

## SAMPLE CONTRACT

### CONTRACT FOR PURCHASE OF WELL AND PUMP MAINTENANCE SERVICES FOR THE CITY OF FLAGSTAFF WATER SERVICES DIVISION

Contract No. 2019-35

This Contract is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Empire Pump, a State of Arizona Corporation ("Contractor").

WHEREAS, the City desires to receive, and Contractor is able to provide materials and/or services;

NOW THEREFORE, in consideration for the mutual promises contained herein, the parties agree as follows:

1. Scope of Work: Contractor shall provide **WELL AND PUMP MAINTENANCE SERVICES FOR THE CITY OF FLAGSTAFF WATER SERVICES DIVISION**, subject to all terms, conditions, and specifications provided in the response to this Solicitation and in the Scope of Work attached hereto as Exhibit A.
2. Compensation: The contractor shall be compensated for work performed under the bid schedule, work performed under purchase order or for work or services provided under the Special Item section identified in the Scope of Work attached hereto as Exhibit A. Payment shall be compensation in full for all terms necessary to provide a complete job with respect to each bid item, purchase order, or amendment to the job.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated in this Contract by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. Special Terms and Conditions: The City of Flagstaff Special Terms and Conditions, attached hereto as Exhibit C are hereby incorporated in this Contract by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
5. Insurance: Contractor shall meet Insurance Requirements of the City as set forth in Exhibit D.
6. Contract Term: Firm Fixed Fee. Initial term is for two (2) years, with annual renewals not to exceed three (3) additional one (1) year terms.
7. Contract Renewal: The City reserves the right to unilaterally extend the period of the contract for ninety (90) days beyond the stated expiration date.
8. Notice: Any formal notice required under this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Jessica Bryson  
Senior Procurement Specialist  
City of Flagstaff  
211 W. Aspen Ave.  
Flagstaff, Arizona 86001  
[jbryson@flagstaffaz.gov](mailto:jbryson@flagstaffaz.gov)

To Contractor:

Mike Mullin  
Project Manager  
Empire Pump Corporation  
2849 S. 49<sup>th</sup> Ave.  
Phoenix, Arizona 85043  
[mike@empirepumpcorp.com](mailto:mike@empirepumpcorp.com)

With a copy to:

Brian Huntzinger  
Water Production Manager  
City of Flagstaff  
211 W. Aspen Ave.  
Flagstaff, Arizona 86001  
[bhuntzinger@flagstaffaz.gov](mailto:bhuntzinger@flagstaffaz.gov)

With a copy to:

9. Authority: Each party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.

CONTRACTOR

\_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF FLAGSTAFF

\_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney's Office

Notice to Proceed issued: \_\_\_\_\_, 2019

## EXHIBIT A

# SCOPE OF WORK

**OVERVIEW:** The City of Flagstaff, Arizona operates water processing, treatment and distribution facilities, including well fields. The purpose of this bid is to establish a contract with a qualified Contractor for maintenance and repair of the pumps, motors, and other equipment associated with the water processing, wastewater processing, and distribution process throughout the City of Flagstaff.

The bid is organized into bid schedules, which have similar equipment grouped together. Bid schedules 1-6 apply to Lake Mary Water Treatment Facility, bid schedule 7 refers to the Rio de Flag Reclamation Facility and bid schedule 8 refers to the Wildcat Hill Wastewater Treatment Facility. The bid will be evaluated and awarded in the following manner – bid schedules 1-6 (Lake Mary) is one group; bid schedule 7 and 8 (Rio de Flag Wildcat Hill) is the second group.

**SCOPE OF WORK:** The work covered under this contract is for the removal and replacement of submersible pumps, motors, column pipe and line shaft pumps, water treatment pumps and motors, and related electrical work, on an as needed basis. Each bid schedule has data for each well, pump and motor covered under this contract and is attached for proposing and informational purposes.

**DESCRIPTION OF WORK:** The following items are the minimum requirements of performing the scope of work and are not to be construed to mean limits of the work required. The work may be minimized or expanded depending on the method the Contractor chooses to perform the scope of work.

