



## PERMIT AGREEMENT

THIS PERMIT AGREEMENT (this "**Agreement**"), dated as of the \_\_\_\_ day of \_\_\_\_\_, 2019 (the "**Effective Date**"), is made by and between Gotcha Mobility, LLC, a Delaware limited liability company ("**Gotcha**"), and the city of Flagstaff, a political subdivision of the State of Arizona ("**City**"). Both Gotcha and City are sometimes hereinafter referred to individually as a "**Party**" and, collectively, as the "**Parties**".

WHEREAS, Gotcha is in the business of constructing and providing shared mobility products ("**Assets**") and services for municipalities, colleges, and universities throughout the United States, and has developed a proprietary shared mobility platform with access to related proprietary software, ongoing maintenance services, and expansion assistance (the "**Business**"); and

WHEREAS, City desires to retain Gotcha to establish and maintain a shared mobility platform using Gotcha Assets ("**Services**") on City right-of-way, as defined by the Flagstaff City Code, (the "**Premises**"), and Gotcha is willing to perform and maintain the Services on the Premises, under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Services.

1.1 Services. In exchange for the Fees and other consideration as set forth in this Agreement, Gotcha agrees to provide, and City agrees to hire Gotcha to provide, the Services as more particularly described in the Scope of Work attached hereto as Exhibit A.

1.2 Use of Premises. City hereby grants Gotcha and its Affiliates (defined in Section 9) a non-exclusive, worldwide, fully paid-up and royalty-free license to access and use the Premises during the Term (as defined in Section 4.1), for purposes of performing the Services including, without limitation, for the potential installation of Asset stations ("**Stations**") on the Premises, for operation and maintenance of the Assets.

1.3 Relationship of the Parties. The relationship between the Parties under this Agreement is that of independent contractors, and nothing in this Agreement will be construed to create an agency, partnership, joint venture, strategic alliance, employment or other relationship similar to any of the foregoing between the Parties. Each Party, as an independent contractor, will have complete charge of and control over the details of the means, methods and manner of performing its obligations under this Agreement, including equipment, supplies and materials used in connection therewith, to the extent that the foregoing are consistent with the performance of such Party's obligations under this Agreement. Unless specifically authorized to do so under this Agreement or otherwise in writing, no Party will have power to act on behalf of another Party or to bind such other Party by any representation, promise or commitment, and will make no representation to the contrary to any Person. No Party shall have any responsibility for or control over any employees or contractors of another Party, and under no circumstances shall any such employees or contractors of a Party be considered an employee or agent of another Party.



## 2. Obligations of the Parties.

### 2.1 Gotcha.

- (a) Equipment. Gotcha agrees to provide the following as of the Launch Date, as specified in the Scope of Work: (i) To supply and maintain the quantity of Assets on the Premises; (ii) To install and maintain Stations, upon receipt of permission and agreement of all necessary parties; (iii) To establish and permit a user of the Assets (“**User**”) access to the propriety software and technology that includes a downloadable proprietary mobile application (the “**App**”) available to Users (collectively, the “**Technology**”), as set forth in Scope of Work (Assets, Stations and Technology are referred to collectively as the “**Gotcha Equipment**”); (iv) To monitor Gotcha Equipment usage by Users and make adjustments to quantities of Assets at particular Stations, where applicable; (v) To make the App available for download in Apple iOS or Android form for Users of the Assets to download to their mobile devices and register for an account, subject to their acceptance of the end user license agreement and other legal notices related to the App, for use in connection with their use of the Assets including unlocking an Asset from a Station, where applicable; (vi) To maintain Gotcha Equipment in good working order and provide routine maintenance in accordance with manufacturer specifications, and to keep records of such maintenance; and (vii) To assist City in assessing developmental goals and plans for expanding the Services during the Term.
- (b) Personnel. Gotcha shall have a primary contact to act as its authorized representative with City in respect of all matters pertaining to this Agreement (the “**Gotcha Contract Manager**”), and designate those employees, contractors or vendors in number and skill that it determines, in its sole discretion, to be capable of assisting it to perform the Services.
- (c) Permits. Subject to section 2.2(c) below, during the Term, Gotcha shall obtain and maintain in good standing all required federal, state, county and local licenses and permits necessary to perform the Services. In the event that any governmental restrictions are imposed on Gotcha that would necessitate alteration of the performance of the Services offered by Gotcha under this Agreement, Gotcha shall immediately notify City, indicating the specific regulation that requires such alteration, and the Parties shall cooperate in good faith to modify the Services in a way to comply with such restriction but also maintains the essence of the Parties’ bargain. During the Term, Gotcha shall be in good standing as a recognized business entity authorized to transact business pursuant to the laws of the state where the Premises is located and the Services are performed.
- (d) Equal Opportunity Requirements. Gotcha acknowledges and agrees that it is bound by the following in contracting with City: “This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), (or for construction contractors, 41 CFR § 60-4.3(a)), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.”



