

**CONTRACT FOR PRODUCTS AND SERVICES
FOR THE CITY OF FLAGSTAFF**
Contract No. 2020-72

This Contract is entered into this ____ day of _____, 2020 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and JE Fuller Hydrology & Geomorphology, Inc., an Arizona corporation ("Contractor").

WHEREAS, the City desires to receive, and Contractor is able to provide services;

NOW THEREFORE, in consideration for the mutual promises contained herein, the parties agree as follows:

1. Scope of Work: Contractor shall provide the services generally described as follows:

STREAM GAUGES AND INSTALLATIONS

and as more specifically described in the Scope of Work attached hereto as Exhibit A and the Maps and Specifications attached to the Scope of Work.

2. Compensation: The Contractor shall be compensated **one hundred twelve thousand eight hundred dollars (\$112,800.00)** for work performed under the Bid schedule, work performed under purchase order section identified in the Scope of Work attached hereto as Exhibit A. Payment shall be compensation in full for all terms necessary to provide a complete project with respect to each Bid item, purchase order, or amendment to the project as bid schedule Exhibit A.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated in this Contract by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. Insurance: Contractor shall meet Insurance Requirements of the City as set forth in Exhibit C.
5. Grant Provisions: Contractor shall meet the Grant Provisions is funded through the Arizona Department of Emergency and Military Affairs (ADEMA) Grant Agreement No. 73054 as set forth in Exhibit D.
6. Contract Term: Scope of Work to be completed by September 30, 2020.
7. Renewal: This Contract may be renewed or extended for up to two (2) additional one (1) one-year terms by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
8. Notice: Any formal notice required under this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Emily Markel
Senior Procurement Specialist
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
emarkel@flagstaffaz.gov

To Contractor:

Cory Helton
JE Fuller Hydrology & Geomorphology, Inc.
3111 N. Caden Ct. Ste 180
Flagstaff, AZ 86004
928-853-2205
cory@jefuller.com

With a copy to:

Edward Schenk
Project Manager Stormwater
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, Arizona 86001
Edward.Schenk@flagstaffaz.gov

With a copy to:

Stacey Brechler-Knaggs
Grants & Contracts Manager
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, Arizona 86001
sknaggs@flagstaffaz.gov

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

CONTRACTOR

Print name: _____

Title: _____

CITY OF FLAGSTAFF

Print name: _____

Title: _____

Attest:

City Clerk

Approved as to form:

EXHIBIT A

SCOPE OF WORK

The purpose of this document is to solicit bids for the installation of up to nine (9) new flood ALERT rain and stream gauge systems within the City of Flagstaff. Two existing rain gauge sites will also need to be upgraded with pressure transducers to make those sites fully operational. The total of 11 new or upgraded gauges will need to be tied into the existing City of Flagstaff ALERT radio telemetry network, the existing data management server, and public-facing website. Details for the scope of the work are as follows:

Task 1: Coordination

Assist the City of Flagstaff (COF) with installation and on-going maintenance coordination. The task includes completing any needed FCC licenses for the operation of the radio telemetry at each of the new (9) sites using the Mount Elden radio repeater. The current system is ALERT 1 with expandability to meet ALERT 2 protocols in the future. The data management software is JEFDAQ and is housed on both a City server and a backup server hosted by a local private firm. The contractor will also coordinate any necessary COF and Coconino County (Mountain Dell gauge) easement and right-of-way permitting for new installations. The contractor will be responsible for locating all utility lines (Bluestake) at the site prior to installation.

Task 2: Flood ALERT gauge equipment purchase

COF currently owns three (3) complete flood ALERT gauges that can be used to partially complete the installation required under Task 3. These gauges consist of a High Sierra Electronics stand-pipe, a rainfall tipping bucket, a pressure transducer, a High Sierra Electronics data transmitter, and a radio telemetry assembly. Four new complete gauge assemblies will need to be obtained as well as two new partial assemblies (one precipitation only, one water level only), and two pressure transducers for current precipitation only gauges. Equipment should be compatible with the current ALERT 1 network as well as expandable for use with any future ALERT 2 network. Water level can be measured using pressure transducers (current setup), bubblers, or downward looking radar. If the bid includes multiple options for water level monitoring, please make them clear in the cost estimate portion of the bid.

