

## CONTRACT FOR PROFESSIONAL SERVICES

Contract No. 2020-27

This Contract is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and, Evergreen Solutions, LLC, a Florida Limited Liability Company ("Contractor").

WHEREAS, the City of Flagstaff desires to receive and Contractor is able to provide compensation study and consulting services; and

NOW THEREFORE, in consideration for the mutual promises contained herein, the City and Contractor (the "parties") agree as follows:

### SERVICES

1. Scope of Work: Contractor shall provide Compensation Consultant services to evaluate and enhance the City of Flagstaff's compensation program with a focus on salary compression and tactics that can be implemented with limited funds in a multi-phase approach, and other services generally described as follows:

### COMPENSATION STUDY

and as more specifically described in the scope of work attached hereto as Exhibit A.

2. Compensation: In consideration for the Contractor's satisfactory performance, City shall pay Contractor a sum not to exceed seventy-eight thousand dollars and zero cents (\$78,000). Any price adjustment must be approved by mutual written consent of the parties. The City Manager or his/her designee (the Purchasing Director) may approve an adjustment if the annual Contract price is less than \$50,000; otherwise City Council approval is required.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B, are hereby incorporated into this Contract by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit B.
4. Key Personnel/Subcontractors: The Contractor shall provide the contact information for Key Personnel and Subcontractors (if any). 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 the Human Resources Director, Jeanie Gallagher, or her designee. All communications to the City shall be through the City Representative who is responsible for bringing any request for a contract amendment or price adjustment to the attention of the Purchasing Director.
6. City Cooperation: City will cooperate with Contractor by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for Contractor's performance of this Contract.

## CONTRACT TERM

7. Contract Term: The Contract term is for a period of one (1)-year unless terminated pursuant to the Standard Terms and Conditions. This Contract shall be effective as of the date signed by both parties.
8. Renewal: This Contract may be renewed or extended for up to four (4) additional one (1)-year 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.

## DATA AND RECORDS

9. City Ownership of Document and Data: Any original documents prepared or collected by Contractor 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. Contractor 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 Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the material.
10. Re-Use. City may use City's work product without further compensation to Contractor; provided, however, City's reuse without written verification or adaption by Contractor for purposes other than contemplated herein is at City's sole risk and without liability to Contractor. Contractor shall not engage in any conflict of interest nor appropriate any portion of City's work product for the benefit of Contractor or any third parties without City's prior written consent.
11. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Contractor shall immediately deliver to City copies all of City's work product and any other documents and data accumulated by Contractor in performance of this Contract, whether complete or in process.

## MISCELLANEOUS

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

### **To the City:**

Jeanie Gallagher  
Human Resources Director  
City of Flagstaff  
211 W. Aspen Ave.  
Flagstaff, AZ 86001  
Allison.Eckert@flagstaffaz.gov  
Phone: (928) 213-2090

### **To Contractor:**

Jeff Ling, Ph.D.  
Executive Vice President  
Evergreen Solutions, LLC  
2878 Remington Green Circle  
Tallahassee, FL 32303  
Jeff@consultevergreen.com  
Phone: (850) 383-0111

**With a copy to:**

Matthew K. Luhman, MBA, CPP  
Purchasing Manager  
Purchasing Section  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, AZ 86001  
mluhman@flagstaffaz.gov  
Phone: (928) 213-2278

**With a copy to:**

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

CONTRACTOR

\_\_\_\_\_

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

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

Date: \_\_\_\_\_

CITY OF FLAGSTAFF

\_\_\_\_\_

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

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

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney's Office

Notice to Proceed Issued: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF WORK**

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## 1.5 – Detailed Work Plan

Evergreen has provided a detailed work plan to conduct a Compensation Study for the City of Flagstaff (City) in this section. We understand that City has approximately 1,017 employees, in 266 classifications, which will be included in this study:

Our work plan consists of the following eight tasks:

- Task 1: Project Initiation
- Task 2: Evaluate the Current Broadband Pay Plan Structure
- Task 3: Evaluate the Current Skill-Based Pay Plan, Public Safety, and General 2080 Pay Plan Structures
- Task 4: Identify List of Market Survey Benchmarks and Approved List of Targets
- Task 5: Conduct a Market Salary Survey and Provide External Assessment Summary
- Task 6: Develop Strategic Positioning Recommendations
- Task 7: Develop and Submit Draft and Final Reports
- Task 8: Develop Recommendations for Compensation Administration

### Task 1.0 Project Initiation

#### TASK GOALS

- Finalize the project plan with City.
- Gather all pertinent data.
- Finalize any remaining contractual negotiations.
- Establish an agreeable final time line for overall process, milestones, and deliverables.
- Conduct an initial meeting.

