TOWN ENGINEER AGREEMENT
TOWN OF PRESCOTT VALLEY, ARIZONA

This Agreement, entered into this 9th day of June, 2016, by and between the Town of Prescott Valley, a municipal corporation of Arizona (hereinafter the "Town"), and Dava & Associates, Inc., an Arizona corporation (hereinafter the "Engineer");

WITNESSETH:

WHEREAS, ARS §9-237 requires the common council of every town to appoint a town engineer; and

WHEREAS, ARS §9-238 gives the town engineer charge of the town streets, sewers and water works; and

WHEREAS, §3-02-040 of the Prescott Valley Town Code requires the Town Engineer to perform such duties as are required by law and as the Council or Town Manager may deem necessary; and

WHEREAS, beginning in June of 1988, the private engineering firm of Dava and Associates has served as the Town Engineer of Prescott Valley on a contractual basis; and

WHEREAS, the Engineer and the Town entered into an employment contract dated February 28, 1991, with the term ending July 10, 1993; and

WHEREAS, said contract was amended June 24, 1993 for a two (2) year period ending June 30, 1995, and again on June 22, 1995 for a two (2) year period ending June 30, 1997; and

WHEREAS, said contract was inadvertently not renewed in 1997, but Dava and Associates and the Town continued to function as though the terms of the previous amendment applied; and

WHEREAS, the Engineer and the Town then entered into an employment contract dated May 28, 1998, with the term ending June 30, 2000; and

WHEREAS, the Engineer and the Town then entered into an employment contract dated June 8, 2000, with the term ending June 30, 2002; and

WHEREAS, the Engineer and the Town then entered into an employment contract dated July 11, 2002, with the term ending June 30, 2004; and

WHEREAS, the Engineer and the Town then entered into an employment contract dated May 27, 2004, with the term ending June 30, 2006; and

WHEREAS, said contract was inadvertently not renewed July 1, 2006, but the Engineer and the Town have continued to function as though the terms of the previous employment contract applied; and

WHEREAS, the Engineer and the Town then entered into an employment contract dated September 28, 2006, with the term ending June 30, 2008; and

WHEREAS, the Engineer and the Town then entered into an employment contract dated July 10, 2008, with the term ending June 30, 2010; and

WHEREAS, the Engineer and the Town then entered into an employment contract dated June 10, 2010, with the term ending June 30, 2012; and

WHEREAS, the Engineer and the Town then entered into an employment contract dated June 14, 2012, with the term ending June 30, 2014; and

WHEREAS, the Engineer and the Town then entered into an employment contract dated June 12, 2014, with the term ending June 30, 2016; and

WHEREAS, Town Code §3-04-080 provides an exception to the requirement of formal competitive procurement for services when it comes to acquiring professional engineering services; and

WHEREAS, when an independent contractor is appointed as Town Engineer, the contractor is not an "employee" for the purposes of ARS §12-820 (public liability), but it is a "public officer" for purposes of ARS §38-502 (conflicts-of-interest); and

WHEREAS, the Mayor and Council desire again to enter into a contractual arrangement with Dava and Associates to serve as the Town Engineer, with such general duties as are set forth hereinafter;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1.

The Engineer shall perform the following services for the Town:

(a) Meet weekly or at other convenient times with the Town Manager for discussions concerning projects, problems and other related matters concerning civil engineering;

(b) Attend Town Council meetings as required by the Town Manager;

(c) Provide information, advice and recommendations to the Town Manager and/or members of the Town Council or Town staff as requested by the Manager on public works projects;

(d) Draft requests for proposals and/or bids for construction and/or engineering contracts, and distribute same to the local newspaper of record (currently the Prescott Courier) for publication in a timely fashion, and provide recommendations to the Town Manager and/or Town Council on awards of contracts after review of proposals and/or bids;

(e) Prepare engineering studies and/or reports when requested by the Town Manager;

(f) Update the Town Manager about on-going projects;

(g) Prepare construction plans and specifications and observe the construction of capital improvement projects as directed by the Town Council;

(h) Assist the Town Manager in the development of capital improvement programs and maintenance procedures;

(i) Arrange for professional services by subcontractors when those services are not within the staff expertise of the Engineer;

(j) Perform work mutually agreeable to the Town Manager and the Engineer upon the giving of reasonable notice by the Town Manager; and

(k) Perform related work as required.

In providing these services, the Engineer shall furnish all necessary supervision, labor and materials, and shall obtain all required licenses and permits.