1. Mobilization and demobilization to pull the pump and to set the pump.
2. Electrical work: The contractor shall disconnect the source power to the well; disconnect power cables from the switch gear, pull electrical cable from conduit as required, take precautions when handling electrical or power cable so as not to damage protective coatings or wire, disconnect motor leads, and/or splice motor leads. The Contractor shall connect the source power to the well; band submersible cable with stainless steel bands every twenty (20) feet, run cable through conduit, make appropriate electrical connections, set, and balance power phases for efficient pump operations. Load protection devices are installed on all wells except those located in the Inner Basin well field.
3. Mechanical and Plumbing: The Contractor shall disconnect all pipe fittings, air lines, oil lines, and discharge heads that are required to be taken apart and removed to pull the pump and motor. At some locations, it will be necessary to remove and replace a removable building, hatch or other structure. Many of these structures have connection eyes on the roof to connect a cable harness to simplify the structure removal. All mechanical and plumbing items removed will be replaced in a workmanlike manner that will result in as good or better installation found prior to the dismantling.
4. Pumps and Motors: The Contractor will pull and deliver to the appropriate City of Flagstaff Water Treatment Facilities all submersible pumps and motors and all line shaft motors and/or pumps unless other arrangements are agreed upon for storage or repair. The deliveries to the City of Flagstaff Water Treatment Facilities will be made during normal operating hours, Monday through Friday only. The Contractor shall notify the Facility Manager two working days prior to delivery.

**LOCATIONS:** The well field locations are within a 15-mile radius of Flagstaff City Hall. The Inner Basin well field is approximately 11.5 miles north; the Woody Mountain well field is approximately 6.5 miles

southwest and; the Lake Mary well field is approximately 8.5 miles southeast. The Wildcat Hill Wastewater Treatment Facility is at 2800 North El Paso Road, telephone number 928.526.2520; the Rio de Flag Reclamation Facility is at 600 Babbitt Way, telephone number 928.556.1301; and the Lake Mary Water Treatment Facility is at 4500 South Lake Mary Road, telephone number 928.774.0262. These facilities are on City maintained streets.

ACCESS TO SITES: City crews will maintain road and site access to all Woody Mountain and Lake Mary well fields during the progress of the work, except in the most severe weather conditions. Inner Basin wells will not be worked on during the winter season (November through May). Road and site access will be maintained to the Inner Basin wells by City crews during the period(s) the Contractor is requested to work on the wells except in periods of severe weather. The City will have an employee on hand to monitor the progress of the work.

#### CONTRACTOR RESPONSIBILITIES:

The contractor will:

1. Provide all labor, equipment, materials, tools, expertise, and incidentals to perform the scope of work.
2. Safeguard all City equipment such as, but not limited to, electrical cables, air lines, oil lines, fittings, pumps, motors and protecting water filled motors from freezing. For Lake Mary equipment items except for column pipe may be turned over to the City at the Lake Mary Water Treatment Plant (LMWTP) for storage during the time the pump is out of the well hole. While in storage at the LMWTP the Contractor will not be liable for the equipment and/or materials.

The Contractor is fully responsible for the protection and security of the water quality and integrity of the well during the period of time the pump is out of the well hole.

SPECIAL ITEMS: Special items under this section refer to materials and services not included within the bid schedules, but which may be necessary for the Contractor to provide.

Examples of items include, but are not limited to:

- "Test pumping" equipment
- Pitless adapters
- Sounding tubes
- Water delivery: pipe, adaptors, fittings.
- Motor repairs
- Motor replacements (new and/or rebuilt)
- Steel building
- Column pipe
- Bowl assemblies
- Pump replacement (new and/or rebuilt)
- Shaft and tubing
- Bearings
- Check valves
- Electric cables
- Electric controls
- Stainless steel bands
- Well and pump modification
- General excavation, drainage work and trenching

- Well rehabilitation/workover
- Dust control
- Motor control centers/switchgear/transformers
- Load protection devices
- Lightning protection equipment
- Electric panels, and lighting circuits
- Compressors
- Crane

The Contractor will be compensated for such services at a percentage markup of the cost the Contractor pays for the item or service (wholesale price). **State the markup percentage:** \_\_\_\_\_; actual invoices must be submitted with billing in order for invoices to be paid.

