

CONTRACT FOR PROFESSIONAL SERVICES

Contract No. 2020-85

This Contract is entered into this _____ day of _____, 20____ by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and, StrongPoint Mobius Partners, LLC., doing business as NuPoint Marketing, an Arizona limited liability company ("Consultant").

WHEREAS, the City of Flagstaff desires to receive and Consultant is able to provide Election Consulting and Public Outreach services; and

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

SERVICES

1. Scope of Work: Consultant shall provide Election Consultant services to develop, implement and campaign through public outreach the City of Flagstaff's ballot measures as generally described as followed:

ELECTION CONSULTING AND PUBLIC OUTREACH

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

2. Compensation: In consideration for the Consultant's satisfactory performance, City shall pay Consultant **one hundred forty-five thousand one hundred eighty-five dollars (\$145,185.00)**. Any price adjustment must be approved by mutual written consent of the parties. The City Manager or his/her designee (the Purchasing Director) may approve an adjustment if the annual increased price is less than \$50,000; otherwise, City Council approval is required. Price increases will be processed according to Article 41 of this contract.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B, are hereby incorporated into this Contract by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit B.
4. Key Personnel/Subcontractors: Consultant's shall provide the contact information for Key Personnel and Subcontractors (if any). Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The City Representative for this contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

CITY RESPONSIBILITIES

5. City Representative: The City Representative is Shannon Anderson. All communications to the City shall be through the City Representative. City Representative is responsible for bringing any request for a contract amendment or price adjustment to the attention of the Purchasing Director.
6. City Cooperation: City will cooperate with Consultant by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for Consultant's performance of this Contract.

CONTRACT TERM

7. Contract Term: The Contract term is for a period of two (2) years unless terminated pursuant to the Standard Terms and Conditions. This Contract shall be effective as of the date signed by both parties.
8. Renewal: This Contract may be renewed or extended for up to one additional two-year term by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
9. Additional Services: The City reserves the right to add or remove services at any time as needed for the election campaign. Service revisions will be made through written amendment pursuant to Article 41 of the Standard Terms and Conditions contained in this contract as Exhibit B.

DATA AND RECORDS

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

MISCELLANEOUS

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

To the City:

Shannon Anderson
Deputy City Manager
City of Flagstaff
211 W. Aspen Avenue

To Consultant:

Mary Rowley, APR
CEO & Managing Partner
NuPoint Marketing
4400 E. Broadway Street, Suite 315
Tucson, AZ. 85711

Flagstaff, AZ 86001
sanderson@flagstaffaz.gov
Phone: (928) 213-2084

mrowley@nupointmarketing.com
Phone: (520) 795-1566 x222

Patrick Brown, C.P.M., CPPB
Purchasing Director
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001
pbrown@flagstaffaz.gov
Phone: (928) 213-2277

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

NuPoint Marketing

Print name: _____

Title: _____

Date: _____

CITY OF FLAGSTAFF

Greg Clifton

City Manager

Date: _____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

EXHIBIT A
SCOPE OF WORK

Election Consultant to assist the City with ballot evaluation, development, implementation and public outreach. The Election Consultant shall:

Consulting Service:

- Review recent, relevant documents from Parks & Recreation, Open Space, Housing and Flagstaff Watershed Protection Project, potential ballot measures from other agencies, and election history.
- Collaborate with City staff to develop key components of the informational messages regarding any proposed projects and purposes of any potential bond measures for Parks & Recreation, Open Space, Housing and Flagstaff Watershed Protection Project (FWPP).
- Coordinate with City staff, Council members and others, as requested, to identify methods and techniques to effectively communicate the results and conclusions of the Parks & Recreation and Open Space Priorities Committee, Housing Commission and FWPP stakeholders.
- Assist City staff in designing ballot measures to include optimal ballot language and best practices for ballot measures.
- Support City staff on presentations to Council members, as requested.

Outreach Services:

- Conduct opinion research in the form of a survey and focus group to gather public opinion on Parks & Recreation, Open Space, and Housing potential bond measures.
- Collaborate with City staff to develop messaging and communications plan to educate the public about potential bond measures for Parks & Recreation, Open Space, Housing and Flagstaff Watershed Protection Project.
- Develop required election-related publicity pamphlets for Parks & Recreation, Open Space, Housing and Flagstaff Watershed Protection Project potential bond measures.
- Develop outreach strategies to educate the public, including the creation of design graphics, informational materials and website, and educational videos.
- Assist City staff with public outreach using social media, direct mailers and advertising through appropriate local venues.
- Attend project team meetings to strategize on educating the public with proper educational messaging and outreach.
- Support City staff on presentations to Council members, as requested.

