

**CITY OF FLAGSTAFF  
CONTRACT FOR PROFESSIONAL SERVICES  
Contract No.: 2022-05**

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 Makers Architecture & Urban Design, LLP, a Washington State Limited Liability Partnership ("Consultant").

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

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

**SERVICES**

1. **Scope of Work:** Consultant shall provide the professional services generally described as follows:

**ZONING AND SUBDIVISION CODE UPDATE  
FOR THE LA PLAZA VIEJAS NEIGHBORHOOD SPECIFIC PLAN 2021**

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

2. **Special Terms and Conditions:** The City of Flagstaff Special Terms and Conditions, attached hereto as Exhibit B, shall apply to performance of this Contract, except to the extent modified in Exhibit A.
3. **Key Personnel/Subcontractors:** Consultant's Key Personnel, Subcontractors (if any), and contact information are designated in Exhibit A. 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 Representatives for this Contract have the right to approve any proposed substitution of Key Personnel or Subcontractors.

**CITY RESPONSIBILITIES**

4. **City Representative:** The City Representatives are Daniel Symer, Zoning Code Manager and Daniel Folke, Community Development Director. All communications to the City shall be through the City Representative. The City Representatives are responsible for bringing any request for a Contract amendment or price adjustment to the attention of the Procurement Agent.
5. **City Cooperation:** The City will cooperate with Consultant by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for Consultant's performance of this Contract.

**CONTRACT TERM**

6. **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.

7. Renewal: This Contract may be renewed for up to two (2) additional one (1) year terms by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
8. Termination: This Contract may be terminated pursuant to the Special Terms and Conditions attached hereto as Exhibit B.

#### PAYMENT

9. Compensation: In consideration for the Consultant's satisfactory performance, City shall pay Consultant Seventy Thousand Five Hundred Eighteen Dollars and Zero Cents **(\$70,518.00)** as defined by the Scope of Work attached hereto as Exhibit A.
10. Price Adjustment: Any price adjustment must be approved by the City in writing as a formal Contract Amendment. The City Manager, or his designee, (the Purchasing Director) may approve an adjustment if the annual Contract price is less than \$49,999; otherwise, if the annual Contract price exceeds \$50,000, City Council approval is required.

#### DATA AND RECORDS

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

MISCELLANEOUS

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

To the City:

Daniel Symer  
Zoning Code Manager  
211 W. Aspen Ave.  
Flagstaff, AZ 86001  
Daniel.Symer@flagstaffaz.gov

Daniel Folke  
Community Development Director  
211 W. Aspen Ave.  
Flagstaff, AZ 86001  
dfolke@flagstaffaz.gov

To the Consultant:

Bob Bengford  
Makers Architecture & Urban Design  
500 Union Street #700  
Seattle, WA 98101  
Bobb@makersarch.com

With a copy to:

Brian Eilerts  
Senior Procurement Specialist  
211 W. Aspen Ave.  
Flagstaff, AZ 86001  
Brian.Eilerts@flagstaffaz.gov

15. 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)**

CONSULTANT

\_\_\_\_\_

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

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

CITY OF FLAGSTAFF

\_\_\_\_\_

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

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

Attest:

\_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney's Office

## **EXHIBIT A**

### **CITY OF FLAGSTSAFF SCOPE OF WORK**

#### **SECTION 1 – INTRODUCTION**

##### **Project Background and Purpose**

The La Plaza Viejas Neighborhood Specific Plan (Specific Plan or Plan) was adopted by the City Council on October 20, 2015. Serving as a roadmap to implement the community’s vision for the neighborhood, the Plan includes goals, policies, and strategies to guide the development and preservation of the neighborhood. To assist in the implementation of the Plan, the purpose of the project is to conduct a Zoning Code Text Amendment and Zoning Map Amendment to create a new “character” overlay zone that would be applied to the specific areas of the neighborhood. Through the character overlay zone requirements and the associated design guidelines and a “pattern book”, the objective is to create provisions for new development that reinforce the neighborhood’s historical residential architectural forms, features, and landscaping. The design guidelines are also to address provisions enhanced urban design criteria for the commercial edge and transition areas identified in the Specific Plan.