All special item purchases must be approved, in writing, by the City's Water Production Manager prior to any purchases being made.

**RIGHTS AND OBLIGATIONS OF CITY:**

1. City's Water Production Manager: The City's Water Production Manager, who shall be empowered to act for the City in accordance with the provisions of this contract where such acts are not contrary to law of City ordinances, shall be the Water Services Director or his designee. The City's Water Production Manager will audit the billings, approve payments, oversee schedules, and generally be responsible for overseeing the execution of this contract. Changes in the contract may be made only with the approval of the Flagstaff City Council in advance of said change.
2. Inspection: Inspectors may be stationed on the worksite to report to the Water Production Manager as to the progress of the work, the manner in which it is being performed and to report whenever it appears that materials furnished, and work performed by the Contractor fails to fulfill the requirements of this contract. The inspector may direct the attention of the Contractor to such failure or infringement, but such inspection shall not relieve the Contractor from any obligation to furnish acceptable materials or to provide completed work that is satisfactory.

The Contractor shall properly guard and protect all finished or partially finished work and shall be responsible for the same until the work is completed and accepted by the City's Water Production Manager.

**RIGHTS AND OBLIGATIONS OF THE CONTRACTOR:**

1. Contractor's Licenses: Each proposer shall state his/her Arizona Commercial State Contractor's License Number and Classification as evidence that he/she is qualified to contract the work as indicated in the specifications. Each Contractor is required to have a commercial license issued by the State of Arizona Registrar of Contractors regardless of their location.
2. Authorization to Proceed: Specific authorization to proceed with the services described in "Well Maintenance Specifications" and Schedules shall be as follows:
  - a. Authorization to proceed shall be by a telephone call from the City's Project Manager or designee confirmed in writing (Task Order).
    - For special services, the Contractor shall include a description of the work to be

Performed and the schedule for commencing and completing the work.

3. Response Time: After authorization to proceed has been provided to the Contractor by the City in the above described manner, the Contractor shall respond with manpower, equipment and materials to the area requested within the following time frames:
  - a. Routine/Scheduled: When non-emergency services are called for by the City, the Contractor shall respond within fourteen (14) calendar days after the City's authorization to proceed.
  - b. Urgent/Critical: When emergency services are called for by the City, the Contractor shall respond with the most available rig or equipment required, within three (3) calendar days after the City's authorization to proceed.

Time is of the essence in the performance of this contract, and failure to respond within the specified response times shall be considered a breach of the contract and may constitute grounds for the immediate termination of this contract. It shall also be the basis for disallowance of the mobilization and/or demobilization compensation.

The Contractor is employed to render specialized service only, and any payment made is compensation solely for those services rendered. Contractor shall follow the practice its trade or profession in providing such service.

## EXHIBIT B

# STANDARD TERMS AND CONDITIONS

### IN GENERAL

1. **NOTICE TO PROCEED:** Contractor shall not commence performance until after City has issued a Notice to Proceed.
2. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.
3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.
4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive, and the City reserves the right to contract with others for materials or services.
5. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

### MATERIALS

6. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
7. **QUALITY:** Contractor warrants that all materials supplied under this Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials and will be safe and appropriate for use as normally used. City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
8. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.
9. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturers' Warranties to City upon City's acceptance of the materials.
10. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.
11. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City receives the material at the point of delivery, and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.

12. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.
13. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.
14. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
15. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens other than the security interest held by Contractor until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.
16. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

## **PAYMENT**

17. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
18. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
19. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.  
  
Exception: The City will pay any taxes which are specifically identified as a line item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.
20. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
21. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by City.

22. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by City.
23. **AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to City or fees and charges owed to City under this Contract.
24. **OFAC:** No City payments may be made to any person in violation of Office of Foreign Assets Control regulations, 31 C.F.R. Part 501.

