ATTACHMENT C
PROPOSED AGREEMENT FOR CONSULTING SERVICES

FUTS Signage Program

Vendor Name:

Project Number 27025

PROPOSED
AGREEMENT FOR
CONSULTING SERVICES

Mayor
Joseph C. Donaldson

Council

Karen K. Cooper
Kara Kelty
Scott Overton
Joe Haughey
Al White
Rick Swanson

City Manager
Dave Wilcox

Utilities Director
Ron Doba

City Engineer
Reid Miller, P.E.

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William Menard

Community Development Director
Mark G. Landsiedel

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AGREEMENT FOR CONSULTING SERVICES

BETWEEN THE CITY OF FLAGSTAFF

AND

VENDOR NAME

THIS CONSULTANT SERVICES AGREEMENT "Agreement" is made and entered into on this [XXth] day of November, 2006, by and between the City of Flagstaff, a municipal corporation, hereinafter referred to as the "City", and [Vendor Name]. a consulting firm authorized to finalized designs, prepare construction documents and oversee fabrication and installation of a comprehensive signage program for the Flagstaff Urban Trails System (FUTS) services in Arizona, hereinafter referred to as "Consultant".

RECITALS

WHEREAS, the City desires to conduct an in-depth FUTS Signage Program; and

WHEREAS, Consultant has available and offers to provide personnel and facilities necessary to accomplish the work within the required time in accordance with a schedule included herein.

NOW, THEREFORE, the City and Consultant agree as follows:

I. SCOPE OF CONSULTING SERVICES

Consultant agrees to perform the Consulting Services as outlined in **EXHIBIT A** entitled, "Project Approach", attached hereto and incorporated herein as though set forth in full.

II. COMPENSATION OF CONSULTANT

Consultant agrees to perform all of the work required to complete the Consulting Services in an amount not to exceed [$XX,XXX].

III. RIGHTS AND OBLIGATIONS OF CONSULTANT

A. Authorization, Progress and Completion

Specific authorization to proceed with the work described in the Scope of Consulting Services shall be granted in writing by the City within a reasonable time after the

effective date of this Agreement. Consultant shall not proceed with the work without such authorization. Such authorization shall set forth the date of commencement of the work and the schedule of progress and completion.

B. Subcontracts

At the time subcontracted services are anticipated, Consultant shall notify the City of the nature of, and need for, such services and identify the proposed subcontracting firm. Consultant shall receive approval in writing from the City prior to utilization of any subcontractor other than the parties listed in this article. Consultant is authorized by the City to subcontract work having a cost which will not exceed 30 percent (30%) of the total amount of compensation due under this Agreement. Consultant shall be responsible to the City for the actions of persons and firms performing subcontract work.

SUBCONTRACTOR NAME	SERVICES PROVIDED

C. Consultant's Personnel

Key personnel to be assigned to the work under this Agreement shall be identified in writing to the City by Consultant at the time of the Notice to Proceed. Consultant shall identify the project manager who shall be empowered to act for Consultant in accordance with this Agreement in all matters relating to the technical administration of services to be provided. Authorization for changes in key personnel shall be requested in writing by Consultant.

D. Ownership of Documents

All services, information, reports, computer program elements and other deliverables, which Consultant may provide or produce in its performance of services under this Agreement, shall be the exclusive property of the City and shall not be used or released by Consultant, or any other person, without the prior written permission of the City. Consultant shall deliver to the City ten (10) bound copies and one electronic version (in PDF format) of reports, specifications and drawings prepared under the terms of this Agreement. The Consultant shall also provide a full dataset of the completed surveys in a standard digital format with the ability to cross-tabulate information.

E. Work Schedule

Consultant agrees to perform all of the work required to complete the Consulting Services according to the work schedule outlined in **EXHIBIT B** entitled "Project Schedule", attached hereto and incorporated herein as though set forth in full. The work schedule shall be updated periodically as necessary and by mutual agreement of the City and Consultant.

