



THE CITY OF ASPEN

Request for Proposals

Aspen Ice Garden Design/Build for Compressor Replacement

**Proposals Due:
3:00pm, March 10, 2010**

REQUEST FOR PROPOSALS

Sealed proposals will be received at the City of Aspen Purchasing office until 3:00p.m., March 10, 2010, at which time the proposals will be opened and reviewed, for the following City of Aspen project:

Aspen Ice Garden Design/Build for Compressor Replacement

The project will include, but is not limited to: the design, construction and installation of a new compressor in the Aspen Ice Garden facility located in Aspen, Colorado.

Complete Proposal Packages are available to download at
<http://www.aspenpitkin.com/Departments/Purchasing-City-of-Aspen/Open-Bids-RFPs>

A pre-proposal conference will be held at the Aspen Ice Garden, 233 West Hyman, at 10:00a.m., February 18, 2010. Attendance at the pre-proposal conference is mandatory unless prior authorization is given by the City's Project Coordinator.

The City reserves the right to reject any or all Proposals or accept what is, in its judgment, the Proposal which is in the City's best interest. The City further reserves the right, in the best interests of the City, to waive any technical defects or irregularities in any and all Proposals submitted.

The Proposal must be placed in an envelope securely sealed therein and labeled: "Proposal for Aspen Ice Garden Design/Build for Compressor Replacement".

Discussion may be conducted with responsible Offerors who submit Proposals determined to be reasonably susceptible of being selected for award for purpose of classification to assure full understanding of, and responsiveness to the solicitation requirements.

In addition to price, the criteria set forth in the Instruction to Offerors and any specific criteria listed below, may be considered in judging which Proposal is in the best interests of the City: qualifications and experience in similar projects and with compressor design/build projects, levels of service and technical support provided, ability to meet the City's deadline, and proposed current system improvements.

BY ORDR OF THE CITY OF ASPEN, COLORADO

Rebecca Hodgson

The City of Aspen Parks and Recreation Department is accepting proposals for the design, construction and installation of new Compressors within the Aspen Ice Garden located at 233 W. Hyman Ave.

SCOPE OF OPERATIONS

The Aspen Ice Garden currently operates on a year round basis offering ice availability to various local groups to include: junior and adult hockey programs, figure skating programs, curling, and various leagues, lessons and pick up sessions for ice related activities.

SCOPE OF WORK

Abstract: The Aspen Ice Garden has been in operation since the early 1960's. This skating rink has a sheet of Ice which measures 85' X 180', a bit smaller than standard NHL rinks. The refrigeration plant is an indirect R-22 system used to cool brine under the slab. The compressors are York brand reciprocating types. In 1998 the Aspen Ice Garden's refrigerated concrete slab and piping (cold brine floor) was replaced and connected to the existing compressors. In addition a sub surface heating system was installed to prevent frost heaving of the slab. The compressors and refrigeration system are original equipment and have been well maintained. Parts and maintenance expertise are becoming scarce and costly for the old Yale compressors so the City of Aspen is seeking proposals for the design and installation of modern, technologically advanced compressors/systems. This second phase of the Aspen Ice Garden Plant Modernization is intended to: 1) improve energy efficiency, 2) standardize compressors consistent with the Vilter 400 series compressors installed in the Lewis Ice Arena in order to realize efficiencies in service, training, and inventory reductions through the interchangeability of stocked parts, 3) standardize controls with modern alarm systems capable of monitoring systems across the internet and having alarming to notifying staff after hours should a failure occur (using automated text messages, output contacts, and possibly auto-dialing), and other proposed features as may be advisable. In summary, acceptable proposals shall address, at a minimum, the following *Action Plan and Capital Considerations*:

- Improve Energy Efficiency
- Provide consistency in parts with the Lewis Ice Arena
- Maximize Waste Heat Recovery for sub surface heating, heating of the ice pit, and for pre-heating of domestic hot water where applicable.
- Provide electronics/control systems that would allow for Internet access to view status of the systems, and that provide emergency notifications when key systems are down.
- Minimizes Life Cycle Costs.
- Improves the Overall Efficiency of Plant operations
- Addresses any current or foreseen safety issues
- Includes recommendations for refrigerant changes as may be warranted due to forecast pricing and/or E.P.A. regulations related to R-22.
- Allow for ease of future upgrades as may be advisable but not currently within the scope of approved funding.

