

ENERGY SERVICES CONTRACT

Contract No. 2021-63

THIS ENERGY SERVICES CONTRACT (this “**Contract**”) is entered into as of _____, 20_____, by and between the City of Flagstaff, a political subdivision of the State of Arizona located at 211 West Aspen Avenue, Flagstaff, AZ 86001 (“**City**”) and NORESKO, LLC, a Delaware limited liability company, having its principal place of business at One Research Drive Suite 400C Westborough, MA 01581 (“**Contractor**”). The City and Contractor may be collectively referred to as the “**Parties**” and individually as a “**Party.**”

RECITALS

WHEREAS, the City desires to receive, and Contractor is able to provide professional services related to an energy audit and a savings analysis and further comply with the Energy Performance Contracting Act (A.R.S. § 34-105); and

NOW, THEREFORE, in consideration of the covenants, representations, warranties, and mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

CONTRACT

1. **Scope of Work:** Conduct a comprehensive investment grade technical energy audit (the “**Investment Grade Audit**”) and savings analysis (the “**Report**”) at identified City facilities (“**Facilities**”) in order to determine the feasibility of entering into a guaranteed energy performance savings contract (“**Energy Efficiency Services Job Order Contract**”) to provide for the installation and implementation of energy conservation measures (“**ECMs**”) through a number of Projects at the Facilities which may be completed as Job Order Agreements.

And as more specifically described in the scope of work (as amended and/or otherwise modified from time to time as provided herein, (“**Scope of Work**”) attached hereto as Exhibit A.

2. **Compensation:**
 - a. There shall be no initial cost to the City. The design of the projects and installation of equipment to implement the measures will be structured so that the energy savings, maintenance and operational savings, and avoided costs resulting from the installed energy conservation measures are sufficient to cover 75 percent (75%) to 100 percent (100%) of all project costs for the duration of the Contract.
 - b. In the event the City elects not to proceed, for any reason, with the future negotiation of a guaranteed energy, fuel, water, and wastewater Energy Efficiency Services Job Order Contract, after the completion of the Investment Grade Audit, the City will pay a one-hundred eighty-eight thousand (\$188,000) backout fee for the Investment Grade Audit to the Contractor.
 - c. City acknowledges that this fee represents only a portion of Contractor’s cost to perform the Investment Grade Audit and Contractor will incorporate the full cost of the Investment Grade Audit into any eventual Energy Efficiency Services Job Order Contract.

3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B, are hereby incorporated 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, attached here to as Exhibit C.
5. Contract Term: The Contract term is for a period of two (2) years and continuing through _____, 2023 pursuant to the Standard Terms and Conditions. The Contract shall be effective as of the date signed by both parties. The Scope of Work shall be completed within two (2) years of Contract signature date. Performance shall commence within ten (10) days from the City's issuance of the Notice to Proceed and shall be completed on or before _____, 20____ consistent with the schedule of services.
6. Renewal: This Contract may be renewed for up to three (3) one (1) -year extensions 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.
7. City Representative: The City Representative is Nicole Antonopoulos, Sustainability Manager, or her designee. All communications to the City shall be through the City Representative. The City Representative is responsible for bringing any request for a contract amendment or price adjustment to the attention of the Senior Procurement Specialist.
8. Key Personnel/Subcontractors: Contractor must identify 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.
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 the City's work product without further compensation to Contractor; provided, however, the City's reuse without written verification or adaption by Contractor for purposes other than contemplated herein is at the City's sole risk and without liability to Contractor. Contractor shall not engage in any conflict of interest nor appropriate any portion of the City's work product for the benefit of Contractor or any third parties without the 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 the City copies all of the City's work product and any other documents and data accumulated by Contractor in performance of this Contract, whether complete or in process.

