



City of Prescott
 201 S. Cortez St.
 Prescott, AZ 86303

Public Relations/Social Media Marketing
 City Contract No.: 2016-029

The City of Prescott is soliciting proposals from qualified firms to provide public relations and social media marketing services for the promotion of tourism. Sealed proposals (one (1) original and two (2) copies) shall be received before 4:00 pm on Friday, September 18, 2015 at the time and place indicated in Section 2.2.

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1.0 Solicitation Specifications/Scope of Work/Proposal Evaluation

The City is seeking a qualified public relations/social media marketing agency or consultant to assist the Office of Tourism to market the City of Prescott as a tourism destination to consumers, media and the travel trade in Arizona and nationally. The agency or consultant will be responsible for the following:

Social Media

- Develop a monthly plan highlighting events, things to do, images, where to stay, where to dine, etc.
- Engage in the following outlets:
 1. Facebook: minimum three posts per week, preferably one per day in high season.
 2. Twitter: optimize list, add new journalists, bloggers, news outlets and publications, pitch events and key happening, minimum of one posts per week in the off season, two per week in the high season.
 3. You Tube: Look for opportunities to add new videos, organize videos currently on the Tourism You Tube account.
 4. Flickr: search for and add event photos, scenic shots, local businesses, etc.
 5. Pinterest: create an account and add photo boards to create searchable images for Prescott, Prescott events, businesses, etc.
 6. Other outlets as agreed.

With all social media outlets keep followers in tune and up to date with Prescott.

Public Relations

- Agency or consultant should have access to public relations software that will allow the agency/consultant to search for influencers or media outlets to get press releases distributed and pitched to the appropriate media outlet or influencer on behalf of the Prescott Office of Tourism. Preferred software vendors would include Cision or Vocus.
- Statewide media plan: The Agency or consultant will assist the Prescott Office of Tourism to build lists to pitch media by phone, email and social media. Develop a minimum of two press releases per month and help distribute press releases from local tourism partners to statewide media as appropriate.
- Newsletter: assist the Office of Tourism with the monthly newsletter distributed to consumers and media with story ideas, etc.
- National media plan: Build lists of appropriate national media that can be shared with the Prescott Office of Tourism to pitch media by phone, email and social media. Generate a minimum of one press release for national distribution per quarter.
- Pitch media to write about Prescott and gain additional exposure in print, online and broadcast media.
- If requested, assist the Prescott Office of Tourism at major media or trade shows. Travel expenses will be reimbursed by the Prescott Office of Tourism.
- Track and report monthly on media coverage (print and broadcast) of tourism-related articles or reports on Prescott. The report will include circulation and value (ad equivalency).

Desired Qualifications

The Prescott Office of Tourism is seeking an agency or consultant with experience and expertise in social media and public relations with a proven track record of obtaining state and national media coverage for their clients and the ability to design and implement an effective social media strategy. Experience with the tourism industry, and specifically with destination marketing organizations, is preferred.

The City maintains the right to use any materials generated by the agency in any other city material generated by city personnel and may do so without agency consent or approval. The City acknowledges certain legal constraints require universal releases unless cost considerations become prohibitive (such as model releases, music, photographs, etc.) and retains sole right to use materials created for the city as it sees fit.

Term

The term of this contract is for two years: October 1, 2015 to October 31, 2017.

Pricing

Based on the above listed Scope of Work, please respond with a proposed annual cost of services (billed monthly).

The response to this RFP should be specific and complete in detail, address each item by the order given in the RFP and be prepared in a straight-forward manner. One (1) original and two (2) copies of the proposal shall be submitted for purposes of evaluation.

1. Provide a cover letter identifying you or your agency’s qualifications and experience as it relates to this Proposal with emphasis on tourism related projects.
2. Provide bios on the staff that would be assigned to this account.
3. Provide any case studies/success stories on projects your agency has worked on that your feel were particularly successful as it relates to this RFQ.

The Director of Tourism will review all proposals and rank them according to the criteria outlined above.

The Prescott City Council will have the final decision based on the recommendation of the Director of Tourism.

Note: Contracting for agency services is contingent upon appropriation of funds by the Prescott City Council.

2.0 Solicitation Process Requirements/Tentative Timeline

2.1 Communications with the City

All communications regarding this solicitation should be directed to:

Don Prince, Tourism Director
 City of Prescott
 Phone: 928.777.1221
 Fax: 928.777.1258
 e-mail: don.prince@prescott-az.gov

Unless authorized by the Tourism Director, no other City official or employee is empowered to speak for the City with respect to this solicitation. Proposers are advised that the City shall not be bound by information, clarifications, or interpretations from other City officials or employees. Proposers are cautioned against contacting any City official or employee other than the City’s Tourism Director. Failure to observe this requirement may be grounds for rejection of Proposer’s proposal.