Section 2.

The term of this Contract shall be active from July 1, 2016 through June 30, 2018, unless sooner terminated by either party as provided hereinafter.

Section 3.

The Town shall pay the Engineer for services performed on the basis of the following schedule:

(a) A fixed monthly retainer of Six Hundred Dollars ($600.00) for up to ten (10) hours per calendar month of services provided by a Senior (Registered Professional) Engineer;

(b) On a time and materials basis in accordance with the fee schedule, attached hereto as Exhibit "A" and incorporated herein by this reference, for additional services authorized by the Town Manager.

Section 4.

The Town and Engineer agree that the Engineer may be assigned to work on specific projects under the authority of the Town Manager, so long as the total compensation to the Engineer in each specific project is less than Sixteen Thousand Dollars ($16,000). When the estimated fees for any specific project are expected to cost Sixteen Thousand Dollars ($16,000) or more, the Engineer shall present a scope of work and fee estimate to the Town Manager and Town Council for approval prior to commencing work.

The Engineer acknowledges, and the Town and the Engineer agree, that it may be in the Town's best interests, from time to time, to have specific projects completed by other engineering consultants due to work schedule conflicts, requirements for services outside the specific expertise of the Engineer, economic necessity, and other events (including potential conflicts of interest) which would reasonably suggest employing other engineering consultants. Therefore, at the discretion of the Town Manager [for services costing less than Sixteen Thousand Dollars ($16,000)], and at the discretion of the Town Council [for services costing Sixteen Thousand Dollars ($16,000) or more], the Town may request proposals from other consulting engineers and enter into separate agreements to perform those services. In the case of conflicts-of-interest, the Engineer may request that the Town competitively procure such services per ARS §34-603, so that the Engineer may compete on the basis of demonstrated competence and qualifications to provide the service. The Town's determination as to whether or not it will competitively procure such services shall be final.

In all events, the Engineer agrees to conduct itself in accordance with applicable laws and regulations, including laws pertaining to conflicts-of-interest contained in ARS §§38-503, 38-504, and 38-505.

Section 5.

The Town retains the right to inspect and review the Engineer's manner and method of performing its services under this Agreement in order to ensure compliance with both the specifications indicated in this Agreement and applicable local, state or federal rules, regulations or laws. However, Engineer is an independent contractor and all persons or entities employed by or under contract with the Engineer in connection herewith shall be employees of the Engineer and are not employees of the Town in any respect. It is therefore understood that the Engineer shall not be entitled to nor shall the Engineer be paid any amounts for ordinary employee benefits such as a retirement plan, medical benefits or any other benefit commonly given in the normal course of business to officers and employees of the Town. All monies paid to the Engineer shall be recorded in accordance with the Internal Revenue Code under Form 1099.

The Engineer shall provide for and is solely responsible for all local, state and federal taxes and other charges as provided by law incident to the performance of services under this Agreement, including, but not limited to, the payment of all employment taxes, social security taxes, workers' compensation coverage, payroll and other withholdings.

Section 6.

To the fullest extent permitted by law, the Engineer shall defend, indemnify and hold harmless the Town, its agents, officers, officials, employees, and successors for, from and against all claims, demands, suits, settlements, judgments, losses, costs, expenses, and damages of every kind and description (including but not limited to attorneys' fees, court costs, and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the negligent or allegedly negligent acts, errors, mistakes, omissions, work or services of the Engineer, its agents, officers, employees, assigns, and subcontractors in the performance of this Agreement. The Engineer's duty to defend, hold harmless and indemnify the Town, its agents, officers, officials, employees and successors shall arise in connection with any claim, demand, suit, settlement, judgment, loss, cost, expense, or damage that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any of Engineer's negligent or allegedly negligent acts, errors, mistakes, omissions, work or services in the performance of this Agreement, including any employee of the Engineer, any tier of Engineer's subcontractors or any other person for whose negligent or allegedly negligent acts, errors, mistakes, omissions, work or services the Engineer may be legally liable.

The amount and type of insurance coverage requirements set forth hereinafter shall not be construed as limiting the scope of the indemnity in this Section.

Section 7.

The Engineer shall maintain Commercial General Liability insurance with a limit of not less than $1,000,000.00 for each occurrence with a $2,000,000.00 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 provision of this Agreement. Said insurance shall include a Commercial General Liability additional insured endorsement for the benefit of the Town, which shall be at least as broad as Insurance Service Office, Inc. Policy Form CA 00011001, or any replacements thereof.