12. Notice: Any notice concerning 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 Avenue
Flagstaff, AZ 86001
emarkel@flagstaffaz.gov

To Contractor:

Pablo Hernandez
NORESKO, LLC
One Research Drive Suite 400C
Westborough, MA 01581
phernandez@noresko.com

With a copy to:

Nicole Antonopoulos
Sustainability Manager
City of Flagstaff
419 N. Mogollon Street
Flagstaff, AZ 86001
nantonopoulos@flagstaffaz.gov

With a copy to:

Kathleen Krasenics
NORESKO, LLC
One Research Drive Suite 400C
Westborough, MA 01581
Kathleen.Krasenics@noresko.com
Cc: licensing@noresko.com (Legal Department)

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.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURES ON FOLLOWING PAGE)**

CONTRACTOR

Print name: _____

Title: _____

CITY OF FLAGSTAFF

Print name: _____

Title: _____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

Notice to Proceed issued: _____, 2021

EXHIBIT A

SCOPE OF WORK

1. Investment Grade Audit

Contractor will conduct an Investment Grade Audit at City Facilities, as listed in Table A.1, to determine the feasibility of entering into an Energy Efficiency Services Job Order Contract. The Investment Grade Audit will include the following technology categories:

- i. Energy and water efficiency
- ii. Water meter replacements with automated metering infrastructure (AMI)
- iii. Fleet Conversion to Electric
- iv. Strategic Sourcing
- v. Water and wastewater process improvements (preliminary assessment only)

The Investment Grade Audit will present a multi-phase approach:

- Phase 1: Detailed preliminary assessment of the energy and water efficiency, water meter replacements with automated metering infrastructure (AMI), fleet conversion to electric, Strategic Sourcing opportunities, and of water and wastewater process improvements.
- Phase 2: The detailed development of a water and wastewater process improvement, under a separate potential Energy Efficiency Services Job Order Contract.

This process will include in Phase 1, the following priority assessments within the Investment Grade Audit identified by the City:

- City Hall Boiler Replacement
- Main Library Boiler Replacement
- Main Library Window Replacement
- Aquaplex Center Boiler Replacement

Investment Grade Audit Development Plan

Contractor will prepare a comprehensive plan for developing and completing the Investment Grade Audit deliverables. This plan will be presented as part of a kickoff meeting to establish tasks, roles and responsibilities to finalize a schedule to complete the work. As part of the kickoff meeting Contractor will complete the following:

- a) Discuss City requests and project funding to determine areas and technologies that are anticipated to be a part of the project
- b) Review available facility blue-prints and specifications provided by the City to become familiar with the facility systems for the areas determined to be a part of the proposed project
- c) Review construction documents from recent projects including water/wastewater plant upgrade designs and reports, water meter upgrades, lighting retrofits and HVAC and controls work completed within the past five years to be provided by the City
- d) Interview operating personnel and occupants to get a better understanding about the electrical, mechanical, plumbing, irrigation, and water/wastewater treatment systems
- e) Document any issues or problems that need to be addressed related to the areas determined to be a part of the proposed project

- f) Obtain a list of preferred contractors, if available
- g) Obtain detailed electrical, mechanical and plumbing operating schedules on areas determined to be a part of the proposed project
- h) Gather most recent utility costs (electric, natural gas, water/sewer, trash) for the facilities determined to be a part of the project
- i) Gather detailed current and future years' O&M and Capital budget plans related to facilities determined to be a part of the project
- j) Gather information and copies of existing Maintenance and Service Contracts related to facilities determined to be a part of the project
- k) Obtain letter of authorization releasing utility data to Contractor
- l) Obtain facilities and operational calendar

Finance and Energy Efficiency Services Job Order Contract Workshop

Concurrent with the development kickoff meeting, a separate meeting will be scheduled to start the assessment of the wastewater and facilities in preparation for a potential design/build construction Energy Efficiency Services Job Order Contract. The development, review and approval of the Energy Efficiency Services Job Order Contract can take several weeks, and therefore must move forward simultaneously with the technical analysis. In addition, the method for procuring and approving project financing must also be developed. The scope of this meeting will include:

- a) Define the review and approval process for the Energy Efficiency Services Job Order Contract, Job Order Agreements and Project Financing
- b) Identify City staff involved in the review and approval process
- c) Develop a schedule of tasks and milestones
- d) Confirm the finance structure inclusive of City capital contribution and project finance term up to twenty (20) years.

