and install the material therein for the City, in a good and workmanlike and substantial manner and to the satisfaction of the City.

City and the CMAR commit at all times to cooperate fully with each other, and proceed on the basis of trust and in good faith, to permit each party to realize the benefits afforded under the Contract Documents.

ARTICLE II – PROFESSIONAL RESPONSIBILITY: The CMAR shall perform the work hereunder in accordance with the standards of care, skill, and diligence normally provided by a professional in the performance of such services with respect to work similar to that contemplated hereunder. In the event of the CMAR’s failure to observe and adhere to such standards, the CMAR shall, upon notice from authorized City staff, promptly re-perform the work at the CMAR’s sole expense.

A. **PROFESSIONAL SERVICES:** The CMAR shall, consistent with applicable state licensing laws, provide qualified, licensed design professionals employed by the CMAR, or procured from qualified, independent licensed design consultants, the necessary Design Services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permitted CMAR to complete the Work consistent with the Contract Documents. The CMAR’s design professionals shall seal with an Arizona registered professional seal all plans, works and deliverables prepared by them for this Agreement as required by state law.

The CMAR shall provide services to the City in relation to the said Project as indicated in Exhibit A (Request for Statements of Qualification, Scope of Work, Task and Fee Estimate and Project Schedule) and as requested by the City. In addition to those services identified in Exhibit A, the CMAR shall also perform all subordinate tasks not specifically referenced but necessary to the full and effective performance of the tasks specifically referenced.

The standard care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the services, which standards are to be set forth in an exhibit to this Contract, the design professional services shall be performed to achieve such standards.

The CMAR shall be responsible for the completeness and accuracy of the plans, specifications, supporting data, and other work prepared or compiled under its obligation for the Project and shall correct, at its expense, all errors, omissions and negligent acts therein which may be discovered. Correction of errors, omissions and negligent acts discovered on the architectural or engineering plans and specifications shall be the responsibility of the CMAR. The cost of the design necessary to correct those errors

attributable to the CMAR shall not be reimbursable costs to the CMAR. Any damage incurred by the City as a result of additional construction cost caused by such errors, omissions or negligent acts shall not be reimbursed to the CMAR to the extent that such errors, omissions and negligent acts fall below the standard of care and skill that a registered professional in Arizona would exercise under similar conditions. The fact that the City has accepted or approved the CMAR's product shall in no way relieve the CMAR of any of its responsibilities. The settlement of any complications or disputed expenses arising from a CMAR's adjustment shall be borne by the CMAR at their own expense.

- B. DESIGN SERVICES:** The CMAR shall provide all interim design submissions and deliverables as prescribed by the City and as shown on the Project Schedule. The City shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in the CMAR's City-approved Project Schedule. The CMAR shall provide drawings in AutoCAD format compatible with City technology.

The Project design must meet all applicable Maricopa Association of Governments (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; the City of Prescott Supplement to MAG, latest revision; all City building and engineering standards; and shall include any general provisions provided by the City. The Project design criteria and specifications shall be in accordance with all codes, standards and requirements as adopted by ordinance. Variances from the standards and guidelines must be identified in writing by the CMAR and approved by the City. The CMAR shall identify conflicts between the design standards and guidelines and the requirements listed in the paragraph above and shall obtain concurrence with resolution of the conflict. The design standards and guidelines or approval of variances or resolution of conflicts shall not be deemed to transfer any design liability to the City.

The CMAR shall not specify any construction materials known to be hazardous or potentially hazardous, including asbestos, lead or any derivative thereof unless specifically approved in writing by the City.

The CMAR shall coordinate with private, public and City utilities regarding standard utility issues and incorporate pertinent information in the plans. The CMAR shall be responsible for scheduling, submitting to, obtaining approval and retrieving all required Construction Documents from the various required reviewing agencies. The CMAR shall obtain all necessary permits, approvals and licenses required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project. Copies of these permits and notices must be provided to the City prior to starting the permitted activity. The City shall be responsible for providing fees related to City permits.

The CMAR when requested by the City, will attend, make presentations and participate as may be appropriate in public agency and/or community meetings relative to the Project. The CMAR's attendance at design or other meetings in which the CMAR 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 Contract for default. The CMAR will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such meetings.

- C. CONSTRUCTION SERVICES:** The CMAR shall, except as provided otherwise in this Contract or any attached Bid, furnish all supervision, labor and materials, and obtain all

licenses and permits required for performance of the work. The CMAR shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. The CMAR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction in accordance with the Maricopa Association of Governments (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; the City of Prescott Supplement to MAG, latest revision; all City building and engineering standards; and any general provisions and/or conditions provided by the City.

The CMAR shall submit to the City, Construction Documents setting forth in detail drawings and specifications describing the requirements for construction. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting.

ARTICLE III - NON-EXCLUSIVE AGREEMENT: Nothing in this Agreement is to be construed as granting to the CMAR an exclusive right to perform any or all of the City's requirements of the type contemplated hereunder.

ARTICLE IV- CONTRACT DOCUMENTS: The Request for CMAR Qualifications, Scope of Work, Statement of Qualifications, Plans, Specifications, Special Provisions, Addenda (if any), the CMAR's Proposal (as accepted by the Mayor and Council per the meeting minutes of **, 20**), this Contract, Exhibit B - Certificates of Insurance and Required Endorsements, Contract Modifications including but not limited to, Change Orders, and Contract Amendments, are by this reference the Contract Documents and are made a part of the Contract to the same extent as if set forth herein in full.

ARTICLE V- TIME OF COMPLETION: 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. The Project Schedule shall be established, updated and maintained throughout the Work as provided by the General Conditions and Contract Documents. The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve the CMAR of its obligations to complete Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Failure on the part of

the CMAR to adhere to the Project Schedule may be the basis for termination of this Agreement by the City.

- C. The activities making up the schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work. The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the CMAR's activities.
- D. The CMAR covenants and agrees at his own proper cost and expense, to do all work as aforesaid for the CMAR of said improvements and to completely design and construct the same and install the material therein, as called for by the Contract Documents, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the Contract Documents.
- E. 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.