F. Alteration in Character of Work

Whenever an alteration in the character of work results in a substantial change in the Consulting Services, thereby materially increasing or decreasing the cost of the performance, the work shall be performed in accordance with this Agreement and as directed; provided however, that before such work is started, a contract change order shall be approved and executed by the City and Consultant. Additions to, modifications, or deletions from the project provided herein may be made and the compensation to be paid to Consultant may be adjusted accordingly by mutual agreement of the City and Consultant. It is distinctly understood and agreed that no claim for extra work done or materials furnished by Consultant shall be allowed by the City except as provided herein, nor shall Consultant do any work, or furnish any materials not covered by this Agreement unless such work is first ordered in writing. Any such work or materials furnished by Consultant without such written order first being given shall be at Consultant's own risk, cost, and expense, and Consultant hereby agrees that without such written order Consultant shall make no claim for compensation for such work or materials furnished.

G. Completeness and Accuracy of Consultant's Work

Consultant shall be responsible for the completeness and accuracy of Consultant's survey work, plans, supporting data, and any special provisions prepared or compiled under Consultant's obligation for this project and shall correct, at Consultant's expense, all errors or omissions therein which may be disclosed during the review of the plans.

If Consultant is performing any design or construction engineering services under this Agreement, correction of engineering errors or omissions disclosed and determined to exist by the City during the construction of the project shall be accomplished by Consultant. The cost of the design necessary to correct those errors attributable to Consultant and any expense incurred by the City as a result of additional construction costs caused by such engineering errors shall be chargeable to Consultant. The fact that the City has accepted or approved Consultant's work shall in no way relieve Consultant of any of Consultant's responsibilities. Should Consultant be contracted to perform construction inspection of the project, Consultant shall be responsible for errors and omissions in construction inspection disclosed and determined to exist by the City during and subsequent to the construction of the project. Consultant's duty in the construction inspection phase is to assure the City that the project is constructed in conformity with detailed plans and specifications and the cost of design necessary to correct errors and omissions in inspection attributable to Consultant, and any expense incurred by the City as a result of additional construction costs caused by such errors, shall be chargeable to Consultant. Acceptance or approval by the City of Consultant's work shall not relieve Consultant of inspection responsibilities.

H. General Responsibilities and Obligations of Consultant

Consultant is hereby retained to render a professional service only, and any payments made to Consultant are compensation solely for such services as Consultant may render and recommendations Consultant may make in carrying out the work. Consultant shall follow the practice of Consultant's profession to make findings, opinion, factual presentations, and to offer professional advice and recommendations. To the fullest extent permitted by law, each party (as "indemnitor") agrees to indemnify, defend and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney's fees (hereinafter collectively referred to as "claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

IV. CITY'S PROJECT MANAGER

The City's project manager, as designated by the City, shall be empowered to act for the City in accordance with the provisions of this Agreement, where such acts are not contrary to any applicable law.

V. INSURANCE

Consultant and its Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, employees or subconsultants.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Consultant from liabilities that might arise out of the performance of the work under this Agreement by Consultant, its agents, representatives, employees or subconsultants and Consultant is free to purchase additional insurance as may be determined necessary.

A. Minimum Scope and Limits of Insurance

Consultant shall provide coverage at least as broad and with limits of liability not less than those stated below.

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

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$1,000,000
Personal & Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Any one fire)	$ 50,000
Medical Expense (Any one person)	Optional

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

Combined Single Limit Per Accident or Bodily Injury and Property Damage	$1,000,000

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	

4. Professional Liability

Each Claim	$1,000,000
Annual Aggregate	$1,000,000

B. Self-Insured Retentions/Deductibles

Any self-insured retentions and deductibles shall 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.

C. Other Insurance Requirements

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

   a. The City of Flagstaff, its officers, officials, agents, and employees are to be listed as additional insureds with respect to liability arising out of: activities performed by, or on behalf of, Consultant; including the City's general

supervision of Consultant; products and completed operations of Consultant: and automobiles owned, leased, hired or borrowed by Consultant.

b. Consultant's insurance shall contain broad form contractual liability coverage.

c. The City, its officers, officials, agents, employees and volunteers shall be additional insureds to the full limits of liability purchased by Consultant even if those limits of liability are in excess of those required by this Agreement. 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 20 10 1185.

d. Consultant's insurance coverage shall be primary insurance with respect to the City, its, officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, or volunteers shall be in excess to the coverage of Consultant's insurance and shall not contribute to it.

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

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

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

2. Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees and volunteers for losses arising from work performed by Consultant for the City.

