



## **CITY OF PAGE**

### **REQUEST FOR QUALIFICATIONS**

### **PROFESSIONAL CONSULTING SERVICES FOR:**

**CATEGORY 1: ON-CALL ENGINEERING SERVICES**

**CATEGORY 2: BUILDING PLAN REVIEW AND INSPECTION SERVICES**

**CATEGORY 3: ARCHITECTURAL DESIGN SERVICES**

#### **CONTACT PERSON:**

**Tim Suan**

**Community Development Director**

**Community Development Department**

**928.645.4261**

**[tsuan@pageaz.gov](mailto:tsuan@pageaz.gov)**

**ISSUED:**

**NOVEMBER 4, 2020**

**LAST DAY FOR INQUIRIES:**

**NOVEMBER 18, 2020 at 5:30 PM**

**RFQ DUE DATE:**

**DECEMBER 2, 2020 at 4:30 PM**

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## SECTION 1: INTRODUCTION

### REQUEST FOR QUALIFICATIONS (RFQ): PROFESSIONAL CONSULTING SERVICES

The City of Page is requesting qualifications from consulting firms for on-call services including engineering, building plan review and inspections, and architectural design, to support the design, construction, and improvement of both public and private infrastructure. The consultant(s) will provide additional staffing resources for services and projects the City does not have time or expertise to complete, under the following three (3) discipline categories:

- CATEGORY 1: ON-CALL ENGINEERING SERVICES
- CATEGORY 2: BUILDING PLAN REVIEW AND INSPECTION SERVICES
- CATEGORY 3: ARCHITECTURAL DESIGN SERVICES

The consultant(s) must be available for general consultation and response to inquiries related to areas of expertise and specific projects with City administration, department heads, supervisors, and designated staff. A limited but regular on-site presence may be required for meetings, inspections, and other City needs.

The City intends to achieve a short list of up to three consultants for each of the three discipline categories; however, *based on qualifications a consultant may be selected for more than one category.*

**Additionally, the consultant(s) selected for Building Plan Review and Inspection Services may be placed on a City-approved list to provide expedited building plan review directly to and under separate contract with third parties seeking to construct in the City.**

The City is seeking an agreement with each consultant for a three-year period. The City makes no guarantee of a minimum or specific volume of work, total contracted amount, or specific distribution of work for the consultants on the final list arising from this solicitation.

The City will select and negotiate with those consultants whose submittals are responsive to this RFQ and are in the best interest of the City. Any documents submitted in response to this RFQ must provide sufficient detail and information to allow a complete evaluation of its merit. The instructions contained herein should be followed for responses to be considered responsive to this RFQ. The City reserves the right to cancel this solicitation at any time.

## SECTION 2: CONSULTING SERVICES - CATEGORIES AND SCOPE OF SERVICES

The City of Page plans to contract for professional services under the discipline categories of:

1) On-Call Engineering Services, 2) Building Plan Review and Inspection, and 3) Architectural Design.

The awarded consultant(s) will be responsible for services per the details outlined in this section to the satisfaction of designated City staff. The consultant(s) will perform applicable functions as an extension of the City staff and will follow all City codes, ordinances, procedures, and directives related to the services provided. The consultant(s) will use and bill time judiciously.

The following list of discipline categories and scope of services is not comprehensive, and the City of Page reserves the right to modify depending on future needs.

### CATEGORY 1: ON-CALL ENGINEERING SERVICES:

- The routine and reoccurring review of development plans and specifications including sketch plans, preliminary plats, final plats and construction drawings for both developer and City constructed public and private infrastructure.
  - Submitted plats, construction plans and specifications will be reviewed by the consultant for conformity with adopted City ordinances, construction specifications, and departmental master plans and/or to state/federal (regulatory authorities) agency standards. In the absence of local directives consultant will utilize other local, regional, or state standards, or generally accepted methods or practices of engineering, land surveying or construction.
  - Written comments must be developed and returned to appropriate city staff members *within five (5) business days* of receipt on average.
  - The consultant will devise and implement a tracking methodology to accurately log receipt, response and status of each submittal and project.
  - The consultant will review subsequent plat and/or plan revisions or responses until such time as the consultant may provide written certification that the subject plans substantially conform to City standards for content and clarity.
  - The consultant's review of private infrastructure is generally limited to civil site design and upon request, evaluation of specific structural components.
  - Additional consultation, including site inspections, may be required during the construction process to assist the City with proposed field adjustments, plan modifications or the acceptance/approval of constructed facilities.
- Attend meetings with industrial, commercial, and residential developers and to provide guidance on potential developmental impacts on the City's infrastructure.
- Upon request, provide engineering assistance to select staff and elected officials, including:
  - Guidance on maintenance and small improvement projects.
  - Assist with the development and/or planning of capital improvement projects.
  - GIS and mapping support services, including but not limited to:
    - Preparation of preliminary or construction bid documents for various capital improvement projects, preparing, and/or revising plan sheets. GIS support services including data collection and development, map compilation, transformation, and