On Site Field Audit

During a planned site visit, a team of Contractor energy professionals will survey each facility and gather necessary information in order to perform the engineering and energy evaluation. Tasks that Contractor will complete during the field visit include, but are not limited to:

- a) Inventory lighting and plumbing fixtures that have not been retrofitted or replaced within the previous five years, HVAC equipment needing replacement, plug load equipment, and water and wastewater treatment equipment.
- b) Document nameplate data of equipment listed above
- c) Document locations and verifying print/layout maps for equipment listed above
- d) Photograph existing equipment listed above
- e) Conduct isolated monitoring (as needed)
- f) Interview staff and maintenance personnel
- g) Obtain operating schedules, procedures and system configurations for equipment listed above

Utility Tariff Analysis

Contractor will perform utility analysis of each facility determined to be a part of the project using past energy history, to determine the monthly electric, gas and demand profiles, and compare the energy use indices of the facility with similar facilities in the same geographic location. This step provides important

preliminary information about the existing potential at each facility. Tasks that Contractor will complete during the analysis include:

- a) Perform utility bill analysis
- b) Establish base year consumption
- c) Establish effective rates for electricity, natural gas and water/sewer and respective annual escalations
- d) Interview City facility personnel on billing issues and anomalies

Preliminary ECM and Utility Baseline Workshop

Contractor will provide a preliminary Energy Conservation Measure (ECM) Matrix with specific ECMs for review and consideration for this project. City and Contractor will mutually agree on the ECMs that will move forward for detailed savings and cost analysis.

Concurrently, the team will review the utility baseline analysis and associated effective utility rates to be used in the energy and financial analysis.

Investment Grade Audit Report

Contractor will complete a comprehensive energy analysis of each facility using the information provided by the City, the data gathered during the on-site field audit, and the results of the utility tariff analysis. Results of the Investment Grade Audit will determine the annual energy savings by each ECM type for each Facility. Tasks that Contractor will complete during the energy analysis include:

- a) Determine energy savings methodology by ECM
- b) Perform savings evaluation
- c) Document assumption and detailed calculations
- d) Develop operating standards for the energy using equipment

Financial Cost Benefit Analysis

Contractor will complete a cost benefit analysis to demonstrate the financial impacts to City for implementing the proposed solutions. Total Project cost will include, but is not limited to, the following:

- a) Equipment and installation costs
- b) Engineering costs
- c) Detailed design costs
- d) Construction management costs
- e) Commissioning costs
- f) Project development costs
- g) Measurement & Verification costs
- h) Administrative costs
- i) Project contingency costs
- j) Overhead and fees
- k) Profit
- l) Taxes
- m) Construction interest

The City acknowledges and agrees that Contractor has not acted as a municipal financial advisor to the City and that the City has not relied on Contractor for any matters relating to the financing of the Project, including issuance of any bonds.

Project Management Plan

Contractor will prepare a project plan for implementation that will include the following:

- a) Project installation
- b) Construction scope of work
- c) Equipment specification/cut sheets
- d) Commissioning procedures
- e) Project schedule

Final ECM Scope Workshop

Contractor will provide the City with the results of the detailed cost and savings analysis for the selected ECMs, and the associated financial summary. Final comments and revisions will be discussed and resolved, and the results incorporated into the Investment Grade Audit Report.

Submit Investment Grade Audit Report

Based on the input provided during the Final ECM Scope Workshop, Contractor will revise and finalize the Investment Grade Audit Report. Parties agree that any and all reports, deliverables, documentation, etc. shall only become the property of the City upon payment in full. The Investment Grade Audit Report will be organized as noted later in this section including an Executive Summary, Energy Efficiency Services Job Order Contract and associated attachments. These Energy Efficiency Services Job Order Contract Attachments, as well as the Energy Efficiency Job Order Contract terms and conditions concurrently negotiated during the project development process, will comprise the final Energy Efficiency Services Job Order Contract.