## 2.2 City.

- (a) City Contract Manager. City agrees to designate one of its employees or authorized representatives to serve as its primary contact with Gotcha and its Affiliates with respect to this Agreement, and to act as its authorized representative with respect to matters pertaining to this Agreement (the "**City Contract Manager**"), with such designation to remain in force unless and until a successor City Contract Manager is appointed. The City Contract Manager shall respond promptly to any reasonable requests from Gotcha for instructions, information or approvals required by Gotcha to provide the Services.
- (b) Access. City shall ensure that Gotcha has continual access to the Premises, and City amenities as reasonably necessary, in connection with Gotcha's performance of the Services including, without limitation, for the installation and maintenance of Assets, Racks, and Stations. in connection with the Services.
- (c) Other Asset Share Business. During the Term, City shall not: (i) engage or participate, directly or indirectly, in any business that is in competition with the Business; (ii) enter into any agreement with any other party for services similar to the Services on the Premises, without first entering into good faith negotiations with Gotcha with respect to such opportunity; and (iii) otherwise permit advertising or promotional activity anywhere on the Premises where such advertising would compete with the interests of Gotcha. City represents and warrants that, as of the Effective Date, it is not party to any such agreement contemplated in subparagraph (d), other than this Agreement.
- (d) Ownership; No Liens. All Gotcha Equipment used in connection with the Services, unless otherwise expressly set forth in this Agreement, shall remain the property of Gotcha, and shall at no time be deemed a fixture or property belonging to City or any other party. City shall not directly or indirectly cause or create any mortgage, pledge, lien, charge, security interest, claim or other encumbrance ("**Lien**") on or with respect to any Gotcha Equipment. In the event that City causes or creates any such Lien, it shall immediately notify Gotcha thereof and undertake commercially reasonable efforts to cause such Lien to be discharged and released from any record, at City's sole cost and expense. City shall indemnify and hold Gotcha harmless from and against any and all costs and expenses, including reasonable attorneys' fees and costs, incurred in discharging and releasing any such Lien. All City Equipment used in connection with the Services, unless otherwise expressly set forth in this Agreement, shall remain the property of City.
- (e) Additional Equipment. Gotcha will make available to City, at its option, to purchase certain racks, signage panels, and other related equipment ("**Additional Equipment**") that could be use on the Premises in conjunction with the Assets. If the City wishes to purchase any such Additional Equipment at any time, the Parties shall enter into another agreement.

## 3. Fees and Expenses.

- 3.1 User Fees. In consideration of the provision of the Services by Gotcha, City shall permit Gotcha to directly bill and collect from Users various fees to utilize the Services, including but not limited to, monthly and annual membership fees, pay as you go fees and penalty fees ("**User Fees**"). The City shall not be entitled to any User Fees collected due to the Services provided under this Agreement.



3.2 Taxes. Each Party shall be solely responsible for any and all income taxes, and related interest or penalties, incurred by such Party in respect of this Agreement including, without limitation, any federal, state, or local income tax, and any withholding or employment taxes imposed upon such Party, including in respect of any advertising revenue to such Party. City shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable to Gotcha hereunder, as well as related to any real estate taxes or levies, if any, associated with the Premises and on which any Gotcha Equipment or City Equipment is installed.

#### 4. Term and Termination.

##### 4.1 Term, Renewals and Fee Changes.

(a) Term and Renewals. This Agreement shall commence upon the Effective Date and continue for a period of two (2) years from the Launch Date (the “**Initial Term**”). Upon expiration of the Initial Term, this Agreement shall be renewed for four (4) additional one (1)-year periods (the “**Renewal Term**”) unless either Party provides written notice to the other Party no later than one hundred and twenty (120) days prior to such expiration of its election not to extend. Upon expiration of the Renewal Term, unless the Parties agree otherwise, this Agreement shall continue on a month-to-month until terminated by either Party upon thirty (30) days’ written notice to the other Party (the “**Extended Term**”); *provided, however*, that the Extended Term shall automatically expire after twelve (12) months. The Initial Term, the Renewal Term and the Extended Term, if any, are referred to collectively as the “**Term**”.

4.2 Termination for Cause. Either Party may terminate this Agreement, effective upon written notice to the other Party (the “**Defaulting Party**”), if the Defaulting Party: (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within sixty (60) days after receipt of written notice of such breach; (b) becomes insolvent or admits its inability to pay its debts generally as they become due; (c) becomes subject, voluntarily or involuntarily, to any proceeding under any bankruptcy or insolvency law, which is not fully stayed within ten (10) days or is not dismissed or vacated within sixty (60) days after filing; (d) is dissolved or liquidated or takes any corporate action for such purpose; (e) makes a general assignment for the benefit of creditors; or (f) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

##### 4.3 Termination.

(a) Voluntary. Gotcha or the City may terminate this Agreement at any time prior to the expiration of the Term, for any reason whatsoever, by providing City with thirty (30) days’ prior written notice of its decision to terminate.

##### 4.4 Effect of Termination.

(a) Equipment Removal. Upon any termination or expiration of this Agreement, for any reason, the License granted hereunder shall automatically terminate after a period of sixty (60) days following such date, and Gotcha shall be permitted reasonable access to the Premises for such post-termination period, or longer if otherwise extended by the Parties, for purposes of removing Gotcha Equipment on the Premises. The Parties will cooperate in good faith in respect of such removal, and coordinate appropriate times and procedures for such access and removal. Upon



removal of all Gotcha Equipment, City shall have no obligation to permit Gotcha or its personnel on the Premises for purposes of the Business.

(b) Survival. The rights and obligations of the Parties set forth in this Section and in Sections 5, 6, 9, 10 and 11, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

4.5 Force Majeure. Neither Party will be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any: (a) acts of God; (b) flood, fire, or explosion; (c) war, terrorism, invasion, riot, or other civil unrest; (d) embargoes or blockades in effect on or after the date of this Agreement; (e) national or regional emergency; (f) strikes, lock-outs, labor stoppages, disputes or slowdowns, failures of subcontractors or suppliers, or other industrial disturbances; (g) passage of law or governmental order, rule, regulation, or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota, or other restriction or prohibition; or (h) national or regional shortage of adequate power, telecommunications, or transportation facilities (each of the foregoing, a "**Force Majeure**"); in each case, provided that such event is outside the reasonable control of the affected Party.