systems integration. Spatial application development and interfaces. Exhibits, conceptual and/or detailed design and drafting services utilizing computer-aided drafting (CAD) 2-D and/or 3-D modeling e.g. Civil 3D, Inroads or similar.

- General Civil Engineering:
  - Site grading and drainage, area drainage master studies, pavement management.
  - Groundwater recharge with associated on-site conveyance systems, drainage issues, storm sewer conveyance operations, Storm Water Pollution Prevention Plans (SWPPPs), storm drain design, hydrology and hydraulic analysis for storm drains, aquifer studies, flood plain mapping, CLOMR and LOMR development, water system modeling studies.
  - Construction administration (RFIs, inspection, as-built).
  - Boundary surveys, topographic surveys, as-built surveys, construction staking, investigate right-of-way, easement, property lines, ALTA, prepare legal descriptions.
  - Landscape architectural services.
- Excludes water and wastewater systems.
- Management of capital projects.
- *Same-day response* to simple inquiries from select staff and elected officials regarding specific projects or related areas of expertise.

***Travel to Page may be required to maintain a limited but regular on-site presence for inspections, meetings, and consultation/assistance to select City staff and elected officials.***

## **CATEGORY 2: BUILDING PLAN REVIEW AND INSPECTION SERVICES:**

### Building Plan Review:

- Plan review for commercial, industrial, and residential construction of buildings.
- Plan review includes structural, architectural, grading, energy, electrical, mechanical, plumbing, and specifications submitted as part of a building permit, drafting written corrections and redlining of plans, written and oral communication to the applicant, and providing code interpretation.
- Review application package for plot plan square footage and valuation.
- Perform rechecks of corrected plans and plan changes until plans and related documents are substantially correct and complete.
- Compliance with code or discrepancies is based on the currently adopted code version with local amendments of the Building, Mechanical, Electrical, Plumbing, Fuel Gas, Fire, Energy Codes and ADA accessibility regulations mandated by the State and City ordinances (e.g. grading) and department policies and applicable laws in effect at the time of application for construction permits.
- Maintain records related to plans reviewed, including all turnaround times.
- Upon request, under separate and direct contract with the developer or other third-party designated agent for a project, perform expedited building plan review, subject to the same expected terms and standards as required for building plan review directly for or by the City of Page.

### Building Inspections:

- Construction inspection services to ensure conformity to the approved plans and the standards and codes adopted by the City of Page.
- Inspect commercial, industrial, residential buildings during various stages of construction such as foundations, concrete, steel, masonry, framing, plastering or a variety of other complex and routine

building systems elements for compliance with applicable City codes, amendments, and ordinances.

- Review assigned project plans for compliance with code requirements and discrepancies after permit issuance. Compliance with code or discrepancies is based on the currently adopted code version with local amendments of the Building, Mechanical, Electric, Plumbing, Fire codes, Fuel Gas and ADA accessibility regulations mandated by the State and City Ordinances and Department policies and applicable laws in effect at the time of application for construction permits.
- Coordinate inspection activities with other City departments and divisions; confer with architects, engineers, contractors, project managers and superintendents in the field and in the office.
- Provide written documentation of inspections performed, issuance of “stop work” orders, and notices of corrections.
- Report to designated City staff regularly as needed to complete the required paperwork and update inspection results.
- Provide inspection services within a *48-hour notice*.

***Travel to Page may be required to maintain a limited but regular on-site presence for inspections, meetings, and consultation/assistance to select City staff and elected officials.***

### **CATEGORY 3: ARCHITECTURAL DESIGN SERVICES:**

- Architectural Design: Planning, design, and oversight of the construction of facilities, develop architectural drawings including landscape drawings, designs, and specifications.
- Structural Design: Structural ratings, bridge and building designs, and special inspections.
- Electrical Engineering: Instrumentation & control for water and wastewater. Street lighting, pedestrian lighting, ITS facilities, and general site electrical.
- Mechanical Engineering: HVAC, plumbing, and gas site work.