ARTICLE VI – CONTRACT AMOUNT: The CMAR shall be paid, pursuant to the provisions as set forth in the General Conditions and Contract Documents, the total sum of ** dollars and ** cents (\$**), plus any approved Contract Amendments, for the full and satisfactory completion of all Work as set forth in the Project Specifications and Contract Documents. Retention shall be in accordance with A.R.S. § 34-221.

- A. **PAYMENTS TO CONSTRUCTION MANAGER AT RISK:** For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, and in accordance with the directions of the City, the City agrees to pay the CMAR the amount earned, computed from actual quantities of work performed and accepted or materials furnished at the unit CMAR price in the CMAR Bid and to make such payment in accordance with applicable Arizona Revised Statutes, after final inspection and acceptance of the work.
 - a. The CMAR Agrees that this Agreement, as awarded, is for the stated work, and understands that payment for the total work will be on the basis of the indicated amount(s), as stated in the CMAR bid.
 - b. Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

- c. Prior to final payment to the CMAR, the City shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid moneys due the City from the CMAR, and shall apply to those moneys to the appropriate account. The CMAR shall provide to the City any information necessary to determine the total amount(s) due.
- B. PAYMENTS TO SUBCONTRACTORS:** The foregoing sum includes payment for any and all services to be rendered by the CMAR or Subcontractors, which the CMAR may employ for this Contract. It is expressly agreed by and between the parties that the CMAR is solely responsible for any and all payment to other Professionals or Subcontractors retained by the CMAR.
- a. The CMAR shall pay to his Subcontractors or material suppliers, and each Subcontractor shall pay to his Subcontractor or material supplier, within seven (7) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the CMAR or Subcontractor on account of the work performed by his Subcontractors, to the extent of each such Subcontractor's interest therein, except that no Contract for the CMAR may materially alter the rights of any Contractor, Subcontractor or material supplier to receive prompt and timely payment as provided under ARS § 34-221(E). Such payments to Subcontractors or material suppliers shall be based on payments received pursuant to that Section. Any diversion by the CMAR or Subcontractor or payments for work performed on a Contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the Registrar of Contractors. The Subcontractor or material supplier shall notify the Registrar of Contractors and the City in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in that Section.
 - b. Nothing herein prevents the CMAR or Subcontractor, at the time of application and certification to the City or CMAR, from withholding such application and certification to the City or CMAR for payment to the Subcontractor or material supplier for (a) unsatisfactory job progress, (b) defective CMAR work or materials not remedied, (c) disputed work or materials, (d) third-party claims filed or reasonable evidence that a claim will be filed, (e) failure of a Subcontractor to make timely payments for labor, (f) equipment and materials, (g) damage to the CMAR or another Subcontractor, (h) reasonable evidence that the Subcontract cannot be completed for the unpaid balance of the Subcontract sum, or (i) a reasonable amount for retention that does not exceed the actual percentage retained by the City.
- C. 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.

ARTICLE VII - NON-AVAILABILITY OF FUNDS: Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the

period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this section.

ARTICLE VIII – 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 the CMAR in the course of performing the Services (collectively, the "Deliverables") shall be owned exclusively by City. The CMAR 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," the CMAR hereby irrevocably assigns and shall cause its personnel to irrevocably assign to City all Intellectual Property Rights worldwide in the Deliverables. The CMAR 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. Upon completion of the Project and/or termination of the Agreement for any reason, the CMAR 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 CMAR, including those generated by any suppliers, or Subcontractors.
- C. 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 CMAR by the City in relation to this Agreement and the Project. The CMAR 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.

- D. Should the CMAR's officers, employees, agents, or assigns (or anyone of a like nature), in the performance of the work or as a result of performing the work, develop any trade secret, prepare any copyrighted material, make any improvement, originate any invention, develop any process, or otherwise, such trade secret, copyright, improvement, invention, or process shall be the property of the CMAR. However, the CMAR shall grant or cause to be granted to the City the right and/or license to permanently use, or cause to be used for the benefit of the City any such trade secret, copyright, improvement, design, invention, or process in any manner for so long as the City desires to use the same for the City's own internal use.

ARTICLE IX - OTHER WORK IN PROJECT AREA: The City, any other contractors, whether under contract with the City, a third party, and/or utilities, may be working within the project area while this Contract is in progress. The CMAR herein acknowledges that delays and disruptions may, and in all likelihood, will occur due to other work. The CMAR's bid shall be deemed to have recognized and included costs arising from and associated with other work in the project area disclosed by the Contract Documents or which would be apparent to an experienced contractor exercising due diligence during inspection of the project documents, the question and answer session in the pre-proposal process or during site inspection. No payment will be made for any delays or disruptions in the work schedule that are wholly the fault of the CMAR, its agents, employees or any of the CMAR's Subcontractors. In the event that the CMAR encounters delay or disruption in the project schedule due to factors not wholly the fault of the CMAR or within the CMAR's control then the Contract may be adjusted pursuant to the Delay's and Extension of Time provisions of the General Conditions and Contract Documents and a timely request submitted for Contract Amendment. Failure to submit a timely request for Contract Amendment shall be deemed a waiver of any entitlement to additional compensation.

ARTICLE X – NONDISCLOSURE: Except as otherwise required by law or this Agreement, the CMAR, its officers, employees, Subcontractors, agents, and assigns shall not divulge to third parties (without the prior consent of the City) any information obtained by it in connection with its performance under this Agreement.

ARTICLE XI - INDEPENDENT CONTRACTOR: The CMAR shall perform the work hereunder as an Independent Contractor, and all persons or entities employed by or under contract with the CMAR in connection herewith shall be employees of the CMAR and are not employees of the City in any respect.