5. Confidentiality. The Parties agree that the specific terms and conditions of this Agreement including, without limitation, the Fees shall be confidential and only disclosed by City as set forth in this Section, unless otherwise required under applicable law. City shall not, without the prior written consent of Gotcha, use or disclose any Confidential Information of Gotcha during the Term and for a period of two (2) years following the expiration or termination of this Agreement. Notwithstanding the generality of the foregoing, City may disclose Confidential Information to any personnel, consultants, contractors and counsel who have a need to know in connection with this Agreement and have agreed to be bound by the provisions of this Section, or as otherwise required under applicable law, but only to the extent to ensure City's compliance therewith. "**Confidential Information**" means any non-public information of Gotcha relating to the Business, the Services and Gotcha's activities, financial affairs, technology, marketing, client lists and sales plans and pricing, or that is otherwise marked as "confidential", that is disclosed to or obtained by City in connection with this Agreement. Confidential Information does not include information which (a) is or becomes public knowledge through no breach of this Agreement by City, (b) is received by City from another party that is not under a duty of confidentiality, or (c) is already known or is independently developed by City without use of the Confidential Information. If City is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Gotcha of such requirements to afford Gotcha the opportunity to seek, at Gotcha's sole cost and expense, a protective order or other remedy.

6. Public Records. This Agreement 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 Gotcha has clearly marked its proprietary information as "confidential," the City will endeavor to notify Gotcha prior to release of such information.

7. Intellectual Property.

7.1 Rights. All intellectual property rights of Gotcha related to the Business and the Services, including Gotcha Equipment, and all materials prepared by Gotcha or its Affiliates in connection therewith and hereunder including, without limitation, (a) copyrights, software, patents, patent applications and patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade secrets, trade dress,



trade names, logos, taglines, corporate names and domain names, insignia, symbols or decorative signs (collectively, “**Marks**”), (c) know-how, show-how and Confidential Information related to any of the foregoing, and (iv) together with all of the moral rights in and goodwill associated therewith, derivative works, corrections, enhancements, updates, modifications, tangible or intangible proprietary information, rights to apply for registration, and all other rights therein and thereto (collectively, “**Intellectual Property Rights**”), except for any Confidential Information of City (to the extent not prepared by Gotcha), are and shall be owned by Gotcha (or, in certain instances, by its Affiliates), and not by City. Gotcha hereby grants City a limited license to use all such Intellectual Property Rights solely in connection with the Services during the Term, free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid-up and royalty-free basis, to the extent necessary to enable City to make reasonable use of the Services. City acknowledges and agrees that other than as expressly provided in this Section, nothing herein shall be construed as Gotcha of, directly or indirectly, selling, leasing, licensing, pledging, sublicensing, lending, encumbering or otherwise transferring any of the foregoing Intellectual Property Rights other than in connection with the Services, and agrees, to the extent permitted under applicable law, to indemnify and hold Gotcha harmless from and against any claim otherwise.

7.2 Marks. No Party grants to the other Party any right in or license to use such Party’s Marks, other than as expressly set forth in this Agreement. Each Party grants the other Party (including as to their Affiliates) a limited license to use the other Party’s Marks during the Term, free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid-up and royalty-free basis, to the extent necessary for the performance of obligations under this Agreement, which right shall include a right to advertise or make other public announcements in general about the existence of the relationship between City and Gotcha and the Services, in all cases subject to Section 5.

8. General Representations and Warranties. City represents and warrants to Gotcha that: (a) it is a duly authorized to do business by the State of Arizona; (b) it has the lawful power to engage in the business it presently conducts and contemplates conducting, and is not party to any investigation, proceeding or action by any governmental authority which may materially affect its ability to effectuate its obligations under this Agreement and, in the event that it becomes such a party, shall immediately notify Gotcha of such investigation, proceeding or action; (c) it has the authority to execute and carry out this Agreement and to perform its obligations hereunder, and has obtained all necessary authorizations in connection therewith; (d) it has obtained and shall obtain from time to time any and all licenses, permits or other approvals required under applicable law, which license, permits or other approvals shall be kept current at all times throughout the Term; (e) the execution, delivery and performance of under this Agreement shall not conflict with, result in the breach of, constitute a default under or accelerate performance required by its constituent documents or internal regulations, any applicable law or any material covenant, agreement, understanding, decree, judgment, indenture, instrument or order to which it is a party or by which it or any of its properties or assets is bound or affected; and (f) it will comply with all applicable law related to this Agreement and will cooperate fully with Gotcha in complying with such applicable law.

9. Insurance. During the Term, Gotcha shall, at its own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect, to cover its business operations. As defined in the City’s Insurance Requirements attached hereto as Exhibit B. Gotcha shall provide City with a copy of its certificate of insurance from its insurer evidencing the insurance coverage required under this Agreement. The certificate of insurance shall name City as an additional insured. Gotcha shall promptly provide City with written notice in the event of a cancellation or material change in Gotcha's insurance coverage as required hereunder. Unless otherwise approved by City, Gotcha shall not commence work under this Agreement until it has obtained all the insurance required hereunder and delivered to the City evidence satisfactory, in the City’s sole discretion, of the existence of all insurance required under this Agreement.