***Travel to Page may be required to maintain a limited but regular on-site presence for inspections, meetings, and consultation/assistance to select City staff and elected officials.***

### SECTION 3: EVALUATION AND SELECTION CRITERIA

Submittals will be evaluated based on the criteria set forth herein including but not limited to qualifications, demonstrated past performance, quality of submittal, availability, and ability to meet City needs and requirements.

Submittals will be scored using the following specific criteria and based on a maximum of 100 points.

Submittals will be evaluated by a Selection Committee comprised of representatives of the City of Page.

- The Selection Committee will screen and rank all submittals to determine the candidates to participate in interviews.
- The Selection Committee will conduct interviews to choose the consultants for the final list(s) and their order on the final list(s).
- Final approval to award contracts to the selected consultants will be determined by Page City Council.

The City reserves the right to solicit additional information from any and all proposers and will be the sole judge of the merits of the proposals received. The City reserves the right to waive any informalities in the submittals, whether technical or substantial in nature, and to negotiate with any and all proposers. The City reserves the right to reject any and all submittals if it is deemed in the best interest of the City.

All proposers will be notified of the results within thirty (30) days after the close of the RFQ period.

The scoring breakdown is as follows:

Qualifications	Points
1. General qualifications and previous experience with providing similar professional services on a consulting basis.	30
2. Proposed work schedule, availability of key personnel, time frame for delivery of service, responsiveness, and on-site availability.	25
3. Understanding of the Scope of Services and ability to complete the work successfully.	20
4. The team’s services delivery approach and demonstrated ability to meet standard City contract requirements.	15
5. Proximity within 150 miles of Page, Arizona of consultant or qualified subcontractor(s) to provide required on-site services.	10
<b>TOTAL</b>	<b>100</b>

**Acceptance of Evaluation Methodology.** By submitting its qualifications in response to this RFQ, proposer acknowledges and accepts the evaluation process, the established criteria and associated scoring system, and that determination of the “most qualified” consultant(s) will require subjective judgments by the City.

## SECTION 4: SUBMITTAL REQUIREMENTS AND SCHEDULE

Interested consultants shall review all submittal requirements including the attached Professional Services Contract sample and submit a qualifications packet including the items outlined in this section.

All submittals must be prepared and submitted in accordance with this RFQ to be considered responsive. Incomplete or nonresponsive submittals will not be evaluated or ranked, and at the City's discretion a submittal may be disqualified at any time during the evaluation process if:

- It lacks sufficient information for reasonable determination of compliance to minimum qualifications;
- It is determined that the submitting consultant does not meet the minimum required skill, experience, or requirements to provide the requested services;
- The submitting consultant has a history of failing to fully perform or fulfill contractual obligations; or
- The submitting consultant's qualifications packet contains false, inaccurate, or misrepresenting statements that are intended to mislead the City in its evaluation of the submittal.

Submittals are limited to 10 pages, unless responsive to more than one discipline category which then are limited to 15 pages, excluding cover letter and discipline checklist, and must include the following:

1. Cover Letter: Provide an introduction letter identifying the consultant. Briefly summarize any distinguishing qualities or capabilities that uniquely qualify the consultant for the services requested.
2. Discipline Checklist: Submissions without the completed Discipline Checklist will not be considered.

Please provide a separate statement for each discipline category:

3. Executive Summary:
  - Qualifications of the consultant or consulting firm
  - Project manager and his/her experience
4. Statement of Qualifications: The competence and experience of the consultant including:
  - Experience in providing the requested services on a consultant basis.
  - Please provide a statement that covenants that the consultant has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner with the performance of services required to be performed under an agreement arising from this procurement, and that further covenants that in the performance under such an agreement the consultant shall not engage any employee, apprentice, or subcontractor having any such interest. The submitting consultant agrees that an agreement arising from this procurement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.
5. Previous Experience: A statement including a list of 3 past clients, including federal, state, and local governments, and similar services. Information should include at a minimum the following:
  - Name of project, location, and contract award date
  - Owner/Client's name and address
  - Contact name and phone number
  - Nature and scope of contracted services
6. Response to the Scope of Work: Information responsive to the specific requested services.



