

**PROFESSIONAL SERVICES AGREEMENT  
WITH \*\*\* COMPANY NAME HERE \*\*\***

This Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the “Effective Date”) by and between THE CITY OF APACHE JUNCTION, an Arizona municipal corporation (“City”), and \*\*\* COMPANY NAME HERE \*\*\* , an Arizona limited liability company/corporation, (“Consultant”), both of which may be hereinafter referred to collectively as the “Parties”, for the project entitled ”PW 2018 – PUBLIC WORKS ON-CALL SERVICES” (the “Project”).

**RECITALS**

A. City desires to retain consultants to furnish design/planning and general civil engineering services and to make payment for the same in accordance with the terms and conditions set forth in this Agreement, including all attachments and addenda which are appended hereto by mutual agreement of the Parties.

B. The open market procedures set forth in the Apache Junction City Code have been satisfied.

C. The Parties have set forth below contemplated services Consultant will provide City, including payment terms for such services and products.

**AGREEMENT**

NOW, THEREFORE, in consideration of the Recitals noted above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **CONSULTANT’S DUTIES:** Consultant agrees to perform the professional services detailed in Exhibit A. Consultant shall perform these services and/or through such other personnel as may be required who are employed or retained by Consultant as outlined in Consultant’s Statement of Qualifications (“SOQ”) submittal document, and who the Consultant shall make available to City within 48 hours of a request for services. If the Consultant is unable to comply with the request, the City may contact another Consultant under contract with City to provide such services.

2. **COMPENSATION:** In accordance with the terms and conditions of this Agreement, City shall compensate Consultant for professional services actually performed and expenses actually incurred by Consultant under this Agreement and Consultant agrees to accept compensation based on services actually performed and accepted by City and expenses actually incurred by Consultant under this Agreement in an amount not to exceed Three Hundred Thousand Dollars (\$300,000.00) for each year based on the estimated breakdown of said sum in accordance with the price sheet set forth in Exhibit B.

3. **CONSULTANT BILLING:** Consultant shall bill City on a time and expense basis in a total amount not to exceed Section 2 above. City shall pay such billings within thirty (30) calendar days of the date of receipt.

4. **TERM/RENEWAL:** This Agreement shall be effective beginning on the Execution Date of this Agreement and shall remain in full force and effect a period of three (3) years, unless otherwise terminated as set forth herein. Following the initial term, the Parties may not renew or extend this Agreement.

5. **CITY'S STANDARD OF PERFORMANCE:** City shall furnish Consultant with all data, information and other supporting services specified in Exhibit A.

6. **CONSULTANT'S STANDARD OF PERFORMANCE:** While performing the services, Consultant shall exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise. Consultant shall be responsible for all errors and omissions Consultant commits in the performance of this Agreement.

7. **NOTICES:** All notices to the a Party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following:

If to City:                      Emile Schmid, P.E., City Engineer  
   City of Apache Junction  
   575 E. Baseline Ave.  
   Apache Junction, AZ 85119

If to Consultant:            \*\*\* **CONTACT NAME**, Consultant  
   \*\*\* **CONTACT TITLE**  
   \*\*\* **COMPANY NAME**  
   \*\*\* **ADDRESS**  
   \*\*\* **CITY STATE ZIP**

8. **INSURANCE:** Consultant, at its own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed in the State of Arizona with policies and forms satisfactory to City.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement.

Consultant's insurance shall be primary insurance as respects the City, and any insurance or self-insurance maintained by City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, officers, officials and employees for any claims arising out of Contractor's acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Consultant shall be solely responsible for the deductible and/or self retention and City, at its option, may require Consultant to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Consultant of any deficiencies in such policies and endorsements, and such receipt shall not relieve Consultant from, or be deemed a waiver of, City's right to insist on strict fulfillment of Consultant's obligations under this Agreement.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Agreement, shall name City, its agents, officers, officials and employees as Additional Insureds.

## **REQUIRED COVERAGE**

### **Commercial General Liability**

Consultant shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement, which coverage will be at least as broad as that on Insurance Service Office, Inc. Policy Form No. CG 00011093, or any replacements thereof.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20101185, and shall include coverage for Consultant's operations and products and completed operations.

