

TABLE OF CONTENTS

Part	Page#
I. PUBLIC NOTICE	2
II. INSTRUCTIONS TO RESPONDENTS.....	3
General	3
Arizona Registration.....	3
Content of Statement	3
Pre-Proposal Conference.....	3
Delivery of Statements	3
Interviews	3
Evaluation Criteria and Basis for Award	4
Form and Execution of Contract	4
Delivery of Materials.....	4
Interpretation of SOQ.....	4
Examination of Existing Facilities.....	4
Non-Disclosure of Data, Regulations and Obligations.....	4
III. STATEMENT OF QUALIFICATIONS ORGANIZATION and FORMAT	5
Section 1 – Qualifications/Experience of Firms on Team	5
Section 2 – Understanding of the Project and Approach to Performing Required Services	5
Section 3 – Qualifications of Proposed Project Manager	6
Section 4 – Meaningful Local Participation	6
Evaluation Criteria Summary	6
ATTACHMENT A - Scope of Work.....	7
ATTACHMENT B – Sample Agreement.....	11
EXHIBIT A – Flood Control Site Plan.....	22
EXHIBIT B – City of Flagstaff Space Planning Final Report.....	23
EXHIBIT C – City of Flagstaff Final Report Appendix I.....	24

I. PUBLIC NOTICE

City of Flagstaff – Public Works Division

NOTICE of REQUEST for STATEMENT of QUALIFICATIONS (RSOQ) #29068

New Public Works Maintenance/Administrative Facility – Project No. 01-09003

The Public Works Division for and on behalf of, the City of Flagstaff, is seeking Statements of Qualifications (SOQ's) from Arizona licensed Design/Engineering/Architectural Professionals for Professional Services to prepare:

A complete site survey, conceptual site plan and facility layout, preliminary building elevations, preliminary grading plans, utility availability assessments, off site roadway modifications, preliminary landscape plans, and other related work. Prepare plans and packages suitable for conceptual Development Review for both the City of Flagstaff and Coconino County jurisdictions. For any concept designs recommended, the Consultant shall prepare and provide concept drawings and cost estimates, including acquisition and all other costs that can reasonably be anticipated, such that the estimates can be relied upon as the basis of financial planning.

SCHEDULE OF STATEMENT DEADLINES

Advertise for Services: April 29 & May 3, 2009

Pre-Statement Meeting: 9:00 A.M. May 5, 2009
City Hall – Council Conference Room
211 W. Aspen Avenue
Flagstaff, AZ 86001

Statements Due: 3:00 p.m. May 14, 2009

Consultant Interviews (if necessary) Week of May 18, 2009

Anticipated Award of Professional Services Contract: June 16, 2009

Sealed Statements may be **mailed** to: City of Flagstaff Purchasing Department, Attn: Patrick Brown, Senior Procurement Specialist, 211 West Aspen Avenue, Flagstaff AZ. 86001, or may be **hand delivered** to: City of Flagstaff Purchasing Department, Attn: Patrick Brown, Senior Procurement Specialist, 211 West Aspen Avenue, Flagstaff AZ., with the understanding that materials must be in hand by 3:00 p.m. May 14, 2009. All Statements must be labeled with RSOQ Number and Title. **Statements received after that time and date will be considered non-responsive and will be returned unopened.**

Additional information and/or Request for Statement of Qualifications packages may be obtained at the office of City of Flagstaff Public Works Division, 211 W. Aspen Avenue, Flagstaff, AZ 86001, or by e-mailing a request to: Dan Holmes, Senior Project Manager, dholmes@flagstaffaz.gov. (928) 779-7685 ext. 7235.

The City of Flagstaff reserves the right to reject any or all Statements, to waive or decline to waive irregularities in any Statement, or to withhold the award for any reason it may determine.

CITY OF FLAGSTAFF

Erik Solberg, Public Works Director

Published: April 29 & May 3, 2009

II. INSTRUCTIONS TO RESPONDENTS

GENERAL

All Statements should follow the format and sequence described in the paragraphs below; this will allow a standard basis for evaluation by a designated Evaluation Committee. Failure to follow the instructions regarding format may result in rejection of the Statement.

For the purposes of this request for SOQ's, the City of Flagstaff is hereinafter referred to as 'the City'.