#### TASK ACTIVITIES

- 1.1 Discuss with the City Project Manager (CPM) the following objectives:
  - understand City objectives for this project, mission and current compensation philosophy (if any);
  - review our proposed methodology, approach, and project work plan to identify any necessary revisions;
  - reach agreement on a schedule for the project including all assignments and project milestones/deliverables; and
  - establish an agreeable communication schedule.
- 1.2 Identify potential challenges and opportunities for the study. Discuss the strategic direction of the City and some of the short- and long-term priorities. This activity serves as the basis for assessing where the City is going and what type of pay plan will reinforce current and future goals.
- 1.3 Obtain relevant materials, including:
  - related background documents;
  - any previous projects, research, evaluations, or other studies that may be relevant to this project;
  - organizational charts along with related responsibility descriptions;
  - current position and classification descriptions, salary schedule(s), benefits information, and classification system; and
  - personnel policies and procedures.



- 1.4 Review and edit the project work plan and submit a schedule for the completion of each project task and written, bi-weekly status reports to the City Manager or designee
- 1.5 Schedule and conduct initial meeting with the Compensation Committee, Employee Advisory Committee, and Leadership to assure an understanding of project objectives.

**KEY PROJECT MILESTONES**

- Comprehensive project management plan
- Comprehensive database of City employees
- Initial meeting

**PHASE I – for delivery by January 2, 2020**

**Task 2.0  
Evaluate the Current  
Broadband Pay Plan  
Structure**

**TASK GOALS**

- Conduct a comprehensive preliminary evaluation of the City’s current pay scale and existing classification plan.
- Review related background documents.

**TASK ACTIVITIES**

- 2.1 Obtain the existing Broadband Pay Plan structure for the City. Look for potential problems and issues to be resolved. Review related background documents.
- 2.2 Determine the strengths and weaknesses of the current broadband zones for the City, and identify any pay compression issues that need to be addressed.
- 2.3 Complete an assessment of current conditions that details the pros and cons of the current system for the City as well as highlights areas for potential improvement in the final adopted solution.
- 2.4 Provide recommendations and best practices related to the following:
  - moving through the broadband zones;
  - internal equity processes when compared to non-broadband classifications;
  - merit or performance-based pay increases in broadband structures;
  - zone change requests; and
  - managing the budget of broadband zone change requests.

**KEY PROJECT MILESTONES**

- Review of existing Broadband Pay Plan for the City
- Review related background documents
- Assessment of Broadband Pay Plan current conditions

**Phase II – for delivery by February 14, 2020**

**Task 3.0  
Evaluate the Current  
Skill-Based Pay Plan,  
Public Safety, and  
General 2080 Pay Plan  
Structures**

**TASK GOALS**

- Conduct a comprehensive preliminary evaluation of the City’s current pay scale and existing classification plan.
- Review related background documents.



**Task 4.0  
Identify List of Market  
Survey Benchmarks  
and Approved List of  
Targets**

**TASK ACTIVITIES**

- 3.1 Obtain the existing Skill-Based Pay Plan, Public Safety, and General 2080 Pay Plan structures for the City. Look for potential problems and issues to be resolved. Review related background documents.
- 3.2 Determine the strengths and weaknesses of the current pay structures for the City, and identify any pay compression issues that need to be addressed.
- 3.3 Complete an assessment of current conditions that details the pros and cons of the current system for the City as well as highlights areas for potential improvement in the final adopted solution, including an evaluation of the current and future role of the Compensation Committee.

**KEY PROJECT MILESTONES**

- Review of existing Skill-Based Pay Plan, Public Safety, and General 2080 Pay Plan structures for the City
- Review related background documents
- Assessment of current Skill-Based Pay Plan, Public Safety, and General 2080 Pay Plan structures conditions

**TASK GOALS**

- Reach an appropriate number and identify the proper benchmark positions for the external labor market assessment.
- Identify and develop a comprehensive list of targets for conducting a successful external labor market assessment.