3. Professional Liability Insurance

In the event that the professional liability insurance required by this Agreement is written on a claims made basis, Consultant warrants that any retroactive date under the policy precedes the effective date of this Agreement; and that continuous coverage: shall be maintained and an extended discovery period shall be exercised for a period of two (2) years beginning from the time work under this Agreement is completed.

D. Notice of Cancellation

Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to: Hollie Burton, Contract Specialist, 211 W. Aspen Avenue, Flagstaff, AZ, 86001, and shall be sent by certified mail, return receipt requested.

E. Acceptability of Insurers

Insurance shall be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less that A-: VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Consultant from potential insurer insolvency.

F. Verification of Coverage

Consultant shall furnish the City with Certificates of Insurance 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.

All Certificates of Insurance shall be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall be a material breach of contract.

All Certificates of Insurance required by this Agreement shall be sent directly to: Hollie Burton, Contract Specialist, 211 West Aspen Avenue, Flagstaff, Arizona, 86001. The project number and project description shall be noted on the Certificate of Insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement, at any time.

G. Subconsultants

Consultants' Certificates of Insurance shall include all subconsultants as insured's under its policies or Consultant shall furnish to the City separate Certificates of Insurance for each subconsultant. All coverages for subconsultants shall be subject to the minimum requirements identified above.

H. Approval

Any modification or variation from the insurance requirements in this Agreement shall have prior approval from the Flagstaff City Attorney’s Office, whose decision

shall be final. Such action shall not require a formal contract amendment, but may be made by administrative action.

VI. FAILURE OF PERFORMANCE AND TERMINATION

A. Delays or Failure of Performance

1. Subject to paragraph 2 below, any delays in or failure of performance by either party under this Agreement which may be caused by circumstances beyond the reasonable control of the party concerned, including but not limited to, decree of government, act of God, strike, or other concerted action of workmen, fire, flood, explosion, riot, war, rebellion or sabotage shall not give rise to a claim for damages or constitute default per se.

2. If Consultant is delayed in the performance of this Agreement by act of God or other conditions as set forth above which could not reasonably have been foreseen or provided against, or by labor disputes or activities incident thereto, the estimated time for the performance of this Agreement shall be extended by a period equivalent in time to the duration of such delay. In the event of such delay attributable to any such foregoing cause, Consultant shall notify the City of such delay in writing within five (5) days after the commencement of the event causing delay, and within two (2) weeks after the event causing such delay ceases to exist, Consultant shall furnish City written notice of the number of delay days claimed and a statement of the reason Consultant believes such delay is excused by virtue of this section. If accepted by the City, an extension shall be granted for the period of time lost by reason of such delay within the purview of this section for which notice is given.

B. Termination

The City and Consultant hereby agree to the full performance of the covenants contained herein, except the City reserves the right, at its discretion, to terminate all or any part of the project at any time.

1. In the event the City shall terminate the service or any part of the services as herein provided, the City shall notify Consultant in writing, and immediately after receiving such notice, Consultant shall discontinue advancing the work under this Agreement and proceed to close said operations under this Agreement.

2. Upon such termination, Consultant shall deliver to the City all reports, calculations, drawings, specifications, and estimates entirely or partially completed, together with all unused materials supplied by the City. Use by the City or its agent of the completed documents for the projects for which intended, or for any completed divisible part of the project which can be deemed to stand alone (the completed divisible part(s) of the project shall be determined by both parties prior to or at the time of termination), shall not relieve Consultant of liability for errors and

omissions; any use of incomplete documents for the project for which intended without specific written authorization from Consultant shall be without liability or legal exposure to Consultant. Any use of the aforesaid documents for other projects without the specific written authorization from Consultant shall be without liability or legal exposure to Consultant.

3. Consultant shall appraise the work Consultant has completed and submit a written appraisal to the City for evaluation.

4. Consultant shall receive, as compensation in full for services performed to the date of such termination, a fee for the percentage of the work actually completed. This fee shall be a percentage of Consultant's fee described in this Agreement under SECTION III, and shall be in an amount to be agreed upon mutually by Consultant and the City.

5. When the work detail covers only the preparation of the preliminary plans, there shall be no limitation upon the City as to the subsequent use of the plans or ideas incorporated therein for the preparation of final construction plans except as provided under Subsection 2 above.

