

CONTRACT FOR PROFESSIONAL SERVICES

Contract No. 2020-16

This Contract is entered into this 2nd day of October, 2019 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Rounds Consulting Group, Inc., an Arizona Corporation ("Contractor").

WHEREAS, the City of Flagstaff desires to receive and Contractor is able to analyze the current and future economic impacts of the City's minimum wage increases, and to provide the City and local businesses with mitigation strategies; and

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

SERVICES

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

Analyze the current and future economic impacts of the City's minimum wage increases, and to provide the City and local businesses with mitigation strategies.

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

2. **Compensation:** In consideration for the Contractor's satisfactory performance, City shall pay Contractor Forty-Eight Thousand dollars (\$48,000). Any price adjustment must be approved by mutual written consent of the parties. The City Manager or his/her designee (the Purchasing Director) may approve an adjustment if the annual Contract price is less than \$50,000; otherwise City Council approval is required.
3. **Standard Terms and Conditions:** The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B, are hereby incorporated into this Contract by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. **Key Personnel/Subcontractors:** Contractor'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 Cliff Bryson, Assistant to the City Manager or his designee. 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 Contractor by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for Contractor's performance of this Contract.

CONTRACT TERM

7. Contract Term: The Contract term is for a period of three (3) years unless terminated pursuant to the Standard Terms and Conditions. This Contract shall be effective as of the date signed by both parties. Performance shall commence within the time specified on individual Service Orders and shall be completed on or before the agreed upon time consistent with the Schedule of Services.
8. 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.

DATA AND RECORDS

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

MISCELLANEOUS

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

To the City:

Cliff Bryson
Senior Management Analyst
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
cbryson@flagstaffaz.gov
Phone: (928) 213-2070

To Contractor:

Jim Rounds
President
Rounds Consulting Group, Inc.
51 W. 3rd Street, Suite E-110
Tempe, Arizona 85281
rounds@roundsconsulting.com
Phone: (480) 508-4911

With a copy to:

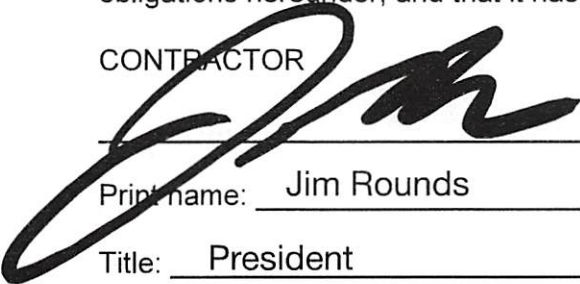
Patrick Brown, C.P.M., CPPB
Purchasing Director
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001
pbrown@flagstaffaz.gov
Phone: (928) 213-2277

With a copy to:

Louis Cordova
Vice President
Rounds Consulting Group, Inc.
51 W. 3rd Street, Suite E-110
Tempe, Arizona 85281
cordova@roundsconsulting.com
Phone: (480) 508-4911

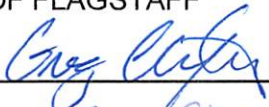
13. Authority. Each party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.

CONTRACTOR




Print name: Jim Rounds
Title: President
Date: October 2, 2019

CITY OF FLAGSTAFF



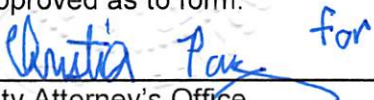
Print name: Greg Clifton
Title: City Manager
Date: OCTOBER 14, 2019

Attest:



City Clerk

Approved as to form:

 for

City Attorney's Office

Notice to Proceed issued: _____, 20____

EXHIBIT A
SCOPE OF WORK

I. GENERAL INFORMATION

The City of Flagstaff (“City”), is seeking Proposals from qualified Consultants or reputable Consulting Firms to analyze the current and future economic impacts of the City’s incrementally increasing minimum wage and to assist businesses and local government alike with strategies for doing business differently.

The City is seeking to award a term contract to the Proposer that can best provide minimum wage consulting services outlined in the scope of work and provides the best overall value to the Flagstaff community.

The initial term of the contract will be for a three (3)-year period, with the ability to renew for up to two (2) additional one (1)-year terms by mutual written consent of the parties.