#### **SECTION 2 – SCOPE OF WORK**

##### **Task 1 Initial Project Introduction**

- A. Research, Review of Public Information and Familiarity. In preparation to commence the project, the Consultant will review and become familiar with the Specific Plan, the historic context analysis, applicable zoning standards and design guidelines. Consultant will also review city staff’s research on pattern books examples.
- B. Neighborhood Tour & Familiarity. Consultant shall conduct an on-site field tour of the neighborhood to become familiar with the physical forms details of La Plaza Viejas Neighborhood, including its historic patterns of urbanism and architecture.
- C. Team meetings. Consultant shall participate in up to three meetings with the Project Manager and City Staff to discuss their approach and concepts for the project associated with this task. This includes two remote meetings to discuss our approach to this task and preliminary research findings and prepare for the neighborhood tour, and one on-site meeting together with the neighborhood tour to discuss tour findings and discuss next steps.

Timing: November – December.

Products:

- Project context memo, which notes project goals, introductory meeting notes, site analysis notes, and a matrix document notable plans and studies plus outcomes notable to this effort.
- Memo of relevant pattern book examples.

- Copies of all photographs/videos taking from the tour.
- Team meeting notes.

## **Task 2 Public Participation Plan**

- A. Public Participation Plan (PPP). Consultant shall develop a PPP for approval by the City's Project Manager. The PPP shall outline steps, processes, and public neighborhood meetings that are to be utilized to accommodate, notify and receive comments and input from the neighborhood stakeholders (property owners, residents, business, etc.) the Planning and Zoning Commission, Heritage Preservation Commission and the City Council.

At minimum the methods of notification, neighborhood meetings, and work sessions and public meeting/hearing with the Planning and Zoning Commission, Heritage Preservation Commission and the City Council shall comply with requirements the Flagstaff Zoning Code.

- B. Communication. Consultant shall draft a notification flier, newspaper ad, sign, press release, and to inform the La Plaza Viejas neighborhood, adjoining community and public about the planning efforts to be undertaken and each public meeting and hear. The PPP shall include provisions for :

- Project notification flier design.
- Project notification flier mailing.
- Newspaper advertisement design.
- Press releases.
- Public Notice sign design.

The format of the notification flier, newspaper advertisement, sign design shall be a designed as template that the City's Project Manager will update for each notification and site posting. The City will separately pay for the notification mailings, publishing the newspaper advertisements, and the sign productions and site postings. In addition, the City will publish the press release information and webpage publications.

- C. Social media and site posting support. Consultant shall provide information to the City's Project Manager to be utilize on the City's website, signs, and site posting. This information shall include text, photographs, maps, renderings, and other images. This material shall describe the project, the process to create the necessary information for character overlay zone and associated Zoning Code Text Amendment and Zoning Map Amendment, neighborhood meeting and public meeting(s)/hearing(s) and adoption process.

Timing: November - December for (A) and (B) and (C) for entire scope.

Products:

- PPP as set for in (A) above.

- Communications products as set forth in (B) above.
- Social media and site posting support as set forth in (C) above.

### **Task 3 Neighborhood Meeting/Workshop and Stakeholder Interviews**

- A. Public Participation Meeting/ Workshop. Upon familiarity, Consultant shall hold at least one public meeting/ workshop with stakeholders (elected officials, property owners, residents, neighborhood representatives, neighborhood business owners, and City staff) that will be involved with the project. The meeting/workshop will be conducted in person.
- B. Stakeholder interviews. Consultant shall conduct targeted stakeholder interviews with groups and individuals that are familiar with the neighborhood and its history. The City Project Manager will assist in identifying the individuals to be interviewed. This task assumes up to six interviews to be conducted via phone or video.