ARIZONA REGISTRATION

Statements will only be considered from firms with a responsible party who is duly registered in the State of Arizona with the State Board of Technical Registration.

CONTENT OF STATEMENT

The Statement should display clearly and accurately the experience, knowledge, and capability of the respondent to meet the requirements of this SOQ. Seven (7) copies of the Statement are required.

The Statement should be fully self-contained, without addenda, and should follow the format outlined in Part III of this SOQ. Presentations within the Statement should reflect consideration for the specific evaluation criteria included at the conclusion of Part III of this SOQ.

PRE-STATEMENT MEETING

A pre-statement conference will be scheduled **for Tuesday, May 5, 2009 at 9:00 A.M.** at City Hall – in the Council Conference Room located at 211 W. Aspen Avenue in Flagstaff. The purpose of the conference is to afford interested firms the opportunity of inquiring as to the specifics of this contract. Appropriate representatives from the City of Flagstaff will be present. Attendance is not mandatory, however no minutes will be published.

DELIVERY OF STATEMENTS

Sealed Statements may be **mailed** to: City of Flagstaff Purchasing Department, Attn: Patrick Brown, Senior Procurement Specialist, 211 West Aspen Avenue, Flagstaff AZ. 86001, or may be **hand delivered** to: City of Flagstaff Purchasing Department, Attn: Patrick Brown, Senior Procurement Specialist, 211 West Aspen Avenue, Flagstaff AZ., with the understanding that materials must be in hand by 3:00 p.m. May 14, 2009. All Statements must be labeled with RSOQ Number and Title. **Statements received after that time and date will be considered non-responsive and will be returned unopened.**

No electronically transmitted Statements or electronically transmitted modifications of Statements will be considered. Statements received after the designated submittal deadline will be considered non-responsive and will be returned unopened.

INTERVIEWS

Respondents may be requested to participate in one interview with the Evaluation Committee. A maximum of three firms may be selected for interviews.

Interviews, if conducted, will be for a maximum of 60 minutes as follows:

15 minutes: Respondent may make a presentation to supplement the Statement information for the Evaluation Committee.

45 minutes: Evaluation Committee question and answer time.

EVALUATION CRITERIA and BASIS FOR AWARD

The Evaluation Committee as established by the City will determine a recommendation for award. The qualifying criteria included in Part III will be used as the basis of this recommendation. The City will then negotiate with the selected firm for fee compensation that is determined to be fair and reasonable based on final agreed upon scope. Award of contract will be contingent upon mutually agreeable fee/scope of services negotiations.

FORM AND EXECUTION OF CONTRACT

It is anticipated that the City and the selected firm will enter into a contract for services the week of June 15, 2009. The contract form for services will be the City of Flagstaff's standard form of **Agreement for Consultant Services**. (See Attachment C).

DELIVERY OF MATERIALS

The firm to which the City awards a contract shall, within 10 days after receipt of Notice of Award, sign and deliver signed copies of the contract as well as certificates evidencing the required insurance coverage's. Minimum insurance coverage's shall be as specified in Attachment B. All policies of insurance shall be reviewed and approved by the City before the successful respondent may proceed with the services.

INTERPRETATION OF REQUESTS FOR SOQ BEFORE STATEMENT SUBMISSION

Respondents who desire further clarification of the Project scope, conditions or requirements may attend the Pre-Statement Meeting, scheduled as shown in the Public Notice, with the City's designated Project Manager. Requests for individual meetings prior to the statement due date will not be granted.

EXAMINATION OF EXISTING FACILITIES

Each respondent is fully responsible for, or accepts the consequences of waiving the responsibility for, visiting the City and becoming familiar with existing conditions and limitations under which the contracted services are to be performed, prior to submitting a Statement.

NON-DISCLOSURE OF DATA , REGULATIONS and OBLIGATIONS

Statements in response to this SOQ may contain data that the respondent does not wish to have disclosed for any purpose other than evaluation of the Statement. If so, the respondent must clearly identify those pages of the Statement that are to be restricted. The City assumes no liability for disclosure or use of unmarked data. Unless identified, information submitted in response to this Request for SOQ may be disclosed pursuant to the Freedom of Information Act and applicable Arizona Revised Statutes.