10. Indemnification. Each Party agrees to indemnify, defend and hold harmless the other Party and their parent and subsidiary entities, related and affiliate entities, and its and their owners, directors, officers, employees, vendors, representatives and agents (“**Affiliates**”) (each, an “**Indemnified Party**”) from and against any and all losses, damages, liabilities, obligations, penalties, judgments, awards, costs, expenses, interest, and disbursements (including reasonable attorneys’ fees and costs, and expenses related to investigation and appeals, arbitration, enforcement of judgments, and proceedings in equity) (“**Loss**”), which may be suffered by, incurred by, accrued against, charged to or recoverable from any Indemnified Party, by reason of any claims, actions, suits or proceedings (“**Claim**”) arising out of or relating to any act, error or omission resulting in grossly negligent, reckless or willful misconduct of such Party or its Affiliates during the Term in connection with this Agreement including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) to a natural person; (b) damage to any other party’s personal or real property; (c) any material misrepresentation or breach of warranty by such Party of any representation or warranty set forth in this Agreement; (d) any material breach by such Party of any provision of this Agreement; and (e) any claim of infringement related to any Intellectual Property Rights; *provided, however*, that the foregoing indemnity shall not apply to the extent that the applicable Loss resulted in whole from the acts or omissions of an Indemnified Party. A Party seeking indemnification under this Agreement shall give written notice thereof to the other Party as required by law where applicable or promptly following discovery of the fact or circumstance giving rise thereto; provided, however, that any delay in providing such notice shall not impact a Party’s right to be indemnified, except to the extent that the other Party is actually prejudiced thereby. Neither Party shall settle or compromise any Claim without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
11. Limitation of Liability; Assumption of Risk; Disclaimer. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, MORAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER, OR FOR ANY LOSS OF USE, LOSS OF PRODUCTION, LOSS OF REVENUE OR PROFITS, COST OF CAPITAL, LOSS OF GOODWILL, LOSS OF OPPORTUNITY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER THEORY AT LAW OR IN EQUITY, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF IT ESSENTIAL PURPOSES, AND EACH PARTY EXPRESSLY RELEASES THE OTHER PARTIES FROM ANY SUCH LIABILITY. THE PARTIES FURTHER AGREE THAT THE LIABILITY OF A PARTY UNDER THIS AGREEMENT, WHETHER BASED ON A CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE FOR ALL EVENTS, ACTS OR OMISSIONS UNDER THIS AGREEMENT, SHALL NOT EXCEED \$10,000. THE LIMITATIONS ON LIABILITY IN THIS SECTION SHALL NOT APPLY, HOWEVER, TO: (A) A PARTY’S CRIMINAL OR FRAUDULENT CONDUCT; (B) A PARTY’S OBLIGATIONS OF INDEMNIFICATION RELATED TO INTELLECTUAL PROPERTY RIGHTS UNDER SECTION 6.1 or SECTION 9; (C) TO LIMIT IN ANY WAY THE EXTENT OF APPLICABLE INSURANCE PROCEEDS; (D) TO CITY’S OBLIGATIONS OF INDEMNIFICATION UNDER SECTION 1.2 AND SECTION 2.2(G); (E) OR AS OTHERWISE PROHIBITED BY APPLICABLE LAW GOVERNING THE RIGHTS AND DUTIES OF CITY IN ENTERING INTO CONTRACTS LIKE THIS AGREEMENT.

Each Party assumes any and all risks of personal injury and property damage attributable to the acts or omissions of such Party or any of its Affiliates, to the degree that such damage is attributable to such Party or Affiliate. GOTCHA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES (INCLUDING, FOR CLARIFICATION, THE DELIVERABLES AND THE SERVICES), INCLUDING ANY (F) WARRANTY OF MERCHANTABILITY, (G) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR (H) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.



12. Miscellaneous.

12.1 Notice. Any notice or approval required or permitted under this Agreement must be in writing and shall be given to the other Parties at their addresses set forth in this Section. Each such notice, request or other communication shall be effective (a) if given facsimile, the date on which it is transmitted to the number provided by a Party in writing to the other Party, and the appropriate confirmation is received, (b) if given by U.S. Mail, five (5) calendar days after such communication is deposited in the mail with first class, return receipt requested postage prepaid, addressed as aforesaid, and (c) if given by overnight courier, forty-eight (48) hours after the date on which such communication is received by such courier. E-mail shall be a permitted means of providing notice to a Party under this Agreement as long as receipt can be verified, and provided that notice through e-mail shall be effective forty-eight (48) hours after the date on which the e-mail notice can be verified as received. Unless otherwise notified by a Party in writing, a Party shall submit any notice hereunder as follows:

<i>If to Gotcha:</i>	<p>Gotcha, LLC, 7 Radcliff St., Suite 200  Charleston, SC 29403  Attn: Brett Vigrass, General Counsel  brett@thegotchagroup.com</p> <p><i>With a copy to:</i>  Ryan Leach, CFO  ryan@thegotchagroup.com</p>
<i>If to City:</i>	<p>City of Flagstaff, 211 W. Aspen Ave.  Flagstaff, AZ 86001  Attn: Matt Luhman, Senior Procurement Specialist  mluhman@flagstaffaz.gov</p> <p><i>With a copy to:</i>  Nicole P. Antonopoulos, Sustainability Manager  nantonopoulos@flagstaffaz.gov</p>

Any such notices, demands and requests shall be deemed to be delivered (a) if delivered in person, on the date so delivered, and (b) if sent by overnight delivery service, on the delivery date as evidenced by the courier’s confirmation. The addresses set forth herein may be changed by written notice to the other Party.

Except as otherwise specifically set forth in this Agreement, all notices, extensions, modifications, consents, requests and approvals to be given by either Party under any section of this Agreement shall be in writing and not be unreasonably withheld by the other Party.

12.2 Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of South Carolina, without regard to applicable conflicts of law principles, and this Agreement shall for all purposes be deemed to have been executed, delivered and agreed to by and between the Parties entirely within the State of South Carolina.



