

## FOR PURCHASE OF SERVICES

Contract No. 2021-119

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 See Source LLC, a Utah Limited Liability Company, ("Contractor").

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

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

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

### DIGITAL AD SERVER

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 One Hundred Sixty Thousand Dollars and Zero Cents (**\$160,000.00**) as defined by Exhibit A. Any price adjustments 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. City Representative: The City Representative is Lori Pappas, Marketing and Media Relations Manager, or his/her 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 City Buyer.
5. City Cooperation: The 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.
6. Contract Term: The Contract term is for a period of one (1) year unless terminated pursuant to the Standard Terms and Conditions. This Contract shall be effective as of the date signed by both parties.
7. Renewal: This Contract may be renewed for up to Four (4) additional one (1) year terms by mutual written consent of the parties. The City Manager or his/her designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
8. Termination: This Contract may be terminated pursuant to the Standard Terms and Conditions attached hereto.

9. Price Adjustment: Any price adjustment must be approved by the City in writing as a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds \$50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.

INSURANCE

10. Insurance: Contractor shall maintain \$2,000,000 in general commercial liability and \$500,000 in workers' compensation.

MISCELLANEOUS

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

To the City:

Brian Eilerts  
Senior Procurement Specialist  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001  
Brian.Eilerts@Flagstaffaz.gov

Lori Pappas  
Marketing and Media Manager  
City of Flagstaff 211 W.  
Aspen Ave.  
Flagstaff, AZ 86001  
LPappas@flagstaffaz.gov

To Contractor:

Lauren Rogers  
See Source LLC  
1100 Country Hills Drive  
STE 100  
Ogden, Utah 80182-  
3008  
Lauren@seesource.com

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

**(SIGNATURES ON THE FOLLOWING PAGE)**

CONTRACTOR

\_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF FLAGSTAFF

\_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney's Office

## **EXHIBIT A**

### **SCOPE OF WORK**

#### **SPECIFICATIONS**

1. Contractor must have a core competency in the travel business that includes:
  - a minimum of five (5) years of experience serving and managing ads inclusive of display, video, native, and social
  - at least five (5) destination marketing organizations (DMOs) as past clients
  - at least two (2) current clients that are DMOs
2. Contractor must demonstrate and provide monthly robust overall campaign performance data on the targeted audience of travelers engaged which should include:
  - projected ROI
  - where the travelers are originating and include the economic impact of their travel
  - reporting on travelers who were served impressions and arrived in Flagstaff
  - additional metrics to include served impressions, click-throughs, and conversions such as visitor guide requests and website sessions
  - comparisons to year-over-year performance
  - campaign impact
3. Contractor must demonstrate the ability to serve real time ads behaviorally and geographically to travel audiences with high propensity to travel, to those that have searched Flagstaff and similar destinations.
4. Contractor must demonstrate the ability to identify new prospective and likely to visit Flagstaff travelers
5. Contractor should demonstrate the ability to drive hotel bookings
6. Contractor must demonstrate knowledge and adaptability to leverage the traveler's path to purchase and from where they are searching
7. Contractor must demonstrate the ability to be proactively adapt to search engine changes including algorithm updates and policy changes (elimination of third-party cookies) well in advance of the change

## **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 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.

#### **PAYMENT**

6. **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.
7. **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.
8. **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.

9. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
10. **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.
11. **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.
12. **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.
13. **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**

14. **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.
15. **CONTROL:** Contractor shall be responsible for the control of the work.
16. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
17. **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.
18. **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**

19. **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.

20. **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.
21. **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.
22. **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**

23. **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.
24. **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**

25. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
26. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
27. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.
28. **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.

29. **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.
30. **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.
31. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

### **EMPLOYEES AND SUBCONTRACTORS**

32. **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.
33. **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.
34. **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.
35. **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 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**

- 36. 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.
- 37. 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.
- 38. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 39. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 40. 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.
- 41. 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.
- 42. 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.
- 43. 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.

44. **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 service to a public servant (“Gratuities”) in connection with award or performance of the Contract.
45. **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**

46. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.
47. **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.
48. **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.
49. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
50. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
51. **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.
52. **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.

**53. 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 Contract, not to engage in a boycott of Israel.