- Clear and precise specifications for all materials, equipment, sequences of operations and services proposed

Design Team should be prepared to take each component of this Design/Build planning process through to installation and start up.

PROPOSAL SUBMISSION FORMAT

Proposals must be submitted in a three-ring binder with dividers or tabs for each section.

Section I: Refrigerant Recommendation:

1. While the current system utilizes R-22, please identify specifically any refrigerant change which is being recommended in this proposal.
2. Please identify any hazards and/or benefits associated with refrigerant being recommended.
3. Please identify the approximate annual cost of material for the recommended refrigerant.
4. Please identify the availability of the refrigerant being recommended.
5. Please identify the upfront costs/savings related to making a refrigeration change.

Section II: Waste Heat Recovery:

1. Please identify what uses may be achieved in the use of waste heat recovery. Keep in mind that the existing system is using waste heat for the snowmelt pit and subsurface heat under the concrete slab, but that snow-melting is inadequate.
2. Please identify any energy efficiencies which may be achieved by upgrading the system to new compressors.

Section III. Control Panels and Connectivity to the Internet:

1. Please identify connections necessary for control panels which would allow systems to be viewed, managed, and settings changed from remote locations.
2. Please identify the platform necessary to run this type of control panel.
3. Please identify the functions of this type of control panel, and specifically address remote notification of staff for key alarms.
4. Please identify how proposed controls would integrate into the existing Recreation Department Building Management System (Johnson Controls N.A.E. based).

Section IV. Energy Efficiency:

1. Please identify the energy efficiencies of the compressor system being recommended.
2. Please identify the energy efficiencies of control panels being recommended.
3. Please identify the energy efficiencies of any waste heat recovery systems being recommended.
4. Please identify if current motors should be re-used or if Super Low-E motors would be warranted.

5. In each of the above identify the approximate reduction in energy consumption.

Section V. Life Cycle Maintenance:

1. Provide the lifecycle maintenance costs and schedule associated with each component being recommended as part of this proposal. (i.e. the compressor system, waste heat recovery systems, control panels)

Section VI. Training Provided:

1. Please provide the training provided for the operation of any and all components of this proposal.

Section VII. Design and Installation Timeline:

1. Please provide a Gant chart which lays out a proposed timeline from approval of contracts to project completion. Include timelines which identify:
 - Design
 - Demolition Plan
 - Construction Plan
 - Start Up
 - Troubleshooting
 - Training

Section VIII. Specifications of Systems Recommended:

1. Please provide the specifications of the systems being recommended to include:
 - Power Supply necessary
 - Energy Consumption on an annual basis
 - **Compressor models**
 - **Will the compressors be direct or belt drive**

Section IX. Overall Improvement to the Plant:

1. Please identify any unmentioned opportunities to improve the overall plant during the replacement of the compressor systems.
2. Please identify any known improvements the recommended systems will bring to the operation of the refrigeration plant.

Section X. Fees and Expenses:

1. Provide a breakdown of fees and expenses such that various components are broken out to identify:
 - Base component costs for the minimum replacement of the compressors

- An itemized breakdown of additional component costs such as; control panel upgrades, waste heat recovery improvements, any energy efficiency upgrades, and other items that may be offered as options.
- Labor costs associated with each component.
- Schedule of values if applicable.
- Additional costs; is travel and lodging included as part of this bid?

Section XI. References:

1. The City of Aspen would like a minimum of five (5) references of similar installations within the past 3 years. Similar installations would be considered replacement installations, not new construction.

Section XII. Technical Merit:

1. Please highlight any technical merit or expertise that would be sufficient to warrant the selection of your proposal despite an increased cost to the City of Aspen.

PROPOSAL SUBMISSION

Two paper copies and one electronic copy, on a disc compiled into a single PDF document, of the Proposal must be received by the City of Aspen Purchasing department, 130 S. Galena Street, Aspen, Colorado 81611 on or before 3:00pm, March 10, 2010. The City of Aspen cannot accept faxed Proposals.