Should this SOQ result in a contract, the terms, clauses, and conditions required by City of Flagstaff procurement regulations shall apply to the contract.

This Request for SOQ does not obligate the City to pay any costs incurred in the preparation and/or submission of any Statements or any subsequent presentations or interviews, nor to enter into a contract with any of the Respondents.

III. STATEMENT ORGANIZATION and FORMAT

The Evaluation Committee will evaluate firms submitting responses to this request for SOQ's based on the information provided in the Statements of Qualifications (SOQ) and interviews as necessary. To allow for a standard basis of evaluation, all SOQ's are requested to follow a similar format. SOQ's shall not exceed fifteen (15) pages **total** in length excluding title and front and back cover pages. Total allowable pages shall be single-sided 8 1/2" x 11" with the exception that up to one page may consist of an 11" x 17" fold-out. SOQ's should be organized with tabbed sections/dividers (excluded from page count) as follows:

Cover:

The cover should contain the following relevant data as a minimum:

- Statement indicating response to: SOQ for New Public Works Maintenance/Administrative Facility
- Project No. 01-09003
- Submittal date
- company name (and logo if desired)
- other information/graphics as desired

Title Page:

Include Firm's name, address, e-mail/website address(es), phone and FAX numbers and name(s) of principals.

Executive Summary:

Address issues of experience, number of office personnel by discipline, ability and commitment to respond completely to the project scope, ability to keep design on schedule and within budget and local availability of resources.

SECTION 1.) Qualifications/Experience of Firms on Team

Minimum 0 points – Maximum 30 points

- A. Provide a general description of the firm and/or team that is proposing to provide professional services on the project. Provide an organizational chart that shows key personnel and identifies the location from which they will perform their work.
- B. Identify at least three projects of comparable character, size, budget and complexity in which the firm/team served as prime consultant within the previous five years. Special consideration will be given to firms that have provided professional design or planning services on similar successful projects involving municipal maintenance and administrative facilities.
- C. For each key person identified, list their length of time with the firm and at least two comparable projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the firm, provide just the project name and the role of the key person.

SECTION 2.) Understanding of the Project and Approach to Performing the Required Services

Minimum 0 points – Maximum 30 points

- A. Discuss the major issues your team has identified on this project and how you intend to address those issues.
- B. Discuss the team's approach to achieving project goals and development of creative solutions.

SECTION 3.) Qualifications of Proposed Project Manager

Minimum 0 points – Maximum 20 points

- A. Provide up to three examples for the proposed Project Manager that demonstrates experience as a lead on similar project.
- B. Provide listing of professional licenses and any accreditation for the proposed Project Manager, including year received. Please include licenses that were obtained in the State of Arizona only.

SECTION 4.) Meaningful Local Participation

Minimum 0 points – Maximum 25 points

- A. Describe which locally based firms will be a part of the services team and what roles they are expected to fill on the project.
- B. Discuss how your team intends to deal with local development regulations and local codes in preparing concept design layouts and site plans.

EVALUATION CRITERIA

Responses from respondents will be ranked based on points as detailed below

<u>Section as described above:</u>	<u>Maximum Points Available:</u>
1. Qualifications/Experience of Firms on Team	30
2. Understanding of the Project and Approach to Performing the Required Services	30
3. Qualifications of Proposed Project Manager	20
4. Meaningful Local Participation	25
Total Maximum Achievable Points:	105

Attachment A

Scope of Work

Request for Statement of Qualifications

New Public Works Maintenance/Administrative Facility

Flagstaff, Arizona

April 2009

Scope of Work

1.0 GENERAL INFORMATION

The existing Public Works Division's maintenance and administrative functions currently operate from multiple locations throughout the City. The existing Public Works maintenance yard is located on Mogollon Street in what is now a residential neighborhood. This location is no longer appropriate due to general age, traffic flow of large equipment in a residential area, insufficient site space and a lack of covered parking for valuable equipment used by the Division. Administrative functions are carried out from several distinct buildings in the downtown area, causing physical separation of personnel conducting related and often interdependent functions. A need exists to relocate all Public Works maintenance and administrative facilities to a single location, providing increased efficiencies in land use, personnel productivity and building expenses.