Task 3: Gauge Installation

This task includes installing the nine new gauges at sites pre-selected by the COF and the installation of pressure transducers at two existing rain gauges. The new gauges consist of a rain and stream gauge with standpipe manufactured by High Sierra Electronics and purchased by the COF. The contractor will be responsible for purchasing any conduit needed for installing the pressure transducer in the channel and any bracing, brackets, concrete, or other hardware required for the permanent installation. The pressure transducer should be installed no greater than 6 inches off of the minimum bed elevation and should be protected using appropriate shielding and bracing to withstand floods greater than the 25 year event. Example photos of

past installations and maps of the locations are included at the end of the SOW. The COF will provide one employee to help with the installation of each gauge. Gauge locations include:

Site Name	Latitude	Longitude
Rio de Flag near Mall (water level add-on)	35°13'13.49"N	111°33'59.84"W
Penstock Wash (new)	35°13'56.10"N	111°34'9.16"W
Spruce Wash at Route 66 (new)	35°12'7.10"N	111°36'57.54"W
Switzer Wash (new)	35°12'43.60"N	111°38'23.64"W
Rio de Flag upstream from Sinclair Wash (new)	35°11'16.86"N	111°38'46.19"W
Bow and Arrow Wash at Lone Tree (new)	35°10'4.87"N	111°38'50.78"W
Ponderosa Wash at detention basin (new)	35° 9'41.52"N	111°40'1.28"W
Sinclair Dam (water level add-on)	35° 9'40.84"N	111°42'5.49"W
Observatory Mesa (new, Precip only)	35°12'39.06"N	111°40'55.57"W
West Ave. Wash (new)	35°12'45.66"N	111°37'21.51"W
Rio de Flag at Butler (new, water level only)	35°11'31.30"N	111°38'10.78"W

Sites marked as “water level add-on” are already installed and only need a pressure transducer (or similar) installed to complete the rain-stream gauge system. The Observatory Mesa site will be precipitation only and the Rio de Flag site at Butler Tunnel will be water level only. Precipitation gauges consist of tipping buckets, pressure transducers are vented units (currently, use of bubbler or radio is also acceptable), installation of water level loggers should be in a shielded conduit to prevent freeze/thaw damage from condensation and to provide some armoring during flood flows.

Task 4: Test installation and QA/QC

The contractor will test the gauge after installation including

- calibrating the precipitation tipping bucket
- test the solar panel charging system
- test and replace battery if needed
- clean precipitation funnel
- test radio/cable/antenna
- inspect all housing components for damage
- inspect grounding system
- make minor repairs or adjustments including re-sealing weather-tight connections, tightening loose fittings, adjusting top section lock, etc.
- and test overall system for data throughput and precision.

The installed gauge should be fully functional including both physical equipment and radio tie in with the existing database (JEFDAQ) and displayable on the web portal (JEFMAP; <https://rain.flagstaffaz.gov/jefmap/>).

Deliverables

A short summary report of the gauge installations will be delivered to the City in both electronic and hard written form. The report should include calibration and maintenance summaries, copies of any easement or right-of-way permits, photos of gauges at the end of the project, and a list of any outstanding issues not covered by this Scope of Work.

Schedule

The gauges should be installed and fully operational before the typical start of monsoon season in Flagstaff (end of June 2020). An extension will be granted if the bid and procurement process does not allow sufficient time to complete all of the tasks.

Site locations: The following pages include general maps of the proposed gauge locations.

