

TOWN OF ORO VALLEY

NOTICE OF REQUEST FOR PROPOSALS #14011

Notice is hereby given that the Town of Oro Valley is conducting a competitive proposal process with the intent of contracting for a feasibility study for initiating a business accelerator/incubator in Oro Valley. All inquiries for information regarding this solicitation should be directed to: Amanda Jacobs, Economic Development Manager ajacobs@orovalleyaz.gov.

Due Date

Sealed Proposals will be received until September 27, 2013 at 4:00pm

Proposals should be mailed or hand delivered to:

Town of Oro Valley, Town Clerk
11000 N. LaCañada Drive
Oro Valley, Arizona 85737

Pre-Proposal Conference

Monday September 9, 2013 at 2:00pm

Town of Oro Valley
11000 N La Canada
Oro Valley, AZ 85737
Administration Building - Kachina Conference Room

Description

The Town of Oro Valley intends to contract with a consulting firm to determine the feasibility of initiating a business accelerator/incubator in Oro Valley.

A copy of this solicitation and possible future addenda may be obtained from our Internet site at: www.orovalleyaz.gov/town/departments/finance/procurement. Internet access is available at the Oro Valley Public Library as well as all Tucson-Pima Public Libraries.

Any interested bidder without Internet access may obtain a copy of this solicitation by calling (520) 229.4722, or a copy may be picked up during regular business hours at 11000 N. La Canada Drive, Oro Valley, Arizona 85737.

The Town of Oro Valley takes no responsibility for informing recipients of changes to the original solicitation document. It is the Offeror's responsibility to obtain a copy of any addenda relevant to this solicitation. Failure to submit addenda with the solicitation response may be grounds for deeming a bid non-responsive.

Post Date: August 30, 2013
Publishing Dates: August 30 and September 6, 2013

REQ: Town of Oro Valley
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Request for Proposals
For
Feasibility Study for a Business Accelerator

Due Date

September 27, 2013 at 4:00pm

Pre-Proposal Conference

Monday September 9, 2013 at 2:00pm
Town of Oro Valley
11000 N La Canada
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Town Manager Department
Town of Oro Valley

I. INTRODUCTION

The Town of Oro Valley intends to contract with a consulting firm to determine the feasibility of initiating a business accelerator/incubator in Oro Valley. Creating an accelerator in Oro Valley will help us grow our bioscience corridor, Innovation Park, and create additional primary jobs. Funding for this project is estimated to be \$20,000 to \$30,000. Proposals shall be reviewed and scored by a committee from the Town of Oro Valley.

II. BACKGROUND

Oro Valley

Oro Valley is a planned community cradled in the shadows of the magnificent Santa Catalina Mountains with hiking trails through Catalina State Park, hiking and bicycle trails throughout the Town, world class golf courses, horseback riding and a long valued cultural tradition, vibrant for over a thousand years.

The Town has been given many accolades through the years, and is proud to be part of the lists below:

- Best Places to Live in Arizona
- Best Towns for Families
- Best Places in America to Live and Launch a Small Business

The town is located in the high Sonoran Desert with average high temperatures of 83.4 degrees and average lows of 53.8 degrees and breathtaking beauty. Located just miles north of the Tucson city limits, amenities like The University of Arizona and Tucson International Airport are just steps away.

Oro Valley is a community defined by the highest standards of environmental integrity, education, infrastructure, services and public safety. It is a community of people working together to create a shared future with a government that is responsive to residents, businesses and changing conditions to ensure the long-term financial stability of the Town.

III. SCOPE OF SERVICES

Creating an accelerator in Oro Valley will help us grow our bioscience corridor, Innovation Park, and create additional primary jobs. The Oro Valley Accelerator will allow small startup companies to develop a prototype of their product or its equivalent, i.e. the early clinical data or “mock up” that attracts venture capital investors in their company. Oro Valley is already home to Ventana Medical Systems, a member of the Roche Group, a world leader and innovator of tissue-based diagnostic solutions for patients worldwide; and sanofi, the third largest pharmaceutical company in the world. Both facilities are located in Innovation Park where there is considerable room for expansion. Additionally, the region has significant resources devoted to the development of new high-tech and

bioscience ventures, such as the University of Arizona Bio5 Institute and University of Arizona Bio5 Oro Valley.