If required by this Agreement, if Consultant sublets any part of the work, services or operations, Consultant shall purchase and maintain, at all times during prosecution of the work, services or operations under this Agreement, an Owner and Consultant's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of Consultant's work, service or operations under this Agreement. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues Consultant's Commercial General Liability insurance.

#### Automobile Liability

Consultant shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to Consultant's owned, hired, and non-owned vehicles assigned to or used in performance of Consultant's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

#### Workers' Compensation

Consultant shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

By execution of this Agreement, Consultant certifies as follows:

"I am aware and understand the provisions of A.R.S. § 23-900 *et seq.* which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of this chapter, and I will comply with such provisions before commencing the performance of the work of this Agreement."

If Consultant has no employees for whom workers' compensation insurance is required, Consultant shall submit a declaration or affidavit to City so stating and covenanting to obtain such insurance if and when Consultant employs any employees subject to coverage.

In case any work is subcontracted, Consultant will require subcontractors to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of Consultant.

### Professional Liability

Consultant retained by City to provide the work or service required by this Agreement will maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the work or services performed by Consultant, or any person employed by Consultant, with a limit of not less than \$1,000,000 each claim.

### Certificates of Insurance

Prior to commencing work or services under this Agreement, Consultant shall furnish City with Certificates of Insurance, or formal endorsements as required by the Agreement, issued by Consultant's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. The form of the certificates of insurance and endorsements shall be subject to the approval of the Apache Junction City Attorney's Office, shall comply with the terms of this Agreement, and shall be issued and delivered to City Attorney, City of Apache Junction, 300 East Superstition Boulevard, Apache Junction, AZ 85119.

In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Consultant's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Agreement, a renewal certificate must be sent to City thirty (30) calendar days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. Policies or certificates and completed forms of City's Additional Insured Endorsement (or a substantially equivalent insurance company form acceptable to the City Attorney) evidencing the coverage required by this section shall be filed with the City and shall include the City as an additional insured. The policy or policies shall be in the usual form of a public liability insurance, but shall also include the following provision:

**“Solely as respects work done by or on behalf of the named insured for the City of Apache Junction, it is agreed that the City of Apache Junction and its officers and employees are added as additional insureds under this policy.”**

**Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) calendar days’ prior written notice to City.**

**9. APPLICABLE LAW AND VENUE:** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys’ fees, necessary witness fees and court costs to be determined by the court in such action.

**10. FORCE MAJEURE:** Neither City nor Consultant, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an “Enforced Delay”) due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the obligations under this Agreement. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular Consultants, subcontractors, vendors or investors desired by Consultant in connection with the obligations under this Agreement. Consultant agrees that Consultant alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided

further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

11. **TERMINATION**: This Agreement may be terminated by either Party for any reason upon fifteen (15) days' written notice. If this Agreement is terminated, City shall be reimbursed from Consultant the amount paid for any undelivered and/or unaccepted products or services. Upon termination, City agrees to pay for all delivered, accepted, and properly invoiced services that were provided up to the announced Termination Date.

12. **INDEMNIFICATION**: Consultant shall indemnify and hold City, its officers and employees harmless from loss, damage, claim for damage, liability, expense, or cost, including reasonable attorneys' fees, to the extent they arise out of, the negligent performance of work under this Agreement by Consultant, or any of Consultant's employees, agents or subconsultants, and from claims by Consultant's employees, subconsultants and agents for compensation for services rendered to Consultant in the performance of this Agreement, notwithstanding that City may have benefited from their services. This indemnification provision shall apply to negligent acts or omissions or negligent conduct, whether active or passive, on the part of Consultant or Consultant's employees, subconsultants or agents. This section shall survive the expiration or early termination of the Agreement.

13. **TAXES**: Consultant shall pay all license, sales, consumer, transaction privilege, use and other similar taxes for services provided by Consultant which are legally enacted at the time the obligations under this Agreement are performed.

14. **PERMITS & FEES**: Unless otherwise provided in this Agreement, Consultant shall secure and pay for all applicable permits, government fees, licenses and inspections necessary for the proper execution and completion of services which are customarily secured after execution of the Agreement. Consultant shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the obligations. Consultant represents and warrants that any license necessary to perform the services under this Agreement is current and valid. Consultant understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Consultant agrees to obtain a business license pursuant to Article 8-2 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement. Consultant also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege license and/or other licenses as may be required by all applicable laws. If there are taxable activities, a business license shall be converted to a transaction privilege tax license by the Consultant through the City of Apache Junction City Clerk's Office. Further, Consultant agrees to pay all applicable privilege and use taxes that are

applicable to the activities, products and services provided under this Agreement.