### **SERVICES**

25. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
26. **CONTROL:** Contractor shall be responsible for the control of the work.
27. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
28. **SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
29. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
30. **ACCEPTANCE:** If work is rejected by the City due to noncompliance with the Contract, The City, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.

### **INSPECTION, RECORDS, ADMINISTRATION**

31. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.
32. **RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.
33. **PUBLIC RECORDS:** This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as "confidential", the City will endeavor to notify Contractor prior to release of such information.

- 34. CONTRACT ADMINISTRATION:** Contractor will be required to participate in the City's Contract Administration Process. Contractor will be closely monitored for contract compliance and will be required to promptly correct any deficiencies.

### **INDEMNIFICATION, INSURANCE**

- 35. GENERAL INDEMNIFICATION:** Contractor shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney's fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents of Contractor or damages to any property arising or alleged to have arisen out of the negligent performance of the Contract, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the Contract. This indemnification clause shall not apply, if a different indemnification clause is included in the City's Specific Terms and Conditions.
- 36. INSURANCE:** Contractor shall maintain all insurance coverage required by the City, including public liability and worker's compensation.
- 37. INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of Contract performance or use by the City of materials furnished or work performed under this Contract. Contractor shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the City against any and all expenses, losses, royalties, profits and damages, attorney's fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

### **CONTRACT CHANGES**

- 38. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 39. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
- 40. AMENDMENTS:** This Contract may be amended by written agreement of the parties.
- 41. SEVERABILITY:** If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.
- 42. NO WAIVER:** Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
- 43. ASSIGNMENT:** This Contract may be assigned by Contractor with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and

void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to City. The Purchasing Director shall have authority to consent to an assignment on behalf of City.

- 44. BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

#### **EMPLOYEES AND SUBCONTRACTORS**

- 45. SUBCONTRACTING:** Contractor may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
- 47. NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition, Contractor shall comply with the City Code, Chapter 14-02 Civil Rights which prohibits discrimination based on sexual orientation, or gender identity or expression.
- 48. DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.
- 49. IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all state and federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

#### **DEFAULT AND TERMINATION**

- 50. TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days, unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated

breaches, the non-defaulting party may elect to terminate this Contract by written notice, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law, in addition to the remedies provided in this Contract.

51. **CITY REMEDIES:** In the event of Contractor's default, City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
52. **CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.
53. **SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
54. **TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
55. **TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice without further penalty or liability to Contractor. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination.
56. **TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate this Contract, and Contractor is deemed in default, if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.
57. **PAYMENT UPON TERMINATION:** Upon termination of this Contract, City will pay Contractor for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
58. **CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with award or performance of the Contract.
59. **CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor.

## **MISCELLANEOUS**

- 60. ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City without the prior written consent of the City.
- 61. NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent. A Notice may be sent by email as a secondary form of notice.
- 62. THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
- 63. GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
- 64. FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
- 65. ATTORNEYS' FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.

## EXHIBIT C

### **SPECIAL TERMS AND CONDITIONS**

1. **INTENT:** The City of Flagstaff, Arizona operates water processing, treatment and distribution facilities, including well fields. The purpose of this bid is to establish a contract with a qualified Contractor for maintenance and repair of the pumps and motors and other equipment associated with the water processing, wastewater processing and distribution process throughout the City of Flagstaff.

The bid is organized into bid schedules which have similar equipment grouped together. Bid schedules 1-6 apply to Lake Mary Water Treatment Facility, bid schedule 7 refers to the Rio de Flag Reclamation Facility and bid schedule 8 refers to the Wildcat Hill Wastewater Treatment Facility. The bid will be evaluated and awarded in the following manner – bid schedules 1-6 (Lake Mary) is one group; bid schedule 7 and 8 (Rio de Flag Wildcat Hill) is the second group.