A. Business Plan

The business plan should identify potential tenants and a “champion” to lead the development and initial operations of the new program, such as a regional economic development organization, university, private company or another possible candidate. The firm should at a minimum:

- Incorporate research and suggestions provided by Tucson Regional Economic Opportunities, Inc. (TREO's) Diagnostics Strategy

B. Funding Sources

The consulting firm should provide funding scenarios to develop and operate the accelerator/incubator.

C. Meetings

The selected firm shall be required to participate in at least three in-person meetings with the project staff and conduct at least two focus groups with educational and business leaders. The firm will present the final product to Town Council.

IV. Financial Considerations

- A. For services rendered under the resulting contract, the Town shall pay the Consultant based on the amounts as agreed upon between the Consultant and the Town which include overhead, profit and all other costs associated with performing services under the Contract. If the Scope of Services or the Project budget increases or decreases significantly, the amounts of compensation shall be revised in accordance with Town procedures.
- B. Progress payments will be made consistent with Town procedures. The Consultant shall prepare Pay Requests for the amount representing the actual value of the services rendered and submit these forms to the Project Manager for approval and processing.
- C. Consultants shall not be reimbursed for normal business use mileage within Pima County. Work requiring travel outside of Pima County shall include reimbursement for travel and per diem expenses paid per current Town allowances. Vehicle usage, lodging, and per diem expenses for out of town consultants must be identified and approved in the consultant's cost proposal.
- D. Consultant shall consider normal computer usage for daily activities as a part of overhead. Computer time for complex graphics, computer dedicated to field activities or computer time for numerical modeling as needed for a specific task must be identified and approved in the consultant's price proposal.
- E. Reimbursable Expenses (which are all not-to-exceed allowances) shall be paid at cost to consultant and shall include no markup. Pay Requests shall be submitted with documentation of incurred expenses for reimbursement as approved expenses

are incurred but not to exceed the amount agreed upon by the Consultant and the Town.

INSTRUCTIONS TO OFFERORS

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

For purposes of this solicitation and subsequent contract, the following definitions shall apply:

Addendum: A document issued by the Town that has the effect of modifying, clarifying, adding to or deleting specifications, scope, and terms or conditions of the solicitation.

Amendment: A document issued by the Town that modifies the specifications, scope or terms and conditions of a contract.

Contract: The legal agreement executed between the Town and the Contractor/Consultant. The Contract shall include this RFP document incorporated herein by reference, all terms, conditions, specifications, scope of work, addenda, amendments, the Contractor's offer and negotiated items as accepted by the Town.

Contractor/Consultant: The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the Town.

Contract Representative: The Town employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and is responsible for monitoring and overseeing the Contractor's performance under this Contract.

Procurement Agent: The central contracting authority for the Town.

May: Indicates something that is not mandatory but permissible.

Offeror: The individual, partnership, or corporation who submits a proposal or offer in response to a solicitation.

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements, if they constitute a substantive requirement, may, at the Town's sole discretion, result in the rejection of a proposal as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the Town may, at its sole option, ask the Offeror to provide the information or evaluate the proposal without the information.

Town: The Town of Oro Valley, Arizona.

2. PRE-PROPOSAL CONFERENCE: If scheduled, the date and time of a Pre-Proposal conference is indicated on the cover page of this document. Attendance at this conference is not mandatory. The purpose of this conference will be to clarify the contents of this Request for Proposal in order to prevent any misunderstanding of the Town's position. Any doubt as to the requirements of this Request for Proposal or any apparent omission or discrepancy should be presented to the Town at this conference. The Town will then determine the appropriate action necessary, if any, and may issue a written addendum to the Request for Proposal. Oral statements or instructions will not constitute an addendum to this Request for Proposal.

3. INQUIRIES: Any question related to the solicitation shall be directed to the contact person whose name appears on the cover page. The contact person may require any and all questions be submitted in writing. Offerors are encouraged to submit written questions via electronic mail or facsimile, at least five days prior to the solicitation due date. Any correspondence related to a solicitation should refer to the appropriate

solicitation number, page and paragraph number. An envelope containing questions should be identified as such, otherwise it may not be opened until after the official proposal due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written addendum to the solicitation will be binding.