ARTICLE XII – NONWAIVER: The failure of the City to insist upon or enforce strict performance by the CMAR of any of the provisions of this Agreement, or to exercise any of its rights hereunder, shall not be construed as a waiver or relinquishment to any extent of the City's right to assert or rely upon such terms or rights on any future occasion.

ARTICLE XIII - SAVINGS CLAUSE: In the event any phrase, clause, sentence, paragraph, section, article or other portion of this Contract shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Contract shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

ARTICLE XIV - CONFLICT-OF-INTEREST: Pursuant to A.R.S. § 38-511, the City may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, 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 event of the foregoing, the City further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating this agreement on behalf of the City from any other party to the contract, arising as a result of this contract.

ARTICLE XV - COMPLIANCE WITH FEDERAL AND STATE LAWS

- A. All Services performed by the CMAR 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. The CMAR, at the CMAR's expense, shall be responsible for obtaining all necessary licenses, permits and governmental authorizations required to perform the Services. The CMAR understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.
- B. **NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY:** 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 CMAR 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.
- C. The CMAR shall at all times comply with all applicable laws, statutes, rules, regulations, and ordinances in its performance under this Contract, including without limitation those governing wages, hours, employment discrimination, and safety as provided in the General Conditions. The CMAR shall also comply with equal opportunity laws and regulations to the extent they are applicable.
- D. This Agreement shall be construed under the laws of the State of Arizona.
- E. This Contract constitutes the entire Contract between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous Agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.
- F. In the event of a discrepancy between this Agreement and other documents incorporated into this Agreement, this Agreement shall control over Exhibit "A".
- G. **ISRAEL:** Contractor 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.

- H. **FORCE LABOR OF ETHNIC UYGHURS CERTIFICATION:** Pursuant to A.R.S. § 35-394, Contractor 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 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.
- I. If the Contractor 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 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.
- J. **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.
- K. **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

ARTICLE XVI – GENERAL PROVISIONS

- A. **INTEGRATION AND AMENDMENT:** This Agreement represents the entire and integrated Agreement between the City and the CMAR 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 CMAR. 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:** This Contract is the result of negotiations by and between the parties. Although it has been drafted by the City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.
- C. **SEVERABILILTY:** Any provisions of this Contract prohibited or rendered unenforceable by local, state, or federal law, or by the ruling of any court of competent jurisdiction, shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.
- D. **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.
- E. **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

- F. **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.

ARTICLE XVII – 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 CMAR shall be paid for authorized services satisfactorily performed to the date of the CMAR'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 CMAR, 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 CMAR, or may use any other remedies as provided by law.
- C. Upon receipt of a written notice of termination, the CMAR 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 CMAR 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 CMAR made herein shall survive the termination of this Agreement.

ARTICLE XVIII - DISPUTE RESOLUTION: 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 CMAR further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of this Agreement.

The CMAR agrees that notwithstanding the existence of any dispute, the Contractor shall continue to perform the obligations required of the CMAR during the negotiation and resolution of any such dispute unless specifically enjoined or prohibited by an Arizona Court of competent jurisdiction.

ARTICLE XIX - RECOVERY OF ATTORNEY FEES: The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Contract, 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 CMAR further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.

ARTICLE XX – INDEMNIFICATION: Subject to the limitations of A.R.S. § 34-226 and to the fullest extent permitted by law, the CMAR shall 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 CMAR, its agents, employees or any tier of the CMAR's Subcontractors negligent, reckless, or intentional acts, errors, or omissions, pursuant to this Agreement. The CMAR 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 CMAR has or may have against the City, its agents or employees, arising out of or in any way connected with the CMAR's activities under this Agreement, other than those acts which occur due to the negligence of the City or its employees.

The CMAR's duty to defend, hold harmless and indemnify the City, its agents, officers, officials and employees shall 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 there from, caused by the CMAR's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the CMAR, any tier of the CMAR's Subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the CMAR may be legally liable.

The CMAR shall indemnify, defend, and hold harmless the City, its officers, employees, agents and successors, against and from all claims, demands, losses, costs, expenses, suits, settlements, judgments, and damages (including attorneys' fees), of any kind or nature whatsoever on account of infringement of any patent, copyrighted work, secret process, trade secret, un-patented invention, article, or otherwise, including claims thereof pertaining to, or arising from the CMAR's performance under this Contract.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

ARTICLE XXI - RIGHT TO ASSURANCE: If the City in good faith has reason to believe that the CMAR does not intend to or is unable to perform or continue performing under this Agreement, the Director may demand in writing that the CMAR give a written assurance of intent to perform. Failure by the CMAR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Agreement.

EXHIBITS

- A. Scope of Services
- B. Insurance Requirements

SAMPLE

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

SAMPLE

Pre-Construction Services Agreement

Exhibit A – Scope of Services

SAMPLE

Pre-Construction 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
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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.



CONSTRUCTION CONTRACT

****Project**

Contract No. 20-*****

THIS AGREEMENT made and entered into this ** day of **, 20**, by and between ** of the city of **, county of **, state of **, hereinafter designated “Contractor”, and the City of Prescott, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated “City”.

WITNESSETH: That the said Contractor, for and in consideration of the sum to be paid by the said City, and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds provided, hereby agrees, for him/herself, his heir, executors, administrators, successors and assigns as follows:

ARTICLE I - SCOPE OF WORK: The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities, required to perform all work for the construction of the project described as City of Prescott: ** Project and install the material therein for the City, in a good and workmanlike and substantial manner and to the satisfaction of the City through its engineers and under the direction and supervision of the Airport Director, or their properly authorized agents and strictly pursuant to and in conformity with the Plans and Specifications prepared by the engineers for the City, and with such written modifications of the same and other documents that may be made by the City through the Airport Director or their properly authorized agents, as provided herein.