EVALUATION CRITERIA

Proposals shall be evaluated on the following criteria:

- Qualifications and experience in similar projects
- Qualifications and experience in compressor design/build projects
- Levels of service and technical support provided
- Ability of Vendor to meet deadlines
- Consideration of proposal to improve the current system(s)
- Fees

The City reserves the right to reject any or all Proposals or accept what is, in its judgment, the Proposal which is in the City's best interest. The City further reserves the right, in the best interests of the City, to waive any technical defects or irregularities in any and all Proposals submitted.

**THE CITY OF ASPEN
INSTRUCTIONS TO OFFERORS
OF PROFESSIONAL SERVICES**

1. The City of Aspen has advertised to invite Professionals to submit sealed Proposals as more fully described in the Request for Proposals. The following instructions have been prepared to assist Offerors in the preparation of their Proposals. These instructions may be altered by the City whenever it is deemed necessary in the best interests of the City.
2. The Contract Documents for this project shall consist of the following documents:
 - A. Request for Proposals (Public Notice and Letters to Potential Offerors).
 - B. Instructions to Offerors.
 - C. Addenda, if any.
 - D. Proposal submitted by Offeror.
 - E. Proposal Bond Forms, if any.
 - F. Qualification Form, if any.
 - G. Notice of Award.
 - H. Agreement.
 - I. Scope of Work, if not set forth in the Request for Proposals.
 - J. Notice to Proceed.
3. Information contained in the Contract Documents, as completed during the contract award process, shall be the basis for the Proposals, and nothing shall be deemed to change or supplement this basis except for written revisions to the above documents issued by the City of Aspen.
4. The City of Aspen reserves the right to reject any or all Proposals or accept what is, in its judgment, the best Proposal. The City further reserves the right, in the best interests of the City, to waive any technical defects or irregularities in any and all Proposals submitted, and to negotiate contract terms with the Successful Offeror, and the right to disregard all nonconforming, nonresponsive or conditional Proposals. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
5. The cost of proposal preparation shall be borne solely by the persons or entities submitting proposals.
6. The following procedures or steps shall be followed after the issuance or publication of Request for Proposals:
 - A. Reference is made to the Request for Proposals to determine if a pre-Proposal conference will be scheduled, and if so, where and when. If a pre-Proposal conference is scheduled, attendance at the pre-Proposal conference

is mandatory unless prior authorization is given by the City. The costs of attendance at a pre-Proposal conference shall be borne entirely by the Offeror.

- B. Reference is made to the Request for Proposals to determine how complete Proposal Packages may be obtained.
- C. Before submitting a Proposal, each Offeror must (a) examine the Contract Documents thoroughly, (b) visit the site, if any, to familiarize her/himself with local conditions that may in any manner affect cost, progress or performance of the Work, (c) familiarize her/himself with federal, state and local laws, ordinances, rules and regulations that may in any manner affect costs, progress or performance of the Work; (d) familiarize her/himself with the unique weather conditions of the City of Aspen and surrounding area that may affect costs, progress or performance of Work; and (e) study and carefully correlate Offeror's observations with the Contract Documents.
- D. Reference is made to the Request for Proposals for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which have been relied upon by the the City of Aspen or a consultant in preparing any Drawings or Specifications. These reports are not guaranteed as to accuracy or completeness, nor are they part of the Contract Documents. Before submitting her/his Proposal each Offeror will, at her/his own expense, make such additional investigations and tests as the Offeror may deem necessary to determine her/his Proposal for performance of the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
- E. Reference is made to the Request for Proposals to determine the place, date, and time for delivering sealed Proposals for this project.
- F. Proposals shall be submitted at the time and place indicated in the Request for Proposals and shall be included in an opaque sealed envelope, marked with the Project title and name and address of the Offeror and accompanied by the Proposal Security referenced below and other required documents. If the Proposal is sent through the mail or other delivery system the sealed envelope shall be enclosed in a seperate envelope with the notation "PROPOSAL ENCLOSED" on the face thereof. Proposals submitted by facsimile machine (FAX) shall not be accepted or considered.
- G. Reference is made to the Request for Proposals to determine if Proposal Security shall be required for this project. If a Proposal Security is required then each proposal must be accompanied by Proposal Security made payable to the City of Aspen, in an amount of five percent (5%) of the maximum

Proposal price and in the form of a certified or bank check or a Proposal Bond (on form attached, if a form is prescribed) issued by a Surety.