4. **SOLICITATION ADDENDUM:** The Offeror shall acknowledge receipt of a solicitation addendum by signing and returning the document by the specified due date and time. The Request for Proposals with Information for Respondents, Supplemental Project Information, any future Addenda may be obtained from the Town's website: <http://www.orovalleyaz.gov/Procurement/>. **It is the sole responsibility of the Respondent to obtain, review, and acknowledge any addenda that may be published on the Town's website.**
5. **FAMILIARIZATION OF SCOPE OF WORK:** Before submitting a response, each offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting contract performance. The Offeror shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a response will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.
6. **PREPARATION OF RESPONSE:**
 - A. All proposals shall be on the forms provided in this solicitation package. It is permissible to copy these forms as required. Facsimiles or electronic mail proposals shall not be considered.
 - B. The Offer page, Price Page if applicable and any solicitation addenda must be signed and returned with the response.
 - C. The Offer page shall be signed by a person authorized to submit an offer. An authorized signature on the Offer page, Proposal addenda, or cover letter accompanying the proposal documents shall constitute an offer to sell the good and/or service specified herein.
 - D. In case of error in the extension of prices in the proposal, unit price shall govern when applicable.
 - E. Periods of time, stated as a number of days, shall be in calendar days unless otherwise specified.
 - F. It is the responsibility of all offerors to examine the entire solicitation package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a response. Negligence in preparing a response confers no right of withdrawal after due date and time.
 - H. The Town shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.
7. **TAXES:** Sales taxes shall not be included in the price information.
8. **SUBMITTAL FORMAT:** **An original and 3 copies (4 total) of each response** should be submitted on the forms and in the format specified in the solicitation. In addition, an electronic copy on CD or USB drive must be submitted. The material should be in

sequence and related to the solicitation. **The sections of the submittal should be tabbed, clearly identifiable and should include a minimum of the following sections: the completed Offer Page, all signed addenda and the Offeror's response to the Evaluation Criteria including the completed Price Page (if applicable).** Failure to include the requested information may have a negative impact on the evaluation of the submittal.

- 9. EXCEPTIONS TO CONTRACT PROVISIONS:** A response to any solicitation is an offer to contract with the Town based upon the contract provisions contained in the Town's Standard Contract (attached), the specifications, scope of work and any special terms and conditions. Offerors who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language. The provisions of the contract cannot be modified without the express written approval of the Procurement Agent. If a proposal or offer is returned with modifications to the contract provisions that are not expressly approved in writing by the Procurement Agent, the contract provisions contained in the Town's solicitation document and standard contract shall prevail. **NO EXCEPTIONS OR REVISIONS TO THE INDEMNIFICATION PROVISION OF THE STANDARD CONTRACT SHALL BE CONSIDERED.**
- 10. PUBLIC RECORD:** All proposals submitted in response to this solicitation shall become the property of the Town and shall become a matter of public record available for review subsequent to the award notification.
- 11. CONFIDENTIAL INFORMATION:** The Town is obligated to abide by all public information laws. If an Offeror believes that any portion of a proposal, offer, specification, or correspondence contains information that should be withheld, a statement advising the Procurement Agent of this fact should accompany the submission and the information shall be so identified wherever it appears. The Town shall review all requests for confidentiality and may provide a written determination to designate specified documents confidential or the request may be denied. Price is not confidential and will not be withheld. If the confidential request is denied, such information shall be disclosed as public information, unless the offeror submits a formal written objection.
- 12. CERTIFICATION:** By signature on the Offer page, solicitation addenda, or cover letter accompanying the submittal documents, Offeror certifies:
- A. The submission of the offer did not involve collusion or other anti-competitive practices.
 - B. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.
 - C. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer.
 - D. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to bind the Offeror to the Contract.