Bid Schedule

CITY OF FLAGSTAFF
CITY OF FLAGSTAFF RAIN AND STREAM GAUGE INSTALLATION
BID NUMBER 2020-72

BID FORM

PLEASE SEE THE SCOPE OF WORK ATTACHED TO THE CONTRACT AS *EXHIBIT A*, AND MAP AND SPECIFICATIONS ATTACHED TO THE SCOPE OF WORK AS, FOR REQUIRED SERVICES. ENTER THE SERVICE CHARGES/BID AMOUNTS FOR THE FOLLOWING GAUGE AND ALL SERVICES SPECIFIED IN THIS SOLICITATION

RATES FOR EACH STREAM GAUGE INSTALLATION

<u>INSTALLATION SITES</u>	<u>COST PER GAUGE AND SITE</u>
<u>Rio de Flag near Mall (water level add-on) 35°13'13.49"N 111°33'59.84"W</u>	<u>\$ 7,000</u>
<u>Penstock Wash (new) 35°13'56.10"N 111°34'9.16"W</u>	<u>\$ 11,600</u>
<u>Spruce Wash at Route 66 (new) 35°12'7.10"N 111°36'57.54"W</u>	<u>\$ 11,600</u>
<u>Switzer Wash (new) 35°12'43.60"N 111°38'23.64"W</u>	<u>\$ 11,600</u>
<u>Rio de Flag upstream from Sinclair Wash (new) 35°11'16.86"N 111°38'46.19"W</u>	<u>\$ 11,600</u>
<u>Bow and Arrow Wash at Lone Tree (new) 35°10'4.87"N 111°38'50.78"W</u>	<u>\$ 11,600</u>
<u>Ponderosa Wash at detention basin (new) 35° 9'41.52"N 111°40'1.28"W</u>	<u>\$ 11,600</u>
<u>Sinclair Dam (water level add-on) 35° 9'40.84"N 111°42'5.49"W</u>	<u>\$ 7,000</u>
<u>Observatory Mesa (new, Precip only) 35°12'39.06"N 111°40'55.57"W</u>	<u>\$ 6,000</u>
<u>West Ave. Wash (new) 35°12'45.66"N 111°37'21.51"W</u>	<u>\$ 11,600</u>
<u>Rio de Flag at Butler (new, water level only) 35°11'31.30"N 111°38'10.78"W</u>	<u>\$ 11,600</u>
Total:	\$112,800.00

(All charges must be included; no extra charges will be considered at a later date. Miscellaneous charges will be considered in determining the low Bid)



