

CONTRACT FOR CONSULTING SERVICES
Contract No.: 2019-62

MOBILE HOME PARK CLOSURE ASSISTANCE FOR DISPLACED RESIDENTS

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 Flagstaff Shelter Services, an Arizona non-profit organization ("Provider").

RECITALS

WHEREAS, the City of Flagstaff desires to enter into this Contract to obtain services related to mobile home park closure assistance for displaced residents and Provider is able to provide those services;

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

SERVICES

1. Scope of Work: Provider shall provide the services generally described as follows:

MOBILE HOME PARK CLOSURE ASSISTANCE FOR DISPLACED RESIDENTS

and as more specifically described in the scope of work attached hereto as Exhibit A. Amendments to the program criteria set forth in the Scope of Work, must be requested in written form only and must be approved by the City of Flagstaff Housing Director. Amendments shall only take effect if and after approval by the Housing Director.

2. Schedule of Services: Provider shall perform all work upon notification by the City of a qualifying event as set forth in Exhibit A.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. Key Personnel/Subcontractors: Provider's Key Personnel, Subcontractors (if any), and contact information are designated in Exhibit A. Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The City Representative for this Contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

CITY RESPONSIBILITIES

5. City Representative: The City Representative is Sarah Darr, Housing Director or her designee. All communications to the City shall be through the City Representative. City Representative is responsible for bringing any request for a contract amendment or price adjustment to the attention of the City Buyer.

6. City Cooperation: City will cooperate with Provider by placing at its disposal all available information concerning the City, City property, or the City program reasonably necessary for Provider's performance of this Contract.

CONTRACT TERM

7. Contract Term: The Contract shall be effective as of the date signed by both parties for a term of one (1) year. Performance shall commence within ten (10) days from the City's issuance of the Notice to Proceed, and shall be completed consistent with the Schedule of Services.
8. Renewal: This Contract may be renewed for four (4) additional one (1) year terms, upon the same terms by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
9. Termination: This Contract may be terminated pursuant to the Standard Terms and Conditions attached hereto.

PAYMENT

10. Compensation: Provider shall not exceed \$84,562.00 per annum the first year and based on satisfactory performance of work. Compensation will be pursuant to budget award by council the following renewal years and will be based on satisfactory performance of the work, in accordance with the Scope of Work attached hereto as part of Exhibit A.
11. Price Adjustment: Any price adjustments must be approved by the City in writing as a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds \$50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.

DATA AND RECORDS

12. City Ownership of Document and Data: Any original documents prepared or collected by Provider in performance of this Contract such as models, samples, reports, test plans, survey results, graphics, tables, charts, plans, maps, specifications, surveys, computations and other data shall be the property of City ("City's work product"), unless otherwise agreed by the parties in writing. Provider agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and hereby assigns to the City all rights and interests Provider may have in the materials it prepares under this Contract, including any right to derivative use of the material.
13. Re-Use. City may use City's work product without further compensation to Provider; provided, however, City's reuse without written verification or adaption by Provider for purposes other than contemplated herein is at City's sole risk and without liability to Provider. Provider shall not engage in any conflict of interest nor appropriate any portion of City's work product for the benefit of Provider or any third parties without City's prior written consent.
14. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Provider shall immediately deliver to City copies all of City's work product and any other documents and data accumulated by Provider in performance of this Contract, whether complete or in process.

INSURANCE

15. Insurance: Provider shall meet insurance requirements of the City, set forth in Exhibit C.

MISCELLANEOUS

16. Monthly Reports to City. Upon notification of a qualifying event from the City of Flagstaff, the Provider shall prepare and submit to the City by the second (2nd) Friday of each month a Monthly Performance Report. If the scope of the Contract has been fully completed and implemented, no further updates will be required. When the scope of this Contract is complete, Provider will provide a final report. The final report should be marked as final and should be inclusive of all necessary and pertinent information regarding the Contract as deemed necessary by the City. Notwithstanding anything to the contrary, the Provider shall not be required to provide any of the Provider’s confidential or proprietary information in reports provided to the City, including without limitation, any information regarding research collaborators, research plans or any data, results or other information resulting from Provider’s performance of research or any other activities relating thereto.