The Proposal Security of the Successful Offeror will be retained until such Offeror has executed the Agreement and furnished the required Payment and Performance Bonds, if any are required by the Supplemental General Conditions, whereupon it will be returned; if the Successful Offeror fails to execute and deliver the Agreement and furnish the required Performance and Payment Bonds, if any are required, within fifteen (15) days of the Notice of Award, the City of Aspen may annul the Notice of Award and the Proposal Security of that Offeror shall be forfeited. The Proposal Security of any Offeror whom the City of Aspen believes to have a chance of receiving the award may be retained by the City of Aspen until the earlier of the seventh day after the "effective date of the Agreement" (which term is defined in the General Conditions) or the sixty first (61) day after the Proposal opening. Proposal Security of other Offerors will be returned within seven (7) days of the Proposal opening.

- H. Reference is made to the Request for Proposals for any Proposal Forms that may be required to be completed as part of the Proposal. Proposal Forms, if any are required, must be completed in ink or by a printer/typewriter. The Proposal price must be stated in words and numerals; in case of a conflict, words will take precedence. Proposals by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature. Proposals by partnerships must be executed in the partnership named and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- I. Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted at any time prior to the opening of Proposals. If, within twenty four (24) hours after Proposals are opened, any Offeror files a duly signed written notice with the City of Aspen and promptly thereafter demonstrates to the reasonable satisfaction of the City of Aspen that there was a material and substantial mistake in the preparation of her/his Proposal, that the Offeror may withdraw her/his Proposal and the Proposal Security will be returned. Thereafter that Offeror shall be disqualified from submitting a Proposal.
- J. At the place, date and time fixed for opening Proposals, all Proposals received prior to that time shall be opened and reviewed. All Proposals shall remain open for a period of thirty (30) days, but the City may, in its sole

discretion, release any Proposal and return the Proposal Security prior to that date.

- K. The City shall then evaluate each Proposal in the best interests of the City of Aspen. The proposals shall be evaluated to determine which are the most advantageous to the City of Aspen taking into consideration price, the evaluation factors set forth at Section 3-14(f) of the Aspen Municipal Code, and any factors set forth in the Request for Proposals.
 - L. Prior to accepting a Proposal, the City may decide to interview one or more Offerors to negotiate final contract terms for inclusion in the Agreement.
 - M. To demonstrate qualifications to perform the Work, each Offeror must be prepared to submit within five (5) days of a request, financial data, previous experience or evidence of authority to conduct business in the state of Colorado. Notwithstanding any language to the contrary contained in any Request for Proposals, professionals shall not be required to divulge any information they deem to be confidential regarding previous clients, work performed, or cost of said previous work. The request, if any, for financial data is intended solely to help assess the professional's capacity and qualifications to work for the City.
 - N. Upon determining the successful Offeror, the City of Aspen shall send to the Successful Offeror a Notice of Award notifying the recipient of the City's acceptance of the Offeror's Proposal, subject to the City Manager or City Council approval of the Contract Documents. The Notice of Award shall also forward to the presumptive Successful Offeror three (3) unexecuted copies of the Agreement with instructions to execute and return the same to the City within ten (10) days or risk having their Proposal declared abandoned. If the proposed Agreement shall be for an amount in excess of \$25,000.00, the City Council at its next regularly scheduled meeting following receipt by the City of the duly executed copies of the Agreement shall be asked to consider approval of the Agreement and authorize the Mayor of the City of Aspen to execute the same. If the proposed Agreement shall be in an amount equal to or less than \$25,000.00 the City Manager shall be asked to consider approval of the Agreement by executing the same.
 - O. Upon receipt of all documents required by the Notice of Award and upon approval of the Agreement by the City Council or City Manager, the Successful Offeror shall be sent a Notice to Proceed along with a copy of the Agreement duly executed by the City Manager or Mayor of the City of Aspen.
7. All purchases of supplies, construction or building materials shall not include Federal Excise Taxes or Colorado State or local sales or use taxes. The City of Aspen's State of Colorado

tax identification number is 98-04557. The City of Aspen's Federal Tax Identification Number is 84-6000563.