ARTICLE II - CONTRACT DOCUMENTS: The Notice Inviting Bids, Project Plans and Specifications, MAG Specifications and Details, City Supplement to MAG, Special Provisions, Addenda, Contractor’s Affidavit Regarding Settlement of Claims and Certification of Completion of Warranties, Contractor Bid Proposal as accepted by the Mayor and Council per Council Minutes of **, 20**, Proposal Guarantee, Performance Bond, Payment Bond, Certificates of Insurance and required Endorsements, Contract Allowance Authorizations and Contract Amendments, are by this reference made a part of this Contract to the same extent as if set forth herein in full.

ARTICLE III - TIME OF COMPLETION: The Contractor hereby agrees to commence work on or before the tenth (10th) day after written notice to do so, unless such commencement of work is mutually agreed to be extended by the parties due to material unavailability and delayed lead times. The Contractor will complete the work within ** (***) calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided by the City Supplement to MAG. The contract will close 60 days after the substantial completion date, to finalize the payment process.

ARTICLE IV - COMPENSATION: Contractor shall be paid, pursuant to the provisions as set forth in the Contract Documents, a not to exceed amount of ** dollars and ** cents

(\$**), plus any approved contract amendments, for the full and satisfactory completion of all work as set forth in the Project Plans, Specifications and Contract Documents. Retention shall be in accordance with A.R.S. § 34-221. If the Contractor 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 Contractor 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 shall be approved by the Director, but Contract Amendments over \$50,000 must also be approved by City Council.

ARTICLE V – CONFLICT OF INTEREST: Pursuant to A.R.S. § 38-511, the City may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the contract on behalf of the City is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the event of the foregoing, the City further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating this contract on behalf of the City from any other party to the contract, arising as a result of this contract.

ARTICLE VI - AMBIGUITY: This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

ARTICLE VII - NONDISCRIMINATION: The Contractor, 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 Contractor will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, the Americans With Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09 as amended.

ARTICLE VIII - INDEPENDENT CONTRACTOR STATUS: It is expressly agreed and understood by and between the parties that the Contractor is being retained by the City as an independent contractor, and as such the Contractor 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 other than that compensation as set forth in Article IV - Compensation above. As an independent contractor, the Contractor further acknowledges that he 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 Contractor further agrees that he will conduct himself in a manner consistent with such status, and that he will neither hold himself out nor claim to be an officer or employee of the City by reason thereof, and that he 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 workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

ARTICLE IX - CITY FEES: Prior to final payment to the Contractor, the City shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid moneys due the City from the Contractor and shall apply to those moneys to the appropriate account. Contractor shall provide to the City any information necessary to determine the total amount(s) due.

ARTICLE X - LIQUIDATED DAMAGES: All time limits stated in the Contract Documents are of the essence and should the Contractor fail to complete the work required to be done on or before the time of completion as set forth in these Contract Documents, including any authorized extension of time, it is mutually agreed and understood by and between the parties that the public will suffer great damages; that such damages, from the nature of the project, will be extremely difficult and impractical to fix; that the parties hereto wish to fix the amount of said damages in advance; and that the sum of \$**\$.00 per day for each and every day's delay in completion and acceptance of the work required to be done by the Contractor subsequent to the time of completion, including any authorized extensions of time, is the nearest and most exact measure of damages for such breach that can be fixed now or could be fixed at or after such breach and that, therefore, the Owner and Contractor agree to fix said sum of \$**\$.00 per day for each and every said day's delay as liquidated damages, and not as a penalty or forfeiture for the breach of the agreement to complete the work required to be done by the Contractor on or before the time of completion and acceptance and, in the case of such breach, the Owner shall deduct said amount from the amount due the Contractor under the contract. In the event the remaining balance due the Contractor is insufficient to cover the full amount of assessed liquidated damages, then the Contractor or the surety on the bonds shall pay the difference due the Owner.

ARTICLE XI - OTHER WORK IN PROJECT AREA: The City, any other contractors, whether under contract with the City, a third party, and/or utilities, may be working within the project area while this Contract is in progress. The Contractor herein acknowledges that delays and disruptions may, and in all likelihood, will occur due to other work. The Contractor's bid shall be deemed to have recognized and included costs arising from and associated with other work in the project area disclosed by the Contract Documents or which would be apparent to an experienced contractor exercising due diligence during inspection of the project documents, the question-and-answer session in the pre-bid process or during site inspection. No payment will be made for any delays or disruptions in the work schedule that are wholly the fault of the Contractor, its agents, employees, or any of the Contractor's subcontractors. In the event the Contractor encounters delay or disruption in the project schedule due to factors not wholly the fault of the Contractor or within the Contractor's control then the Contract may be adjusted pursuant to the Delay's and Extension of Time provisions of this Contract and a timely request submitted for Contract Amendment. Failure to submit a timely request for Contract Amendment shall be deemed a waiver of any entitlement to additional compensation.

ARTICLE XII - BONDS:

- A. On or before the execution of the contract, the Contractor shall obtain in an amount equal to the full contract price a performance bond pursuant to A.R.S. § 34-222, conditioned upon the faithful performance of this contract in accordance with the plans, specifications, and conditions herein. The bonds shall be solely for the protection of the City. A copy of this bond shall be filed with the Prescott City Clerk.

- B. Contractor shall also obtain a payment bond, pursuant to the provisions of A.R.S. § 34-222, in an amount equal to this full contract price herein, said bond to be solely for the protection of claimants supplying labor or materials to the Contractor or his subcontractors in the prosecution of the work provided for in this contract. A copy of this bond shall be filed with the Prescott City Clerk.
- C. All bonds 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 the applicable bid bond, payment bond and performance bond. In addition, depending upon the nature of the contract and amount thereof, the City Manager may also require insurance companies and/or bonding companies to have an “A” rating or better with Moody's or A.M. Best Company, and/or to be included on the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended) by the audit staff, Bureau of Accounts, US Treasury Department.