Additional Services as Needed:

The City may need to add or delete election measures as necessary, or add other election initiatives if necessary. Any additions of service will be in accordance to Article 41 of this contract through an Amendment.

Fees For Services

Fees for Consulting Services

Hourly Fee: All members of the Consultant team are billed at a blended hourly rate of \$150.

Bond Measure Language Consulting	\$1,300
- Evaluate results of the bond survey research for bond composition	
- Craft bond contents that meet the need of residents	
- Provide a recommendation to City of Flagstaff staff	
Bond Initiative Consulting	
- Phase 1: Develop strategy and communications plan	\$4,700
- Phase 2: Message development	\$3,500
- Ongoing consulting and client meetings (across 9 months), including supporting City staff on presentations to Council members, as requested	\$5,750

Fees for Outreach Services

Hourly Fee: All members of the Consultant team are billed at an hourly rate of \$150.

Surveys, Focus Groups, and Research

- Open Public Web-based Survey \$7,450
 - Develop the questionnaire
 - Code and host the online survey
 - Collect up to 1500 responses
 - Clean and code all data
 - Conduct data analysis on the responses
 - Aggregate all responses into a report
 - Lead presentation of the research results to City of Flagstaff leadership

- Telephone-based Bond Survey \$19,500
 - Develop the questionnaire
 - Code and host the telephone survey
 - Collect 600 responses
 - Clean and code all data
 - Conduct data analysis on the responses
 - Aggregate all responses into a report
 - Lead presentation of the research results to City of Flagstaff leadership

- Brushfire Poll \$3,000
 - One telephone poll of 200 randomly selected City of Flagstaff residents.

- Focus Group (Initial) \$10,310
 - Develop discussion guide
 - Recruit initial focus group with qualifying participants
 - Run focus group session
 - Honoraria fee for each participant
 - Collect responses
 - Analyze responses
 - Develop focus group results report
 - Provide results report, presentation and focus group video to client

- Additional Focus Groups \$2,375
 - Cost per focus group to create, organize, and recruit qualifying participants, using the discussion guide created for the initial focus group
- Focus Group Facility Expenses \$300
 - Direct cost per focus group of site rental, food cost for focus group participants

Design, Website, Video and Social Media

- Developing publicity pamphlets \$4,500
- Creating design graphics and informational materials \$33,750
- Website Design and Launch \$15,000
- Educational video conceptualization, scripting, filming, editing publishing (cost per video, depending on length, number of locations, etc.) \$4,000/video
- Social Media messaging and creative development and strategy \$3,200

Consulting \$17,250

- Ongoing consulting, attending project team meetings and supporting City staff on presentations to Council members, as requested (across 9 months)

EXHIBIT B
STANDARD TERMS AND CONDITIONS

IN GENERAL

1. **NOTICE TO PROCEED:** Consultant shall not commence performance until after City has issued a Notice to Proceed.
2. **LICENSES AND PERMITS:** Consultant at its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.
3. **COMPLIANCE WITH LAWS:** Consultant shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.
4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive and the City reserves the right to contract with others for materials or services.
5. **SAMPLES:** Any sample submitted to the City by the Consultant and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

MATERIALS

6. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
7. **QUALITY:** Consultant warrants that all materials supplied under this Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials and will be safe and appropriate for use as normally used. City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
8. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Consultant is responsible for all costs associated arising from rejection.
9. **MANUFACTURER'S WARRANTIES:** Consultant shall deliver all Manufacturer's Warranties to City upon City's acceptance of the materials.
10. **PACKING AND SHIPPING:** Consultant shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.

11. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery, and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.
12. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Consultant shall not have the right to substitute a conforming tender without prior written approval from the City.
13. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Consultant may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute shall deliver conforming materials, or services, in each installment or lot of the contract a breach of the contract as a whole.
14. **SHIPMENT UNDER RESERVATION PROHIBITED:** Consultant is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
15. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens other than the security interest held by Consultant until payment in full is made by the City. Upon request of the City, Consultant shall provide a formal release of all liens.
16. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

PAYMENT

17. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were delivered or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
18. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Consultant, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
19. **TAXES:** Consultant shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Consultant's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment

insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line item dollar amount in the Consultant's bid, proposal, or quote, and which were considered and approved by the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Consultant's invoices.