**TASK ACTIVITIES**

- 4.1 Identify, from the initial review, a list of classifications (benchmarks) to include in the labor market survey. **Note:** Evergreen will work with the CPM to select up to 60 benchmark positions for the market salary survey.
- 4.2 Submit the list of positions to the CPM for review.
- 4.3 Based on the review, make revisions to the benchmark list and finalize consistent with Evergreen's analysis.
- 4.4 For each employee group, review with the CPM at least five other local government and private sector peer organizations to be included in the market survey. **Note:** Evergreen will work with the CPM to select up to 20 targets for the market survey.
- 4.5 Develop a preliminary list of organizations for the external labor market salary survey, placing a comparative emphasis on characteristics such as:
  - size of the organization;
  - geographic proximity to the Flagstaff area;
  - economic and budget characteristics; and
  - other demographic data.
- 4.6 Develop a list of survey targets by employee group. Develop a system for use of secondary data including potential sources and weighting of secondary data, if necessary.
- 4.7 Review survey methodology with the CPM and refine survey methodology prior to distribution of survey.



**Task 5.0**  
**Conduct a Market**  
**Salary Survey and**  
**Provide External**  
**Assessment Summary**

4.8 After approval of survey methodology, develop contact list of peer organizations and notify peers of impending survey.

**KEY PROJECT MILESTONES**

- Preliminary list of benchmark positions
- Final list of benchmark positions for the external labor market assessment
- Initial list of survey peers
- Survey methodology
- Final list of survey peers and contacts

**TASK GOALS**

- Conduct the external labor market salary survey.
- Provide a summary of the survey results to the CPM for review.

**TASK ACTIVITIES**

- 5.1 Prepare a customized, comprehensive external labor market salary survey for the CPM's approval. Discuss questions and categories for the market survey.
- 5.2 Contact the targets for electronic completion of the survey.
- 5.3 Conduct necessary follow-up through e-mails, faxes, and phone calls.
- 5.4 Collect and enter survey results into Evergreen's electronic data analysis tools.
- 5.5 Validate all data submitted.
- 5.6 Develop summary report of external labor market assessment results.
- 5.7 Submit summary report of external labor market assessment results to the CPM.

**KEY PROJECT MILESTONES**

- Market survey instrument
- Summary report of external labor market assessment results

**TASK GOALS**

- Assess the appropriateness of City existing compensation philosophy.
- Propose changes to the overall pay scale based on the results of the external labor market salary survey.
- Develop a plan providing issue areas and preliminary recommendations for strategic improvement.

**TASK ACTIVITIES**

- 6.1 Identify the accepted compensation philosophy and accompanying thresholds.
- 6.2 Using the market salary data collected in **Task 4.0**, and the classification data reviewed in **Task 2.0**, as well as internal equity and review each classification for appropriate assignment and determine the proper pay scale including number of grades and ranges.
- 6.3 Identify highly competitive positions among City's employees and customize recommendations for compensation, where required.



**Task 7.0**  
**Develop and Submit**  
**Draft and Final Reports**

6.4 Produce a pay scale(s) that best meets the needs of City from an internal equity and external equity standpoint.

**KEY PROJECT MILESTONES**

- Proposed compensation strategic direction, taking into account internal and external equity
- Plan for addressing unique, highly competitive positions

**TASK GOALS**

- Develop and submit a draft and final report of the Compensation Study.
- Prepare the final report.

**TASK ACTIVITIES**

7.1 Produce a comprehensive draft report that outlines the methodology and documents the results of each previous step including all market research and recommendations, including but not limited to:

- hiring policies for new employee compensation (full-time, exempt, temporary and those entering broadband);
- compensation policies relating to internal promotions, demotions, transfers and voluntary reassignment of existing employees;
- recommendations necessary for the implementation of a total reward strategy;
- hazardous assignment pay;
- paramedic pay;
- on-call and/or standby pay; and
- acting pay.

7.2 Submit the comprehensive draft report to the CPM for review and approval.

7.3 Make edits and submit copies of the Final Report.

7.4 Present the Final Report to the Mayor and City Council.

7.5 Develop a plan for maintaining recommendations over time.

**KEY PROJECT MILESTONES**

- Draft and Final Reports
- Implementation and maintenance database

**TASK GOAL**

- Develop recommendations for the continued administration by City staff to sustain the recommended compensation plan.

**TASK ACTIVITIES**

8.1 Develop recommendations and guidelines for the continued administration and maintenance of the compensation plan, including recommendations and guidelines related to:

- how employees will move through the pay structure/system as a result of transfers, promotions, or demotions;
- how to pay employees whose base pay has reached the maximum of their pay range or value of their position;



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- the proper mix of pay and benefits;
  - how often to adjust pay scales and survey the market;
  - the timing of implementation; and
  - how to keep the system fair and competitive over time.