ARTICLE XIII – SUBCONTRACTORS:

- A. During performance of this Agreement, the Contractor may engage such additional subcontractors as may be required for the timely completion of the construction. 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 Contractor.
- B. The Contract Amount includes payment for any and all services to be rendered by the Contractor or Subcontractors which the Contractor may employ for this Agreement. It is expressly agreed by and between the parties that the Contractor is solely responsible for all payment to such any other Contractors or Subcontractors retained by the Contractor. The Contractor agrees to indemnify and save harmless the City of Prescott against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure to pay for all labor performance and materials furnished for the performance of said project when completed.

ARTICLE XIV – INDEMNITY: The Contractor shall defend, indemnify and hold harmless the City, its departments, officers, officials, agents, and employees (hereinafter referred to as “Indemnatee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys fees and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Contractor or any of the Contractor’s owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under Worker’s Compensation Law or arising out of failure of such Contractor to conform to any Federal, State, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intentions of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts of Indemnatee, be indemnified by the Contractor from and against any and all claims. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its departments, officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the City.

ARTICLE XV – RIGHT TO ASSURANCE: If the City in good faith has reason to believe that the Contractor does not intend to or is unable to perform or continue performing under this Contract, the Airport Director may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the City’s option, be the basis for terminating the Contract.

ARTICLE XVI – TERMINATION FOR CONVENIENCE: The City reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the City without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to the City. In the event of termination under this paragraph, all documents, data, and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the City upon demand. The Contractor shall be entitled to receive just and equitable compensation for work completed, and materials accepted before the effective date of the termination.

ARTICLE XVII - MISCELLANEOUS:

- A. All pay applications need to have these items contract number, pay application number, dates of service and date submitted. They need to be submitted to the project manager for review. Once they review and sign off, they will submit to our accounts payable department for payment processing.
- B. 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 Contractor further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of this Agreement.
- C. Final Payment Acknowledgement to be signed by the contractor and sent in with the final pay application. This is to further certify that the project is completed to acceptable standards as defined in the plans and specifications per the Project Contract Agreement. Any changes to the plans have been noted on the Construction As-built Mylar Drawings certified by the Engineer of Record. The revised As-built Drawings have been delivered and approved by the Department. All materials used and workmanship performed are expressly warranted to be free of defects for a period of twenty-four (24) months from the date of final acceptance by the City of Prescott.
- D. Contractor’s Affidavit Regarding Settlement of Claims and Certification of Completion of Warranties is to be signed and returned at the end of the two-year warranty period that is determined per the warranty letter sent out when the project has been completed.
- E. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Contract, pursuant to A.R.S. § 12-341.01 (A) and (B), A.R.S. §34-301, §34-302 & §34-321 or pursuant to any other state or federal statute, court rule, case law or common law. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.
- F. In the event of default, neither party shall be liable for incidental, special, or consequential damages.

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

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

I. 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.

J. 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.

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 agrees that notwithstanding the existence of any dispute, the Contractor shall continue to perform the obligations required of Contractor during the negotiation and resolution of any such dispute unless specifically enjoined or prohibited by an Arizona Court of competent jurisdiction.

M. In the event of a discrepancy between this Agreement and other documents incorporated into this Agreement, this Agreement shall control over Exhibit "A".

N. Non-Availability of Funds: Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

O. Compliance with Federal and State Laws: All Services performed by the Contractor 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. The Contractor, at the Contractor's expense, shall be responsible for obtaining all necessary licenses, permits and governmental authorizations required to perform the Services. The Contractor understands and acknowledges the applicability to

it of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

P. Nondiscrimination and Equal Employment Opportunity: The Contractor 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 Contractor 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 Contractor 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.

Q. Employees on Public Works Construction Projects: E-Verify Requirements:

1. The Contractor 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 Contractor hereby warrants to the City that the Contractor 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 "Contractor Immigration Warranty"). The Contractor further understands and acknowledges that:
 - a. A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Contractor 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 Contractor or Subcontractors' employee to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor 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 Contractor and any of the Subcontractors to ensure compliance with the Contractor Immigration Warranty. The Contractor agrees to assist the City in regard to any random verification performed.
 - d. 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(A).

- e. The provisions of this Article shall be included in any contract the Contractor enters 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 Contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement of real property.
- R. Israel: Contractor 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.
- S. Force Labor of Ethnic Uyghurs Certification: Pursuant to A.R.S. § 35- 394, Contractor 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 / 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 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 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.

- T. 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.

SAMPLE

DATED: _____ day of _____, 20____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

** (Company Name)

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

SAMPLE

Insurance Requirements

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, or subcontractors. The Contractor is free to purchase such additional insurance as may be determined necessary.

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 name/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.

NOTICE OF CANCELLATION:

With the exception of a ten (10) day notice of cancellation for non-payment of premium, and 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. General liability, automobile liability, and worker's compensation insurance is to be placed with an insurer admitted in the state in which operations are taking place.

VERIFICATION OF COVERAGE:

Contractor 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.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project and warranty period as set forth in warranty letter. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

MAG Specifications, Sections 103.1 through 103.8, including: Unless otherwise specifically required by the Special Conditions, the minimum limits of public liability and property damage liability shall be as follows:

1. Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a following form basis.

Commercial General Liability – Occurrence Form –

Policy shall include bodily injury, property damage, broad form, contractual liability and XCU coverage.

- General Aggregate \$ 3,000,000
- Products – Completed Operations Aggregate \$ 3,000,000
- Personal and Advertising Injury \$ 1,000,000
- 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 Contractor agrees to endorse the City of Prescott as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors, or CG2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement in combination with the additional endorsement of GC2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations shall be required to provide back coverage for the contractor’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard.”

Business Automobile Liability: 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

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

“The City of Prescott shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles, owned, leased, hired, or borrowed by the Contractor.”

Worker's Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability	
• Each Accident -	\$1,000,000
• Disease – each employee -	\$1,000,000
• Disease – policy limit -	\$1,000,000

Policy shall contain a waiver of subrogation against the City of Prescott for losses arising from work performed by or on behalf of the Contractor.

Professional Liability (Errors and Omissions Liability) – *if applicable*

• Each Claim	\$ 1,000,000
• Annual Aggregate	\$ 2,000,000

1. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years at the time work under this contract is completed.
2. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes to material to compliance with this contract in the insurance policies above shall require thirty (30) day written notice.