The scope of work will include completion of studies and conceptual designs to determine the feasibility and cost of developing a portion of a parcel known as the "McCallister Parcel" as a new Public Works Facility including Public Works administration, Parks administration, Sustainability and Environmental Management, Facilities Maintenance, Streets, Parks, Fleet Shop, Environmental Services, an Emergency Operations Center, new City warehouse, records storage and retention, fueling facility, wash rack, material storage and other related functions. It may also be desired to provide office space for Utilities Division staff within the administrative building. The conceptual designs and costs will be utilized as a basis for presentation to voters of a bond election in November of 2010 to finance construction of the facilities. Participation and involvement of personnel associated with these functions will be vital to the success of this effort.

1.1 PROJECT LOCATION

The project is located at the west boundary of the Flagstaff city limits adjacent to Route 66 (B40) west of the Woody Mountain intersection on Assessor's Parcel Numbers 112-01-001C and 112-01-002. It is anticipated that the majority of site development will be on a portion of Parcel 112-01-001C. This is a large, City owned parcel with a portion currently in use as a detention basin. A site survey of the parcel, prepared by the U. S. Army Corps of Engineers is available for down load at the City of Flagstaff Purchasing web site as a related document to this RSOQ.

1.2 PROJECT DESCRIPTION

It is currently anticipated that the project will comprise multiple structures determined by function. It is desired that all administrative and service personnel operate from a single structure. It is anticipated that this will be a two story structure with office/meeting space on the upper level with appropriate service shops, break space and facilities on the ground level. Other structures will be enclosed steel buildings where appropriate or covered steel canopies for equipment requiring a lesser degree of protection.

In accordance with City policy, the administration building is to be designed to obtain a LEED Silver certification from the United States Green Building Council (USGBC). Building location, orientation and cost estimates shall all reflect this project requirement.

A draft space planning study and needs assessment for all City facilities has been prepared by fm Solutions of Phoenix, Arizona which includes space requirements for all Public Works sections, types of buildings required, floor areas required and other requirements. A copy of this draft document is available for down load at the City of Flagstaff Purchasing web site as a related document to this RSOQ.

1.3 PROJECT COST ESTIMATES

A crucial element of this study will be a detailed estimate of total costs to design and construct the desired facilities. This estimate should include design and development review, permitting, actual construction, construction management and any other related costs. Cost estimates shall include, but not be limited to, site development, site utilities, utility relocations (if any), drainage, roadways, lighting, landscaping, earthwork and other significant components as agreed upon.

Cost estimates shall take into account construction conditions typical in the Flagstaff area including seasonal considerations, high elevation climate, presence of rock substrate, presence of clays, and building costs which are typically higher than some other communities in Arizona.

1.4 LENGTH OF SERVICES

Services for this project must be complete no later than November 1, 2009. The length of services for this concept study will be approximately five months, inclusive of all agency reviews.

1.5 PROJECT DELIVERABLES

All project deliverables shall be submitted in both digital format and hard copies. It is anticipated that a total of four increasingly detailed submittals will be made through the course of concept design development including:

Initial Submittal

- Site plan including results of boundary and topographic survey. Preliminary site layout of all building footprints, service facilities, driveway entrances, traffic circulation, limits of pavements and proposed parking areas. Determine need and extent of off site improvements to Route 66 to provide safe access into and out of the site.

Second Submittal

- Site plan including results of boundary and topographic survey. Revised site layout of all building footprints, service facilities, driveway entrances, traffic circulation, limits of pavements and proposed parking areas which will reflect comments on the initial submittal provided by users of the facility. Provide preliminary grading and drainage concept plans. Preliminary floor plans shall be prepared for all buildings within the facility. Provide preliminary architectural elevations for the administration building including proposed construction materials and finishes and proposed landscape plans. Provide a conceptual cost estimate for the facilities as currently developed. Prepare and submit concept development review packages for both City and County development review bodies and attend agency review meetings.

Third Submittal

- All items from the second submittal revised to reflect review comments provided by users on the second submittal. Refine architectural elevations and floor plans to include user comments. Provide a pre-final cost estimate for the entire facility.

Fourth Submittal

- This will be the last submittal and shall include final site layout, final grading and drainage plans, final floor plans for each building, paving and parking plans, final building elevations and final paving plans. Prepare a final cost estimate based upon final building and site layout.