15. **RECORDS**: Records of Consultant's labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Consultant shall maintain records for a period of at least two (2) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

16. **RIGHT OF CITY TO CONTRACT WITH OTHERS**: Nothing in this Agreement shall imply City is obligated to obtain the services described herein with only this particular Consultant.

17. **INDEPENDENT CONTRACTOR**: City and Consultant agree and understand that the relationship between both Parties is that of an independent contractor.

18. **WAIVER OF TERMS AND CONDITIONS**: The failure of City or Consultant to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

19. **COMPLIANCE WITH FEDERAL AND STATE LAWS**: Consultant understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement.

As required by A.R.S. § 41-4401, Consultant hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Consultant further warrants that after hiring an employee, Consultant will verify the employment eligibility of the employee through the E-Verify program. If Consultant uses any subcontractors in performance of services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Consultant is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Consultant shall not be deemed in material breach of this Agreement if the Consultant and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S.



§ 23-214(A). City retains the legal right to inspect the papers of any Consultant or subcontractor employee who works under this Agreement to ensure that the Consultant or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

20. **ENTIRE AGREEMENT:** This Agreement and any attachments represent the entire agreement between City and Consultant and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Supporting Documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

21. **SUCCESSORS & ASSIGNS:** City and Consultant each bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in this Agreement. Neither Party to the Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall Consultant assign any monies due or to become due to or to become due to it without the previous written consent of City.

22. **SEVERABILITY:** City and Consultant each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or City Code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

23. **ACCURACY OF WORK:** Acceptance of services or work by City shall not relieve Consultant of the responsibility for subsequent correction of any such errors and the clarification of any ambiguities. Consultant shall make all necessary revisions or corrections resulting from errors and omissions on the part of Consultant without additional compensation.

24. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions in this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

25. **PROHIBITION TO CONTRACT WITH CONSULTANTS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL:** The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Consultants who engage in boycotts of the State of Israel. Should Consultant under this Agreement engage in any such boycott against the State of Israel, this Agreement is automatically terminated. Any such boycott is a material breach of contract and will subject Consultant to monetary damages, including but not limited to, consequential and liquidated damages.

26. **CONFLICTS OF INTEREST:** This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

27. **FEDERAL PROJECT FUNDING:** Consultant understands and acknowledges that some of the projects completed under this Agreement may be funded in whole or in part by federal funds, including but not limited to Community Development Block Grant (“CDBG”) funds.

Consultant shall retain records related to federally funded projects per federal requirements.

Consultant and subconsultants are required to have a Data Universal Number System (“DUNS”) number and be registered on the federal System for Award Management website ([www.SAM.gov](http://www.SAM.gov)).

Consultant shall complete a civil rights certification as detailed and described in Exhibit C, attached hereto and made a part hereof by this reference.

The City, as required by national policy, the Arizona Department of Housing and the CDBG Program, is an affirmative action employer and therefore encourages the use of minority business enterprises, women-owned business enterprises and small business enterprises in a rural area whenever possible. Consultant shall complete an affirmative action certification as detailed and described in Exhibit C.

IN WITNESS WHEREOF, Consultant and City have executed this Agreement as of the date first set forth above.

**CONSULTANT:**

\_\_\_\_ **\*\*\* COMPANY NAME HERE** \_\_\_\_\_,  
an Arizona limited liability company/  
corporation

By: **\*\*\* PRINTED NAME HERE** \_\_\_\_\_  
Its: **\*\*\* CONTACT TITLE** \_\_\_\_\_

**CITY:**

CITY OF APACHE JUNCTION, ARIZONA, an  
Arizona municipal corporation

By: Jeff Serdy  
Its: Mayor

**ATTEST:**

\_\_\_\_\_  
Kathleen Connelly, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
R. Joel Stern, City Attorney

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing was subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of  
[Company Name], an Arizona [corporation/limited liability company].