2.2 Schedule

Solicitation Advertisement	Sunday, August 9, 2015
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Q & A Deadline (Proposers)	Friday, August 28, 2015 COB
Q & A Response (City)	Friday, September 4, 2015 COB

Proposals Due	Time:	Friday, September 18, 2015 at 2:00 pm
	Location:	City of Prescott – Office of Tourism 201 S. Cortez St. Prescott, AZ 86303

2.3 Questions and Requests for Addenda

Proposers who have questions about or suggestions for changes to this solicitation may direct them to the Tourism Director in writing by fax or email.

Questions and requests for addenda must be received by the Tourism Director no later than the date and time listed in Section 2.2. Questions received after this time will not be considered or answered.

Failure by a Proposer to request clarification of any inadequacy, omission or conflict shall not relieve the Proposer of the responsibility of being in compliance with the solicitation.

2.4 City Answers and Addenda

Changes to this solicitation will be made only by formal written addenda issued by the City's Tourism Director.

Changes to this solicitation may be made by the City if, in the sole judgment of the City, the changes will not compromise the City's objectives in this acquisition.

All addenda issued by the City shall become a part of the specifications of this solicitation, and will be made part of the resulting agreement.

2.5 Proprietary Material

A Proposer shall clearly mark any proprietary information contained in its proposal with the words "proprietary information." Proposer shall not mark any Solicitation Form as proprietary. Marking all or nearly all of a proposal as proprietary may result in rejection of the proposal.

Proposers should be aware that the City is required by law to make its records available for public inspection. The Proposer, by submission of materials marked proprietary, acknowledges and agrees that the City will have no obligation to advocate for non-disclosure in any forum or any liability to the Proposer in the event that the City must legally disclose these materials.

2.6 Multiple Proposals

A Proposer may submit multiple proposals for any solicitation however; each proposal must be submitted separately (in its own complete package) from the others.

2.7 Delivery of Proposals

Sealed proposals (one (1) original and two (2) copies) must be received at the Prescott City Hall no later than the date and time listed in Section 2.2 and addressed to:

Office of Tourism
City of Prescott
201 S. Cortez St.
Prescott, AZ 86303

Proposer shall enclose proposal (one (1) original and two (2) copies) in a sealed envelope. The envelope should identify the Proposer's name, mailing address, Solicitation and Title, and the time and date due.

The City shall not consider late proposals or telegraphic (fax) or telephone proposals.

Proposer is solely responsible for ensuring that proposal(s) are delivered on time. Delays caused by any delivery service, including the U.S. Postal Service, will not be grounds for an extension of the deadline for receipt of proposals. Proposals received after the deadline will be returned unopened.

2.8 Cost of Proposals

The City shall be not be liable for any costs incurred by Proposer in the preparation and submittal of a proposal(s) in response to the solicitation or in the participation of any part of the acquisition process.

2.9 Errors in Proposals

Proposer is responsible for all errors or omission in their proposals, and any such errors or omission will not serve to diminish their obligations to the City.

2.10 Withdrawal of Proposals

A proposal may be withdrawn by written request of the Proposer prior to the proposal due date and time listed in Section 2.2. No proposal may be withdrawn for a period of 90 calendar days after the proposal due date and time.

2.11 Changes in Proposals

Prior to the proposal due date and time listed in Section 2.2, a Proposer may make changes to its proposal provided the change is initialed and dated by the Proposer. Corrections and/or modifications received after the closing time specified will not be accepted.

2.12 Rejection of Proposals

The City reserves the right to reject any and all proposals and to waive any immaterial defects and irregularities in proposals.

2.13 Disposition of Proposals

All materials submitted in response to the solicitation, including samples, shall become the property of the City upon delivery to the City.

2.14 Incorporation of Solicitation and Response in Agreement

This solicitation, including all attachments and addenda, and all promises, warranties, commitments and representations in the successful proposal shall be binding and shall become obligations of the agreement.

2.15 Protests

Any protest of the solicitation process must be filed by 5:00 p.m. on the third business day after solicitations are opened. All such protests shall be in writing, contain a complete statement of the grounds for protest, and be filed with the City Clerk's Office, 201 S. Cortez, Prescott, AZ 86303.

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 Apparent Successful Proposer(s). The City will not consider any protest based on items that 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.

