

SERVICE PROVIDER CONTRACT

Contract No. _____

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 United Way of Northern Arizona, an Arizona nonprofit corporation ("Provider").

RECITALS

WHEREAS, the City desires to enter into this Contract to obtain services related to Community Health and Human Services, via a social service contribution from the City and Provider is able to provide those services;

Provider has available and offers to provide the personnel necessary to organize and provide said services in accordance with the Scope of Work section, attached to this Agreement as Exhibit A; and

The City has made available a sum of money to provide financial assistance to non-profit organizations to provide Community Health and Human Services to primarily low and moderate income residents of the City; and

The City wishes to delegate certain program administration and monitoring responsibilities to Provider regarding the allocation of funds reserved for city-wide Community Health and Human Service programs to local social service agencies.

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:

Community Health and Human Services, via a social service contribution from the City of Flagstaff and as more specifically described in the scope of work attached hereto as Exhibit A.

2. Schedule of Services: Provider shall perform all work per the schedule 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 Rick Tadder, Management Services Director or his 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 on or before _____, 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 be paid \$363,750.00 for satisfactory performance of the work, in accordance with the Compensation Schedule attached hereto as part of Exhibit A.
11. Price Adjustment: If price adjustments are permitted (see Exhibit A), any price adjustment 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. During the entire Contract period, 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:

Rick Compau, C.P.M., CPPO, CPPB
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001
rcompau@flagstaffaz.gov

To Provider:

Carol Dykes
United Way of Northern Arizona
1515 East Cedar Ave., Ste. D-1
Flagstaff, Arizona 86004
cdykes@nazunitedway.org

Copy to:

Rick Tadder
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001
rtadder@flagstaffaz.gov
Phone: (928) 213-2752

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.

PROVIDER

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/FEE SCHEDULE**

Scope of Work:

1) Identify community health and human services critical needs and opportunities and provide the City funds for them through a fair process.

Dialogue and data collection shall occur on an on-going basis with social services providers. Provider shall:

- Conduct email surveys with partner agencies to determine the effect of the changing economic conditions on clients and demand for services;
- Conduct three (3) face to face meetings with executives and senior staff from health and human service agencies to discuss needs and opportunities;
- Sponsor a community forum on poverty with the Arizona Community Action Association, and Coconino County to assess needs and assets of our community's ability to respond to the increasing numbers of low-income residents; and
- Routinely discuss findings from data collection and dialogue with business and civic leaders to understand health and human services needs in relation to their knowledge of community conditions.

These communication methods or similar ones shall be maintained on an on-going basis.

Additionally, Provider staff shall participate in a variety of organizations to facilitate the transfer of knowledge and build understanding of trends, best practices and opportunities in health and human services.

Provider shall coordinate with Launch Flagstaff under the collective impact for services, planning, and collaboration in the respective areas cradle to career.

2) Ensure funds are used effectively and specifically for the intended low and moderate income populations.

Each spring, the Provider's board and staff shall recruit volunteers from among donors, campaign volunteers, corporate and community leaders to determine how the City of Flagstaff funds should be disbursed. Teams of volunteers headed by a member of the Provider's board review applications and conduct site visits. Each applicant is expected to document how its services impact the lives of the people who participate in its programs.

These volunteers have an interest in community social services, have an ability to read and interpret program/services information and are willing to commit the time necessary to do the best job possible. Volunteers are required to become knowledgeable regarding Provider's community investment process by attending a training session, become knowledgeable regarding agencies assigned to them, and specifics of programs for which funds are requested (each volunteer is asked to review five proposals' narratives and fiscal reports as well as complete a rating sheet), attend all meetings of their assigned team, recommend funding levels to Provider's board and ensure that community investment decisions are based on information provided within submitted proposals and site visits.

Volunteers shall evaluate the written proposal on key areas: Alignment with funding priorities (funding priorities are set by the Board based on community assessments), ability to display quantitative and qualitative outcomes that address how community conditions or individual clients conditions have changed in the current year due to program(s)/service(s) delivered,

goals and outcome objectives, budget narrative, logic model and inclusion of all required materials. Provider's staff shall audit applications to ensure compliance and volunteers shall be asked to bring their own experiences to the review process. A CPA or a person with expertise in fiscal management shall review fiscal components of the application. Review teams shall then recommend allocation amounts for each applicant to the Provider's Board of Directors

Final allocation decisions shall be made by the Provider's Board of Directors. The Board shall take into consideration the committee recommendations. A senior member of the City of Flagstaff staff shall hold a position on the Board of Directors and assume a leadership role with the community review team.