These specifications require the doing of all things necessary, or proper for, or incidental to the furnishings and delivery of said unit and associated equipment. All things not expressly mentioned in these specifications but involved in carrying out their intent are required by these specifications, and the Contractor shall perform the same as though they were specifically mentioned, described, and delineated.

The Contractor is to submit a user list with in service date, phone number, and person to contact that are currently using the equipment offered in this bid for consideration, so that if necessary, the City can view the equipment in operation.

2. **WARRANTY:** Contractor expressly warrants that all goods and services covered by this Contract shall conform to the specifications, drawings, samples or other description in this Invitation for Bids, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect and that goods and services of Contractor's design be free from defect in design. Inspection, test, acceptance or use of the goods furnished hereunder shall not affect Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Contractor agrees to replace or to correct defects of any goods or services not conforming to the foregoing warranty promptly, without any expense to the City including shipping and transportation costs, when notified of such nonconformity by the City. In the event of failure by Contractor to correct defects in or replace nonconforming goods or services promptly, City, after reasonable notice to Contractor, may make such corrections or replace such goods and services and charge Contractor for the cost incurred by the City thereby.

Contractor's product, service, and facilities shall be in full compliance with all applicable federal, state and local laws, statutes, ordinances, regulations, and standards, regardless of whether or not they are expressly referred to by the City.

Unless otherwise specified, the minimum warranty period shall be one (1) year from Contractor's installation or delivery of the warranted item. Contractor shall provide the City with a copy of the complete manufacturer's warranty information.

If the City purchases new equipment from the successful Contractor that the Contractor recommends and installs, the equipment shall be under warranty for a year from the date of

purchase. This warranty shall include the cost of new equipment and the cost the Contractor bears for pulling, replacing and setting the new equipment.

Contractor guarantees that the equipment offered shall be warranted as follows:

- A. Contractor must send a copy of the warranty explaining clearly what parts and labor are warranted and the time period involved. Contractor is to state the name of the firm where warranty work is to be performed and the maximum number of hours to respond to a service request by a qualified technician arriving at the City of Flagstaff shop.
- B. OPERATIONAL STANDARDS: This equipment will be used at elevations from near sea level to 10,000 feet and in ambient temperatures as high as 120 degrees and as low as - 40 degrees F. The equipment shall remain operational under these conditions. Each component of the complete unit shall be adequate for and compatible with all structural and performance demands placed upon it as a part of the complete unit.

- 3. **COMPLIANCE WITH THE SCOPE OF WORK:** It is agreed that Contractor shall be fully responsible for making any corrections, replacements, or modifications necessary for specification or legal compliance. Contractor agrees that if the product or service offered does not comply with the terms and conditions of this Contract, the Purchasing Director has the right to cancel at any time with full refund within sixty (60) calendar days after notice of non-compliance and Contractor further agrees to be fully responsible for any incidental and/or consequential damages suffered by the City.
- 4. **GENERAL CONTRACTED SERVICES AND MATERIALS:** Contractor agrees to perform those planned tasks and provide those materials described in Bid Schedules, attached hereto and incorporated herein.
- 5. **SUPERVISION BY CONTRACTOR:** The Contractor will supervise and direct the work. Contractor shall be solely responsible for the methods, techniques, sequences and procedures of the work. The Contractor will employ and maintain on the work site a qualified supervisor or superintendent who shall have been designated, in writing, by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.
- 6. **CONTRACTOR'S PERSONNEL:** Key personnel to be assigned to the project shall be identified, if requested, to the City by the Contractor at the time of each assignment.
- 7. **MISCELLANEOUS CHARGES:** If any other charges are applied to the Well and Pump Maintenance Services, such charges shall be as stated on the bid form under "Miscellaneous Charges". No other charges shall be considered later.
- 8. **CONTRACT ADMINISTRATOR:** The Contract Administrator for the City shall be the Water Production Manager or designee. The Contract Administrator shall audit billings, approve payments, establish schedules, and generally be responsible for overseeing execution and the delivery of this Contract.
- 9. **BILLING AND OTHER DOCUMENTS:** Contractor shall submit to the City's Water Production Manager, Attn: City of Flagstaff, Water Services Division, 211 West Aspen Avenue, Flagstaff, AZ

86001, a billing of services and materials according to the bid schedule of each assignment authorized by the City. Invoices shall contain the City of Flagstaff purchase order number.