Parties agree that reuse of the design and/or corresponding contract documents or portions thereof by the City shall be limited to the City and for the benefit of the City. When reuse is contemplated, all title blocks and references to Contractor shall be removed from drawings unless written consent for reuse is given by Contractor. The City shall defend, indemnify and hold Contractor, its officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims or injury or damages arising out of the reuse of the design and / or corresponding contract documents or portion thereof without the written consent of Contractor.

Note that Contractor will also support the City with information required for describing the project to City Council and related departments, such as powerpoint presentations and summarized project descriptions and data.

Final Energy Efficiency Services Job Order Contract and Finance Workshop

If required, a final workshop will be held with City procurement and finance team members to discuss project elements and prepare for subsequent review and approval.

2. Strategic Sourcing

Contractor shall provide strategic sourcing services for the following specified City budget categories:

- Telecommunications and IT
- Temporary Labor and Professional Services
- Insurance (Health and Non Health)
- Logistics
- Equipment, Vehicle Rental and Vehicle Management
- Office Supplies, Printing, Shop Supplies, Furniture
- Travel
- P Card, Ghost Card, Travel Card Programs
- Marketing and Promotional Services

Additional budget categories can be added by mutual agreement.

Contractor will develop a comprehensive strategy to identify, validate, and implement expense reductions, enhanced revenue, and refunds of vendor overpayments. The work will be performed as follows:

Opportunity Analysis (“Phase 1”)

After receipt of the necessary financial information from the City, Contractor will complete a preliminary assessment of strategic sourcing opportunities. Results of the assessment will be communicated to the City in a strategic sourcing opportunity report which shall include the identification of budget categories for which potential savings or enhanced revenue opportunities have been identified and the range of projected savings or enhanced revenue.

The City shall review the strategic sourcing opportunity report and shall identify in writing which (if any) budget categories should be evaluated further. Additional analysis would be completed under separate agreement or amendment to this agreement structured under a shared savings approach.

Table A.1 City Facilities

<i>Facility</i>	<i>Address</i>	<i>Year Built</i>	<i>Square Footage</i>
Airport - Apron E (#2790)	2790 W. Lightning Drive	2005	2,700
Airport - Foxtrot Hangar 1 (#2771)	2771 W. Lightning Drive	2005	14,080
Airport - Foxtrot Hangar 2 (#2791)	2791 W. Lightning Drive	2005	14,080
Airport - Hangar A (#2660)	2660 W. Lightning Drive	1989	14,560
Airport - Hangar D (#2750)	2750 W. Lightning Drive	1992	14,560

Facility	Address	Year Built	Square Footage
Airport - Hangar E (#2661)	2661 W. Lightning Drive	1999	14,560
Airport AARF	6000 S. Liberator Lane	2005	11,500
Airport DPS	6090 S. Liberator Lane	1980	3,750
Airport FAA maintenance	6628 S Cessna Circle	1980	2,000
Airport Hangar #2661	2661 W. Lighting Drive	2005	18,000
Airport terminal	6620 S. Pulliam Dr.	1995	27,815
Aquaplex Center	1702 N. 4th St.	2008	52,500
Cemetery House	1300 S. San Francisco	1975/2011	2,392
Cemetery Storage Warehouse	1300 S. San Francisco	1990	1,820
City Court	15 N. Beaver	1945	12,300
City Courthouse	101 W. Cherry	2020	39,500
City Hall	211 W. Aspen	1983	49,400
City Warehouse	5477 E. Commerce	1986	5,600
Coconino Warehouse	511 W. Coconino	1965	4,400
Cogdill Recreation Center	301 S. Paseo de Flag	1969	8,752
Fire Station #1	1972 S. Thompson Rd	2007	8,620
Fire Station #10 (Old Airport Ops Building)	6629 S. Cessna Circle	1954/1974	2,000