2.16 Proposal Submittal

Proposal (one (1) original and two (2) copies) must be sealed and the envelope must clearly indicate the information as described in Section 2.9. Proposer must fully complete and submit the following documents:

- 1) Proposal Form A - Solicitation Response Cover Sheet
- 2) Proposal Form B - Proposal Certification
- 3) Proposal Form C - Non-Collusion Certificate
- 4) Proposal Form D - Contractor Questionnaire
- 5) Proposal Form E - Certificate of Ownership
- 6) Proposal Form F - Proposer Qualifications, Representations and Warranties

3.0 Standard Proposal Information

3.1 Default by Proposer

In case of default by the Proposer, the City of Prescott may procure the items or service from other sources and may deduct from any monies due or that may thereafter become due to the Proposer the difference between the price named in the contract or purchase order and the actual cost thereof to the City of Prescott. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.

3.2 Cash Discounts

In connection with any cash discount specified on this proposal, time will be computed from the date of complete delivery of the supplies, equipment or services as specified or from the date correct invoices are received in the City Finance office if the latter date is later than the date of delivery. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.

3.3 Litigation

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. Neither party shall be entitled to an award of attorneys' fees, either pursuant to the Contract or another other state or federal statute.

3.4 Cooperative Use of Contract

This contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the contracted vendor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

4.0 Instructions for Solicitation Forms

4.1 Form A - Solicitation Response Cover Sheet

Proposer shall complete, sign, and submit Form A as the first page of the proposal package.

4.2 Form B - Proposal Certification

Proposer shall complete, sign, and submit Form B

4.3 Form C - Non-Collusion Certificate

Proposer shall complete, sign, and submit Form C.

4.4 Form D - Contractor Questionnaire

Proposer shall complete, sign, and submit Form D.

4.5 Form E - Certificate of Ownership

Proposer shall complete, sign, and submit Form F completely and accurately stating the names and addresses of all persons, firms, corporations, partnerships or other associations having any direct or indirect financial interest in the Proposer's business and the nature and extent of each such interest.

4.6 Form F - Proposer Qualifications, Representations and Warranties,

4.6.1 Proposer shall complete and submit Solicitation Form F. Proposer shall provide additional information as required.

4.6.2 The City reserves the right to inspect any of Proposer's facilities and equipment after the proposal due date and time listed in Section 2.2. The Proposer shall make such facilities and equipment available for the City's inspection within eight business hours of the City's request. The City may require additional information concerning a Proposer's facilities, equipment, personnel, and procedures. The Proposer shall supply such information within the time noted in the City's request.

4.6.3 The City shall consider awarding agreements only to responsible Proposers. Responsible Proposers are those that have, in the sole judgment of the City, the financial ability, character, reputation, resources, skills, capability, reliability, and business integrity necessary to perform the requirements of the agreement.

4.6.4 In determination of responsibility, the City may consider all information available to the City, whether specifically provided by the Proposer in response to this solicitation or other information otherwise available to the City in evaluating the responsibility of the Proposer. Such information may include, but is not limited to, experience and history of the City with current and/or prior contracts held by the Proposer with the City or with other agencies, references provided by the Proposer to the City, information provided by the Proposer as part of the solicitation responses, and information not specifically provided by the Proposer but is otherwise available to the City and has merit in consideration of responsibility, in the opinion of the City. The evaluation of responsibility shall be determined by the City and shall be in the sole opinion of the City. Such evaluation by the City shall be final and not subject to appeal.

Furthermore, no agreement will be awarded to a Proposer if any owner of such Proposer has been convicted within the past ten years of a crime involving dishonesty or false statements, or if the Proposer has unsatisfied tax or judgment liens.

4.6.5 Proposer shall provide (2) references, a sub-contractors list (if applicable) and certify there are no unsatisfied tax liens or judgments on record. Proposer shall complete, sign, and submit Form F.

Form A - Solicitation Response Cover Sheet

City of Prescott
Solicitation Response

Solicitation Number:

Description: Public Relations and Social Media Marketing

Proposal checklist:

Original Forms A through F completed and submitted

(2) copies of proposal included

Business Name: _____

Business Address: _____

Business Phone: (____) _____

Business Contact: _____

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Form B - Proposal Certification

Proposer Name: _____

The undersigned Proposer hereby certifies as follows:

B.1 That he/she has read The City of Prescott's Solicitation, appendices, attachments and the following Addenda (if applicable) in their entirety and to the best of his/her knowledge has complied with the mandatory requirements stated therein.