8. There are specific indemnity and insurance requirements which the Successful Offeror must comply with prior to the start of Work for this project. These requirements are set forth in detail in the Agreement.
9. The submission of a Proposal will constitute an incontrovertible representation by the Offeror that he has complied with every requirement of these instructions and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.
10. Reference is made to the Request for Proposals for the identity of the City of Aspen's project manager(s) who will coordinate all aspects of the selection process. All questions about the meaning or intent of the Contract Documents shall be submitted to the project manager(s) in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the project manager(s) as having received a Proposal Package. Questions received less than ten (10) days prior to the date of Proposal openings may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 11.. By submitting an offer or bid, Professional certifies and represents that at this time:
 - (i) Professional shall confirm the employment eligibility of all employees who are newly hired for employment in the United States; and
 - (ii) Professional has participated or attempted to participate in the Basic Pilot Program in order to verify that it does not employ illegal aliens.



The City of Aspen
City Attorney's Office

CITY OF ASPEN STANDARD FORM OF AGREEMENT - 2009

PROCUREMENT SUPPLY AND PROFESSIONAL SERVICES

City of Aspen Project No.: _____

AGREEMENT made as of _____ day of _____, in the year _____.

BETWEEN the City:

c/o _____

Phone: _____

Contract Amount:

Procurement:	_____
Professional Services:	_____
Total:	_____

And the Professional:

c/o _____

If this Agreement requires the City to pay an amount of money in excess of \$25,000.00 it shall not be deemed valid until it has been approved by the City Council of the City of Aspen.

City Council Approval:

Date: _____

Resolution No.: _____

For the Following Project:

Exhibits appended and made a part of this Agreement:

Exhibit A:
Exhibit B:
Exhibit C:

The City and Professional agree as set forth below.

SUPPLY PROCUREMENT

1. Purchase. Professional agrees to sell and City agrees to purchase the supplies, equipment, or materials as described in **Exhibit A**, appended hereto and by this reference incorporated herein, for the sum of set forth above.
2. Delivery. (FOB _____).
3. Contract Documents. This Agreement shall include all Contract Documents as the same are listed in the Invitation to Bid or Request for Proposals and said Contract Document are hereby made a part of this Agreement as if fully set out at length herein.
4. Warranties. (_____ [Add Warranty provisions here] _____).
5. Successors and Assigns. This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the City and the Professional respectively and their agents, representatives, employee, successors, assigns and legal representatives. Neither the City nor the Professional shall have the right to assign, transfer or sublet its interest or obligations hereunder without the written consent of the other party.

PROFESSIONAL SERVICES

6. Scope of Work. Professional shall perform in a competent and professional manner the Scope of Work as set forth at **Exhibit B** attached hereto and by this reference incorporated herein.
7. Completion. Professional shall commence Work immediately upon receipt of a written Notice to Proceed from the City and complete all phases of the Scope of Work as expeditiously as is consistent with professional skill and care and the orderly progress of the Work in a timely manner. The parties anticipate that all Work pursuant to this Agreement shall be completed no later than _____, with the installation and operation of all the equipment no later than _____. Upon request of the City, Professional shall submit, for the City's approval, a schedule for the performance of Professional's services which shall be adjusted as required as the project proceeds, and which shall include allowances for periods of time required by the City's project engineer for review and approval of submissions and for approvals of authorities having jurisdiction over the project. This schedule, when approved by the City, shall not, except for reasonable cause, be exceeded by the Professional.
8. Payment. In consideration of the work performed, City shall pay Professional on a time and expense basis for all work performed. The hourly rates for work performed by Professional shall not exceed those hourly rates set forth at **Exhibit C** appended hereto. Except as otherwise mutually agreed to by the parties the payments made to Professional shall not initially exceed the amount set forth above. Professional shall submit, in timely fashion, invoices for work performed. The City shall review such invoices and, if they are considered incorrect or untimely, the City shall review the matter with Professional within ten days from receipt of the Professional's bill.
9. Non-Assignability. Both parties recognize that this Agreement is one for personal services and cannot be transferred, assigned, or sublet by either party without prior written consent of the other. Sub-Contracting, if authorized, shall not relieve the Professional of any of the responsibilities or obligations under this Agreement. Professional shall be and remain solely responsible to the City