Such policy shall not exclude coverage for the following:

1. Injury to or destruction of any property arising out of the collapse of/or structural injury to any building or structure due to grading of land, excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work.
2. Injury to or destruction of wires, conduits, pipes, mains, sewers, or other similar property or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating, drilling; or injury to or destruction of any property at any time resulting there from.
3. Injury to or destruction of any property arising out of blasting or explosion.
4. Motor vehicle public liability and property damage insurance to cover each automobile, truck, and other vehicle used in the performance of the Contract in an amount of not less than \$1,000,000.00 for one person, and \$1,000,000.00 for more than one person, and property damage in the sum of \$1,000,000.00 resulting from any one accident which may arise from the operations of the Contractor in performing the work provided for herein.

The Contractor shall carry and maintain fire and extended coverage with an endorsement for vandalism and malicious mischief in Contractor's name and also in the name of the City in an amount of at least ONE HUNDRED PERCENT (100%) of the Contract amount (if applicable).

The Contractor shall secure "all risk"-type builder's risk insurance for work to be performed. Unless specifically authorized by the City, the amount of such insurance shall not be less than ONE HUNDRED PERCENT (100%) of the contract price. Such policy shall include coverage for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship, during the contract time and until final acceptance of work by the City (if applicable).

SAMPLE

ATTACHMENT D SITE LOCATIONS

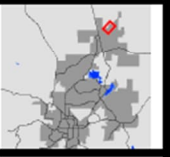
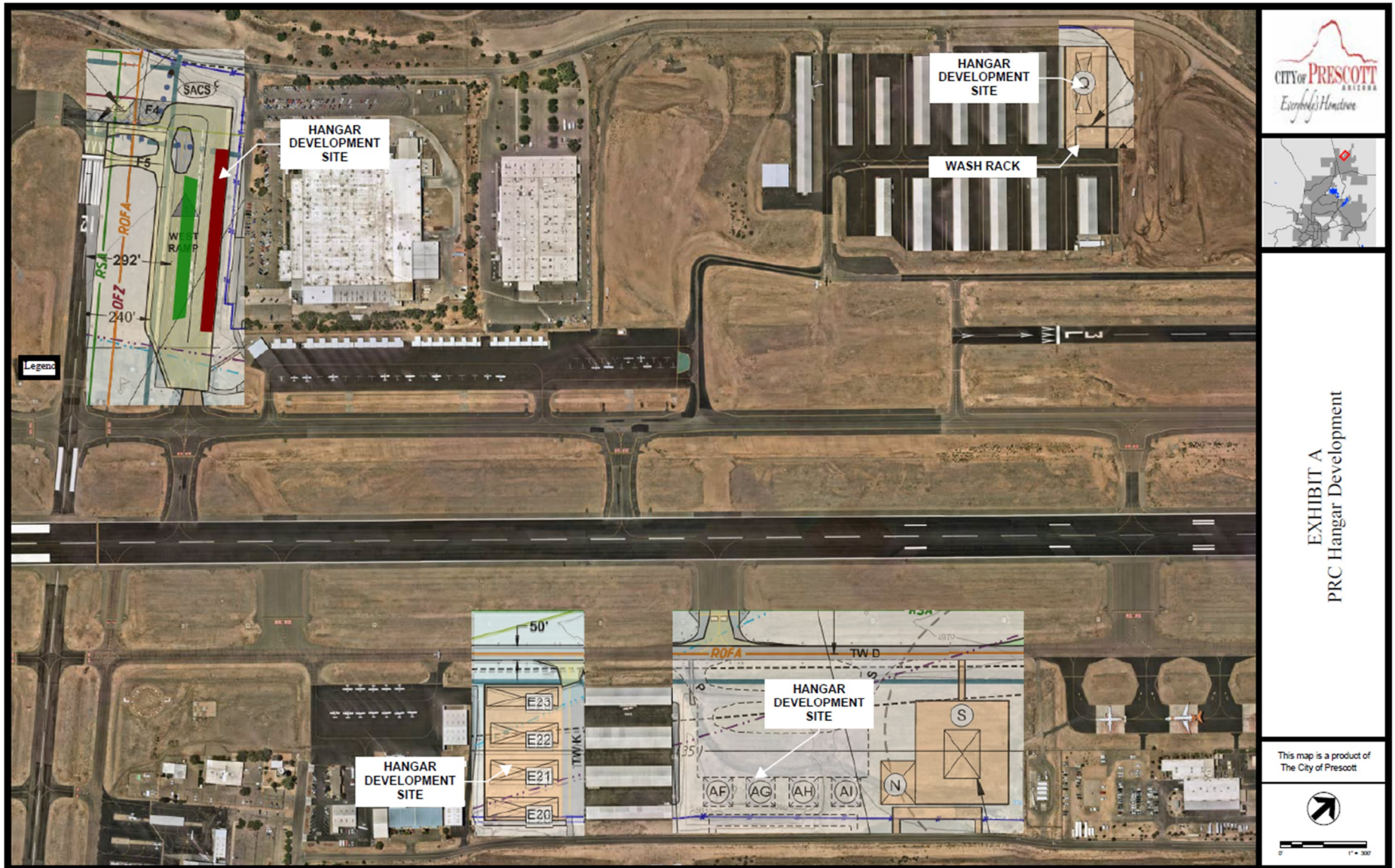
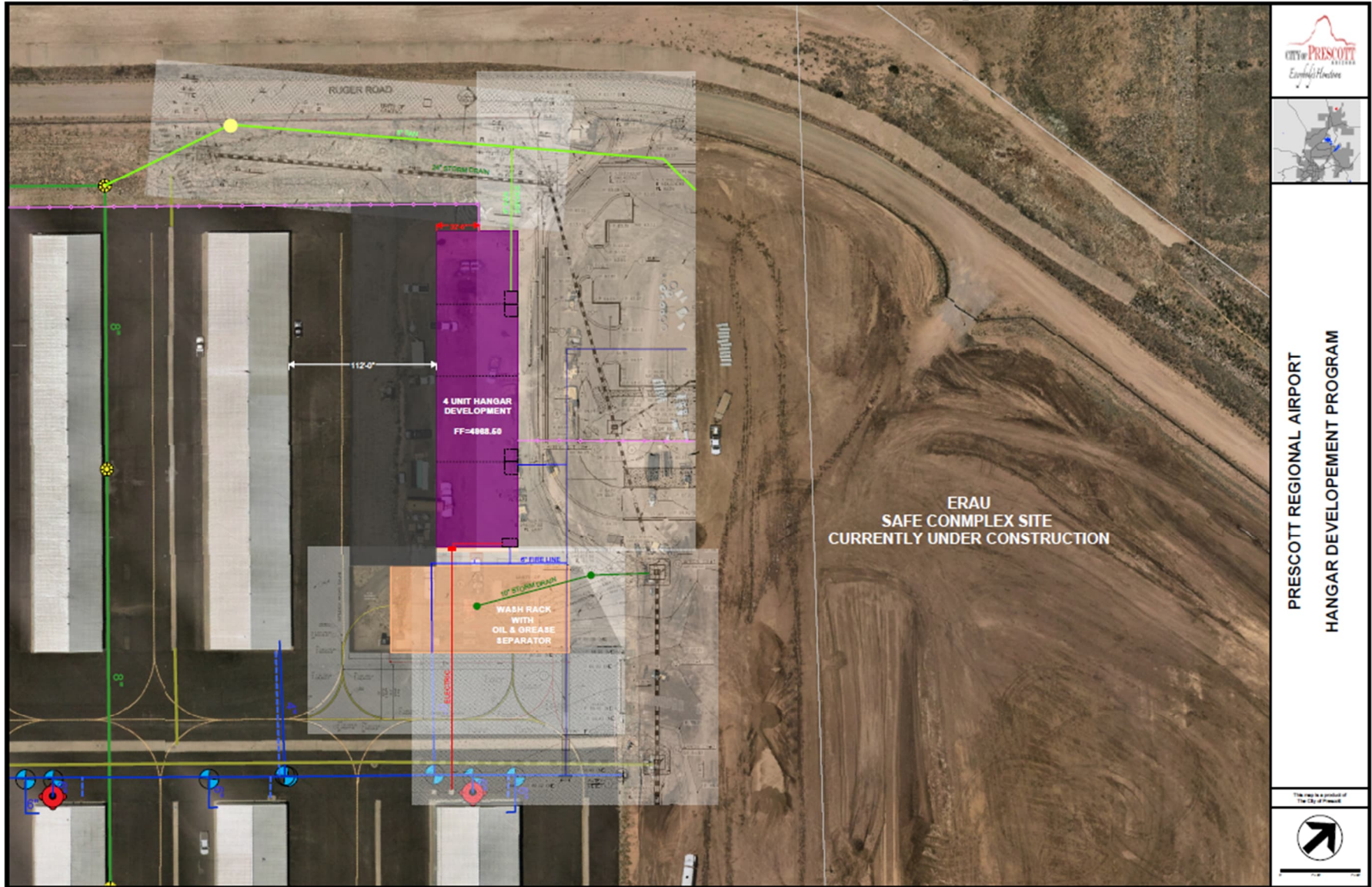