Provider shall work in collaboration with service providers, local government, health and education leaders that have successfully established or supported new programs or addressed system-wide responses to specific population needs. Provider shall lead an effort to better understand the needs and impact of this population, as well as potential models utilized in other communities, to address chronic alcoholism.

Provider shall work from an asset or strength-based model, meaning the Provider believes in working from strengths and that rarely can a single entity solve problems. To this end, as gaps in service become evident, Provider shall work with its partners, Community Initiative Councils, businesses and civic leaders to identify existing resources to meet needs. Provider, in collaboration with The Financial Stability Partnership (FSP), shall identify services for newly unemployed, people who have never had to access help before as an emerging need. Provider shall create resource lists and develop distribution methods. Provider shall provide the resource list to human resource personnel for the City of Flagstaff and other alliance members to ensure that employees targeted for lay-offs or furloughs received information about available social services.

3) Use City funds to leverage additional resources to provide enhanced and substantially similar benefit.

Three levels of review shall occur for each entity that is funded as follows:

- 1) compliance with non-profit organizational and fiscal requirements (990 tax filing, annual audit, non-profit status)
- 2) site visits by community review teams to see the program operations and meet the executive level staff and key board members
- 3) programmatic reports documenting services provided

Each organization shall provide the following:

A single Application Cover Sheet, Amount(s) Requested Form, Budget Narrative, Patriot Act Compliance Form, Certification of Non-Discrimination Form, Audit, and 990 Tax Return are required for funding source:

- **Application Cover Sheet** – Please utilize provided Application Cover Sheet. Signatures and printed names of Board President and Executive Director/CEO are required.
- **Amount(s) Requested Form** - Indicate amount for City of Flagstaff Funds being requested.
 - ◆ Computation of Administrative/Fund Raising Expenses.
- **Budget Narrative** - The purpose of a budget narrative is to provide more clarity and detail on various budget line items for which funds are being requested. The budget narrative

should explain criteria used to compute budget figures. Tie budget narrative with projected outcomes within Logic Models. Complete Budget Narrative For Amount(s) Requested Form.

- **USA Patriot Act Annual Compliance Form**
- **Certification of Non-Discrimination in Services and Employment Form**
- **Audit** - Most recent independent certified public accountant's ***Audit Report*** for agency **with Auditor's management letter**. Auditor's Recommendations to Board of Directors. *(If Management Letter was not issued, a letter from the Auditor stating no Management Letter was issued **MUST BE SUBMITTED**).*
 - **GAAP and GAAS** - The Agency listed in this application accounts for its funds in accordance with generally accepted accounting principles (GAAP) and was audited in accordance with generally accepted auditing standards (GAAS) by an independent certified public accountant in the immediately preceding year.
 - **OMB 133 Audit**: (Single Audit Act) \$500,000 or more expenditures of Federal funds. Fiscal and program compliance tested. More testing required. Opinion letter addresses Internal Controls. Management Letter provides suggestions.
 - **Regular Audit**: Review of fiscal documentation and records. No Opinion Letter on Internal Controls. Management Letter with suggestions is written. Required based on partner's budget/revenues of \$100,000 and above.
 - **Reviewed Financial Statement**: Tests numbers and ratios. Required based on partner's budget/revenues of \$25,000 - \$100,000.
 - **Compilation**: Pulls fiscal records and converts into Generally Accepted Accounting Procedures (GAAP) with disclosures/notes. Required based on partner's budget/revenues below \$25,000.
 - **IRS 990 Tax Return** – Must be from the same calendar year/fiscal year as audit (organizations which are not required to submit a Form 990 must complete the first two pages of a 990 for UWNA), accounting method **must be accrual**; including signatures in the box marked "Signature of Officer." The preparer's signature alone is **not** sufficient. Dates of the Form 990 **must match** dates of annual audit and both cannot be older than 18 months.
 - **New applicants to Successful Provider** - If this is the first year an agency is applying for any funds through , the following are required:
 - Copy of most recent **IRS determination letter** (501c3).
 - **Current Year's Budget** (the year agency is currently in) for entire agency as approved by agency's Board of Directors.
 - A list of agency's **Board of Directors** and **Advisory Board** (if agency is an affiliate of a statewide organization) with the following required information:
 - Mailing addresses and telephone numbers for each member. Just the agency's address and phone number are unacceptable.
 - Indicate offices currently held by each member.
 - Terms of office – beginning and ending dates (month, day, and year). If your agency does not have term limits, attach a copy of Bylaws stating this fact.
 - A list of dates of Board of Directors meetings held within the past 12 months. Indicate meetings at which a quorum was present.

- Provide times and locations with an exact address of each Board meeting.