Prior to the release of any payments to the Contractor, the Contractor will be required to provide lien waivers from all Sub-Contractors and suppliers as proof of payment. The City will not release any payments to the contractor until all lien waivers have been received on each project.

- 10. INSPECTION AND PERFORMANCE TESTS:** Inspection of workmanship, materials, design and performance of the unit or services may be made at the Contractor's factory at the sole discretion of the City. The City will pay all expenses of its inspectors. However, the services specified shall be subject to final inspection and acceptance by the City. The completed services will be required to undergo a performance test before final acceptance. Any defects or failure to comply with any requirements of these specifications shall be immediately remedied by the Contractor at the Contractor's own expense before final acceptance.
- 11. PROTECTION OF WORK AND PROPERTY:** Contractor shall exercise reasonable and prudent care to safeguard the City's property, facilities and equipment from any unnecessary damage during the performance of Contractor's duties under this contract.  
  
The Contractor shall be liable to the City for any damage, theft or vandalism to its wells, pumps, equipment, machinery or other property as a result of the Contractor's acts or omissions.
- 12. MARKING OF CONTROLS:** All operating controls, light switches, and controls for auxiliary equipment that may be installed on the vehicle, or at any other location on the unit shall be clearly and permanently marked and identified by means of identification plates.
- 13. CLEANUP:** After all work under each assignment is completed, the Contractor shall remove all debris and other materials not incorporated in the work from the site of the work.
- 14. DUMPING AND DISPOSAL OF WASTE:** The Contractor shall provide for the disposal of all waste products, debris, etc., and shall make necessary arrangements for such disposal.
- 15. DELIVERY:** The prices quoted shall be F.O.B. destination delivered to the City of Flagstaff, Water Services Division, 211 West Aspen Avenue, Flagstaff, Arizona. Clean and ready for service with all items attached and operational. The selected contractor shall notify the Operations Manager, Water Services Division or designee by phone (928) 774-0262, not less than two (2) days in advance, informing them of how and when they intend to deliver the equipment.
- 16. RECOMMENDED SPARE PARTS:** The Contractor shall furnish with each service manual a list of recommended spare parts. The list shall include all necessary data for ordering the parts. Parts furnished by other manufacturers shall be identified by the ordering data of the actual manufacturer.
- 17. ACCEPTANCE:** Each item delivered shall be subject to a complete inspection prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Thirty (30)-calendar days shall be allowed for this process. If delivered equipment is returned to the Contractor prior to acceptance for any reason, additional periods of thirty (30)-calendar working days shall be allowed for inspection when subsequent deliveries occur. Any defects or failures to comply with any requirements of these specifications shall be immediately remedied; otherwise liquidated damages would be applicable as referenced herein.

- 18. WEATHER CONDITIONS:** This product will be used at elevations from near sea level to 10,000 feet and ambient temperatures as high as 120 degrees and as low as – 40 degrees F. The product shall remain operational under these conditions. Each component of the complete unit shall be adequate for and compatible with all structural and performance demands placed upon it as a part of the complete unit.
- 19. OPERATION MAINTENANCE AND REPAIR DATA:** Prior to the delivery of the unit and associated equipment, the Proposer shall forward directly to the City, operating, maintenance repair manuals. All manuals shall be in the form of neatly bound books, with durable covers and shall be properly identified with manufacturer's name, model and serial number of the equipment.

The operating and maintenance or shop manual shall be the latest manufacturer's handbook covering in detail the recommended operating maintenance and service procedures.

The repair or shop manual shall include detailed drawings, schematics, electrical and hydraulic or other piping diagrams and complete parts lists for all components of the unit and associated equipment.

Where components or equipment of several manufacturers' have been used in assembling the unit, the manuals shall include operating, maintenance repair and parts lists of all manufacturers' covering all of the components.