II. SCOPE OF WORK

A. Introduction

Comprehensive Analysis on the Impacts of an Increased Minimum Wage in Flagstaff

Introduction/ Background

In accordance with the passage of Proposition 414, a citizen’s initiative, a new hourly minimum wage schedule was established on July 1, 2017 for individuals who worked or are expected to work 25 hours or more in a given calendar year within the city limits of Flagstaff, AZ. Incremental increases in the minimum wage are scheduled through 2022 and on January 1st, 2023, the Flagstaff minimum wage will be indexed to changes in the Consumer Price Index or will be \$2.00 above the State of Arizona minimum wage (whichever is higher).¹

Using the experience of the city of Flagstaff (hereby the City) and the experiences of other similar cities around the country, the City is seeking the services of a consultant to analyze the current and future economic impacts of the City’s incrementally increasing minimum wage and to equip businesses and local government alike with mitigation strategies.

Objectives

¹ <https://flagstaff.az.gov/3520/Minimum-Wage>

The primary objectives of this research are three-fold;

- To provide information on the existing and future impacts of Flagstaff's incrementally increasing minimum wage² on businesses, workers and general economic health.
- To provide best practice recommendations for local businesses, non-profit organizations and state-subsidized programs as they navigate the current and future minimum wage increases.
- To provide best practice recommendations for the City of Flagstaff to support local businesses, including potential policy measures that could be implemented to foster a more robust and diverse economy.

Scope of Work

A. Baseline measurements

Using the years 2011 - 2016 as a baseline, this section of the study is intended to describe the City's "pre-increase" economic status, including trends for businesses, workers and the community as a whole. The following measurements are expected to be included in this section of the report.

1. Youth unemployment rate in Flagstaff;
2. Overall unemployment rate in Flagstaff;
3. Number of jobs available (at any payrate) in Flagstaff;
4. Number of small to medium enterprises in Flagstaff (broken into businesses with 1-50 employees and 51-100 employees);
5. Average monthly gross earnings of minimum wage workers in Flagstaff;
6. Average monthly gross earnings of non-minimum wage workers in Flagstaff;
7. Average weekly hours worked by minimum wage workers in Flagstaff;
8. Price of staple consumer goods in Flagstaff;
9. Average consumer spending rate in Flagstaff;
10. Turnover rate of minimum wage employees in Flagstaff;
11. Cost of living (aggregate of average cost of rent/ utilities/ transportation/ etc.) in Flagstaff;
12. Amount of commercial construction investment (CapX) in Flagstaff;
13. Amount of money employers paid employees in sick hours in Flagstaff;
14. Number of state-subsidized organizations operating in Flagstaff, disaggregated by sector.

The Consultant may propose that other measurements be included if such additional measurements would increase understanding of the impacts of Flagstaff's incrementally increasing minimum wage.

B. Current impact with control group

Examining the 2017-2019 period, this section of the study is intended to describe the initial impacts of the City's increased minimum wage, in comparison to a real or synthetic control community(ies). The State of Arizona may also be used as an additional control group.

1. Change in youth unemployment rate in Flagstaff as compared to change in control group;
2. Change in overall unemployment rate in Flagstaff as compared to change in control group;

² <https://flagstaff.az.gov/3520/Minimum-Wage>

3. Change in number of jobs available (at any payrate) in Flagstaff as compared to change in control group;
4. Change in number of small to medium enterprises in Flagstaff as compared to change in control group;
5. Change in average monthly gross earnings of minimum wage workers in Flagstaff as compared to change in control group;
6. Change in average monthly gross earnings of non-minimum wage workers in Flagstaff as compared to change in control group;
7. Change in average weekly hours worked by minimum wage workers in Flagstaff as compared to change in control group;
8. Change in price of staple consumer goods in Flagstaff as compared to change in control group;
9. Change in average consumer spending rate in Flagstaff as compared to change in a control group;
10. Change in turnover rate of minimum wage employees in Flagstaff as compared to change in control group;
11. Change in cost of living in Flagstaff as compared to change in control group;
12. Change in amount of commercial construction investment (CapX) in Flagstaff as compared to change in control group;
13. Change in amount of money employers paid employees in sick hours in Flagstaff as compared to change in control group;
14. Change in number of state-subsidized organizations operating in Flagstaff, disaggregated by sector, as compared to change in control group;
15. Estimate any loss in qualification for public benefits due to wage increase (SNAP, TANF, Housing vouchers, etc.);
16. Estimate any increases in automation within businesses.