Facility	Address	Year Built	Square Footage
Fire Station #2	1701 E. Ponderosa Pkwy	2011	14,631
Fire Station #3	4500 E. Nestle-Purina	2009	8,620
Fire Station #4	4040 E. Butler	1987	5,600
Fire Station #5	2525 N. Fort Valley Road	2008	8,620
Fire Station #6	3877 S. Lake Mary Rd.	1999	9,000
Hal Jensen Recreation Center	2403 N. Izabel	1970	16,808
J. Lively Ice Rink	1850 N. Turquoise	1975 / 2010	34,991
Joe C. Montoya Community and Senior Center	245 N. Thorpe	1978	9,246
Joel Montalvo Building	2230 E. Spruce	1950	3,300
Lake Mary - Filtration Building (11)	4500 S. Lake Mary Rd	2003	9,246
Lake Mary - Old Plant (2)	4500 S. Lake Mary Rd	1941	2,590
Lake Mary - Operations Control (1)	4500 S. Lake Mary Rd	1964	4,603
Lake Mary - Plant Maint. Shop (6)	4500 S. Lake Mary Rd	1960-66	2,100
Lake Mary Pump House	Lake Mary Well Field	1982	2,679
Landfill - Administration Bldg	Cinder Lake Landfill	2001	2,717
Landfill - Household Prod. Coll. Center	Cinder Lake Landfill	2002	4,000
Landfill - Maintenance Building	Cinder Lake Landfill	2008	4,700

<i>Facility</i>	<i>Address</i>	<i>Year Built</i>	<i>Square Footage</i>
Landfill – Offices	Cinder Lake Landfill	1985	1,600
Library East	3000 N. 4th St. #5		11,000
Library Main	300 W. Aspen	1987	35,000
McCallister Ranch House	3366 W. Rt 66	1940's	2,000
McPherson Center	1850 N. Turquoise	1970	2,100
Milligan House	323 W. Aspen	1904	3,514
Murdoch Center	220 E. Brannen	1965	2,000
NACET – Incubator	2225 N. Gemini Drive	2008	10,285
NACET Accelerator - Innovation Mesa	2201 N. Gemini Drive	2015	28,053
North Reservoir Filtration Plant		1983	7,700
Phoenix Warehouse	216 W. Phoenix Ave.	1969	23,409
Ponderosa Head Start	1825 N. Main St		3,000
Prosecutors Building	107 W. Aspen	2001	3,255
PW Bldg 3 - Multi Use Garage (Old Solid Waste)	419 N. Mogollon	2005	6,300
PW Bldg 7 - Fleet/Vehicle Shop	419 N. Mogollon	1945	16,200
PW Core Admin Building 5	3200 W. Route 66	2018	13,155
PW Core Fleet Building 2	3200 W. Route 66	2018	21,701

<i>Facility</i>	<i>Address</i>	<i>Year Built</i>	<i>Square Footage</i>
PW Core Solid Waste Building 3	3200 W. Route 66	2018	17,580
PW Core Streets Building 4	3200 W. Route 66	2018	20,809
PW Core Wash Facility Building 1	3200 W. Route 66	2018	3,000
Rio De Flag - Final Sludge & Scum Sta.	600 Babbitt Way	1993	1,518
Rio De Flag - Influent Pumping Sta.	600 Babbitt Way	1993	4,545
Rio De Flag - Operations Building	600 Babbitt Way	1993	21,525
Rio De Flag - Primary Sludge/Pumping Sta.	600 Babbitt Way	1993	1,510
Sunnyside Head Start	1825 N. 1 St		2,500
Sustainability Office (Old SW Office-B1)	419 N. Mogollon	1984	2,838
Theatrikos Building	11 W. Cherry	1940	8,500
Thorpe Shop	600 N. Thorpe Road	1975	4,000
USGS #3	2255 N. Gemini	1974	16,552
USGS #4	2255 N. Gemini	1976	23,847
USGS #5	2255 N. Gemini	1976	9,163
USGS #6	2255 N. Gemini	2002	27,525
Utilities Shop	5401 E. Commerce	1999	17,388
Visitor's Center	1 W. Rte. 66	1937	5,000