EXHIBIT A
PRC Hangar Development

This map is a product of
The City of Prescott



INITIAL SITE PHASE



ATTACHMENT E

DBE REQUIREMENTS

A. Applicable Federal Regulations

This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race-and gender-conscious DBE participation goal for the design-phase Contract, the Sponsor must track and report DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.

B. DBE Participation

For the design-phase contract solicitation, the Sponsor has *not* established a race- or gender-*conscious* DBE participation goal. In accordance with the PRC DBE Program, a race and gender-neutral goal may be established for the construction phase contract for this project. The Sponsor extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Sponsor uses race- and gender-*neutral* measures to facilitate participation by DBEs and Small Businesses. The Sponsor *encourages* each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.

C. Small Business Participation

The Sponsor will track the participation of all approved businesses throughout the life of this contract. The Sponsor will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39).

D. DBE Certification

Only firms (1) certified by the Sponsor or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from RGN measures on this Contract. This DBE determination affects the Sponsor’s tracking and reporting obligations to USDOT.

E. Civil Rights Assurances

As a recipient of USDOT funding, the Sponsor has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Sponsor and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance *verbatim*:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Prescott deems appropriate.”

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the “contractor” awarded the contract.

F. Submittal Requirements

With the response to the Request for Statements of Qualifications, proposer is required to submit evidence of efforts to solicit DBE/SBE participation for the design-phase contract, including:

1. Listing of all proposed DBE/SBE team members, if any.
2. DBE/SBE certifications held by proposed DBE team members, if any.
3. Documentation of DBE/SBE outreach efforts to solicit DBE participation.

This documentation should be submitted as an appendix to the SOQ, labeled: “DBE/SBE Documentation”

The DBE documentation will not count against the page limit of the SOQ.

G. Guidance Concerning Good Faith Efforts

- I. When procuring construction, equipment, services, or any other purpose, the submitting applicant of a RSOQ must, make sufficient good faith efforts to meet the DBE requirements. Their submission can meet this requirement in either of two ways. First, they can meet the requirements, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it does not meet the requirements, the submitter can document adequate good faith efforts. This means that the applicant must show that they took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation the Sponsor (City of Prescott) contract goal requirement, Part 26 requires that good faith efforts are performed. City shall make a fair and reasonable judgment whether an applicant’s submission does not meet the goal made adequate good faith efforts. The city will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance as outlined.