The manuals shall be furnished in sets. Each set (four sets total) shall include an operator's manual, parts catalog and shop repair manual. The books and manuals shall be delivered to the City of Flagstaff Fleet Superintendent at the time the equipment is delivered. Delivery shall not be considered complete and payment shall not be made until all required manuals and books are received. Two sets of all manuals maybe submitted in CD format.

- 20. COMPLIANCE:** The equipment offered is to meet all OSHA, ANSI, EPA and State of Arizona regulations and standards.
- 21. USE OF BRAND NAMES:** The specifications as stated herein are desired features; the Use of Brand Names has been used per the Term and Conditions of, "Use of Brand Names", page four (4) of the IFB document. This bid is for Brand Name or Equal equipment.
- 22. CONTRACTOR RESPONSE:** The detailed specifications establish an acceptable level of equipment for each feature. In order to facilitate the City's evaluation, contractor shall indicate the specific level under the "Bid Schedules", failure to do so may disqualify your bid. All exceptions shall be clearly noted on the Bid Form.
- 23. CONTRACTOR REQUIREMENTS:** The Contractor or manufacturer bidding on these specifications must be able to provide technical service from an authorized service representative within a maximum of six hours after our request is made to the contractor or manufacturer. The authorized service center shall be within 180-mile radius from the City of Flagstaff, City limits.

Preference will be given to the Contractor that can provide the quickest response time to repair parts orders as determined from past experience and information obtained during interviews with companies currently using the proposed equipment.

The manufacturer, whether he is the Contractor or not, must be satisfactory to the City from the standpoint of experience, reliability, and demonstrated ability to manufacture equipment comparable as to size and type as that required by these specifications, and shall have manufactured and sold

equipment of the size and type specified which has operated satisfactory in the field for a minimum of one year.

The City reserves the right to and may base a portion of the evaluation on a Contractor's past performance on timely repairs and parts and service availability as determined from experience and reference interviews.

The City reserves the right to reject bids of Contractors who cannot produce satisfactory evidence that they can furnish promptly, all spare parts needed for ordinary service or repair of the equipment herein specified and that the equipment offered has performed satisfactorily by current customers.

**EXHIBIT D**

**INSURANCE REQUIREMENTS**

**INDEMNIFICATION:** Contractor (as “indemnitor”) agrees to indemnify, defend and hold harmless the City (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 the acts or omissions of indemnitor, its officers, officials, agents, employees or volunteers relating to this Contract.

**INSURANCE:** Contractor shall procure and maintain until all of its obligations under this Contract have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property that may arise from or in connection with the purchase and or use of the commodity.

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

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor 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 for Bodily Injury and Property Damage	\$1,000,000
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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

**B. SELF-INSURED RETENTIONS/DEDUCTIBLES:** Any self-insured retentions and deductibles shall be declared to and approved by the City.

**C. OTHER INSURANCE REQUIREMENTS:** The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverage's:

a. Contractor'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, or employees shall be in excess to the coverage of contractor's insurance and shall not contribute to it.

b. Contractor'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.

c. Coverage provided by contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

d. Contractor's insurance shall contain broad form contractual liability coverage.

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 contractor's operations, work or products that are the subject of this Contract.

**D. NOTICE OF CANCELLATION**: Each insurance policy required by the insurance provisions of this Contract 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: Jessica Bryson, Senior Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001 and shall be sent by certified mail, return receipt requested.

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

**F. VERIFICATION OF COVERAGE**: Contractor shall furnish the City with Certificates of Insurance (ACORD form) as required by this Contract. The certificates for each insurance policy are to 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. Failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal shall be a material breach of this Contract.

All Certificates of Insurance required by this Contract shall be sent directly to: Jessica Bryson, Senior Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001. A description of the commodity is to 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 Contract at any time.

**G. APPROVAL**: Any modification or variation from the insurance requirements in this Contract shall have prior approval from the City's Risk Manager, whose decision shall be final. Such action shall not require a formal contract amendment but may be made by administrative action.