Facility	Address	Year Built	Square Footage
Water Services / Housing East Side Annex	2323 N. Walgreens	1992	8,623
Wildcat Hill - Bio Towers & Oil Storage (7)	2800 N. El Paso Flag rd	1970	28,000
Wildcat Hill - Chlorine Storage (1)	2800 N. El Paso Flag rd	1982	1,783
Wildcat Hill - Influent Head works (11)	2800 N. El Paso Flag rd	1982	3,400
Wildcat Hill - Non-Haz. Liquid Waste (15)	2800 N. El Paso Flag rd	1980	10,000
Wildcat Hill - Operations & Maint. (6)	2800 N. El Paso Flag rd	1982	15,452
Wildcat Hill - Prim. Effluent Pump Station (12)	2800 N. El Paso Flag rd	1982	7,000
Wildcat Hill - Process Digesters (13)	2800 N. El Paso Flag rd	1982	9,800
Wildcat Hill - Reclaim Pump Station (4)	2800 N. El Paso Flag rd	1982	1,880
Wildcat Hill - Sand Filter Building (10)	2800 N. El Paso Flag rd	1991	8,632
Wildcat Hill - Sec. Eff. Pump Station (3)	2800 N. El Paso Flag rd	1991	849
Wildcat Hill - Secondary Clarifiers (14)	2800 N. El Paso Flag rd	1982	375
Wildcat Hill - Septage Truck Station (8)	2800 N. El Paso Flag rd	1992	36
Wildcat Hill - Sludge Inj. Equip. Storage (5)	2800 N. El Paso Flag rd	1982	760
Wildcat Hill - SO2 Storage (2)	2800 N. El Paso Flag rd	1991	969
Wildcat Hill - Storm Water Pump Station (9)	2800 N. El Paso Flag rd	1970	750
Woody Mountain Clarifier	Woody Mountain Well Field	1959	3,215

<i>Facility</i>	<i>Address</i>	<i>Year Built</i>	<i>Square Footage</i>
		TOTAL	947,936

Note: The Investment Grade Audit Report shall include an evaluation of City water meters serving residential and commercial water customers.

Investment Grade Audit Deliverables

The deliverables will be structured in three parts as described below. These deliverables may be delivered together or separately, and in any order for consideration by the City.

Part 1 will be comprised of the Investment Grade Audit Report where the deliverables shall include:

- A. Executive Summary
- B. Assessments of:
 - 1. Energy and water efficiency
 - 2. Water meter replacements with automated metering infrastructure (AMI)
 - 3. Fleet Conversion to Electric
 - 4. Strategic Sourcing
 - 5. Water and wastewater process improvements (preliminary assessment only)
- C. A Proposed Design/Build Energy Efficiency Services Job Order Contract with the following Attachments:
 - ATTACHMENT A Property Description
 - ATTACHMENT B Scope of Services
 - ATTACHMENT C Reserved
 - ATTACHMENT D Notice to Proceed
 - ATTACHMENT E Delivery and Acceptance Certificates
 - ATTACHMENT F Guaranty of Energy Cost Savings
 - ATTACHMENT G Contract Cost and Annual Services
 - ATTACHMENT H Change Order Form
 - ATTACHMENT I Maintenance Services
 - ATTACHMENT J Contractor Installed Equipment
 - ATTACHMENT K Standards of Service
 - ATTACHMENT L Modifications to Investment Grade Audit Documentation
 - ATTACHMENT M Form of City’s Approval of Sample or Specifications

Part 2 will address preliminary development of water and wastewater process improvements where the deliverables shall include:

- A. A brief report summarizing the potential opportunities, preliminary estimate savings and order-of-magnitude budget that could be supported by the savings.
- B. A project development plan will be provided outlining next steps to develop the mutually agreed opportunities.

C. A proposed Phase 2 Energy Efficiency Services Job Order Contract.

Part 3 will address the results of Phase 1 budget optimization through strategic sourcing where the deliverables shall include:

A. A report with identification of budget categories for which potential savings or enhanced revenue opportunities have been identified and the range of projected savings or enhanced revenue.

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 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.
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.

67. NO BOYCOTT OF ISRAEL: Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over 10 employees and the Contract is worth at least \$100,000, the Party certifies that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.

EXHIBIT C

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

e. Professional Liability \$2,000,000

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:
- Attention: Emily Markel, Senior Procurement Specialist
Contract No. 2021-63
Purchasing Department
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 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. 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.