- 13. RESPONSES TO THIS SOLICITATION:** In order to be considered, the Offeror must complete and submit its response to the Town Clerk at 11000 N. LaCanada Dr., Oro Valley, AZ 85737, prior to or at the exact date and time indicated on the Notice page. The Offeror's response shall be submitted in a sealed envelope. The words "SEALED PROPOSAL" with the REQUEST FOR PROPOSAL TITLE, REQUEST FOR PROPOSAL NUMBER, PROPOSAL DUE DATE AND TIME and OFFEROR'S NAME AND ADDRESS shall be written on the envelope.
- 14. LATE PROPOSALS:** Late proposals will be rejected and returned unopened.
- 15. OFFER AND ACCEPTANCE PERIOD:** In order to allow for an adequate evaluation, the Town requires an offer in response to this solicitation to be valid and irrevocable for one hundred twenty (120) days after the proposal due date and time.
- 16. WITHDRAWAL OF OFFER:** At any time prior to the specified solicitation due date and time, an offeror may formally withdraw the offer by a written letter, facsimile or electronic mail from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.
- 17. DISCUSSIONS:** The Town reserves the right to conduct discussions with offerors for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal in order to clarify an offer and assure full understanding of, and responsiveness to, solicitation requirements.
- 18. CONTRACT NEGOTIATIONS:** Negotiations may be conducted with responsible offeror(s) for the purpose of altering or otherwise changing the conditions, terms and price of the proposed contract unless prohibited. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- 19. UPON NOTICE OF INTENT TO AWARD:** The apparent successful offeror shall sign and file with the Town, within ten (10) days after Notice of Intent to Award, all documents necessary to the successful execution of the Contract.
- 20. AWARD OF CONTRACT:** Notwithstanding any other provision of the solicitation, the Town reserves the right to:
- (1) waive any immaterial defect or informality; or
 - (2) reject any or all proposals, or portions thereof; or
 - (3) reissue the solicitation.

EVALUATION REQUIREMENTS

I. EVALUATION CRITERIA

- A. Qualifications, Experience and Expertise (40 points)
- B. Method of Approach (40 points)
- C. Price Proposal (20 points)

II. REQUIREMENTS SPECIFIC TO EVALUATION CRITERIA: The narrative portion and the materials presented in response to this Request for Proposal should be submitted in the same order as requested and must contain, at a minimum, the following:

A. QUALIFICATIONS, EXPERIENCE AND EXPERTISE

1. A brief history of the Offeror's firm, including how long the Offeror has been in business performing services as requested in the Scope of Work.
2. A list of specific qualifications the Offeror and staff has in supplying the services listed in this proposal, including any applicable professional designations, certifications or licenses, etc. Offeror shall list the key personnel that will perform the functions of each proposed service or task. Resumes of key personnel shall be submitted as part of the proposal.
3. A list of at least three (3) previous and current contracts, which are considered identical or similar to the Scope of Work herein. For each client listed, please include the name and phone number of a reference who is able to comment on the related experience.
4. A list of subconsultants (if applicable), and their respective qualifications, to be used in performing the services requested. The Town reserves the right to approve or deny proposed subconsultants.

B. METHOD OF APPROACH

Offeror shall prepare a detailed Method of Approach, which indicates the service proposed to be performed by the Offeror. This should address in depth, how Offeror plans to meet the requirements of the Scope of Services of the RFP. The method and approach should be addressed in a manner that reflects understanding and commitment to providing services as needed in a professional and timely manner.

C. PRICE PROPOSAL

Offeror shall provide a charge or fee for provision of all services described herein and shall include all work necessary to effectively conduct and complete the Scope of Services. The fees stated must include all necessary

costs including, but not limited to, labor, materials, overhead, administrative charges, profit and insurance.

Any required travel and/or per diem shall be include but priced separately. Offeror shall also provide hourly rates per discipline for any additional services that may be required but not specifically listed herein.

III. GENERAL

A. Shortlist:

The Town reserves the right to shortlist the offerors on all of the stated criteria. However, the Town may determine that shortlisting is not necessary.

B. Interviews:

The Town reserves the right to conduct interviews with some or all of the offerors at any point during the evaluation process. However, the Town may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria. The Town shall not reimburse the offeror for the costs associated with the interview process.

C. Additional Investigations:

The Town reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any offeror submitting a proposal.

D. Prior Experience:

Experiences with the Town and entities that evaluation committee members represent may be taken into consideration when evaluating qualifications and experience.

SPECIAL TERMS AND CONDITIONS

1. INSURANCE

The Consultant agrees to obtain insurance coverage of the types and amounts required consistent with the coverage limits shown below.