- 12.3 Cancellation for Conflict of Interest (A.R.S. § 38-511). The City may cancel this Agreement within three (3) years after its execution, without penalty or further liability to Gotcha.
- 12.4 Dispute Resolution; Jury Waiver. Any dispute arising out of or related hereto, which cannot be resolved amicably among the Parties after good faith efforts of not less than sixty (60) days, shall be exclusively resolved by the courts of Charleston County, South Carolina, and the Parties irrevocably submit to the exclusive jurisdiction of such courts for purposes thereof, and waive all objections to the laying of venue therein. Each Party shall be responsible for its own attorney's fees and costs in respect of any dispute related to this Agreement, including the costs of any investigations and appeals. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY DISPUTE, AND AGREES THAT SUCH WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT AND TO PERFORM THEREUNDER.
- 12.5 Assignment. Except as expressly set forth otherwise in this Agreement, no Party may assign its rights under this Agreement, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, Gotcha may assign this Agreement and its rights and obligations hereunder to a successor entity, in whole or in part, upon written notice to City. Nothing herein shall be construed to prevent Gotcha from delegating its duties hereunder to its Affiliates, provided that Gotcha in any event shall remain responsible for its obligations hereunder irrespective of any such delegation.
- 12.6 Approval of Sub-Providers.
- a. If after the start of this Agreement, the Gotcha wishes to use sub-providers, at no additional costs to the City, then Gotcha shall submit a written request to the City Manager or his/her designee for consent to add sub-providers, including the names of the sub-providers and the reasons for the request at least five (5) days in advance from when Gotcha wishes to use the sub-providers. The City Manager or his/her designee may consent or reject such requests in his/her sole and absolute discretion.
  - b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general and automobile insurance in conformity to the insurance required to be carried by Gotcha as defined in Exhibit C. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement.
  - c. The requirement of this Section shall not apply to persons who are merely providing materials, supplies, data or information which Gotcha then analyzes and incorporates into its work product.
- 12.7 Binding Effect; Survival. This Agreement shall be binding upon, and will inure to the benefit of, the Parties and their successors and valid assigns. The obligations of the Parties and the provisions of this Agreement that by their nature survive the termination hereof, including those obligations as expressly stated in this Agreement, shall survive and inure to the benefit of the Parties, their successors and valid assigns.
- 12.8 No Third Party Beneficiaries. Except as expressly set forth otherwise in this Agreement, this Agreement is intended solely for the benefit of the Parties and their respective successors and valid assigns, and is not intended to confer any benefits upon, or create any rights in favor of, any other party other than the Parties.



- 12.9 Cumulative Remedies. All rights and remedies of a Party set forth in this Agreement shall be in addition to all other rights and remedies available at law or in equity including, without limitation, a right to specific performance, and temporary and permanent injunctive relief, to the extent permitted under applicable law.
- 12.10 No Waiver. No waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Party making such waiver, and any such waiver shall apply only to the specific occasion which is the subject of such waiver or consent and shall not apply to the occurrence of the same or any similar event on any future occasion. No delay express waiver of any provision of this Agreement shall be deemed to be or shall constitute a waiver of any other provision whether or not similar, and no waiver shall constitute a continuing waiver. Any delay in enforcement of any provision hereof shall not constitute a waiver thereof.
- 12.11 Entire Agreement; Construction. This Agreement, including its preamble, recitals, the Scope of Work, and any and all exhibits, appendices and valid amendments, constitutes the entire agreement and understanding of the Parties and supersedes all prior or contemporaneous agreements, understandings or representations, written or oral, by the Parties. The headings in this Agreement are provided for convenience of reference only and shall not affect the construction of any text. Any reference to the singular shall also include a reference to the plural, and vice versa, as the context requires. This Agreement shall be construed as drafted by all of the Parties, and no provision of this Agreement shall be interpreted for or against any Party on the basis that a Party, its Affiliates or counsel drafted such provision. In the event of any conflict between any term or provision of this Agreement and any term or provision of any exhibit hereto, the term or provision of this main document shall prevail.
- 12.12 Amendment. This Agreement may not be modified or amended unless done so in a writing signed by the Parties.
- 12.13 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, illegal, invalid or otherwise unenforceable under Applicable Law, such provision shall be severed from this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect.
- 12.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which, including counterparts executed electronically through verifiable means, shall be deemed to be an original for all purposes.
- 12.15 Independent Counsel; Costs. The Parties acknowledge and agree that the terms and conditions of this Agreement have been freely and fairly negotiated. Each Party acknowledges that in executing this Agreement it has relied solely on its own judgment, belief and knowledge, and such advice as it may have received from its own counsel, and that it has not been influenced by any representation or statement made by the other Party or such Party's Affiliates, including its counsel. Each Party shall pay its own fees and expenses incurred in connection with the negotiation, drafting and execution of this Agreement, and in respect of the transactions contemplated by this Agreement (including, without limitation, attorney's fees and costs).
- 12.16 Further Assurances. From time to time, as and when reasonably requested by a Party or its successors or assigns, the other Parties shall execute and deliver, or cause to be executed and delivered, such



documents and instruments, and shall take, or cause to be taken, such further or other actions as may be reasonably necessary, to carry out the purposes set forth in this Agreement.

*[Remainder of Page Intentional Blank; Signatures Appear on Following Page]*



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

GOTCHA

City of Flagstaff

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name: Greg Clifton

Title:

Title: City Manager

Date:

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

*[Signature Page to Agreement]*



EXHIBIT A

SCOPE OF WORK

SEE ATTACHED

## SCOPE OF WORK

### I. GENERAL INFORMATION

The City of Flagstaff (“City”), in cooperation with Northern Arizona University (“NAU”), is seeking Proposals from qualified and reputable firms to establish a term contract for a bike share system.

The City is seeking to award a term contract for a bike share system to the Proposer that can best provide an innovative bike share system that supports the City’s Climate Action and Adaptation goals, ensures that services are accessible and available to traditionally underserved members of the community, and provides the best overall value to the Flagstaff community and NAU.