Each spring the Provider shall release a request for proposal for City of Flagstaff funding. All Community Health and Human Service agencies serving Flagstaff residents shall be invited to participate through public notification in the Arizona Daily Sun. Provider partners shall be invited to participate through their annual provider application for funds. Previous year's applicants shall be notified via email and Provider staff shall be available via phone/email for questions and concerns. Provider shall require that each applicant provide a logic model explaining how City of Flagstaff funding was utilized by the agency in the previous calendar year. Provider shall ask for quantitative and qualitative outcomes that address how the agency is changing community conditions including: locations/ neighborhoods served, demographics of those served (local residents or transient populations), and how has this service changed community conditions.

Provider shall also require that each applicant provide goals and objectives for the current calendar year. This component shall include broad statements of intent (goals) with measurable, time-specific outcomes (objectives) that directly link with identified problem/needs addressed through City of Flagstaff funds. Goals shall be general statements of long-range benefits that reflect what changes are desired within a targeted population or community area. Outcome objectives shall be specific, quantified statements of expected outcomes of the service. These performance measures shall describe events that can be realistically achieved with available resources.

And finally, Provider shall require that each applicant complete a logic model for the current year in which they are requesting funding. The logic model shall describe how the proposed service(s)/program is/are compatible with funding priorities. Program goals shall describe any changes in condition, knowledge, attitude or skill as a result of the proposed service. Project/service measurement tools and evaluative methods shall accurately track stated outcome objectives. Logic models shall display: Needs, Process, Outcome, Service Area (Education, Income and Health), Evaluation, and requested Budget to accomplish stated Outcome.

Provider shall provide training to applicants. Each year Provider shall assess the most important topics by evaluating where Provider weaknesses in previous year's applications or a significant change in non-profit management standards. All training provided shall include: Outcome measurement, logic models, Sarbanes Oxley for non-profits, and the new 990.

- **Award Program**

- A. Provider shall send application materials to service providers who received funds from the last City allocation cycle, as well as, any other qualified interested service providers.
- B. Provider shall appoint a review committee composed of Flagstaff area residents and one (1) member appointed by the City which will review funding requests programmatically, financially and administratively, taking into account Community Health and Human Service needs, availability of similar services from other sources.
- C. Provider shall provide written notification to the City of recommended allocations approved by the Provider's Board of Directors.
- D. Provider shall be responsible for notifying organizations of reporting requirements and payment schedules.

- E. Provider shall disburse all approved allocations and otherwise administer all funds covered by this Agreement, while monitoring funded programs and finances, and shall submit an annual report to the City on the status of these programs.
- F. The City shall appoint one (1) professional staff member to serve as a staff liaison to the Provider's Allocation Committee.

4) Ensure sufficient data collection and reporting is available to document the community benefits and both agency and client eligibility. Provide an annual report to the City including process, methodology, leverage and benefits provided.

City funds:

- Shall be directly matched by other funders (private, state and federal) to bring services to Flagstaff residents
- Shall be directly matched with in-kind contributions of volunteers, facilities and other goods and services
- Shall be combined with Provider funds to have a greater impact
- Shall be combined with Coconino County funds to have greater impact
- Shall support a strong Provider, thus bringing Flagstaff the added value of an organization dedicated to improving lives, mobilizing communities and improving community conditions

Provider shall continue to seek opportunities to maximize the impact of City funds by working with partners who can attract multiple funding sources and have the capability to expand the number and quality of services by using volunteers and in-kind resources to stretch funding.

Provider shall conduct an annual audit that documents the total dollars raised, sources of funds and amount used for administration. These audited figures shall be reported to the community by the Provider in its annual report. Additionally, Provider shall have fiduciary reporting oversight and responsibility, where the audited financials, tax returns, volunteer hours tracked by provider, leveraged dollars, and community initiative outcomes are reviewed to aid in maintaining high level of transparency and accountability.

Annually, Provider shall provide a report to the City Council on the use of the Social Services funds. Leveraged dollars and resources shall be reported to the Council at the same time.

On an annual basis each organization that receives funding shall provide:

Quantitative and qualitative outcomes that address how the agency is changing community conditions or individual lives including: locations/ neighborhoods served, type of services provided, number of people served, demographics of those served (local residents or transient populations), and how has this service changed community conditions.

Provider shall compile these individual agency reports into a summary report for the City Council. Annually, Provider shall provide a report to the City Council on the use of the Social Services funds. Leveraged dollars and resources shall be reported to the Council at the same time. Additionally, there are currently four City of Flagstaff employees and the Mayor of Flagstaff on the Provider's Board of Directors; these individuals shall be kept abreast of leveraging activities on an on-going basis.