17. Notice: Any notice concerning this Contract shall be in writing and sent by certified mail and email as follows:

City of Flagstaff:
Patrick Brown, C.P.M. CPPB
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001
pbrown@flagstaffaz.gov

To Provider:
Ross Altenbaugh
Flagstaff Shelter Services
4185 E. Huntington Drive
Flagstaff, AZ 86004

Copy to:
Leah Bloom
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001
lbloom@flagstaffaz.gov
Phone: (928) 213-2752

Copy to:

18. 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.

19. Program Criteria Amendments: Any program criteria amendments , whether requested by the Provider or directed by the City, will be approved at the City’s sole discretion and in writing by the City of Flagstaff Housing Director.

FLAGSTAFF SHELTER SERVICES

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

The Provider will provide the following professional services, in accordance with program criteria developed by the City of Flagstaff, attached to this Scope of Work as Attachment 1. The Program Criteria is subject to change in the sole discretion of the City of Flagstaff;

Upon notification by the City that an eligible event has occurred, distribute and seek reimbursement from the City for up to \$84,562 in Mobile Home Park Relocation Assistance funds through the Provider's existing programs and/or through programs of community partners, as approved by the Provider, in a cost-effective, timely and efficient manner. Assistance funds to be provided to tenants of mobile home parks facing eviction due to park closure, or similar events as determined by the Flagstaff City Manager, with a goal of achieving housing permanency. The goal of the program would be to keep displaced populations housed and avoid households entering into Flagstaff's homeless system.

Assistance Requirements:

1. Mobile Home Park Relocation Assistance funds will be distributed through the provider's existing housing programs or approved community partner programs, and will be offered to residents being displaced due to closures of mobile home parks or other qualifying events.
 - 1.1 The Provider will aim to utilize leverage resources to maximize City investment.
 - 1.2 The Provide will provide housing case management services.
 - 1.3 The Provider will have access to Rapid Rehousing Funding or similar funding source with a housing permanency purpose and will aim to utilize the funding whenever appropriate.

Project Administration:

2. Work collaboratively with the City's Housing Section to comply with the terms of this Contract.
 - 2.1 Provide an invoice documenting all procurement and accounting records, including, receipts for all costs and expenditures (See Attachment B, parts I and II); and
 - 2.2 Provide a "Performance Report" that includes statistics on how many households received services and describes the progress on the performance of services.
 - 2.3 The Provider must abide by City of Flagstaff audit requirements.

Program Criteria

Project Implementation Agency shall have responsibility for day-to-day management and implementation of the Project.

Changes in Scope of Services. No change(s) shall be made to the Scope of Services except by written Agreement amendment. To obtain an Agreement amendment, Agency must submit a revised Scope of Services with a written request for authorization for a Scope of Services amendment. If authorized, an Agreement amendment must be approved by the City Manager, and executed by duly authorized signatories, before the amendment will become effective.

Payments. Payment by the City to the Agency shall be made on a reimbursement basis. Reimbursement may be requested as frequently as monthly, but not less than quarterly. Reimbursement will be paid in dollar amounts approved by the City for work complete. The Agency must submit a final reimbursement request for expenses received and invoiced prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked FINAL. All reports shall be submitted to the contact person as described in Section 23.3 of this Agreement. All payment requests must be submitted by line item and activity in conformance with the Budget attached as Exhibit C and incorporated by reference in this Agreement. All claims against this Agreement shall be made only for expenses incurred within the Agreement time period defined in Section 4. Final payment invoices must be received no later than sixty (60) days after completion of the scope of work or Agreement time period, whichever comes first. No payments shall be made on invoices received after that date.

Changes in Budget. Agency's variances from the Budget require a budget amendment. To obtain a budget amendment, Agency must submit a new budget to the City with a written request for authorization for a budget amendment. The City Manager or her designee is authorized to approve budget amendments as long as the amendment does not increase the total budget of the Project.

Agreement Commencement, Completion and Renewal. Authorization to proceed will be provided by the City in the form of a Notice to Proceed. There will be a written Notice to Proceed for each mobile home park closure. The Notice to Proceed will be provided to the Agency within reasonable time after the City is formally notified of a mobile home park closure. A formal notification for a mobile home park closure must be in written form from the property owner or a written letter to the tenant notifying the resident of relocation due to park closure. The Agency shall not proceed with the work without such authorization. The Agency agrees to complete the Project by three hundred sixty-five (365) days from the Issuance of the Notice to Proceed.

Reports to City. The Agency is responsible for a Performance Report and a Pay Request Form per mobile home park closure project.