To be responsive, one hard copy and one digital copy (PDF format on USB flash drive) of the submittal must be received no later than 4:30 p.m. on December 2, 2020 at:

Page City Hall  
Attn: Kim Larson, City Clerk  
P.O. Box 1180  
697 Vista Avenue  
Page, AZ 86040

Submittals shall be sealed and labeled as "Response to RFQ for Professional Consulting Services". The City is not responsible for any submittal not properly addressed or identified. Faxed or emailed submittals will not be accepted. The City does not reimburse the cost of providing any response to this solicitation.

It is the sole responsibility of the proposer to assure that the submittal is received on time. Any submittal received after the deadline shall not be returned and will become the property of the City of Page.

Submittals will be opened publicly at 4:30 p.m. on December 2, 2020. Only the names of the proposers will be read aloud at that time.

## **TIMELINES**

Anticipated timelines are as follows:

1. Submittals are due December 2, 2020.
2. Top candidates will be interviewed at City's discretion during the week of December 14, 2020.
3. Selected consultants to be available for contracted services beginning February 1, 2021.

Dates are subject to change.

## **CONTACT WITH THE CITY OF PAGE**

All consultants interested in this project (including employees, representatives, agents, lobbyists, attorneys, and sub-consultants) 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. This policy is intended to protect the integrity of the selection process and assure that contract decisions are made in public.

## **QUESTIONS**

If information of a material matter is provided in response to any correspondence or question or if a clarification is issued by the City, a copy of the questions and answers will be provided to all prospective respondents who have requested a copy of the Request for Qualifications. This response shall serve as an addendum to the advertised call for qualifications. Questions may be directed in writing to the City of Page, Attn: Tim Suan, Community Development Director, P.O. Box 1180, 697 Vista Avenue, Page AZ 86040 or [tsuan@pageaz.gov](mailto:tsuan@pageaz.gov), with "Response to RFQ for Professional Consulting Services" in the subject line.

## **SECTION 5: SELECTION PROCESS**

### **SUBMITTAL EVALUATION AND SCORING:**

A Selection Committee organized for this RFQ will review, evaluate, and score the submittals according to the specific criteria as described in Section 3. The same Selection Committee and scoring criteria will serve for all three (3) discipline categories. The maximum score possible is 100.

### **INTERVIEWS:**

Based on the submittal evaluation and scoring, the Selection Committee will generate a list of candidates to participate in interviews. There will be one list for each of the three (3) discipline categories. *It is possible for the same consultant to be on more than one list of candidates for interviews if that consultant responds to and is qualified under more than one discipline category.*

Interviews will be conducted telephonically, on video conference, or in person.

Subject to the number, quality, and suitability to City needs of the submittals received, and allowing for consultants that respond to and are qualified under more than one discipline category, there will be up to five (5) candidate interviews per category.

The Selection Committee will choose the consultants for the final list based on a combination of the results of the interviews and the evaluation of the submittals. Final approval to award contracts will be determined by Page City Council.

### **FINAL LIST/AWARD OF CONTRACTS:**

There will be one final list of up to three (3) approved consultants for each of the discipline categories:

1) On-Call Engineering Services, 2) Building Plan Review and Inspection, and 3) Architectural Design.

The maximum possible contracts that may or will be awarded resulting from this RFQ is to nine (9) separate consultants. *It is possible for the same consultant to be on multiple final lists if selected under more than one discipline category.*

The City will conduct negotiations with firms on the final lists. The contract negotiations shall include consideration of compensation and other contract terms that the City determines to be fair and reasonable to the City. If the City is unsuccessful in negotiating a contract with the best qualified firm, the City may then negotiate with the next most qualified firm until a contract is executed, or may decide to terminate the selection process.

The City will maintain the final consultant list(s) and will request services and assign projects based on City needs, consultant experience and qualifications, and overall fit for specific services or projects. The City makes no guarantee of a minimum or specific volume of work, total contracted amount, or specific distribution of work for the consultants on the final list.

Staffing substitutions must be approved by the City in writing.

No binding contract will exist between the consultant and the City until the City executes a written contract.

**Sample Contract.** An example of the City's Professional Services Contract is attached.

## **SECTION 6: GENERAL INFORMATION**

### **RIGHTS OF THE CITY OF PAGE**

The City of Page may cancel this RFQ, reject in whole or in part any or all submittals or proposals, or determine not to enter into one or more of the multiple contracts as specified in the solicitation if the City determines in its absolute and sole discretion that such action is in the best interest of the City.

### **FUTURE RFP/RFQ**

It is not the City's intention to discontinue requesting RFQs/RFPs for future services or projects. Consultants that are listed as on-call are free to pursue any other RFQ/RFP publicly advertised by the City without jeopardizing their on-call status.