Signature of Person Authorized to Sign Bid

Cory Helton

Printed Name

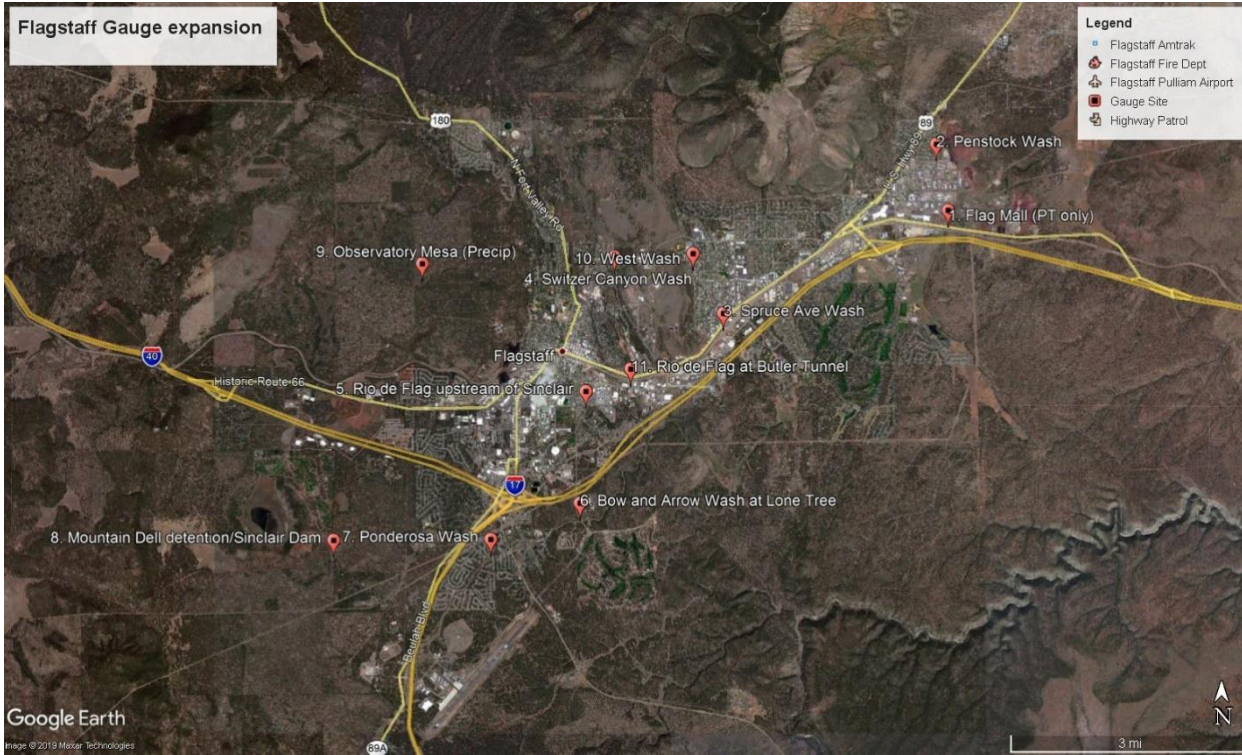
Vice President

Title

5.19.2020

Date

Maps

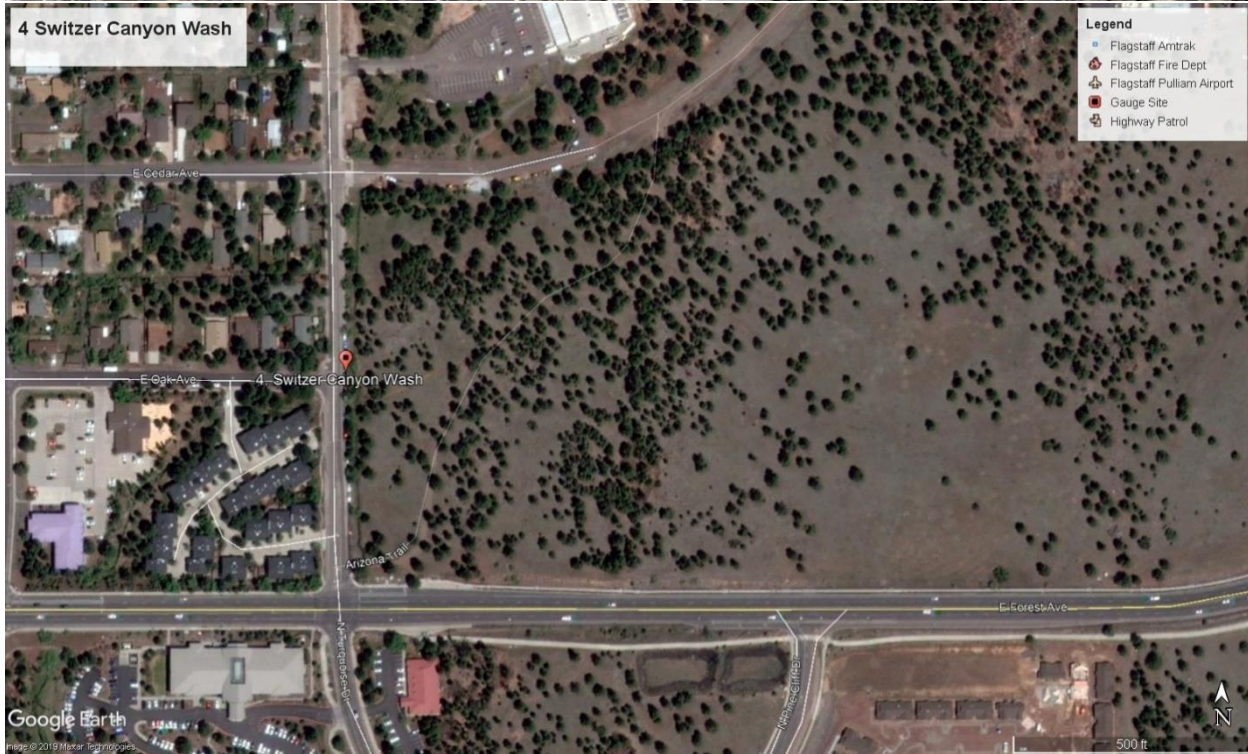


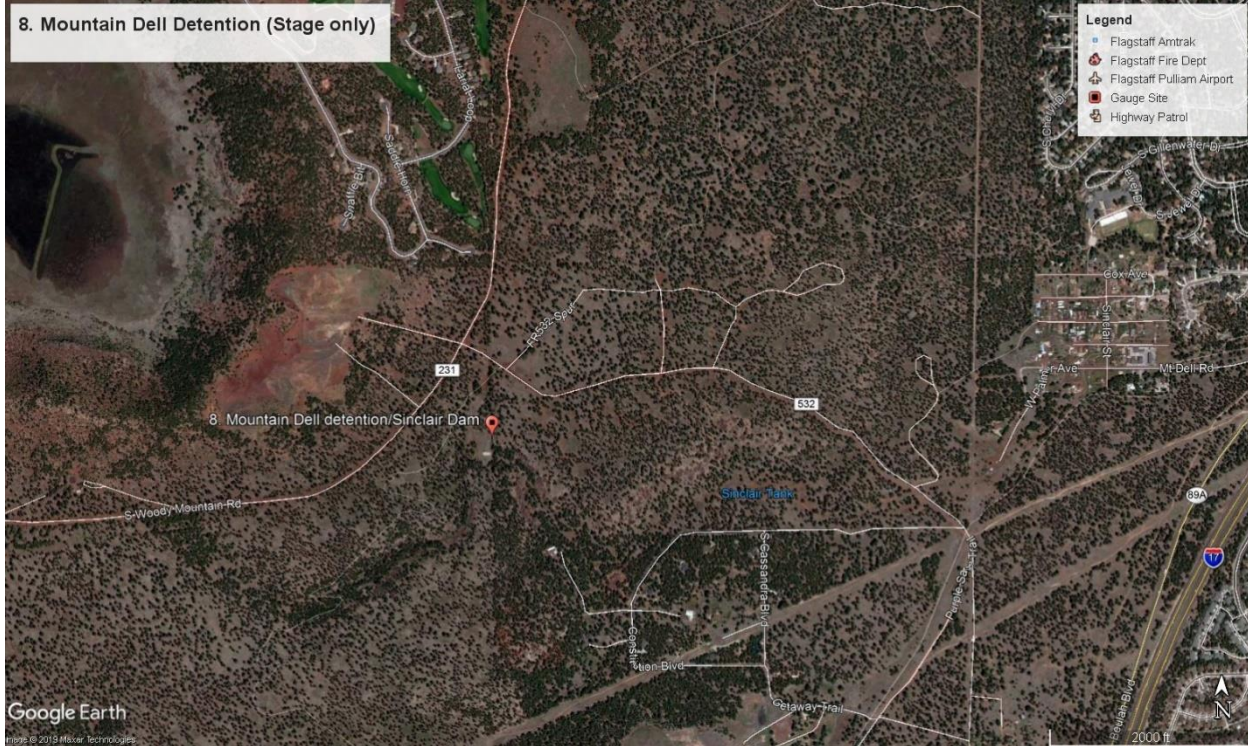
1. Flagstaff Mall (pressure transducer only)



2. Penstock Wash







11. Rio de Flag at Butler Tunnel (Stage Only)



Google Earth
© 2010 Google

- Legend**
- Flagstaff Amtrak
 - Flagstaff Fire Dept
 - Flagstaff Pulliam Airport
 - Gauge Site
 - Highway Patrol

11. Rio de Flag at Butler Tunnel

E. Butler Ave

Arizona Trail

400 ft



EXHIBIT B

CITY OF FLAGSTAFF STANDARD TERMS AND CONDITIONS

IN GENERAL

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

MATERIALS

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

Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.

