



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 pedal assist bicycles ("**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 User Fees as contemplated in section 3.1 below and other consideration as set forth in this Agreement, Gotcha agrees to provide, and City agrees to allow Gotcha to provide the Services as more particularly described in the Scope of Work attached hereto as Exhibit A. If there are any conflicts between the Scope of Work and the terms of this Agreement, the terms of the Agreement will control.

1.2 Use of Premises. City hereby grants Gotcha 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 the potential installation of Asset mobility hubs ("**Mobility Hubs**") on the Premises, for operation and maintenance of the Assets. The installation of Mobility Hubs are subject to the approval of the City Engineer and may require the posting of an assurance by Gotcha. Gotcha shall remove all Mobility Hubs upon termination of this Agreement and restore the Premises to its original condition.

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 250 Assets for the initial deployment that can be placed on the Premises; (ii) To install and maintain Mobility Hubs, subject to the approval of the City Engineer; (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, Mobility Hubs 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 Mobility Hubs, 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. 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. Gotcha will have access to the Premises and City amenities (i.e., City parks and FUTS trails), as reasonably necessary, in connection with Gotcha's performance of the Services, including, the installation and maintenance of Assets and Mobility Hubs. It is understood that certain portions of the Premises may be inaccessible from time-to-time due to City-approved activities being conducted within the Premises, such as construction, maintenance, and special events. It is also understood that weather events may cause certain portions of the Premises to be inaccessible from time-to-time.
- (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; or (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. City represents and warrants that, as of the Effective Date, it is not party to any such agreement contemplated in subparagraph (c), 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. All Additional Equipment purchased by the City 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.



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 the other Party 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 a carrier with an AM best rating of A + category VIII or better, in full force and effect, to cover its business operations and the indemnity obligations under this Agreement. 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 and City approved broad form non-restrictive endorsement. 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. Gotcha agrees to indemnify, defend, save, and hold harmless the City, and its departments, officers, officials, agents, and employees from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses, including court costs, attorneys' fees, and costs of claim processing, investigation and litigation (hereinafter collectively referred to as "Claims") that arise out of any actual or alleged bodily injury to any person (including death) or loss or damage to tangible or intangible property caused or alleged to have been caused, in whole or in part, by the negligent or willful acts, errors, omissions, of Gotcha or any of Gotcha's



owners, directors, officers, agents, employees, or subcontractors in connection with or incident to this Agreement. This indemnity includes any claim or amount arising out of, or alleged to be caused by, the operations of Gotcha under this Agreement. This indemnity provision shall survive the termination, cancellation, or revocation, whether in whole or in part, of this Agreement. If the City seeks indemnification under this Agreement, it shall give written notice thereof to Gotcha 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 the City's right to be indemnified, except to the extent that the Gotchas is actually prejudiced thereby. The City shall not settle or compromise any Claim without the prior written consent of Gotcha, 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, IN THE EVENT OF DEFAULT, 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. THE PARTIES FURTHER AGREE THAT THE LIABILITY OF A PARTY UNDER THIS AGREEMENT IN THE EVENT OF DEFAULT 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: (A) APPLY TO A PARTY'S CRIMINAL OR FRAUDULENT CONDUCT; (B) APPLY TO GOTCHA'S OBLIGATIONS OF INDEMNIFICATION IN THIS AGREEMENT; OR (C) LIMIT IN ANY WAY THE EXTENT OF APPLICABLE INSURANCE PROCEEDS.

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:

<p><i>If to Gotcha:</i></p>	<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>
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<i>If to City:</i>	City of Flagstaff, 211 W. Aspen Ave. Flagstaff, AZ 86001 Attn: Matt Luhman, Senior Procurement Specialist mluhman@flagstaffaz.gov <i>With a copy to:</i> Nicole P. Antonopoulos, Sustainability Manager nantonopoulos@flagstaffaz.gov
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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 Arizona, 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 Arizona.
- 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 Coconino County, Arizona, 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