### **SUSPENSION/DEBARMENT**

By submitting a proposal in response to this solicitation, the respondent is certifying that it is neither debarred nor suspended nor under consideration for suspension or debarment by any federal, state, or local government or agency. If a respondent is not able to so certify, the respondent must submit a letter that identifies the agency involved and a contact and explains why respondent is suspended or debarred or being considered for suspension or debarment.

### **PROTEST POLICY AND PROCEDURES**

The protest policy and procedures provision in A.R.S. § 34-604(J) shall apply to any protests in connection with this procurement.

## DISCIPLINE CHECKLIST

Name of Firm: \_\_\_\_\_ Federal Tax ID: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Website: \_\_\_\_\_ Email: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

PLEASE CHECK ONLY THOSE DISCIPLINE CATEGORIES FOR WHICH YOU ADDRESS IN YOUR STATEMENT OF QUALIFICATIONS AND DESIRE TO BE CONSIDERED:

\_\_\_\_ On-Call Engineering

\_\_\_\_ Structural Design

\_\_\_\_ Building Inspection

\_\_\_\_ Architectural Design

\_\_\_\_ Building Plan Review

\_\_\_\_ Electrical Engineering

\_\_\_\_ Expedited Building Plan Review

\_\_\_\_ Mechanical Engineering

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*By submitting a response to the Request for Qualifications, the submitting Consultant certifies that it has reviewed the Request for Qualifications in its entirety, including the Scope of Services for each applicable discipline category, and the terms and conditions of the sample Professional Services Contract.*

*The submitting consultant certifies that it is qualified and available to perform all of services in the Scope of Services for the discipline category or categories to which it submitted a response. If awarded the Contract, the submitting consultant agrees to be bound thereto.*

Printed Name & Title: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**ON-CALL PROFESSIONAL SERVICES AGREEMENT**

This Agreement for the On-Call Profession Services (“Agreement”) is made by and between the City of Page (“City”), an Arizona municipal corporation and \_\_\_\_\_ (“Provider”).

**RECITALS**

- A. The City desires to enter into this Agreement in order to obtain services of a consultant for the **On-Call Professional Services:** \_\_\_\_\_, as outlined in Exhibit A; and
- B. Provider has available and offers to provide the personnel necessary to provide said services within the required time in accordance with the Scope of Services included in this Agreement;
- C. The following exhibits are incorporated by reference and are expressly made a part of this Agreement:

Scope of Work	Exhibit A
Fee Schedule	Exhibit B

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, the City and Provider agree as follows:

**1. SERVICES TO BE PERFORMED BY PROVIDER**

Provider agrees to perform the following services:

- 1.1 Provider agrees to provide the services as set forth in detail in Exhibit “A” attached and incorporated in this Agreement.
- 1.2 Provider warrants that all materials, services or construction delivered under the Agreement shall conform to the specifications of the Agreement. The City’s receipt or inspection of the materials, services, or construction specified shall not alter or affect the obligations of Provider or the rights of the City under the foregoing warranty.
- 1.3 All services, information, computer program elements, reports and other deliverables which may be created under the Agreement are the sole property of the City and shall not be used or released by Provider or any other person except with prior written permission of the City.

**2. COMPENSATION OF PROVIDER**

Provider agrees to provide all of the services set forth in Exhibit “A” for prices not to exceed the amounts set forth in the fee/price schedule, attached as Exhibit “B”. Provider shall complete services as requested and authorized by the Public Works Director, Community Development Director or City Manager. Provider shall bill the City monthly for the fee due the Provider based upon an hourly rate for work completed for each itemized task pursuant to this Agreement and during the billing period. City shall pay invoices for satisfactorily completed work within thirty (30) days of the date of receipt. Provider shall provide to the City any information necessary to determine the total amount(s) due.

The City makes no guarantee of a minimum or specific volume of work or total contracted amount arising from this Agreement, and assignment of services to be rendered by Provider shall be at City’s discretion.

### 3. RIGHTS AND OBLIGATIONS OF PROVIDER

**3.1 Independent Contractor.** The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the City as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or representative of the City. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement.

**3.2 Provider's Control of Work.** All services to be provided by Provider shall be performed as determined by the City in accordance with the Scope of Services set forth in Exhibit "A." Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for, and in full control of, the work of all such personnel.