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Worker's Compensation Employer's Liability	Statute \$100,000
Commercial General Liability Insurance (including blanket contractual and premises/operations)	\$1,000,000 - Bodily Injury Combined Single Limit \$100,000 Property Damage
Comprehensive Automobile Liability (includes contractor's owned, hired, or non-owned vehicles, assigned to or used in performance of the work)	\$1,000,000 – Bodily Injury and Property Combined Single Limit Each Occurrence

The Consultant shall provide satisfactory certificates on the required insurance coverage before beginning work. All policies shall contain an endorsement providing that written notice be given to the Town at least thirty (30) calendar days prior to termination, cancellation or reduction in coverage policy. Insurance policies shall remain in force until all work has been completed and the completed project has successfully fulfilled its warranty period. If a policy does expire during the life of the Contract, a renewal certificate of the required coverage must be sent to the Town of Oro Valley not less than five (5) workdays prior to expiration date. Each certificate shall include project description, project number and the signed acknowledgement of the insurance company.

The Town of Oro Valley shall be included as an additional insured **and endorsement provided** on all policies except Worker's Compensation. Policies for General, Automobile, and Excess Liability are primary over any insurance available to the Town and as to any claims resulting from the Contract, it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

In regard to General, Automobile, and Excess Liability, the Consultant agrees to indemnify, defend and save harmless the Town of Oro Valley, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively from all losses, claims, suits, actions, payments and judgments, demands, expenses, attorney's fees, defense costs, or actions of any kind and nature resulting from personal injury to any person, including employees of the Consultant or any subcontractor employed by the Consultant (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of the negligent performance of the Consultant for the work to be performed hereunder, except any injury or damages arising out of the sole negligence of the Town, its officers, agents or employees. The amount and type of insurance coverage requirements set forth in the Contract will in no way be construed as limiting the scope of indemnity in this paragraph.

2. KEY PERSONNEL

The Consultant must provide an adequate staff of qualified and experienced personnel to provide services under the contract. The Consultant agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the Town. If key personnel are not available to work under this contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the

Consultant shall immediately notify the Town, and shall, subject to the concurrence of the Town, replace such personnel of substantially equal ability and qualifications. The Town reserves the right to require replacement of assigned personnel when this is deemed to be in the Town's best interest. Upon such notice, the Consultant **shall promptly assign a new appropriately qualified and experienced employee.**

STANDARD TERMS AND CONDITIONS

SECTION I – DESCRIPTION OF PROJECT / SCOPE OF WORK

Services to be rendered under this agreement shall be negotiated and agreed to by the Consultant and the Town prior to issuance of Notice to Proceed. The detailed list of services and any required deliverables and or milestones shall be documented in the resulting contract. Any changes to the scope shall be authorized in writing by the Town in accordance with Section VIII prior to services being rendered.

SECTION II – PAYMENT SCHEDULE

The negotiated fee process shall be utilized for this Contract. For services rendered under this agreement, the Consultant shall be paid in accordance with the negotiated fee schedule. Payment shall be made monthly on the basis of progress reports. Consultant must provide a clear, detailed invoice reflecting items being billed for, a summary sheet showing percentage of work completed to date, amount/percent billed to date and current status of all tasks within the project with backup support documentation. Work schedule updates will be included in the monthly progress payment reports.

SECTION III – PERIOD OF SERVICE

Following receipt of a Notice to Proceed with the work, the Consultant shall complete all services rendered under this agreement within the negotiated number of consecutive calendar days after Notice to Proceed is issued by the Town. In the event delays are experienced beyond the control of the Consultant, the completion date may be extended by mutual written agreement between the Town and the Consultant.

SECTION IV – APPROVALS

All work shall be subject to approval by the designated Town Project Manager or designee.

Consultant agrees to exercise the skill and care which would be exercised by professionals performing similar services at the time and in the locality. If failure to meet these standards results in faulty work, Consultant shall undertake at its own expense the corrective adjustments or modifications.

SECTION V – INDEMNIFICATION

The Consultant agrees to indemnify, defend, and save harmless the Town, its Mayor and Council, appointed boards and commissions, officials, officers and employees individually and collectively from all losses, claims, suits, demands, expenses, subrogations, attorney's fees or actions of any kind and nature arising out of the Consultant's negligence or any subcontractor employed by the Consultant including bodily injury and death, damages to any property or any other losses, claims, suits, demands and/or expenses arising or alleged to have arisen out of the work performed, except any injury or damages arising out of the sole negligence of the Town, its officers, agents or employees. The amount and type of insurance coverage requirements set forth in Section VII will in no way be construed as limiting the scope of indemnity in this paragraph.