for the acts, errors, omissions or neglect of any subcontractors' officers, agents and employees, each of whom shall, for this purpose be deemed to be an agent or employee of the Professional to the extent of the subcontract. The City shall not be obligated to pay or be liable for payment of any sums due which may be due to any sub-contractor.

10. Termination of Procurement. The sale contemplated by this Agreement may be canceled by the City prior to acceptance by the City whenever for any reason and in its sole discretion the City shall determine that such cancellation is in its best interests and convenience.

11. Termination of Professional Services. The Professional or the City may terminate the Professional Services component of this Agreement, without specifying the reason therefor, by giving notice, in writing, addressed to the other party, specifying the effective date of the termination. No fees shall be earned after the effective date of the termination. Upon any termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material prepared by the Professional pursuant to this Agreement shall become the property of the City. Notwithstanding the above, Professional shall not be relieved of any liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Professional, and the City may withhold any payments to the Professional for the purposes of set-off until such time as the exact amount of damages due the City from the Professional may be determined.

12. Independent Contractor Status. It is expressly acknowledged and understood by the parties that nothing contained in this agreement shall result in, or be construed as establishing an employment relationship. Professional shall be, and shall perform as, an independent Contractor who agrees to use his or her best efforts to provide the said services on behalf of the City. No agent, employee, or servant of Professional shall be, or shall be deemed to be, the employee, agent or servant of the City. City is interested only in the results obtained under this contract. The manner and means of conducting the work are under the sole control of Professional. None of the benefits provided by City to its employees including, but not limited to, workers' compensation insurance and unemployment insurance, are available from City to the employees, agents or servants of Professional. Professional shall be solely and entirely responsible for its acts and for the acts of Professional's agents, employees, servants and subcontractors during the performance of this contract. Professional shall indemnify City against all liability and loss in connection with, and shall assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax law, with respect to Professional and/or Professional's employees engaged in the performance of the services agreed to herein.

13. Indemnification. Professional agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Professional, any subcontractor of the Professional, or any officer, employee, representative, or agent of the Professional or of any subcontractor of the Professional, or which arises out of any workmen's compensation claim of any employee of the Professional or of any employee of any subcontractor of the Professional. The Professional agrees to investigate, handle, respond to, and to provide defense

for and defend against, any such liability, claims or demands at the sole expense of the Professional, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands. If it is determined by the final judgment of a court of competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the act, omission, or other fault of the City, its officers, or its employees, the City shall reimburse the Professional for the portion of the judgment attributable to such act, omission, or other fault of the City, its officers, or employees.

14. Professional's Insurance.

(a) Professional agrees to procure and maintain, at its own expense, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Professional pursuant to Section 8 above. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The Professional shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 8 above by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.

(b) Professional shall procure and maintain, and shall cause any subcontractor of the Professional to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurance acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Professional pursuant to Section 8 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(i) *Workers' Compensation* insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, and *Employers' Liability* insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) disease - each employee. Evidence of qualified self-insured status may be substituted for the Workers' Compensation requirements of this paragraph.

(ii) *Commercial General Liability* insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

(iii) *Comprehensive Automobile Liability* insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate with respect to each Professional's owned, hired and non-owned vehicles assigned to or used in performance of the Scope of Work. The policy

shall contain a severability of interests provision. If the Professional has no owned automobiles, the requirements of this Section shall be met by each employee of the Professional providing services to the City under this contract.