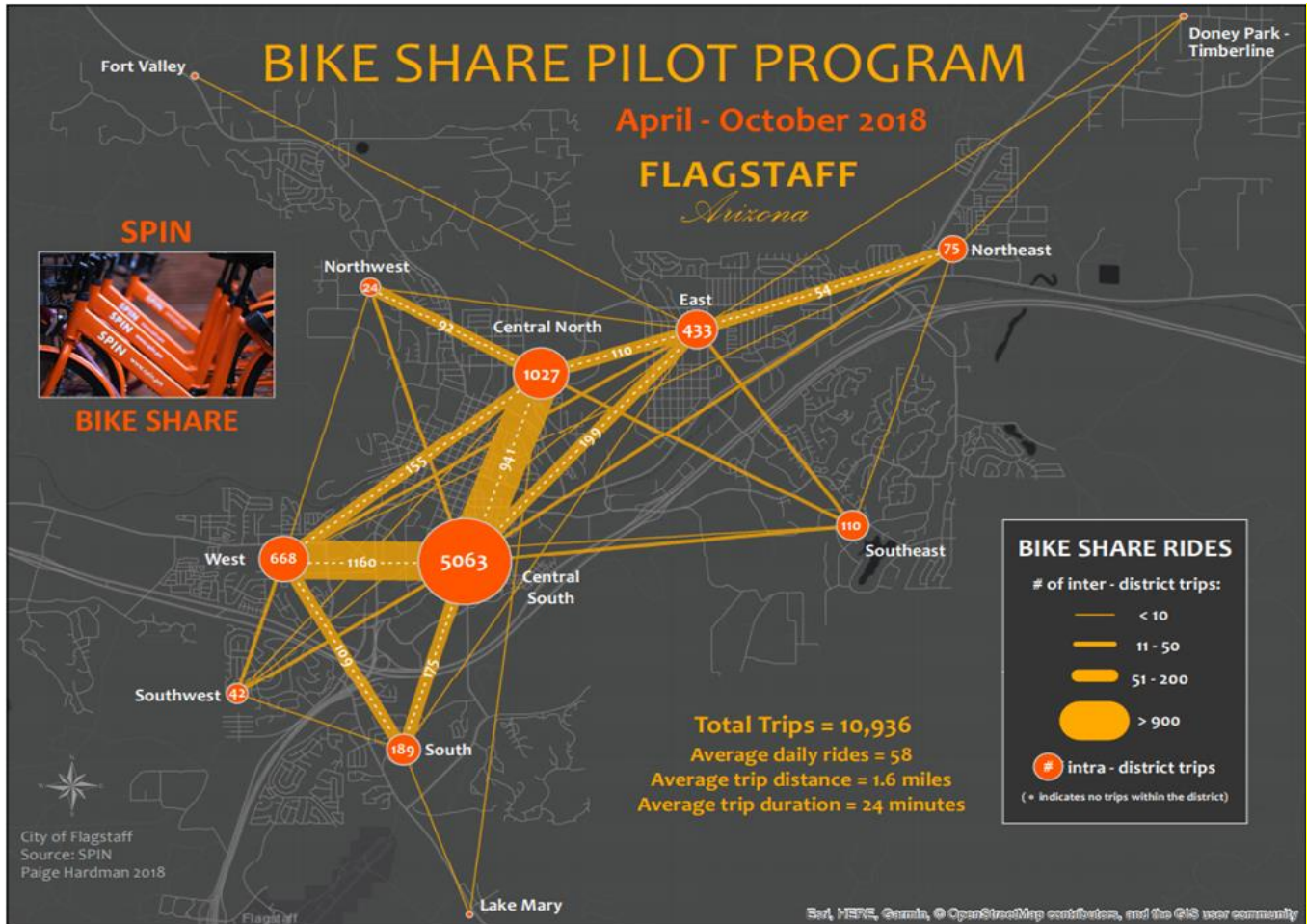
The initial term of the contract will be for a two (2)-year period, with the ability to renew for up to four (4) additional one (1)-year terms based on the successful performance of the Contractor(s) and the needs of the City.

### II. SCOPE OF WORK

#### A. Introduction

The City, in cooperation with NAU, is seeking proposals from interested and qualified Proposers to provide and operate a multi-year bike share program. The system shall be designed to serve both the Flagstaff community at large and the NAU campus. The proposals should be innovative, proposing a hybrid bike system that incorporates dockless and designated parking areas. Designated parking areas will be determined by the City, NAU, and transportation partners, including the Northern Arizona Intergovernmental Public Transportation Authority (“NAIPTA”) and the Downtown Business Alliance (“DBA”). The system shall include at least 250 bicycles for the initial deployment and must be flexible and scalable for expansion to include more bikes and/or additional technologies (such as scooters) once the bike share system is well established.