**3.3 Reports to the City.** Although Provider is responsible for control and supervision of work performed under this Agreement, the services provided shall be acceptable to the City and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Provider to the City and the right of the City, as set forth in the Scope of Services, and the right of the City to audit Provider's records.

**3.4 Compliance with All Laws.** Provider shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement.

**3.5 Completeness and Accuracy of Provider's Work.** The Provider shall be responsible for the completeness and accuracy of his work, plans, supporting data, and Special Provisions prepared or compiled under his obligation for this project and shall correct, at his expense, all errors or omissions therein.

3.5.1 All documents prepared by the design professional shall bear the stamp or seal of the design professional. All services rendered by Provider, including preparation of technical and related documents, shall be completed in accordance with the prevailing Arizona law and services performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

3.5.2 Correction of errors or omissions disclosed and determined to exist by the City during the construction of a project shall be accomplished by the Provider. The costs that become necessary to correct those errors attributable to the Provider and any expense incurred by the City as a result of additional construction costs caused by such errors shall be chargeable to the Provider. The fact that the City has accepted or approved the Provider's work shall in no way relieve the Provider of any of his responsibilities or professional liability. Should the Provider be contracted to perform construction inspection of the project, he shall be responsible for errors and omissions in construction inspection disclosed and determined to exist by the City during and subsequent to the construction of the project. Provider's duty in the construction inspection phase is to assure City that a project is constructed in conformity with detailed plans and specifications and the cost of design necessary to correct errors and omissions in inspection attributable to the Provider and any expense incurred by City as a result of additional construction costs caused by such errors shall be chargeable to the Provider. Acceptance or approval by City of Provider's work shall not relieve Provider of inspection responsibilities or professional liability.

#### 4. NOTICE PROVISIONS

Notice. Any notice concerning this Agreement shall be in writing and sent by certified or registered mail as follows:

To the City's Authorized Representative                      To Provider:

City of Page  
PO Box 1180  
Page, Arizona 86040

#### 5. INDEMNIFICATION

To the fullest extent permitted by law, Provider shall indemnify, defend, save and hold harmless the City of Page and its officers, officials, agents, and employees ("Indemnitee") 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) ("Claims") including 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 Provider or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Provider to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is agreed that Provider shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Provider shall waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by Provider for the City.

#### 6. INSURANCE

Provider and subcontractors shall procure and maintain insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Agreement by the Provider, Provider's agents, representatives, employees or contractors until all of their obligations under this Agreement have been discharged, including any warranty periods. The insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City does not represent or warrant that the minimum limits set forth in this Agreement are sufficient to protect the Provider from liabilities that might arise out of this Agreement, and Provider is free to purchase such additional insurance as Provider may determine is necessary.

**6.1. Minimum Scope and Limits of Insurance.** Provider shall provide coverage at least as broad and with limits not less than those stated below.

6.1.1. Commercial General Liability - Occurrence Form  
(Form CG 0001, ed. 10/93 or any replacement thereof)

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$500,000
Medical Expense (any one person)	Optional

6.1.2. Automobile Liability - Any Automobile or Owned, Hired and Non-owned Vehicles  
(Form CA 0001, ed. 12/93 or any replacement thereof)

Combined Single Limit Per Accident for Bodily Injury and Property Damage	\$1,000,000
6.1.3. Workers' Compensation and Employer's Liability	
Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000
6.1.4. Professional Liability (Per Claim)	\$1,000,000

**6.2 Self-insured Retention/Deductibles.** Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers.

**6.3. Other Insurance Requirements.** The policies shall contain, or be endorsed to contain, the following provisions:

6.3.1 Commercial General Liability and Automobile Liability Coverages. The City of Page, its officers, officials, agents and employees shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Agreement and activities performed by or on behalf of the Provider, including products and completed operations of the Provider; and automobiles owned, leased, hired or borrowed by the Provider.

6.3.2 The Provider's insurance shall contain broad form contractual liability coverage.

6.3.3 The City of Page, its officers, officials, agents and employees volunteers shall be named as additional insureds to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement.

6.3.4. The Provider's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Provider's insurance and shall not contribute to it.

6.3.5 The Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.3.6 Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

6.3.7 The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Provider for the City.

**6.4 Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. When cancellation is for non-payment of premium, then at least ten (10) days' prior notice shall be given to the City.



**6.5 Acceptability of Insurers.** Provider shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a “Best’s” rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect the Provider from potential insurer insolvency.