Addendum	Issue Date
_____	_____
_____	_____

B.2 That he/she has had opportunity to ask questions regarding the solicitation, and that such questions having been asked, have been answered by the City.

- B.3** That the Proposer's proposal consists of the following:
1. Form A - Solicitation response cover sheet
 2. Form B - Proposal Certification
 3. Form C - Non-Collusion Certificate
 4. Form D - Contractor Questionnaire
 5. Form E - Certificate of Ownership
 6. Form F - Proposer Qualifications, Representations and Warranties

B.4 That the Proposer's proposal is valid for 90 days.

Dated this _____ **day of** _____ **2015.**

Signature

Title

Form C - Non-Collusion Certificate

Proposer Name: _____

The undersigned Proposer hereby certifies as follows:

To the best of his/her knowledge, the person, firm, association, partnership or corporation herein, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive pricing in the preparation and submission of a proposal to The City of Prescott for consideration in the award of this solicitation.

Dated this _____ **day of** _____ **2015.**

Signature

Title

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Form D - Proposer Questionnaire

Yes - No

1. Has the City of Prescott or other governmental entity incurred costs as a result of contested change order (s) from the undersigned company?
2. Has the City of Prescott or other governmental entity been involved in litigation relative to contract performance with the undersigned company?
3. Has the undersigned company failed to meet proposal specifications or time limits on other contracts?
4. Has the undersigned company abandoned a contract or refused to perform without legal cause after submitting a proposal?
5. Has the undersigned company had proposalding errors or omissions in two or more proposal submissions within a thirty-six month period?
6. Has the undersigned company failed to perform or performed unsatisfactory of two or more contracts within a thirty-six month period.
7. Does the undersigned company have adequate equipment, personnel and expertise to complete the proposed contract?
8. Does the undersigned company have a record of safety violations in two or more contracts within a thirty-six month period?
9. Does the undersigned have a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, subcontract, or in the performance of such a contract or subcontract within a ten-year period?
10. Has the undersigned company been convicted of a criminal offense within a ten-year period of embezzlement, theft, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which might affect responsibility as a municipal contractor?
11. Has the undersigned company been convicted of state or federal antitrust statues within a ten-year period arising out of submission of proposals or proposals?
12. Has the undersigned company been disbarred or a similar proceeding by another governmental entity?

If you answered "yes" to Items 1-6 or 8-12 or answered "no" to Item 7, please attach a full explanation to this questionnaire.

Company: _____

Address: _____

Name: _____

(Please print)

Title: _____

(Please print)

Signature: _____

Date: _____

Form E - Certificate of Ownership

Proposer Name: _____

The undersigned Proposer hereby certifies as follows:

To the best of his/her knowledge, the person, firm, association, partnership or corporation herein, are the only person, firms, corporations, partnerships, or other associations having any direct or indirect financial interest in the Proposer's business as legal or equitable owner, creditor (except current bills for operating expenses), or holder of any security or other evidence of indebtedness.

Dated this _____ **day of** _____ **2015.**

Signature

Title

odwyerpr.com

Form F - Proposer Qualifications, Representations and Warranties

Proposer Name: _____

The undersigned Proposer hereby certifies as follows:

- F1 Taxes and Liens** - Proposer has no unsatisfied tax or judgment lien on record.
- F2 Subcontractors** - Proposer submits as Attachment 4 to this Proposal Form G a list of all subcontractors it will use in performing the requirements of the agreement resulting from this solicitation. A subcontractor is any separate legal entity used to perform requirements of the proposed agreement. The list shall include the firm's name, contact person and title, mailing address, telephone number, fax number and a description of the service(s) to be subcontracted. Proposer shall also attach a copy of the letter from the subcontractor stating its commitment to perform the services(s) subcontracted.
- F3 References** - The City will enter into an agreement only with a Proposer(s) having a reputation of satisfactory performance. The Proposer's ability to provide timely service; knowledgeable, conscientious, and courteous staff; reasonable care and skill; invoicing consistent with contract pricing, etc., are important to the City. Proposer shall provide information for two clients, other than the City of Prescott, that presently contract with Proposer for similar goods or services:

Reference #1

Firm Name: _____
Address: _____
Contact Person: _____
Phone Number: _____

Reference #2

Firm Name: _____
Address: _____
Contact Person: _____
Phone Number: _____

Note: The proposal evaluators may contact the customer references, as well as any other customers or customer employees including The City of Prescott. A Proposer with unsatisfactory references may have its proposal rejected.