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

PAYMENT

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

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

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

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

SERVICES

25. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
26. **CONTROL:** Contractor shall be responsible for the control of the work.
27. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
28. **SAFEGUARDING PROPERTY:** Contractor shall be responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
29. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
30. **ACCEPTANCE:** If work is rejected by the City due to noncompliance with the Contract, The City, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.
31. **WARRANTY:** Contractor warrants all work for a period of one (1) year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one-year warranty is in addition to, and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

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

INDEMNIFICATION, INSURANCE

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

CONTRACT CHANGES

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

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

EMPLOYEES AND SUBCONTRACTORS

46. **SUBCONTRACTING:** Contractor may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
47. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition any Contractor located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02 Civil Rights which also prohibits discrimination based on sexual orientation, or gender identity or expression.
48. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.
49. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the

Contractor to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

DEFAULT AND TERMINATION

- 50. TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition Contract remedies provided for herein.
- 51. CITY REMEDIES:** In the event of Contractor's default, City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
- 52. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 53. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 54. TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
- 55. TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination.
- 56. TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice

thereof. The City may terminate this Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.

57. **PAYMENT UPON TERMINATION:** Upon termination of this Contract, City will pay Contractor for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
58. **CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant ("Gratuities") in connection with award or performance of the Contract.
59. **CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

60. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.
61. **NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract, or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.
62. **THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
63. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
64. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
65. **ATTORNEYS FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys fees, costs, professional fees and expenses.
66. **FORCE MAJUERE:** There may be events that occur during the term of this Contract that are beyond the control of both the City and the Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God. These events may result in a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of this Contract.

There will be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the events described above, and the City will pay no additional costs incurred as a result of such events.

The parties agree to act in good faith to extend the Contract completion date without any penalty to the Contractor and that the extension will be in an amount of time equal to any temporary delay. This term supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

EXHIBIT C

CITY OF FLAGSTAFF STANDARD INSURANCE REQUIREMENTS

1. In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.
2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.
3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability –
Any Automobile or Owned, Hired
and Non-owned Vehicles
Combined Single Limit Per Accident
for Bodily Injury & Property Damage \$1,000,000

d. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000

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:

Contract No. 2020-72
Emily Markel
Senior Procurement Specialist
Purchasing Section
City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 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.

EXHIBIT D



GRANT PROVISIONS

Grant Project Title: Raingauge Network Expansion

Funding Agency: AZ Department of Emergency & Military Affairs-Division of Emergency Management

**Grant Agreement No.: State Emergency Council Mitigation
FY 2019, #73054**

City Program No.: 6272

GRANT PROVISIONS

This project is funded in part by the Department of Emergency and Military Affairs, Division of Emergency Management, State of Arizona, Mitigation Assistance Agreement #73054.

The Contractor and its Subcontractor shall comply with the following grant provisions;

Applicable Laws

Compliance with all applicable Federal, State, and Local laws and regulations, including but not limited to Arizona Executive Order 2009-9 and ARS §§ 12-1518; 35-154; 35-214 and 215; 38-511; and 41-4401.

Awards to debarred and suspended parties

The City will not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Orders 12549 and 12689, "Debarment and Suspension" and Arizona law AAC R8-2-313(B)(10).

ARS 35-393.01

Pursuant to ARS 35-393.01, a public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract to not engage in, a boycott of Israel. However, the parties recognize that the U.S. District Court for the District of Arizona has entered an injunction barring enforcement of this statute in *Mikkel Jordahl, et al., v. Mark Brnovich et al.*, No. CV-17-08263-PCT-DJH, and unless and until the District Court's injunction is stayed or lifted, A.R.S. 35-393.01 is unenforceable and either party can take any action to enforce it.

Conflicts of Interest

The City (grantee) and Contractor (subgrantees) will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Copyrights

Reports, maps or other documents produced in whole or in part are works for hire and shall not be the subject of any application for copyright by or on behalf of the Contractor or its Subcontractor. The Contractor shall advise the City or its designee at the time of delivery of any copyrighted or

copyrightable work furnished under this Agreement, or any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

Responsible Contractors

The City will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Access and Retention of Records

Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.