VII. GENERAL PROVISIONS

A. 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.

B. Jurisdiction

This Agreement shall be administered and interpreted under the laws of the State of Arizona. Jurisdiction for litigation arising from this Agreement shall be in the State of Arizona.

C. Dispute Resolution

1. 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 be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 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 section does not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

2. Litigation and Attorneys Fees

   Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement shall be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action shall be entitled to its costs including reasonable attorney's fees and court costs from the non-prevailing party.

D. <u>Nonwaiver</u>

Waiver by the City of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the City's right to require strict performance of the same provision in the future or of any other provision.

E. <u>Severability</u>

If any part of this Agreement is determined by a court of competent jurisdiction to be in conflict with statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining language unenforceable.

F. <u>Integration</u>

This Agreement represents the entire understanding of the City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except by written amendment signed by both parties.

G. <u>Assignment</u>

This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement shall not be assigned by either the City or Consultant without the prior written consent of the other.

H. Conflicts of Interest

Consultant covenants that it 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. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed, and no apprentice shall be employed at the expense of the City.

Pursuant to A.R.S. § 38-511, the City may, within three years after its execution, cancel this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is, or becomes at any time while this Agreement or an extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement with respect to the subject matter of this Agreement. The cancellation shall be effective when Vendor receives written notice of the cancellation unless the notice specifies a later time. In addition to the right to cancel this Agreement, the City may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City from any other party to this Agreement, arising as the result of this Agreement.

VIII. EFFECTIVE DATE AND DURATION

This Agreement shall become effective on and from the day and year first above written and shall remain in effect until [XXXXX, XX, 2006], or until all services to be performed under this Agreement are completed, whichever occurs first.

CITY OF FLAGSTAFF, a municipal corporation	[VENDOR NAME]
_____	_____
CITY MANAGER	BY
ATTEST:	
_____	_____
CITY CLERK	TITLE
APPROVED AS TO FORM	ATTEST:
_____	_____
CITY ATTORNEY	SECRETARY

Exhibit A: Project Approach

Exhibit B: Project Schedule

[To be inserted at time Notice of Award is granted]

EXHIBIT C

GRANT REQUIREMENTS

Grant Project Title: FUTS, Signage Phase I
Grant Project Number: 680507

1. CONTRACTS AND SUBCONTRACTS

1.1. Contracts and Subcontracts awarded to accomplish approved project work shall incorporate, by reference, in each contract and subcontract the provisions of the Arizona State Parks Grant Participant Agreement Number 680507 for the FUTS Signage Phase I. The Contractor shall bear full responsibility for acceptable performance under all subcontracts.

1.2. The Contractor shall pay any claim of a subcontractor or other employed individual performing work on this project for services pursuant to this agreement when due. The Contractor is subject to A.R.S. §34-221, and payment is due when required pursuant to A.R.S. §34-221.

1.3. The Contractor shall indemnify and hold the State of Arizona and the Board harmless from any claim for services pursuant to this agreement, or damages relating thereto, of a subcontractor or other employed individual performing work on this project.

1.4. Any subcontract for employment by the Contractor shall be in writing and shall contain a provision whereby a person so employed or with whom a subcontract has been entered, acknowledges that the State of Arizona and the Arizona State Parks Board shall not be liable for any costs, claims, damages, reimbursement, or payment of any kind relating to such subcontract.

2. FUND SOURCE RECOGNITON

2.1. This project is financed in part with a grant from Arizona State Parks Trails Heritage Fund Grant Number 680507 which is funded by the Arizona Lottery and administered by the Arizona State Parks Board.

3. COMPLIANCE

3.1 Non-Discrimination-Employment. The Contractor agrees to comply with the provisions of Executive Order Number 99-4, issued by the Governor of the State of Arizona relating to nondiscrimination in employment, which, by reference, is incorporated herein and becomes a part of the Agreement.

3.2 Records Retention and Audits. Complete financial records and all other documents pertinent to this contract shall be retained by the Contractor and made available to City of Flagstaff Staff and Arizona State Parks Staff, if requested, for review and/or subject to audit purposes for a period of for five (5) years after project closure.