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF PINAL )

The foregoing was subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, by Jeff Serdy, as Mayor of the City of Apache  
Junction, Arizona, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## **EXHIBIT A**

### **SCOPE OF WORK**

#### **General Scope of Services:**

The scopes of work for any on-call projects may include design, specification review and other miscellaneous services for the following not to exceed contract limit service areas listed below. A detailed description of each Service Area is provided below.

#### **Service Area 1: General Civil Engineering**

**Contract Limit: \$ 300,000**

#### **Sub-elements:**

- \* Roadway / Drainage Infrastructure
- \* Traffic Engineering / Transportation
- \* Water Resources / Hydraulics / Hydrology / Floodplains
- \* Water/Wastewater
- \* Design of Concrete Structures (Roadway & Drainage)

#### **Scope of Work/Services (including but not limited to):**

Development of sound, cost conscious and schedule sensitive project recommendations/solutions; preparation of construction designs/studies/documents etc. for roadway design, bridge culvert design, open channel design, transportation and infrastructure master plans, roadway corridor/alignment studies, roadway design concept reports, water and sewer utility design/planning studies, and Capital Improvement Program financing plans, and facility needs for various departments.

Water/wastewater studies, modeling, new construction, upgrades, rehabilitation, or other modifications. Typical projects include treatment facilities, pump stations, metering facilities, buildings, offsite improvement line extensions, etc.

**EXHIBIT B**  
**FEE SCHEDULE**

## EXHIBIT C

### CERTIFICATIONS

#### **CIVIL RIGHTS**

The undersigned is fully aware that this contract is wholly or partially federally funded, and further, agrees to abide by the:

**Civil Rights Act of 1964, Title VI**, as amended, that provides no person on the basis of Race, Color, or National Origin shall be excluded from participation, denied program benefits, or subjected to discrimination.

**And, Civil Rights Act of 1968, Title VIII**, as amended, will not discriminate in housing on the basis of Race, Color, Religion, Sex, or National Origin.

**And, Rehabilitation Act of 1973, Section 504**, as amended, that no otherwise qualified individual shall solely by reason of his or her handicap be excluded from participation and/or employment, denied program benefits, subjected to discrimination under any program receiving federal funds;

**And, Housing and Community Development Act of 1974, Section 109**, as amended, that no person shall be excluded from participation (including employment), denied program benefits, or subjected to discrimination on the basis of Race, Color, National Origin, Sex, Age, and Handicap under any program or activity funded in whole or part under Title I (CDBG) of the Act.

**And, Age Discrimination Act of 1975**, as amended, that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funds.

**And, Americans with Disabilities Act of 1990**, as amended, that there shall be no employment discrimination against "qualified individuals with disabilities."

**And, Executive Order 11063**, that no person shall, on the basis of race, color, religion, sex, or national origin, be discriminated against in housing and related facilities provided with federal assistance, or lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.

**And, Executive Order 11246, as amended, that no person shall be discriminated against, on the basis of race, color, religion, sex, or national origin, in any phase of employment during the performance of federal or federally assisted construction contracts in excess of \$10,000.**

### **EQUAL EMPLOYMENT OPPORTUNITY**

**During the performance of the contract, the CONTRACTOR agrees as follows:**

- 1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, familial status, religious affiliation or handicap. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, national origin, familial status, religious affiliation or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the GRANTEE setting forth the provisions of this non-discrimination clause.**
- 2. The CONTRACTOR will, in all solicitation or advertisements for employees placed by or on behalf of the CONTRACTOR for the GRANTEE, state that all qualified applicants will receive consideration for employment without regard to race, creed, sex, color, national origin, familial status, religious affiliation or handicap.**
- 3. The CONTRACTOR will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.**
- 4. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the GRANTEE's Department of Housing and/or Community Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.**
- 5. In the event of the CONTRACTOR's non-compliance with any provision of this contract or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts**



in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

6. The CONTRACTOR will include the provisions of the subparagraphs 12 (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provision will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the GRANTEE's Department of Housing and/or Community Development may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the GRANTEE's Department of Housing and/or Community Development, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

**AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS**  
**SECTION 503**

(if contract \$25,000 or over)

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The CONTRACTOR agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
3. In the event of the CONTRACTOR's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
4. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer.