**6.6 Verification of Coverage.** The Provider shall furnish the City with certificates of insurance (ACORD form) as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

6.6.1 The City must receive and approve all certificates of insurance before the Provider commences work. Each insurance policy required by this Agreement shall be in effect at, or before, commencement of work under this Agreement and shall remain in effect until all Provider’s and its subcontractors’ obligations under this Agreement have been met. The Provider’s failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of this Agreement.

6.6.2 The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Agreement at any time. The City shall not be obligated, however, to review any insurance policies or to advise Provider of any deficiencies in such policies and endorsements. The City’s receipt of Provider’s policies or endorsements shall not relieve Provider from, or be deemed a waiver of, the City’s right to insist on strict fulfillment of Provider’s obligations under this Agreement.

**6.7 Subcontractors.** Provider’s certificate(s) shall include all subcontractors as additional insureds under its policies, or Provider shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

**6.8 Approval.** Any modification or variation from the insurance requirements in this Agreement must have the prior approval of the City’s Attorney’s Office, whose decision shall be final. Such action will not require a formal Agreement amendment but may be made by administrative action.

## **7. DEFAULT AND TERMINATION**

**7.1 Events of Default Defined.** The following shall be Events of Default under this Agreement:

7.1.1 Any material misrepresentation made by Provider to the City;

7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider’s reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Provider’s reasonable control;

7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the City;

7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the City as unsatisfactory or erroneous;

- 7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;
- 7.1.2.6 Unsatisfactory performance as determined by the City;
- 7.1.2.7 Failure to provide the City, upon request, with adequate assurance of future performance;
- 7.1.2.8 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and
- 7.1.2.9 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

## **7.2 Remedies.**

7.2.1 Upon the occurrence of any Event of Default, the City may declare Provider in default under this Agreement. The City shall provide written notification of the Event of Default. If such Event of Default is not cured within seven (7) days of receipt of the notification, the City may invoke any or all of the following remedies:

- 7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;
- 7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;
- 7.2.1.3 The right to monetary damages;
- 7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;
- 7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the City; and
- 7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The City may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the City, and that if the City allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the City be deemed to waive or relinquish any of its rights under this Agreement.

7.2.3 In the Event of Default by the Provider, the City shall not be liable to Provider for any amount, and Provider may be liable to the City for any and all damages sustained by reason of the default which gave rise to the termination.

**7.3 Right to Offset.** Any costs, including but not limited to attorney's fees, costs of remediation, and costs of delay, incurred by the City due to default of Provider, or due to the City's exercise any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before the default or the exercise of any remedies. If the offset amount is insufficient to cover

excess costs, Provider shall be liable for and shall remit promptly to the City the balance upon written demand from the City.

**7.4 Termination for Convenience.** The City reserves the right to terminate, with or without cause, this Agreement upon ninety (90) days written notice. The City shall be responsible only for those standard items or services which have been delivered and accepted. If any items being purchased are truly unique and therefore not saleable or useable for any other application, the City shall reimburse Provider for actual labor, material, and burden costs, plus a profit not to exceed 8%. Title to all materials, work in progress, and completed but undelivered goods, shall pass to the City after costs are claimed and allowed. Provider shall submit detailed cost claims in an acceptable manner and shall permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

## **8. GENERAL PROVISIONS**

**8.1 Headings.** The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

**8.2 Jurisdiction and Venue.** This Agreement shall be administered and interpreted under the laws of the State of Arizona. Provider hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

**8.3 Attorney's Fees.** If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court, including an appellate court, may adjudge reasonable as attorney fees.

**8.4 Severability.** If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

**8.5 Successors and Assigns.** No right or interest in the Agreement shall be assigned by Provider without prior written permission of the City, and no delegation of any duty of Provider shall be made without prior written permission of the City. The City shall not unreasonably withhold approval and shall notify Provider of the City's position within fifteen (15) days of receipt of written notice by Provider. This Agreement shall extend to and be binding upon the Provider, its successors and assigns, including any individual, company, partnership, or other entity with or into which the Provider shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the Provider shall sell its assets.

**8.6 Subcontracts.** No subcontract shall be entered into by Provider with any other party to furnish any service specified in this Agreement without the advance written approval of the City. All subcontracts shall comply with Federal, State and local laws and regulations that are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth in the Agreement which shall apply with equal force to the subcontract, as if the subcontractor were the Provider. Provider is responsible for contract performance whether or not subcontractors are used. The City shall not unreasonably withhold approval and shall notify Provider of the City's position within fifteen (15) days of receipt of written notice by Provider. Provider shall be responsible for executing the agreement with subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

**8.7 Conflict of Interest.** Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Provider further covenants that in the

performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

**8.8 Authority to Contract.** Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder, and that it has taken all actions necessary to authorize entering into this Agreement.