SECTION VI – REPORTING

Written monthly reports, together with updated work schedules, will be made by the Consultant in the format prescribed by the Town. These reports will be delivered to the Town no later than the fifth day of each month. When requested by the Town, the Consultant will attend Council meetings and provide finished documents including correspondence, supporting charts, graphs, drawings and colored slides for Council action.

SECTION VII – INSURANCE

Proof of insurance as detailed in the Special Terms and Conditions shall be required prior to contract execution.

SECTION VIII – AMENDMENTS

Whenever a change in the scope of work is determined to be necessary, the work will be performed in accordance with the Contract provided. Before a change in the scope of work is implemented, an amendment shall be executed by the Town and the Consultant. Additions to, modifications of or deletions from the project may be made and the compensation to be paid to the Consultant may be adjusted accordingly by mutual written agreement of the contracting parties. It is agreed that no claim for extra work by the Consultant will be allowed by the Town except as provided, nor shall the Consultant do any work not covered by this Contract unless the work is authorized through an amendment and signed by both parties **PRIOR** to starting any additional work.

TIME IS OF THE ESSENCE for this Contract. When the Consultant submits a request for additional time for which work must be completed in a contract, justification outlining the reason for applying for the extension must be provided and a date the work **will** be completed. If the extension is agreed to and signed by the Town and the Consultant, it binds the Consultant to complete the work by the extended date designated in the amendment unless the delay in completion of the work by the Consultant results from an unforeseeable cause beyond the control and without the fault or negligence of the Consultant. It is agreed the Town's only liability for delay from any cause shall be limited to granting a time extension to the Consultant. There is no other obligation, expressed or implied, on part of the Town to the Consultant for delay from any cause.

SECTION IX – TERMINATION

This Contract may be terminated at any time by mutual written consent, or by the Town, with or without cause, upon giving thirty (30) days written notice. If this Contract is terminated, the Town shall be liable only for payment for services rendered and accepted by the Town before the effective date of termination.

The Town reserves the right to terminate in whole or any part of this Contract due to the failure of the Consultant to carry out any term or condition of the Contract. The Town will issue a written notice of default to the Consultant for failing to perform the stipulations, conditions or services/specifications required in this Contract. The Consultant shall have 5 days from receipt of the notice to rectify the failure or establish a plan for remedy. Consultant shall provide documentation of the remedy or proposed plan for approval by the Town.

The Town may terminate this Contract for cause if:

- A. In the opinion of the Town, the Consultant attempts to impose personnel, materials or services of an unacceptable quality;
- B. In the opinion of the Town, the Consultant fails to furnish the required services and/or deliverable within the time stipulated in the Contract;

- C. In the opinion of the Town, the Consultant fails to make progress in the performance of the requirements of the Contract;
- D. The Consultant gives the Town a positive indication that the Consultant will not or cannot perform to the requirements of the Contract.

If funds that are appropriated or allocated for the payment of obligations under this Contract are not allocated by the Town and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the Town at the end of the period for which funds are available. The Town will notify the Consultant in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the Town in the event that this provision is exercised, and the Town shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

Upon Notice of Termination the Consultant shall appraise the work the Consultant has completed and submit this appraisal to the Town for evaluation.

The Consultant shall receive as compensation for services performed through the date of such termination, a fee for the percentage of work actually completed. This fee shall be a percentage of the Consultant fee described in this Contract and shall be in the amount mutually agreed to between the Consultant and the Town. The Town shall make this final payment within sixty (60) days after the Consultant has delivered the last of the partially completed or services or deliverables.

Notice required under this section shall be in writing and shall be served by certified mail upon the other party. When served by certified mail, services shall be conclusively deemed made five (5) days after posting thereof in the United States mail, postage prepaid.

SECTION X – LIQUIDATED DAMAGES

If the work to be performed by the Consultant under this Contract is not timely completed, as negotiated the Consultant shall pay to the Town an amount as agreed to as liquidated damages for each day the work remains incomplete after the scheduled completion date. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the Town would sustain. The scheduled completion date for determining liability for liquidated damages shall be stated in consecutive calendar days from the effective date of Town's Notice to Proceed to Consultant subject to Section XI – Force Majeure.

For the purpose of determining applicability of liquidated damages (Section X), completion time shall be extended only if delay in completion of the work by the Consultant results from an unforeseeable cause beyond the control and without the fault or negligence of the Consultant.