(iv) *Professional Liability* insurance with the minimum limits of ONE MILLION DOLLARS (\$1,000,000) each claim and ONE MILLION DOLLARS (\$1,000,000) aggregate.

(c) The policy or policies required above shall be endorsed to include the City and the City's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers or employees, or carried by or provided through any insurance pool of the City, shall be excess and not contributory insurance to that provided by Professional. No additional insured endorsement to the policy required above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Professional shall be solely responsible for any deductible losses under any policy required above.

(d) The certificate of insurance provided by the City shall be completed by the Professional's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the contract. No other form of certificate shall be used. The certificate shall identify this contract and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.

(e) Failure on the part of the Professional to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which City may immediately terminate this contract, or at its discretion City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by City shall be repaid by Professional to City upon demand, or City may offset the cost of the premiums against monies due to Professional from City.

(f) City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

(g) The parties hereto understand and agree that City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$150,000.00 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to City, its officers, or its employees.

15. City's Insurance. The parties hereto understand that the City is a member of the Colorado Intergovernmental Risk Sharing Agency (CIRSA) and as such participates in the CIRSA Property/Casualty Pool. Copies of the CIRSA policies and manual are kept at the City of Aspen Finance Department and are available to Professional for inspection during normal business hours. City makes no representations whatsoever with respect to specific coverages offered by CIRSA. City

shall provide Professional reasonable notice of any changes in its membership or participation in CIRSA.

16. Completeness of Agreement. It is expressly agreed that this agreement contains the entire undertaking of the parties relevant to the subject matter thereof and there are no verbal or written representations, agreements, warranties or promises pertaining to the project matter thereof not expressly incorporated in this writing.

17. Notice. Any written notices as called for herein may be hand delivered or mailed by certified mail return receipt requested to the respective persons and/or addresses listed above.

18. Non-Discrimination. No discrimination because of race, color, creed, sex, marital status, affectional or sexual orientation, family responsibility, national origin, ancestry, handicap, or religion shall be made in the employment of persons to perform services under this contract. Professional agrees to meet all of the requirements of City's municipal code, Section 13-98, pertaining to non-discrimination in employment.

19. Waiver. The waiver by the City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term. No term, covenant, or condition of this Agreement can be waived except by the written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of any term, covenant, or condition to be performed by Professional to which the same may apply and, until complete performance by Professional of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

20. Execution of Agreement by City. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns. Notwithstanding anything to the contrary contained herein, this Agreement shall not be binding upon the City unless duly executed by the Mayor of the City of Aspen (or a duly authorized official in his absence) following a Motion or Resolution of the Council of the City of Aspen authorizing the Mayor (or a duly authorized official in his absence) to execute the same.

16. Illegal Aliens – CRS 8-17.5-101 & 24-76.5-101.

(a) Purpose. During the 2006 Colorado legislative session, the Legislature passed House Bills 06-1343 (subsequently amended by HB 07-1073) and 06-1023 that added new statutes relating to the employment of and contracting with illegal aliens. These new laws prohibit all state agencies and political subdivisions, including the City of Aspen, from knowingly hiring an illegal alien to perform work under a contract, or to knowingly contract with a subcontractor who knowingly hires with an illegal alien to perform work under the contract. The new laws also require that all contracts for services include certain specific language as set forth in the statutes. The following terms and conditions have been designed to comply with the requirements of this new law.

(b) Definitions. The following terms are defined in the new law and by this reference are incorporated herein and in any contract for services entered into with the City of Aspen.

“Basic Pilot Program” means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.

“Public Contract for Services” means this Agreement.

“Services” means the furnishing of labor, time, or effort by a Contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

(c) By signing this document, Professional certifies and represents that at this time:

(i) Professional shall confirm the employment eligibility of all employees who are newly hired for employment in the United States; and

(ii) Professional has participated or attempted to participate in the Basic Pilot Program in order to verify that new employees are not employ illegal aliens.

(d) Professional hereby confirms that:

(i) Professional shall not knowingly employ or contract new employees without confirming the employment eligibility of all such employees hired for employment in the United States under the Public Contract for Services.