**8.9 Integration.** This Agreement represents the entire understanding of City and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.

**8.10 Non-Appropriation.** If the City Council does not appropriate funds to continue this Agreement and pay for charges under this Agreement, the City may terminate this Agreement at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations. The City agrees to give written notice of termination to the Provider at least thirty (30) days prior to any termination for a lack of funds and will pay to the Provider all approved charges incurred prior to Provider's receipt of such notice, subject to the availability of funds appropriated and budgeted by the City to fund payments under this Agreement.

**8.11 Non-Discrimination.** Provider shall not discriminate against any employee, or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 75-5 as modified by State Executive Order 99-4 or A.R.S. 41-1461 et. seq. The Provider shall be required to comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

**8.12 A.R.S. § 41-4401:** Provider warrants compliance with all Federal immigration laws and regulations relating to employees and subcontractors and warrants its compliance with A.R.S. § 41-4401 including the E-verify program. A breach of this section shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement. City retains the legal right to inspect the papers of Provider or any subcontractor employee who works on the Agreement to ensure compliance with this provision.

**8.13 Anti-Trust Violations.** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Provider. Therefore, to the extent permitted by law, Provider hereby assigns to the City any and all claims for such overcharges as to the goods or services used to fulfill this Agreement.

**8.14 Third-Party Beneficiaries.** This Agreement is entered into for the sole benefit of the City and Provider and no other parties are intended to be direct or incidental beneficiaries of this Agreement. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Provider or City to any party other than the City and Provider.

**8.15 Inspection.** All material, services or construction are subject to final inspection and acceptance by the City. The City may, at reasonable times and at its expense, inspect the plant or place of business of Provider or its subcontractor(s) which is related to the performance of this Agreement. This right of inspection and supervision shall include, but not be limited to the right of the City to audit Provider's records.

**8.16 Force Majeure.** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure.

8.16.1 The term “force majeure” means an occurrence that is unforeseeable and beyond the control of the party affected, which occurs without its fault or negligence, and which it is unable to prevent by exercising reasonable diligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, or unreasonable failures or refusal to act by government authority, and other similar occurrences. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party, in writing, of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this agreement.

8.16.2 Force majeure shall not include the following occurrences:

8.16.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer’s plant or elsewhere, or by an oversold condition of the market.

8.16.2.2 Late performance by a Subcontractor unless the delay arises directly out of a force majeure occurrence in accordance with this force majeure term and condition. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that, such delay or failure is caused by force majeure.

8.16.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing as soon as is practical, of the commencement of such delay and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed certified-return receipt and shall make a specific reference to this section, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this Agreement.

**8.17 Cooperative Use of Contract:** The Agreement may be extended to other municipalities and government agencies of the state. Any such usage by other municipalities and government agencies must be in accordance with the ordinance, charter and/or rules and regulations of the respective political entity. Any public agencies not identified within this Agreement who wish to cooperatively use the contract are subject to the approval of Vendor.

**8.18 Ownership of Documents:** All original drawings, boring logs, field data, estimates, field notes, plans, specifications, documents, reports, calculations, maps and models, and other information developed by Provider under this Agreement are instruments of service for this Agreement only and shall remain the property of the City whether the project is completed or not and shall be delivered to the City upon completion or termination of the services.

**8.19 Boycott of Israel.** Pursuant to A.R.S. § 35-393 et seq., Provider certifies that it is not currently engaged in, and agrees for the duration of this Agreement not to engage in, a boycott of Israel.

## **9. DURATION**

This Agreement shall become effective on and from the date it is executed by the parties, and shall continue for a period of three (3) consecutive years, unless sooner terminated as provided in this Agreement. The City reserves the right to unilaterally extend the period of the Agreement for ninety (90) days beyond the stated termination date. The Agreement may be extended in writing for additional one (1) year increments at the discretion of the City. The City Council authorizes the City

Manager to administratively extend this Agreement for the additional terms specified in this paragraph.

**City of Page**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Name

Attest:

\_\_\_\_\_  
Title

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Date of Execution: \_\_\_\_\_

**EXHIBIT A  
SCOPE OF WORK**

**EXHIBIT B  
FEE SCHEDULE**