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

SERVICES

25. **INDEPENDENT CONTRACTOR:** Consultant shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
26. **CONTROL:** Consultant shall be responsible for the control of the work.
27. **WORK SITE:** Consultant shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
28. **SAFEGUARDING PROPERTY:** Consultant shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
29. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
30. **ACCEPTANCE:** If work is rejected by the City due to noncompliance with the Contract, The City, after notifying Consultant in writing, may require Consultant to correct the deficiencies at Consultant's expense, or cancel the work order and pay Consultant only for work properly performed.
31. **WARRANTY:** Consultant warrants all work for a period of one (1) year following final acceptance by the City. Upon receipt of written notice from the City, Consultant at its own

expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Consultant, and shall bear all costs of correction. If Consultant does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Consultant shall be liable for the costs. This one-year warranty is in addition to, and does not limit Consultant's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

32. **RECORDS:** The City shall have the right to inspect and audit all Consultant books and records related to the Contract for up to five (5) years after completion of the Contract.
33. **RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Consultant or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.
34. **PUBLIC RECORDS:** This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Consultant has clearly marked its proprietary information as "confidential", the City will endeavor to notify Consultant prior to release of such information.
35. **CONTRACT ADMINISTRATION:** Consultant will be required to participate in the City's Contract Administration Process. Consultant will be closely monitored for contract compliance and will be required to promptly correct any deficiencies.

INDEMNIFICATION, INSURANCE

36. **GENERAL INDEMNIFICATION:** Consultant shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney's fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents of Consultant or damages to any property arising or alleged to have arisen out of the negligent performance of the Contract, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the Contract. This indemnification clause shall not apply, if a different indemnification clause is included in the City's Specific Terms and Conditions.
37. **INSURANCE:** Consultant shall maintain all insurance coverage required by the City, including public liability and worker's compensation.
38. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Consultant shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this Contract. Consultant shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the City against any and all expenses, losses, royalties,

profits and damages, attorneys fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

- 39. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 40. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
- 41. AMENDMENTS:** This Contract may be amended by written agreement of the parties. The City Manager or his/her designee (the Purchasing Director) may administrative approve the amendment if the amended price is less than \$50,000; otherwise City Council approval is required.
- 42. SEVERABILITY:** If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.
- 43. NO WAIVER:** Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
- 44. ASSIGNMENT:** This Contract may be assigned by Consultant with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Consultant (Assignor) from any of its obligations and liabilities under the Contract with respect to City. The Purchasing Director shall have authority to consent to an assignment on behalf of City.
- 45. BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

- 46. SUBCONTRACTING:** Consultant may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
- 47. NONDISCRIMINATION:** Consultant shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition, any Consultant located within City of

Flagstaff limits shall comply with the City Code, Chapter 14-02 Civil Rights which also prohibits discrimination based on sexual orientation, or gender identity or expression.

48. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Consultant personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.
49. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Consultant hereby warrants to the City that the Consultant and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Consultant Immigration Warranty"). A breach of the Consultant Immigration Warranty shall constitute a material breach of this Contract and shall subject the Consultant to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Consultant or subcontractor employee who works on this Contract to ensure compliance with the Consultant Immigration Warranty. Consultant agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Consultant and any subcontractors to ensure compliance with Consultant's Immigration Warranty. Consultant agrees to assist the City in regard to any random verification performed. Neither Consultant nor any subcontractor shall be deemed to have materially breached the Consultant Immigration Warranty if Consultant or subcontractor if Consultant or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

DEFAULT AND TERMINATION

50. **TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting party may elect to terminate Contract by written notice to Consultant, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition Contract remedies provided for herein.
51. **CITY REMEDIES:** In the event of Consultant's default, City may obtain required materials and/or services from a substitute Consultant, and Consultant shall be liable to the City to pay for the costs of such substitute service. City may deduct or offset the cost of substitute service from any balance due to Consultant, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
52. **CONSULTANT REMEDIES:** In the event of City's default, Consultant may pursue all remedies available at law, except as provided for herein.

53. **SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
54. **TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Consultant.
55. **TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, the parties may agree by mutual written assent to terminate the Contract for convenience, in whole or part, upon thirty (30) days written notice, without further penalty or liability to either party. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination.
56. **TERMINATION DUE TO INSOLVENCY:** If Consultant becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Consultant under federal bankruptcy law or any state insolvency law, Consultant shall immediately provide the City with a written notice thereof. The City may terminate this Contract, and Consultant is deemed in default, at any time if the Consultant becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Consultant's ability to perform under the Contract.
57. **PAYMENT UPON TERMINATION:** Upon termination of this Contract, City will pay Consultant for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Consultant's final invoice.
58. **CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Consultant, if City determines that Consultant has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant ("Gratuities") in connection with award or performance of the Contract.
59. **CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Consultant.

MISCELLANEOUS

60. **ADVERTISING:** Consultant shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.
61. **NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.

62. **THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
63. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
64. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
65. **ATTORNEYS FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs, professional fees and expenses.