The Engineer shall also maintain Professional Liability insurance covering negligent or allegedly negligent acts, errors, mistakes and omissions arising out of the work or services performed under this Agreement by the Engineer, or any person employed by the Engineer, with a limit of not less than $1,000,000.00 each claim.

The Engineer shall furnish the Town with Certificates of Insurance, or formal endorsements as required by this Agreement, issued by the Engineer's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect.

Section 8.

The Engineer shall not assign this Agreement, or any part thereof, without the prior written consent of the Town. Any attempted assignment in violation hereof shall be void. The Engineer shall neither subcontract nor permit any portion of the work to be subcontracted without the prior consent of appropriate Town staff. The Engineer shall be fully responsible for the negligent or allegedly negligent acts or omissions of any subcontractors of any tier and of all persons employed by them. Neither the consent of Town staff nor anything contained herein shall be deemed to create any contractual relationship between the Engineer's subcontractor of any tier and the Town.

Section 9.

All documents (whether printed or stored as electronic, magnetic, or digital information) including, but not limited to, original drawings, estimates, specifications, field notes, and data, are and remain the property of the Town. The Engineer shall, at the conclusion of this Agreement, deliver to the Town all documents (whether complete or partially complete) produced or collected by the Engineer in its performance under this Agreement. The Engineer may, at its expense, reproduce and retain a copy of the drawings, estimates, specifications, field notes, or data collected or produced under this Agreement.

Section 10.

The Engineer shall keep accurate and complete records in support of all payments hereunder in accordance with generally recognized accounting principles and practices. The Town or its audit representatives shall have the right at any reasonable time to examine, audit, and reproduce all records pertaining to costs, including (but not limited to) payrolls, employees' time sheets, invoices, and all other evidence of expenditures for the work. Such records shall be kept by the Engineer and made available for one (1) year after termination of this Agreement.

Section 11.

This Agreement may be terminated by either party upon the giving of thirty (30) days' written notice to the other party.

Section 12.

Any notice by either party to the other hereunder shall be considered duly served if delivered in person to the office of the authorized representative listed below, or if deposited in the mail, properly stamped with the required postage, and addressed to the authorized representative listed below. Either party may change its representative or the address thereof by giving the other party written notice. Unless changed, notices shall be sent to the following:

Town:	Town Manager Town of Prescott Valley 7501 East Civic Circle Prescott Valley, AZ 86314

Engineer: Gordon Bowers, P.E.
Dava & Associates
310 East Union Street
Prescott, AZ 86303

Section 13.

(a) The failure of the Town to insist upon or enforce strict performance by the Engineer of any of the provisions of this Agreement, or to exercise any of its rights hereunder, shall not be construed as a waiver or relinquishment to any extent of the Town's right to assert or rely upon such terms or rights on any future occasion.

(b) Any provisions of this Agreement prohibited or rendered unenforceable by local, state, or federal law, or by the ruling of any court of competent jurisdiction, shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

(c) This Agreement shall be interpreted in accordance with the substantive and procedural laws of the State of Arizona.

(d) In the event any action shall be instituted between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs, including reasonable attorneys' fees.

(e) In the event any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

(f) This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

Section 14.

This Agreement may be canceled without penalty pursuant to ARS §38-511 in the event of a conflict of interest as described therein by any person significantly involved in negotiating this Agreement on behalf of the Town.

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IN WITNESS WHEREOF, the Town of Prescott Valley and Dava & Associates, Inc. have caused this TOWN ENGINEER AGREEMENT to be executed by their duly-authorized representatives the day and year first-above written.

Town of Prescott Valley, a
Municipal Corporation of Arizona,
"Town"

_____
Harvey C. Skoog, Mayor

ATTEST:

_____
Diane Russell, Town Clerk

APPROVED AS TO FORM:

_____
Ivan Legler, Town Attorney

Dava and Associates, Inc.,
an Arizona corporation, "Engineer"

_____
Gordon Bowers, P.E., President

ATTEST:

_____
Robert Fister
Secretary-Treasurer

STATE OF ARIZONA)
) ss:
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Harvey C. Skoog, Mayor, Town of Prescott Valley, a municipal corporation of Arizona, on behalf of said Municipal Corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:
_____

STATE OF ARIZONA)
) ss:
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Gordon Bowers, President, Dava & Associates, Inc., an Arizona corporation, on behalf of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:

_____