It is anticipated that after each submittal, users will review the deliverables and prepare comments on the site layout and building plans. The successful consultant will then be required to attend review meetings to discuss revisions and comments with user staff.

1.6 SCHEDULE

Consultant shall prepare an initial schedule for this scope of work. The schedule shall identify tasks and duration of each task to be performed and show milestone dates for each submittal listed above. The schedule shall be utilized to monitor project progress and to document the anticipated project timeline relative to payment for services.

1.7 PROGRESS MEETINGS

Consultant shall attend project review meetings with City staff subsequent to each submittal noted in section 1.5 above to discuss necessary revisions/additions to the documents provided. In addition, a project kick off meeting will be held prior to commencement of the work to further define and clarify the scope of work. Additional meetings with the project manager will be held as necessary.

The consultant will prepare the agenda for each meeting. Minutes will be recorded and distributed by the consultant to City staff within ten calendar days of each meeting.

ATTACHMENT B

SAMPLE AGREEMENT

**SERVICE AGREEMENT
FOR
NEW PUBLIC WORKS MAINTENANCE/ADMINISTRATIVE FACILITY

CITY OF FLAGSTAFF
and**

This Agreement for the New Public Works Maintenance/Administrative Facility Concept Design services ("Agreement") is made by and between the City of Flagstaff ("City"), an Arizona municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and [Party's Name], [Form of organization], with offices at [Party's address] ("Provider"), effective as of the date written below.

RECITALS

- A. The City desires to enter into this Agreement in order to obtain services of a consultant for the New Public Works Maintenance/Administrative Facility Concept Design, as outlined in the Scope of Work/Specifications section of the RFP document; and
- B. Provider has available and offers to provide the personnel necessary to provide said services within the required time in accordance with the Scope of Services included in this Agreement;

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

1. SERVICES TO BE PERFORMED BY PROVIDER

Provider agrees to perform the following services:

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

2. COMPENSATION OF PROVIDER

Provider agrees to provide all of the services set forth in Exhibit "A" for prices not to exceed the amounts set forth in the fee/price schedule, attached as Exhibit "B".

3. RIGHTS AND OBLIGATIONS OF PROVIDER

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

expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement.

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

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

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

4. NOTICE PROVISIONS

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

To the City's Authorized Representative
(Dan Holmes):

Patrick Brown
Senior Procurement Specialist
City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001

To Provider:

Provider's representative's name, title
Provider's name, e.g. name of corporation
Address Line 1
Address Line 2
City, State Zip Code

5. INDEMNIFICATION

To the fullest extent permitted by law, Provider shall indemnify, defend, save and hold harmless the City of Flagstaff and its officers, officials, agents, and employees ("Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) ("Claims") including claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Provider or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Provider to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Provider from and against any and all claims. It is agreed that Provider shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Provider shall waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by Provider for the City.

6. INSURANCE

Provider and subcontractors shall procure and maintain insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Agreement by the Provider, Provider's agents, representatives, employees or contractors until all of their obligations under this Agreement have

been discharged, including any warranty periods. The insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City does not represent or warrant that the minimum limits set forth in this Agreement are sufficient to protect the Provider from liabilities that might arise out of this Agreement, and Provider is free to purchase such additional insurance as Provider may determine is necessary.

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

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

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

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

Combined Single Limit Per Accident for Bodily Injury and Property Damage	\$1,000,000
---	-------------

6.1.3. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000

6.1.4. Professional Liability \$1,000,000

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

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

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

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

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

6.3.4. The Provider's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained

by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Provider's insurance and shall not contribute to it.

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

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

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

6.6 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. When cancellation is for non-payment of premium, then at least ten (10) days' prior notice shall be given to the City. Notices required by this section shall be sent directly to Patrick Brown, Senior Procurement Specialist, City of Flagstaff, 211 W. Aspen Avenue, Flagstaff, Arizona 86001.

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

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

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

6.8.2 All certificates of insurance shall be sent directly to Patrick Brown, Senior Procurement Specialist, 211 West Aspen Avenue, Flagstaff, Arizona 86001. The City project/contract number and project description shall be noted on the certificates of insurance. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Agreement at any time. The City shall not be obligated, however, to review any insurance policies or to advise Provider of any deficiencies in such policies and endorsements. The City's receipt of Provider's policies or endorsements shall not relieve Provider from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Provider's obligations under this Agreement.