Final Contract Close Out and Monitoring. The City shall monitor all mobile home park closure assistance projects for displaced residents once the contract is complete. Monitoring includes but is not limited to reviewing financial and programmatic reports provided by the Agency. The City shall follow-up and ensure that the Agency takes timely and appropriate action on all deficiencies pertaining to the project detected through audits, on-site reviews and other means. The Agency agrees to cooperate and provide all information necessary for the City to monitor the Agency periodically to ensure compliance with this Agreement, fiscal responsibility, adequate performance, and any other item of concern relating to the use of Mobile Home Park Closure Assistance for Displaced Residents funds and the provisions defined in this Agreement. The monitoring will take the form of at least one site visit of Agency's place of business. During the term of this Agreement, the Agency shall be monitored periodically by the City, both programmatically and financially, to ensure that the program's goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria, are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance, and administrative issues relative to each program, and will identify areas where technical assistance and other support may be needed. All on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by Agency and the City.

Final Contract Close-Out The Agency's obligation to the City shall not end until all close-out requirements and monitoring are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. The City will send the Agency written notification that a Final Contract Close-Out Report is due when one of the following contractual obligations have been met, and the Agency shall submit the Final Contract Close-Out Report attached in that letter within sixty (60) days of receiving this notification:

1. The Mobile Home Park Closure Assistance for Displaced Residents funds have been expended and the Scope of Work has been completed; or
2. The Agreement period stated in Contract has expired.

**EXHIBIT B
CITY OF FLAGSTAFF
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 Manufacturer's 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 actually 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 and 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 shall deliver conforming materials, or services, in each installment or lot of the contract 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 worksite.
27. **WORK SITE:** Contractor shall inspect the worksite 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.
31. **WARRANTY:** Contractor warrants all work for a period of one (1) year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one-year warranty is in addition to, and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

- 32. 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.
- 33. 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.
- 34. 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.
- 35. 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

- 36. 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.
- 37. INSURANCE:** Contractor shall maintain all insurance coverage required by the City, including public liability and worker’s compensation.
- 38. 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, attorneys fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

- 39. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 40. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
- 41. AMENDMENTS:** This Contract may be amended by written agreement of the parties.

- 42. 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.
- 43. 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.
- 44. 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.
- 45. BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

- 46. 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 any Contractor located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02 Civil Rights which also 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 programs. 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 regard to 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 regard to any random verification performed. Neither Contractor nor any subcontractor shall

be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor 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 Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition Contract remedies provided for herein.
- 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, at any time 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 (“Gratuities”) 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. 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
CITY OF FLAGSTAFF
STANDARD INSURANCE REQUIREMENTS**

1. In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.
2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.
3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

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

a. Commercial General Liability - Occurrence Form

General Aggregate \$2,000,000
Products/Completed Operations \$1,000,000
Each Occurrence \$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability –

Any Automobile or Owned, Hired
and Non-owned Vehicles
Combined Single Limit Per Accident
for Bodily Injury & Property Damage \$1,000,000

d. 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

[OPTION: e. Professional Liability \$2,000,000]

4. Self-Insured Retention. Any self-insured retentions must 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. Contractor shall be solely responsible for any self-insured retention amounts. City at its option may require Contractor to secure payment of such self insured retention by a surety bond or irrevocable and unconditional letter of credit.

5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:
 - a. Additional Insured. In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.
 - b. Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.
 - c. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Contractor's insurance and shall not contribute to it.
 - d. Each Insured. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
 - f. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.
6. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:

Attention: Patrick Brown, Purchasing Manager
Contract No. 2019-62
Purchasing Department
City of Flagstaff,
211 W. Aspen Avenue
Flagstaff, Arizona 86001

7. Acceptability of Insurers. Contractor shall place insurance hereunder 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 does not represent or warrant that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
8. Certificates of Insurance. The Contractor shall furnish the City with certificates of insurance (ACORD form) as required by this Contract. 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. The City program/contract number and program description shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Contractor commences work.

9. Policies. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.
10. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.

ATTACHMENT C

PAY REQUEST (Part I) AND EXPENSE REPORT (Part II)

ATTACHED IN SEPARATE DOCUMENT

ATTACHMENT D

PERFORMANCE REPORT

ATTACHED IN SEPARATE DOCUMENTS

END OF RSOQ