The City and NAU conducted a six-month pilot dockless bike share program, the results of which were promising for a successful long-term bike share system. The pilot program confirmed the community’s interest in multi-modal transit and the potential for capturing future riders. Pilot data is represented on the following page:



Month	Rides	Average Trip Distance (miles)	Total Miles Traveled	Average Trip Time (minutes)	Average of Deployed vs Rentable Bikes*	CO <sub>2</sub> Savings (pounds)
<b>April (11<sup>th</sup> – 30<sup>th</sup>)</b>	775	1.77	1,380	22.28	237 / 212	1,518
<b>May</b>	2,288	1.04	2,375	23.28	260 / 173	2,612
<b>June</b>	2,715	0.86	2,340	24.41	227 / 184	2,574
<b>July</b>	2,218	1.09	2,418	26.79	186 / 180	2,660
<b>August</b>	1,553	1.55	2,406	24.72	154 / 140	2,647
<b>September</b>	1,128	2.00	2,206	20.37	95 / 83	2,427
<b>October (1<sup>st</sup> – 12<sup>th</sup>)</b>	254	2.74	706	17.99	61 / 54	776
<b>TOTALS:</b>	10,931	1.58	13,831	23.96	174 / 147	15,214

Preference will be given to Proposers who can demonstrate the ability to incorporate class 1 or 2 electric pedal assist or “e-bikes” into their initial deployment and provide goals for “e-bike” expansions. Proposals shall include all equipment as well as operation services, including but not limited to; program data, system rebalancing, 24-hour customer support, equipment maintenance, redeployment management, webpage management, mobile app management, engagement in the community and establishing a trusted presence. Proposals shall include a complete back-end management system with real-time location tracking of individual bicycles through on-board monitoring technology.

Additionally, proposals may be contingent on the applicants’ ability to secure sponsorships to meet funding requirements in order to meet minimum system size requirements and future expansion needs. It is preferred that the bike share system be self-financed, with the user fees and ad revenues where permitted by City Code (for example, City sign code does not allow for advertising on stations) and NAU approval, covering any compensation and system costs.

## **B. Scope of Goods and Services**

Proposers are encouraged to submit proposals for a system that meets these requirements:

1. Bicycles:
  - a. Shall be durable all-weather and corrosion resistant for year-round outdoor use and storage
  - b. Shall be in new condition upon delivery
  - c. Shall be specifically designed for bike share use
  - d. Shall include front and rear lights, preferably self-powered and automatic
  - e. Shall include a storage basket capable of supporting loads of up to 20 pounds
  - f. Shall provide effective gearing ratio appropriate for steep local terrain (preferably a range equivalent to 7 or more gears)
  - g. Shall have fenders
  - h. Shall have a bell
  - i. Shall have puncture resistant tires
  - j. Shall have a reliable intuitive braking system
  - k. Shall be uniform and consistently branded (all branding and advertising must be approved by the City and NAU to ensure that it does not conflict with existing codes, marketing, advertising, and branding contracts)
  - l. Shall be one-size-fits-all with step-trough frame and adjustable seat
  - m. Shall be warrantied for mechanical defects
  - n. Shall be equipped with tracking system, i.e. GPS or RFID
  - o. Shall include a minimum of 10% electric assist bicycles at launch date with an operational goal of 25% or more electric assist bicycles
  - p. Based on outreach to community partners, including the City of Flagstaff Disability Awareness Commission, allocate a percentage of the fleet to ADA compliant bicycles
2. Designated parking locations, hubs, and dockless:
  - a. Will include designated parking locations identified by the City, NAU and community partners
  - b. May incorporate/use existing public bike parking
  - c. May be new locations that are approved and identified for public bike parking (must be in line with City and NAU policies)

- d. Shall have distinct identifying signage or other markings to identify the locations as part of the system.
  - e. Describe how the Proposer will manage bicycles parked in prohibited locations or in an improper manner.
  - f. Describe how will communication be managed through the app and website
3. Software:
- a. Shall be an iOS and Android compatible mobile app for users to check real time bike availability at any parking location and to perform bike rental transactions
  - b. Shall be a website and/or app for membership sign up, system map with station location information and details on renting and using the docking stations and bicycles, detailed bicycle safety precautions, etc.
  - c. Shall offer variably priced membership options for short term, long term, one-time use, member organizations, etc.
  - d. Shall offer pricing and membership promotions including the ability to accept discount codes
  - e. Shall provide multi-lingual instructions capability
  - f. Proposer shall provide an equity plan for users without cell phones to access system.
4. Community Engagement Plan:
- a. Shall provide a preliminary plan that outlines efforts to get involved with the community.
5. Equity Plan
- a. Shall provide a preliminary plan that outlines how equity considerations will be built into the system.

### **C. Technology and Reporting Capabilities**

System should provide users with real time system information including station status and bike locations through web and mobile technology. System can primarily depend on smartphone or web-based customer interface. However, the system would preferably have a strategy to facilitate users who do not own a smartphone.

Customer safety agreement must include:

1. Riders under eighteen (18) shall wear helmets whiles riding a bicycle
2. Bicycles shall be parked in appropriate parking zones

System should provide regular and on-demand customizable reports for the City, NAU, and transportation partners. Data related to such areas as system utilization, distribution, maintenance reports, financial reports and general system performance shall be made available to City and NAU account managers with monthly reports available upon request with the following information:

1. Ridership data/statistics (frequency, duration, distance by day, time, and location)
2. Total calories burned by riders
3. Estimated greenhouse gas emission reduction

4. Revenue and membership data
5. Crash/accident/damage/incident data
6. Bicycle and kiosk maintenance data
7. Station rebalancing data
8. Customer complaints
9. Total miles covered by riders

#### **D. System Maintenance Rebalancing and Repair**

Successful Proposer will be responsible for providing all maintenance for system and bicycles. Successful Proposer should provide comprehensive maintenance protocols for system equipment, bicycles and software upgrades. Existing municipal or public bike racks used as part of the system may still be maintained by the appropriate local authority. Successful Proposer will ensure that bicycles will be distributed effectively across the system. Successful Proposer shall ensure that at least 90 percent of bicycles are available and safely operable at all times. Bicycles needing maintenance should be immediately blocked from use and the repair process should be initiated within 48 hours. The successful Proposer shall detail a bicycle maintenance program that ensures that broken bicycles are removed from service and repaired within a 48-hour timeframe. Bicycle maintenance and storage locations shall be provided by the vendor. During periods of extended severe winter weather, a portion of system bicycles may be taken off line and stored indoors with approval from the City and NAU.