(ii) Professional shall not enter into a contract with a subcontractor that fails to confirm to the Professional that the subcontractor shall not knowingly hire new employees without confirming their employment eligibility for employment in the United States under the Public Contract for Services.

(iii) Professional has verified or has attempted to verify through participation in the Federal Basic Pilot Program that Professional does not employ any new employees who are not eligible for employment in the United States; and if Professional has not been accepted into the Federal Basic Pilot Program prior to entering into the Public Contract for Services, Professional shall forthwith apply to participate in the Federal Basic Pilot Program and shall in writing verify such application within five (5) days of the date of the Public Contract. Professional shall continue to apply to participate in the Federal Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Professional is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Federal Basic Pilot Program is discontinued.

(iv) Professional shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the Public Contract for Services is being performed.

(v) If Professional obtains actual knowledge that a subcontractor performing work under the Public Contract for Services knowingly employs or contracts with a new employee who is an illegal alien, Professional shall:

(1) Notify such subcontractor and the City of Aspen within three days that Professional has actual knowledge that the subcontractor has newly employed or contracted with an illegal alien; and

(2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the new employee who is an illegal alien; except that Professional shall not terminate the Public Contract for Services with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) Professional shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

(vii) If Professional violates any provision of the Public Contract for Services pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City of Aspen may terminate the Public Contract for Services. If the Public Contract for Services is so terminated, Contractor shall be liable for actual and consequential damages to the City of Aspen arising out of Professional's violation of Subsection 8-17.5-102, C.R.S.

(ix) If Professional operates as a sole proprietor, Professional hereby swears or affirms under penalty of perjury that the Professional (1) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law, (2) shall comply with the provisions of CRS 24-76.5-101 *et seq.*, and (3) shall produce one of the forms of identification required by CRS 24-76.5-103 prior to the effective date of this Agreement.

21. Warranties Against Contingent Fees, Gratuities, Kickbacks and Conflicts of Interest.

(a) Professional warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Professional for the purpose of securing business.

(b) Professional agrees not to give any employee of the City a gratuity or any offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for

ruling, determination, claim or controversy, or other particular matter, pertaining to this Agreement, or to any solicitation or proposal therefore.

(c) Professional represents that no official, officer, employee or representative of the City during the term of this Agreement has or one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof, except those that may have been disclosed at the time City Council approved the execution of this Agreement.

(d) In addition to other remedies it may have for breach of the prohibitions against contingent fees, gratuities, kickbacks and conflict of interest, the City shall have the right to:

1. Cancel this Purchase Agreement without any liability by the City;
2. Debar or suspend the offending parties from being a Professional, contractor or subcontractor under City contracts;
3. Deduct from the contract price or consideration, or otherwise recover, the value of anything transferred or received by the Professional; and
4. Recover such value from the offending parties.

22. Fund Availability. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Agreement contemplates the City utilizing state or federal funds to meet its obligations herein, this Agreement shall be contingent upon the availability of those funds for payment pursuant to the terms of this Agreement.

23. General Terms.

(a) It is agreed that neither this Agreement nor any of its terms, provisions, conditions, representations or covenants can be modified, changed, terminated or amended, waived, superseded or extended except by appropriate written instrument fully executed by the parties.

(b) If any of the provisions of this Agreement shall be held invalid, illegal or unenforceable it shall not affect or impair the validity, legality or enforceability of any other provision.

(c) The parties acknowledge and understand that there are no conditions or limitations to this understanding except those as contained herein at the time of the execution hereof and that after execution no alteration, change or modification shall be made except upon a writing signed by the parties.

(d) This Agreement shall be governed by the laws of the State of Colorado as from time to time in effect.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three copies each of which shall be deemed an original on the date first written above.

CITY OF ASPEN, COLORADO:

[Signature]

By: _____
[Name]

Title: _____

Date: _____

PROFESSIONAL:

[Signature]

By: _____
[Name]

Title: _____

Date: _____

Approved as to form:

City Attorney's Office

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EXHIBIT A

EXHIBIT B

Scope of Work

EXHIBIT C

Fee Schedule