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

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

7. DEFAULT AND TERMINATION

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

7.1.1 Any material misrepresentation made by Provider to the City;

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

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

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

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

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

7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;

7.1.2.6 Unsatisfactory performance as judged by the Contract Administrator;

7.1.2.7 Failure to provide the City, upon request, with adequate assurance of future performance;

7.1.2.8 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and

7.1.2.9 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies.

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

7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;

7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;

7.2.1.3 The right to monetary damages;

7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;

7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the City; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

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

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

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

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

8. GENERAL PROVISIONS

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

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

8.3 Attorney's Fees. Subject to Section 8.11, if suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court, including an appellate court, may adjudge reasonable as attorney fees.

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

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

8.6 Subcontracts. No subcontract shall be entered into by Provider with any other party to furnish any service specified in this Agreement without the advance written approval of the City. All subcontracts shall comply with Federal, State and local laws and regulations that are applicable to the services covered by the

subcontract and shall include all the terms and conditions set forth in the Agreement which shall apply with equal force to the subcontract, as if the subcontractor were the Provider. Provider is responsible for contract performance whether or not subcontractors are used. The City shall not unreasonably withhold approval and shall notify Provider of the City's position within fifteen (15) days of receipt of written notice by Provider. Provider shall be responsible for executing the agreement with subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

8.7 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

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

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

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

8.11 Mediation. If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall take place in Flagstaff, Arizona, shall be self-administered, and shall be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision shall not constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

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

8.13 Compliance with Federal Immigration Laws and Regulations. Provider hereby warrants to the City that the Provider 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 its employees and A.R.S. §23-214(A) (hereinafter "Provider Immigration Warranty").

8.13.1 A breach of the Provider Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Provider to penalties up to and including termination of this Agreement at the sole discretion of the City.

8.13.2 The City retains the legal right to inspect the papers of any Provider or Subcontractor employee who works on this Agreement to ensure that the Provider or Subcontractor is complying with the Provider Immigration Warranty. Provider agrees to assist the City in regard to any such inspections.

8.13.3 The City may, at its sole discretion, conduct random verification of the employment records of the Provider and any of Subcontractors to ensure compliance with Provider's Immigration Warranty. Provider agrees to assist the City in regard to any random verifications performed.

8.13.4 The provisions of this Article must be included in any contract the Provider enters into with any and all of its Subcontractors who provide services under this Agreement 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.

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

8.15 Advertising. Proposer shall not advertise or publish information concerning the Agreement, without the prior written consent of the City.

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

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

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

8.17.2 Force majeure shall not include the following occurrences:

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

8.17.2.2 Late performance by a Subcontractor unless the delay arises directly out of a force majeure occurrence in accordance with this force majeure term and condition. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give

rise to any claim for damages or loss of anticipated profits if, and to the extent that, such delay or failure is caused by force majeure.

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

8.18 Business Operations in Sudan/Iran. In accordance with A.R.S. § 35-397, the Provider certifies that the Provider and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Provider's certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Agreement.

9. DURATION

This Agreement shall become effective on and from the day and year executed by the parties, indicated below, and shall continue in force until **[END DATE OF INTIAL TERM]** unless sooner terminated as provided above. The City reserves the right to unilaterally extend the period of the Agreement for ninety (90) days beyond the stated termination date. In addition, by mutual written amendment, the Agreement may be renewed for supplemental periods of up to **[NUMBER OF ADDITIONAL TERMS]** additional one (1) year terms.

City of Flagstaff

Provider

Kevin Burke, City Manager

PROVIDER'S NAME AND TITLE

Attest:

City Clerk

Approved as to form:

City Attorney

Date of Execution: _____

AGREEMENT EXHIBIT A - SCOPE OF WORK (INSERT SCOPE OF WORK)

AGREEMENT EXHIBIT B - FEE SCHEDULE (INSERT FEE/PRICE SCHEDULE)

Exhibit A

Flood Control Site Plan

Exhibit B

City of Flagstaff Space Planning Final Report

Exhibit C

City of Flagstaff Final Report Appendix I

*** * * END of RSOQ * * ***