The public meeting, workshop and interviews are intended to publicly announce the start of the project, verify the stakeholders' desires and the historical architectural forms, features and landscaping. In addition, the objective is to gather ideas, concepts and strategies to create the best possible character overlay zone, design guidelines and pattern book.

Timing: December (possible for some stakeholder interviews) – January, 2022.

Products:

- Meeting materials, including handouts, presentation materials, and results of workshop activities.
- Stakeholder interview notes.

### **Task 4 Draft Development of the Character Overlay Zone, Design Guidelines and Pattern Book**

- A. Character Overlay Zone Zoning Code Text Amendment. With the assistance of the City's Project Manager, Consultant shall development the text, graphics, maps and figures to create the overlay zone that is to be part of the Zoning Code Text Amendment.
- B. Design Guidelines and Pattern Book. To accompany the Character Overlay Zone Zoning Code Text Amendment, Consultant shall development text, graphics, maps and figures to create the Design Guidelines and Pattern Book.
- C. Review of Draft(s) and Revisions. Consultant shall provide working drafts of the proposed Character Overlay Zone Zoning Code Text Amendment, Design Guidelines and Pattern Book, and Character Overlay Zone Zoning Map Amendment to the City's Project Manager and City Staff for review. Consultant shall make revision to the Character Overlay Zone Zoning Code Text Amendment, Design Guidelines and Pattern Book, and Character Overlay Zone Zoning Map Amendment.

This task includes remote meetings every other week to discuss progress and next steps.

Timing: January - April, 2022.

Products:

- Character Overlay Zone Zoning Code Text Amendment as set forth in (A) and (C) above.
- Design Guidelines and Pattern Book as set forth in (B) and (C) above.
- Meeting notes.

**Task 5 Public Review of the Character Overlay Zoning Code Text Amendment and Zoning Map Amendment and Revisions** (this task overlaps with Task 6)

- A. Neighborhood Meeting(s). Consultant shall hold at least two on-site public meetings with stakeholders to receive comments and input on the first final draft of the Character Overlay Zoning Code Text Amendment and Zoning Map Amendment. It's assumed these meetings may be conducted on consecutive days.
- B. Planning and Zoning Commission, Heritage Preservation, City Council Work Session Meetings (up to three total, all of which are anticipated to be remote/video conferencing). For the purpose of gathering comments and making revision to the draft, Consultant shall present the first final draft of the Character Overlay Zoning Code Text Amendment, Design Guidelines and Pattern Book, and Zoning Code Map Amendment to the Planning and Zoning Commission, Heritage Preservation Commission, City Council and Work Session meetings. The presentation may be made before a joint gathering of commissions and/or City Council.
- C. Notification. Consultant shall provide notification, communication, and social media and site posting for the in accordance Public Participation Plan.
- D. Revisions to the first final draft. Consultant shall revise the first final draft to address public, commission, staff, and City Council comments.

This task includes remote meetings every other week as needed to discuss progress and next steps.

Timing: April - September, 2022.

Products:

- Meeting materials, including handouts, presentation materials, and results of meetings.
- Revisions to draft as noted in (D) above.
- Meeting notes.

**Task 6 Application for the Character Overlay Zoning Code Text Amendment and Zoning Map Amendment** (this task overlaps with Task 5)

- A. Narrative. Consultant shall provide a separate project narrative for Character Overlay Zoning Code Text Amendment and Zoning Map Amendment. Each narrative shall include an analysis of the general plan and specific plan with regards to the goals and policies the Zoning Code Text Amendment and Zoning Map Amendment comply with and conflict with.
- B. Public Participation Report. Consultant shall provide a Neighborhood Involvement Report that summarize all public meetings and work session held. In addition, the Neighborhood Involvement Report shall include all comments received and the Consultant and City staff's response to the comments.
- C. Zoning Map. Consultant shall provide text, maps and figures to necessary to identify the location of the Zoning Map Amendment.
- D. Final Draft of the Character Overlay Zone Zoning Code Text Amendment. Consultant shall provide a final draft of the text, graphics, maps and figures for the Character Overlay Zone Zoning Code Text Amendment and the associated guidelines and pattern book.
- E. Final Draft of the Zoning Map Amendment. Consultant shall provide a final draft of the text, graphics, maps and figures for the Character Overlay Zone Zoning Map Amendment.