Such notices shall state the CONTRACTOR's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

5. The CONTRACTOR will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONTRACTOR is bound by the terms of Section 503 of Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
6. The CONTRACTOR will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

#### **FLY ASH CERTIFICATION**

The undersigned is fully aware that this contract is wholly or partially federally funded, and further by submission of this bid certifies that the percentage of fly ash in the concrete or cement is or will be consistent with the amounts required by the EPA Guidelines and/or Code of Federal Register 9CFR) for federal procurement of cement and concrete containing fly ash, which is attached.

#### **ACCESS TO RECORDS AND RECORDS RETENTION**

The undersigned certifies, to the best of his or her knowledge and belief that:

1. The individual, sole proprietor, partnership, corporation, and/or association agrees to permit the City of Apache Junction, Arizona Department of Housing Development (ADOH), U. S. Department of Housing and Urban Development (HUD), and the Office of the Inspector General and/or their designated representatives to have access to all records for review, monitoring, and audit during normal working hours.
2. The individual, sole proprietor, partnership, corporation, and/or association agrees to retain all records for at least five years following the "official Arizona Department of Housing Development "Closeout" date of the grant or the resolution of all audit findings, whichever is later.

## **CONFLICT OF INTEREST**

The undersigned is fully aware that this contract is wholly or partially federally funded, and further, by submission of the bid or proposal that the individual or firm, certifies that:

1. There is no substantial interest, as defined by Arizona Revised Statute §§38-503 through 505, with any public official, employee, agency, commission, or committee with the City of Apache Junction.
2. Any substantial interest, as defined by Arizona Revised Statute §§38-503 through 505, with any public official, employee, agency, commission, or committee (including members of their immediate family) with the City of Apache Junction that develops at any time during this contract will be immediately disclosed to the City of Apache Junction.

## **ANTI-LOBBYING CERTIFICATION**

The undersigned certifies, to the best of his or her knowledge and belief that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this Certification be included in the award documents for all sub-awards to all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

## CERTIFICATIONS SIGNATURE FORM

These Certifications (Civil Rights, Equal Employment Opportunity, Affirmative Action for Handicapped Workers -Section 503, Fly Ash, Access to Records and Records Retention, Conflict of Interest, Lobbying) are a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of these Certifications is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required Certifications shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_ **\*\*\* CONTACT NAME HERE** \_\_\_\_\_  
(Typed name of official)

\_\_\_\_\_  
(Signature of official)

\_\_\_\_ **\*\*\* COMPANY NAME HERE** \_\_\_\_\_  
(Typed name of firm)

\_\_\_\_\_  
(Date)

## Affirmative Action Certification

The City of Apache Junction, as required by national policy, the Arizona Department of Housing and the CDBG Program, are Affirmative Action Employers and therefore encourage the use of minority business enterprises, women-owned business enterprises and small business enterprises in a rural area whenever possible.

Although not required as a part of the proposal, the City of Apache Junction requests your cooperation in submitting the following certification as a part of your proposal.

**Name of Firm:** \_\_\_\_\_

**1. Minority Business Enterprise** Yes \_\_\_\_ No \_\_\_\_

A minority business enterprise is a business concern that is (1) at least 51 percent owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more of the minority owners.

There is no standard definition of minority used by all federal financial assistance agencies; however, recipients shall presume that minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or other groups whose members are found to be disadvantaged by the Small Business Act or by the Secretary of Housing under Section 5 of Executive Order 11625.

Business firms which are 51 percent owned by minorities, but are in fact managed and operated by non-minority individuals do not qualify.

**2. Women Business Enterprise** Yes \_\_\_\_ No \_\_\_\_

A women business enterprise (WBE) is a business concern that is, (1) at least 51 percent owned by one or more women, or, in the case of a publicly owned business; at least 51 percent of the stock is owned by one or more women; and, (2) whose daily business operations are managed and directed by one or more of the women owners.

Business firms which are 51 percent owned by women, but are in fact managed and operated by men do not qualify.

**3. Small Business Enterprise in a Rural Area** Yes \_\_\_\_ No \_\_\_\_

A small business enterprise in a rural area (SBRA) is a business concern that is physically located outside any standard metropolitan statistical area.

This Certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

\*\*\* CONTACT NAME HERE \_\_\_\_\_  
(Typed name of official)

\_\_\_\_\_  
(Signature of official)

\*\*\* COMPANY NAME HERE \_\_\_\_\_  
(Typed name of firm)

\_\_\_\_\_  
(Date)