1. At a minimum, the following tasks shall be performed at least once every four (4) week period:
  - a. Inspect drive train for proper functioning and lubrication
  - b. Inspect handlebar for proper centering and tightness
  - c. Inspect tires for proper inflation
  - d. Inspect brakes for excessive wear and ensure proper working order
  - e. Inspect saddle for proper tightness
  - f. Inspect shifters for proper functioning
  - g. Inspect lights for proper functioning
  - h. Ensure components such as the basket, bell, and advertising components are properly attached
  - i. Clean bicycle and bicycle components
2. At a minimum, the following work shall be performed annually, and on an as-needed basis:
  - a. Clean entire drive train
  - b. Inspect spoke tension and true wheels
  - c. Inspect tires for excessive wear and replace, if necessary
3. Successful Proposer assumes all responsibility for costs, repair, and replacement for damage(s) to bicycles and their service vehicles

#### **E. Customer Service**

1. Successful Proposer shall provide all customer service and support. Customer service should be available 24/7 with U.S.-based on-call support services with a phone wait/call back time not to exceed 3 minutes. On-call maintenance/repair staff should be capable of responding to maintenance calls within 48 hours. Customer complaints received by the City or NAU will be forwarded to customer service provided by the successful Proposer. Emergency calls such as bicycles improperly parked or blocking building/street access shall be responded to within 1 hour.
2. Select member(s) of the City and NAU would have the ability to relocate improperly parked bicycles if immediate assistance was needed.

#### **F. Marketing and Sponsor Relations**

1. Successful Proposer will be expected to provide support in securing and managing system sponsorships.
2. Successful Proposer shall have the ability to make presentations to prospective sponsors.
3. Successful Proposer should be able to manage finances associated with sponsorships and direct associated revenue back into the system or offset funding from the City and NAU.
4. Preference will be given to Proposers partnering with local organizations and businesses.

### **III. PROPOSAL REQUIREMENTS**

The bike share system would preferably be self-financed, with the user fees and advertising revenues covering any compensation and system costs. Advertising must be pre-approved by the City and NAU and not in conflict with any existing City and or NAU contracts. Proposer shall describe their pricing model for bicycle rentals and any proposed revenue sharing as part of their proposal.

#### **A. Infrastructure and Technology of the System**

1. Describe the scope of the initial implementation, including number of bicycles and recommended placement and number of hubs or kiosks (if applicable).
2. Provide a detailed description of the bicycles and any equipment to be used, including manufacturing origin. Include information on any related hardware needed to operate and/or maintain the bicycles. Description should include all mechanical specifications, including information regarding the gearing, suspension, seat, branding, any onboard technology, and all other amenities (i.e. basket, bell, locks).
3. Describe the system modularity and expansion capability for hubs or kiosks (if applicable), bicycles, and technology.
4. Describe any safety features that would be included in this system.
5. Describe all reporting features available to the City and NAU (i.e. system utilization, bike distribution, customer feedback, membership levels).

6. Describe all power requirements including any proposed use of solar power, if applicable.
7. Describe how the system will be compliant with the Americans with Disabilities Act and provide ADA bicycles.
8. Describe any information (i.e. safety, way finding) to be placed on bicycle and equipment (if applicable). Describe all mobile applications available for the system, on what platforms they are available, and who is responsible for maintenance and upgrades.
9. Information on the warranty associated with the product the firm is proposing and any extended warranty (include the price) that might be available.

## **B. Operations and Maintenance**

1. Provide recommendations on what equipment and level of staffing would be required to sustain the system.
2. Provide maintenance manual/protocol for the bicycles and any other needed infrastructure or equipment including but not limited to any batteries used by bicycles or station/kiosks. Provide a proposed timeline for replacement.
3. Describe software maintenance protocols and procedures for implementing software upgrades at the request of the City and NAU.
4. Describe any bicycle balancing and redistribution protocols.
5. Describe any established troubleshooting protocol for system outages.
6. Describe the realistic timeline for deployment after a system has been selected.
7. Describe how to handle abandoned bicycles, bicycles improperly parked, those blocking ADA ramps or those blocking entrances to buildings, etc.

## **C. Membership**

1. Provide a description of proposed membership categories and payment options, including recommended membership pricing based on the system size, demographics, population, and discounts for specific groups, etc.
2. Provide a detailed description (including photos/illustrations) of how the system will function from a user's perspective. This should include both annual and short-term memberships.
3. Detail how your firm's proposed system can be integrated into existing forms of identification (i.e. the use of the existing NAU/City identification card or e-mail address).
4. Detail how your firm will protect the identity data of members.

## **D. Proposer Information**

1. Provide a brief history of the firm and its experience, qualifications and success in providing the type of product requested.
2. Provide at least three references where similar goods and/or services have been provided. Include the name of the firm/organization, the complete mailing address, and the name of the contact person, email address and telephone number.

**E. Marketing and Customer Service**

1. Describe the marketing assistance that will be provided, if any.
2. Describe the potential for advertising, including a list of locations on bicycles and equipment that can accommodate customized messaging provided by the City and NAU.
3. Describe the type of customer service support that will be provided to users as well as to the City and NAU. A system that provides 24/7 customer service is preferred.
4. Describe the website that will be provided, if any. Include the services and information that will be provided on the website (i.e. membership sign-ups, safety recommendations, system map, etc.).

**EXHIBIT B  
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

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: Matt Luhman, Senior Procurement Specialist  
Contract No. 2019-60  
Purchasing Department  
City of Flagstaff  
211 W. Aspen Ave.  
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 project/contract number and

project 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.