This task includes remote meetings every other week as needed to discuss progress and next steps.

Timing: April - August, 2022.

Products:

- Items (A-E) as set forth above.
- Meeting notes.

**Task 7 Public Hearings and Adoption**

- A. Public Hearing Presentations. Consultant shall make present the second final draft to Planning and Zoning Commission, Heritage Preservation, City Council Meetings (up to four total, all of which are anticipated to be remote/video conferencing). Consultant shall provide all text, graphics, maps and figures for a Microsoft PowerPoint presentation.
- B. Additional Revisions. Consultant will be responsible for revisions to the Character Overlay Zoning Code Text Amendment and Zoning Map Amendment are request by the Planning and Zoning Commission, Heritage Preservation, City Council Meetings

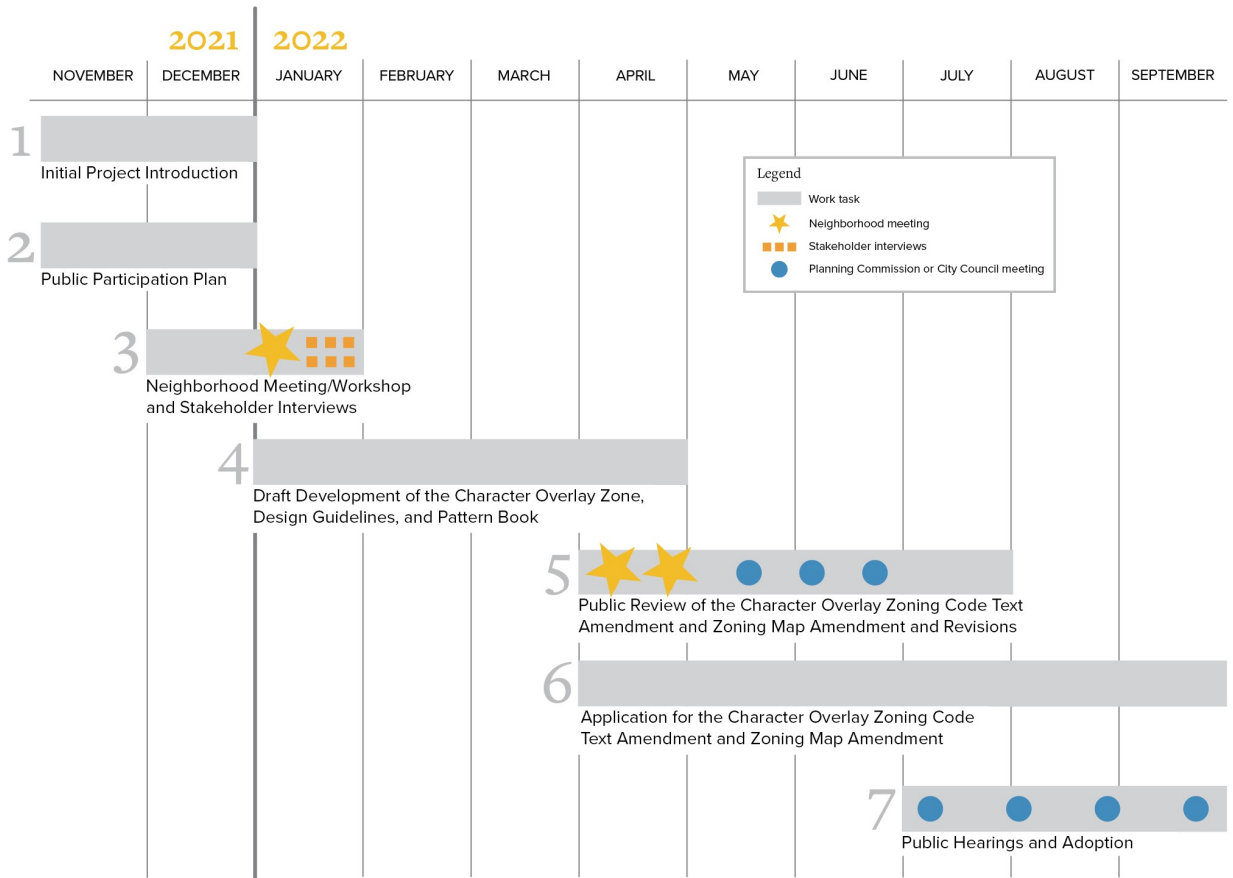
This task includes remote meetings every other week as needed to discuss progress and next steps.