Provider shall adhere to a document retention policy in accordance with Sarbanes Oxley recommendations for non-profit organizations. All documents associated with this contract shall be maintained in accordance with the document retention policy which assures that the City of Flagstaff would have access to any requested materials for a multi-year period.

FEE SCHEDULE:

The City hereby agrees to award funds in the amount of \$293,750 to Provider as approved, subject to the conditions imposed by the City Council (hereinafter referred to as the "Council") and such funds shall be used exclusively for the purpose of assisting non-taxing entities located within the jurisdictional boundaries of the City, in providing Community Health and Human Services to Flagstaff area residents and travelers and payment of compensation for services. Community Health and Human Services may include, but not necessarily limited to: early childhood education, temporary assistance, transportation assistance, crisis shelters, victim assistance, substance abuse programs, and assistance to the elderly.

1. COMPENSATION

A. The total funds awarded to Provider in the amount of \$363,750 shall be broken out as follows:

Direct Services:	\$312,688
Administrative Fee:	<u>\$ 51,062</u>
	\$363,750

2. DISBURSEMENT OF FUNDS

- A. The City shall disburse to Provider its annual allocation award in two equal installments no later than July 15, and December 15 of each year, and Provider shall bill the City as needed for the administrative fee.
- B. Provider shall charge no more than fifteen percent (15%) of the total funds available for allocation as an administrative fee for the monitoring and administration of this program. Provider may earn interest on the total disbursement amount, which shall be credited against amounts owed by the City to Provider for is administrative fee. Provider shall include in its annual report to the City the actual administrative costs incurred by them and all interest earned on the total disbursement amount.
- C. Provider shall assume total fiscal responsibility for all of the funds made available for allocation by the City under this program.

3. CRITERIA AND PROCEDURES

- A. In order to be eligible for City funds under this program, each service provider shall be a non-taxing entity located within the jurisdictional boundaries of the City of Flagstaff, and shall provide direct Community Health and Human Services to primarily low and moderate income residents of Flagstaff and the contiguous Coconino County area, and to travelers to Flagstaff who are in need of emergency service assistance.
- B. Each service provider shall be legally qualified as a non-profit corporation under the law. Each service provider shall obtain a ruling from the United States Treasury Department that it is not a private foundation and that it is exempt from payment of income tax, and that gifts to it are deductible for income tax purposes. A copy of such ruling shall be submitted to the Provider and/or the City.
- C. Each service provider shall have clear purposes and functions which designate it as a voluntary health and human service organization.
- D. Each service provider shall maintain a board of directors or governing body that consists of volunteers, who make policy decisions, represents diversity of our community; and meets at least quarterly. Members of the volunteer governance structure should not receive

financial compensation from the agency they oversee. This requirement precludes an agency's executive director and professional staff from serving on its board of directors.

- E. If the service provider operates under religious auspices, it shall clearly separate its budget and financial reporting for support of City-funded programs from its religious programs.
- F. Each service provider shall maintain full fiduciary responsibility for the Agency, including, but not limited to, managing the organization in full compliance with all Generally Accepted Accounting Principles, and conducting an annual audit. Organizations with an annual budget of less than \$100,000 may request a waiver from Provider for the annual audit requirement. Appropriate documentation shall be required if such a waiver is granted.
- G. Any service provider that employs staff shall demonstrate that overhead expenses are held to a minimum and that all possible use is made of volunteer personnel.
- H. Funding provided by the City may be limited to expenses related directly to service provision, and may exclude funding of capital expenses, debt services, fund raising costs, or building of reserves.
- I. Each service provider shall use City-provided funds only for the provision of services for which such funds are allocated by Provider.
- J. Each service provider shall provide prompt written notification to Provider of any programmatic, fiscal, staff or board issues that may have an impact on the agency operations.

**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.

PAYMENT

5. **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.
6. **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.
7. **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.

8. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.

SERVICES

9. **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.

INSPECTION, RECORDS, ADMINISTRATION

10. **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.
11. **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.
12. **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.
13. **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

14. **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.
15. **INSURANCE:** Contractor shall maintain all insurance coverage required by the City, including public liability and worker's compensation.
16. **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

17. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.

18. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
19. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.
20. **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.
21. **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.
22. **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.
23. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

24. **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.
25. **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.
26. **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.
27. **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

- 28. 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.
- 29. 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.
- 30. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 31. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 32. 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.
- 33. 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.
- 34. 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.

35. **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.
36. **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.
37. **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

38. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.
39. **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.
40. **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.
41. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
42. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
43. **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 \$1,000,000

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: Rick Compau, Purchasing Director
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.