C. Projected impact of future increases

As Proposition 414 calls for continued minimum wage increases with an indexing of the minimum wage against changes in the CPI occurring in 2023, this section of the study should examine the expected future economic impacts of planned minimum wage increases. Specifically, results should compare economic indicators in 2026 in Flagstaff in the case of continued minimum wage increases (as stipulated by Proposition 414) versus maintaining the current (2019) minimum wage. Special emphasis should be placed on examining the impacts of indexing the Flagstaff minimum wage against changes in the CPI. The following indicators should be examined:

1. Expected youth unemployment rate in Flagstaff in 2026, with and without post 2019 minimum wage increases;
2. Expected overall unemployment rate in Flagstaff in 2026, with and without post 2019 minimum wage increases;
3. Expected number of jobs available in Flagstaff in 2026, with and without post 2019 minimum wage increases;
4. Expected number of small to medium enterprises in Flagstaff in 2026, with and without post 2019 minimum wage increases;
5. Expected average monthly gross earnings of minimum wage workers in Flagstaff in 2026, with and without post 2019 minimum wage increases;

6. Expected average monthly gross earnings of non-minimum wage workers in Flagstaff in 2026, with and without post 2019 minimum wage increases;
7. Expected average weekly hours worked by minimum wage workers in Flagstaff in 2026, with and without post 2019 minimum wage increases;
8. Expected price of staple consumer goods in Flagstaff by 2026, with and without post 2019 minimum wage increases;
9. Expected average consumer spending rate in Flagstaff in 2026, with and without post 2019 minimum wage increases;
10. Expected turnover rate of minimum wage employees in Flagstaff in 2026, with and without post 2019 minimum wage increases;
11. Expected cost of living in Flagstaff in 2026, with and without post 2019 minimum wage increases;
12. Expected amount of commercial construction investment (CapX) in Flagstaff in 2026, with and without post 2019 minimum wage increases.

D. Case studies

To complement the information gathered on the City of Flagstaff in sections A-C, the Consultant is also requested to conduct a series of short case studies focused on cities around the US that have implemented a higher minimum wage than their state. The case studies should provide a narrative on the impacts of minimum wage in these cities and contextualize findings based on the unique circumstances of each locality studied. Special attention should be paid to factors such as impacts of an increased minimum wage on (youth) unemployment rates, business success rates and worker earnings in each of the cities studied.

E. Best practices toolkit

Lastly, the Consultant is asked to provide stakeholders impacted by an increased minimum wage with potential solutions. Specifically, the Consultant should produce a “toolkit” filled with ready-to-use techniques and methods designed to mitigate the effects of an increased minimum wage. Techniques and methods should be designed for implementation by different stakeholders, including for-profit businesses, non-profit organizations, state-subsidized organizations and municipal governments. The toolkit should focus on the following;

- Best practices implemented in other cities by for-profit businesses in adapting to an increased minimum wage and managing compaction effects;
- Best practices implemented in other cities by non-profit organizations in adapting to an increased minimum wage and managing compaction effects;
- Best practices implemented in other cities by state-subsidized organizations in adapting to an increased minimum wage and managing compaction effects;
- Best practices implemented in other cities by municipal governments in supporting businesses during a minimum wage increase;
- Best practices implemented in other cities by municipal governments in attracting new businesses or industries during a minimum wage increase.

Deliverables

The consultant will complete key deliverables by the agreed upon date. Deliverables for the project are listed below.

- Monthly update meetings between the Consultant and the City will occur during the third week of November and December of 2019 and the second week of January 2020. These meetings will take place in-person or digitally, depending on the location of the Consultant.
- The Consultant will submit a complete draft of a written report (including findings from sections A – D of the statement of work) to the City no later than the second week of January 2020.
- The Consultant will submit a complete draft of a “toolkit” (including findings from section E of the statement of work) to the City no later than the second week of January 2020.
- The Consultant will submit a final written report (including an executive summary and findings from sections A – D of the statement of work), to the City no later than January 31, 2020.
- The Consultant will submit a final “toolkit” (including findings from section E of the statement of work) to the City no later than January 31, 2020.

Intellectual Property Ownership

The City shall retain all rights, title, and interest in any and all deliverables regarding information (i.e., findings, reports, toolkit) developed by Consultant, its Affiliates and their personnel.

EXHIBIT B
STANDARD TERMS AND CONDITIONS

IN GENERAL

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

MATERIALS

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

inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.

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

PAYMENT

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

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

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

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

SERVICES

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

INSPECTION, RECORDS, ADMINISTRATION

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

INDEMNIFICATION, INSURANCE

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

CONTRACT CHANGES

39. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
40. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.

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

EMPLOYEES AND SUBCONTRACTORS

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

City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

- 50. NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, the parties certify that they are not currently engaged in and agree, for the duration of the agreement, not to engage in a boycott of Israel.

DEFAULT AND TERMINATION

- 51. 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.
- 52. 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.
- 53. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 54. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 55. 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.
- 56. 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.
- 57. 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.

58. **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.
59. **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.
60. **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

61. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.
62. **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.
63. **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.
64. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
65. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
66. **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.