The efforts employed by the applicant should be those that one could reasonably expect someone to take if there are submitting a RSOQ actively and aggressively trying to obtain DBE participation sufficient to meet the DBE requirements. Mere pro forma efforts are not good faith efforts to meet the DBE RSOQ requirements. The determination concerning the sufficiency of the applicant’s good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

- III. A RSOQ submission does not require the applicate to meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the applicants submission makes an adequate good faith efforts showing. This rule specifically prohibits the city from ignoring bona fide good faith efforts.
- IV. The following is a list of types of actions which the city will consider as part of your good faith efforts to obtain DBE participation. It is not intended to be a checklist, nor

is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A.

1. Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.
2. The applicant should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. Their submission should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D.

1. Negotiating in good faith with interested DBEs. It is the applicant's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.
2. An applicant using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself a sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does

not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E.

1. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph should be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.
2. A prime contractor's inability to find a replacement DBE at the original price is not sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the City of Prescott or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to aid in the recruitment and placement of DBEs.

H. In determining whether an applicant has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, the city will review the performance of other applicants in meeting the contract goal. For example, when the apparent successful applicant fails to meet the contract goal, but others meet it, the city will reasonably raise the question of whether, with additional efforts, the apparent successful applicant could have met the goal. If the apparent successful applicant fails to meet the goal but meets or exceeds the average DBE participation obtained by other applicants, the city may view this, in conjunction with other factors, as evidence of the apparent successful applicant having made good faith efforts. As provided in § 26.53(b)(2)(vi), city will require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the applicant when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

- I. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts except in design-build procurement.

ATTACHMENT E continued:

DEMONSTRATION OF GOOD FAITH EFFORTS OR GOOD FAITH EFFORT PLAN

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and submit documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____

(Signature)

Title

DEMONSTRATION OF GOOD FAITH EFFORTS

FORM 2: LETTER OF INTENT *Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.*

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

Description of Work	NAICS	Dollar Amount / %*	Manufacturer/Regular Dealer/Distributor/Broker**

**Percentage is to be used only in negotiated procurements*

***For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

Signature of Bidder/Offeror's Authorized Representative Date: _____

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above and is properly certified to be counted for DBE participation, therefore.

Signature of DBE's Authorized Representative Date: _____

If the bidder/offeror does not receive award of the prime contract, all representations in this Letter of Intent shall be null and void.

Submit this page for each DBE subcontractor.

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be invalid. Submit this page for each DBE subcontractor.

FORM 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? YES NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? YES NO (If "YES," Go to Question 2. If "NO" Continue.)
- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory? YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

* If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate? YES NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)? YES² NO³

a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? YES² NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

ATTACHMENT F

FEDERAL REQUIREMENTS — CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDINGS OR AIRPORT FACILITIES FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

SECTION I – CONSTRUCTION PHASE DAVIS BACON COMPLIANCE

The CMAR shall comply with “Federal Davis Bacon and Related Acts” in accordance with 29 CFR Part 3 and 29 CFR Part 5 as applicable for the construction phase contract. Prior to bidding to subcontractors, the CMAR shall obtain the effective federal wage determination to be included in all subcontracts.

SECTION II – FEDERAL REQUIREMENTS

Lobbying and Influencing Federal Employees. No Federal appropriated funds shall be paid, by or on behalf of the CMAR, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant. If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the CMAR shall complete and submit Standard Form-LLL, “Disclosure of Lobby activities,” in accordance with its instructions.

Trade Restriction. The CMAR and subcontractors, by submission of the Statement of Qualifications, certifies that it is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR); has not knowingly entered into any contract or subcontract for this contract with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; and has not procured any product nor subcontracted for the supply of any product for use on the contract that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a CMAR or subcontractor who is unable to certify to the above. If the CMAR knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the CMAR agrees that, if awarded a contract resulting from this solicitation it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The CMAR may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The CMAR shall provide immediate written notice to the Sponsor if the CMAR learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous

by reason of changed circumstances. The subcontractor agrees to provide written notice to the CMAR if at any time it learns that its certification was erroneous by reason of changed circumstances.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a CMAR is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Debarment, Suspension, Ineligibility and Voluntary Exclusion. The CMAR and its subcontractors, by submission of its Statement of Qualifications (SOQ) certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting its SOQ that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the CMAR or any lower tier participant is unable to certify this statement, it shall attach an explanation to its SOQ.

Buy American Preference. The CMAR certifies by submission of its Statement of Qualifications, that it will comply with Buy American preferences established under Title 49.

U.S.C. Section 50101. Unless formally approved by the Federal Aviation Administration, all acquired steel and manufactured products installed must be produced in the United States. Be advised that the North American Free Trade Agreement does not apply to Aviation Improvement projects.

Equal Employment Opportunity. The CMAR agrees that it will undertake affirmative action in conformance with 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. The CMAR assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. The CMAR further agrees that it will require its covered suborganizations to provide assurances to the CMAR that they similarly will undertake affirmative action and that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.

If the CMAR is a construction contractor on the Airport, the CMAR shall submit to the City of Prescott the reports required by paragraph (e) of 14 C.F.R. § 152.415, on the same basis as stated in paragraph (e) of 14 C.F.R. § 152.415, and the CMAR shall require each subcontractor to submit the reports required by paragraph (f) of 14 C.F.R. § 152.415 through the CMAR to the City of Prescott, for transmittal by the City of Prescott to the FAA.

Non-Segregated Facilities. The CMAR and its subcontractors, by submission of the Statement of Qualifications certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control where segregated facilities are maintained. The CMAR certifies further that it will not maintain or provide for its employees segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

Federal Affirmative Action Requirements. The CMAR will comply with the federal Affirmative Action requirements as provided by 14 C.F.R. Part 152, subpart E during the term of the contract and the CMAR will require its subcontractors to also comply with the federal Affirmative Action requirements as set out above, and as may be amended. Failure of the CMAR and its subcontractors to maintain compliance during the term of the contract, including renewal options, is a material breach and may result in termination of the contract.

The selected CMAR should expect to comply with the Arizona State Statutes Title 34.