- F4 Proposer's Examination** - Proposer has made its own examination, investigation and research regarding the requirements of the solicitation including but not limited to the work to be done, services to be performed, any conditions affecting the work and services, the type and quantity of labor, equipment and facilities necessary to perform. Proposer fully understands the character of the work and services, the manner in which payment is to be made, the City of Prescott standard terms and conditions, and the solicitation. Proposer acknowledges and agrees that it has satisfied itself by its own examination, investigation and research, and that it will make no claim against the City because of erroneous estimates, statements, or interpretations made by City. Proposer hereby proposes to furnish all materials, equipment, and facilities and to perform all labor which may be required to do the work within the time required and upon the terms and conditions provided in the draft agreement and the solicitation, and at the prices as proposed.

Dated this _____ **day of** _____ **2015.**

Signature: _____ **Title:** _____

Sample General Services Contract

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GENERAL SERVICES CONTRACT

CITY CONTRACT NUMBER: 2016-029

THIS AGREEMENT, made and entered into this _____ day of _____,
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 him 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 himself, 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:

_____ ,
in a good and workmanlike and substantial manner and to the satisfaction of the City through its
Contractors and under the direction and supervision of the ** Director, or his properly authorized
agents and strictly pursuant to and in conformity with the Plans and Specifications prepared by
the Contractors for the City, and with such written modifications of the same and other
documents that may be made by the City through the ** Director or his properly authorized
agents, as provided herein.

ARTICLE II - CONTRACT DOCUMENTS: The Notice Inviting Bids, Plans, Standards
Specifications and Details, Special Conditions, Addenda, if any, and Proposal as accepted by the
Mayor and Council per Council Minutes of _____, Performance Bond,

Payment Bond, Bid Bond, Certificate of Insurance and Contract Amendments, if any, 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 initial term of the contract shall be for a period of two years. The contract may be extended for additional one year periods up to a total of one additional years, with the mutual consent of the City of Prescott and Contractor. Price changes for succeeding years shall be adjusted in accordance with the Consumer Price Index (CPI), not to exceed upwards or downwards of three (3) percent.

ARTICLE IV - COMPENSATION: Contractor shall be paid, pursuant to the provisions as set forth in the Contract documents, the total sum of _____ dollars and no cents (\$ 000.00) 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 Arizona Revised Statutes Section 34-221.

ARTICLE V - CONFLICT OF INTEREST: Pursuant to ARS Section 38-511, the City of Prescott 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 of Prescott 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 of Prescott 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 of Prescott 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 there from 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- OTHER WORK IN PROJECT AREA: The City of Prescott, 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 that the contractor encounters delay or disruption in the project schedule due to factors not wholly the fault of the contractor or within the contractors 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 XI – 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 ARS Section 34-222, conditioned upon the faithful performance of this contract in accordance with the plans, specifications and conditions herein. Such bond shall be solely for the protection of the City of Prescott. 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 ARS Section 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 ARS Section 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 XII – MISCELLANEOUS

- A. 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.
- B. 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 ARS Section 12-341.01 (A) and (B), 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.
- C. 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:
- | | |
|--------------------|----|
| Tourism Director | ** |
| City of Prescott | ** |
| 201 S. Cortez | ** |
| Prescott, AZ 86303 | |
- D. This Agreement is non-assignable by the Contractor unless by subcontract, as approved in advance by the City.
- E. This Agreement shall be construed under the laws of the State of Arizona.
- F. 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.
- G. 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.
- H. INDEMNIFICATION: To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not

limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract, Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees that arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

- I. 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.
- J. **INSURANCE:** 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:

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

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. .

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 contract. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to the ** at **, Prescott, AZ 86301. 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.

Insurance Requirements - 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, personal injury, broad form contractual liability coverage.

- 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 Legal Liability (Damage to Rented Premises) \$ 100,000

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

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

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 an additional insured with respect to liability arising out of the activities performed by, or on behalf of 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.

All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in ARS Section 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

Prior to commencing work under this Agreement, the Contractor shall provide City with evidence that it is either a “self-insured employer” or a “carrier insured employer” for Workers’ Compensation as required by ARS 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

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. In the event of a discrepancy between this Agreement and other documents incorporated into this Agreement this Agreement shall control over such other incorporated documents.
- M. 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.

IN WITNESS WHEREOF, three (3) identical counterparts of this Contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

ATTEST:

Witness, if Contractor is an Individual

Contractor

By: _____

Title: _____

City of Prescott, a municipal corporation

Marlin D. Kuykendall, Mayor

Attest:

Approved as to Form:

Dana R. DeLong, City Clerk

Jon M. Paladini, City Attorney