SECTION XI – FORCE MAJEURE

Notwithstanding any other term, condition, or provision hereof to the contrary, in the event any party hereto is precluded from satisfying or fulfilling any duty or obligation imposed upon such party by the terms hereof due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of God or other events beyond the control of such party, the time period provided herein for the performance by such party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events and must be agreed to **IN WRITING** by both parties.

SECTION XII – ARBITRATION OF DISPUTES

Any dispute arising under this Contract that is not settled by the Town and the Consultant may, upon mutual agreement of the parties, be decided by an Arbitration Board composed of a representative of the Town, a representative of the Consultant and a representative mutually acceptable to the Town and the Consultant. The Town, however, reserves its rights as set forth in Arizona Revised Statutes, Title 12. The Consultant shall continue to render all services requested in this Contract without interruption, notwithstanding the provisions of this Section. Nothing herein shall be deemed to require arbitration except at the Town's discretion. The laws of the State of Arizona shall apply to this Contract, and the Consultant agrees to the subject itself to the jurisdiction of the Courts of the State of Arizona for any conflict that arises from the terms of this Contract.

SECTION XIII – INDEPENDENT CONSULTANT

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

The Consultant is advised that taxes or social security payments shall not be withheld from a Town payment issued hereunder and that Consultant should make arrangements to directly pay such expenses, if any.

The Town will not provide any insurance coverage to the Consultant including Workers' Compensation coverage.

SECTION XIV – OWNERSHIP OF DOCUMENTS

All documents including, but not limited to, tracings, drawings, original mylars, estimates, field notes, investigations, design analysis and studies which are prepared in the performance of this Contract are to remain the property of the Town. The Consultant shall furnish the Town, upon request, originals or copies of technical specifications and copies of all documents listed above.

SECTION XV – NO KICK-BACK CERTIFICATION

The Consultant warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the Town Council or any employee of the Town has an interest, financial or otherwise, in the Consultant firm.

For breach or violation of this warranty, the Town shall have the right to annul this Contract without liability or, at its discretion, to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

SECTION XVI – CONFLICT OF INTEREST

This Contract is subject to the provisions of A.R.S. § 38-511 which provides in pertinent part that the State, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or a Consultant to any other party to the Contract with respect to the subject matter of the Contract.

SECTION XVII – ASSIGNMENT

This Contract shall not be assignable except at the written consent of the parties, and it shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties.

The Consultant may assign money due to him under terms of this Contract to a banking or lending institute. The Town shall assist the Consultant in performing the assignment by testifying to the progress of the work as may be required.

SECTION XVIII – ENFORCEMENT, LAWS AND ORDINANCES

This Contract shall be enforced under the laws of the State of Arizona.

Each party must comply with all applicable federal, state, county and Town laws, ordinances and regulations.

Consultant shall ensure Consultant's obligation regarding payment of all taxes, license, permits and other expenses of any nature associated with the provision of services herein.

Consultant shall maintain in current status all Federal, State and local certifications required for the business operated by the Consultant.

SECTION XIX – WAIVER

The failure of either party of this Agreement to take affirmative action with respect to any conduct of the other which is in violation of the terms of this contract shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

SECTION XX – ENTIRE CONTRACT

This is the entire Contract between the parties. If any portion(s) of this Contract is (are) later found to be invalid or unenforceable, such portion(s) shall be null and void and without any effect on the rest of the Contract which shall continue in full force and effect.

SECTION XXI - MISCELLANEOUS PROVISIONS

- A. The Consultant shall establish and maintain procedures and controls that are reasonably acceptable to the Town for the purpose of assuring that no information contained in its records or obtained from the Town or from others in carrying out its functions under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information must be referred to the Town.
- B. The Consultant shall 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.
- C. In accordance with A.R.S. §35-391, the Consultant hereby certifies that the Consultant does not have scrutinized business operations in Sudan.

- D. In accordance with A.R.S. §35-393, the Consultant hereby certifies that the Consultant does not have scrutinized business operations in Iran.

OFFER

TO THE TOWN OF ORO VALLEY:

The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and addenda in the Request for Proposal which is incorporated by reference as if fully set forth herein.

For clarification of this offer, contact:

Company Name

Address

Town State Zip

Signature of Person Authorized to Sign

Printed Name

Title

Name: _____

Title: _____

Phone: _____

Fax: _____

E-mail: _____