8.2 Recommend recruitment/retention strategies, where appropriate.

8.3 Present recommendations to the CPM for review.

#### KEY PROJECT MILESTONES

- Recommendations for compensation administration
- Recommendations for recruitment/retention policies

### 1.6 – Proposed Timeline

Evergreen Solutions possesses the ability, staff, skills, and tools to conduct a Classification and Total Compensation Study for the City of Flagstaff (City) in approximately **two and a half** months of the project start date and following signing of the contract. This schedule is based on a tentative start date of **December 1, 2019**, and a completion date of **February 14, 2020**.

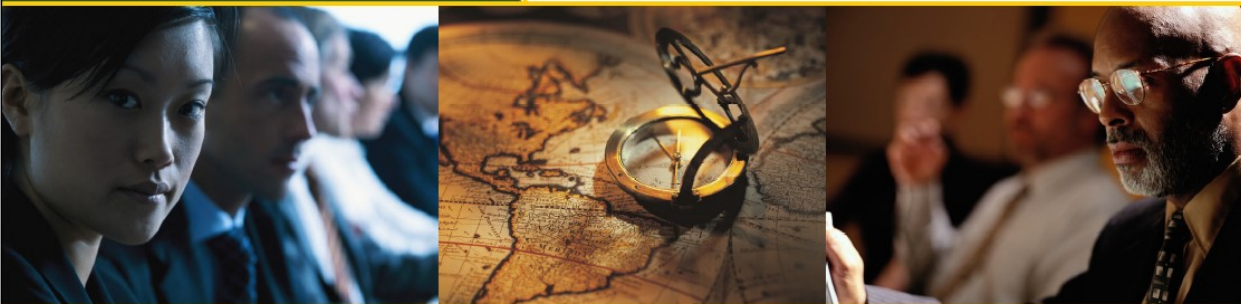
Our proposed schedule can be modified in any way to best meet the needs of the City.



A Fee Proposal to Conduct a  
Compensation Study  
for the City of Flagstaff, Arizona

RFP #2020-27

ORIGINAL



Evergreen Solutions, LLC

Thursday, October 31, 2019  
3pm Arizona Time

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A Fee Proposal to Conduct a  
Compensation Study  
for the City of Flagstaff, Arizona

RFP #2020-27

Submitted to:

City of Flagstaff  
211 West Aspen Ave.  
Flagstaff, Arizona 86001

Submitted by:



Evergreen Solutions, LLC  
2878 Remington Green Circle  
Tallahassee, Florida 32308  
(850) 383-0111 (ph) / (850) 383-1511 (fax)

**October 31, 2019**

## FEES FOR SERVICES

Evergreen Solutions, LLC is pleased to present our proposed costs to conduct a Compensation Study for the City of Flagstaff (City). We are committed to providing the highest quality consulting services to our client partners for a reasonable price. Our firm is fortunate that our overhead is minimal and our expenses are reasonable so we can pass that cost savings on to our clients.

Our total, not-to-exceed, fixed cost to complete all tasks identified in our detailed work plan in **Section 1** of our proposal is **\$78,000**. Our cost is all inclusive, and includes travel costs (meals and lodging), transportation, fringe benefits, indirect costs (overhead), clerical support, and all other out-of-pocket expenses. **Note:** Our cost includes up to **four** trips to the City during the course of the study.

Our preferred payment schedule is:

- 25 percent upon completion of Tasks 1 – 2
- 25 percent upon completion of Tasks 2 – 4
- 25 percent upon completion of Tasks 5 – 6
- 25 percent upon completion of Tasks 7 – 8

**We are willing to negotiate the time, scope, and cost of the basic tasks, or any other options that the City wishes to identify.**



**EXHIBIT B**  
**STANDARD TERMS AND CONDITIONS**

**IN GENERAL**

1. **NOTICE TO PROCEED:** Contractor shall not commence performance until after City has issued a Notice to Proceed.
2. **LICENSES AND PERMITS:** Contractor at 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 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 delivered or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
- 18. LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
- 19. TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by

the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.

20. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
21. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by City.
22. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by City.
23. **AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to City or fees and charges owed to City under this Contract.
24. **OFAC:** No City payments may be made to any person in violation of Office of Foreign Assets Control regulations, 31 C.F.R. Part 501.

## **SERVICES**

25. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
26. **CONTROL:** Contractor shall be responsible for the control of the work.
27. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
28. **SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
29. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
30. **ACCEPTANCE:** If work is rejected by the City due to noncompliance with the Contract, The City, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.
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 projects. Contractor personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.
49. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in 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 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 attorney's fees, costs, professional fees and expenses.