Timing: July - September 2022.

Products:

- Items (A-B) as set forth above.
- Meeting notes.

# Scope of Work Schedule



## Scope of Work Budget Estimated Travel Cost Per Person

Flagstaff La Plaza Viejas Character Overlay Zone

Task	Team member	MAKERS			Amount	Persons Traveling	Travel Cost	
		Bob Bengford, Partner	Scott Bonjukian	Yifan Xing				
		Billing rate \$215	\$130	\$130				
		Hours						
1 Initial Project Introduction		16	24	2	\$ 6,820	2	\$ 1,358.00	
2 Public Participation Plan (and ongoing support)		8	32	6	\$ 6,660	0		
3 Neighborhood Meeting(s) and Workshop(s)		28	40	8	\$ 12,260	2	\$ 1,358.00	
4 Draft Development of the Character Overlay Zone, Design Guidelines and Pattern Book		24	32	40	\$ 14,520	0		
5 Public Review of the Character Overlay Zoning Code Text Amendment and Zoning Map Amendment and Revisions		40	24		\$ 11,720	1	\$ 1,038.00	two days for the two meetings
6 Application for the Character Overlay Zoning Code Text Amendment and Zoning Map Amendment		10	10		\$ 3,450	0		
7 Public Hearings and Adoption		20	10		\$ 5,600	1	\$ 734.00	budgeting for one trip just in case
<b>SUBTOTAL</b>		<b>146</b>	<b>172</b>	<b>56</b>	<b>\$ 61,030</b>			
Travel or remote engagement support expenses					\$ 4,488			
Contingency					\$ 5,000			
<b>TOTAL</b>					<b>\$ 70,518</b>			

See next tab for travel calculations that assume one-night stays

Estimated trip cost for one person			Estimated trip cost for two people			Estimated trip cost for three people		
Item	Cost	Quantity	Item	Cost	Quantity	Item	Cost	Quantity
Typical hotel night	\$120.00	1	Typical hotel night	\$120.00	2	Typical hotel night	\$120.00	3
Typical roundtrip flight	\$430.00	1	Typical roundtrip flight	\$430.00	2	Typical roundtrip flight	\$430.00	3
Typical car rental, daily	\$110.00	1	Typical car rental, daily	\$110.00	1	Typical car rental, daily	\$110.00	1
Federal per diem (meals and incidentals)	\$74.00	1	Federal per diem (meals and incidentals)	\$74.00	2	Federal per diem (meals and incidentals)	\$74.00	3
Federal mileage rate	\$0.00	0	Federal mileage rate	\$0.00	0	Federal mileage rate	\$0.00	0
Total per trip per person cost estimate	\$ 734.00		Total per trip per person cost estimate	\$ 1,358.00		Total per trip per person cost estimate	\$ 1,982.00	
Estimated trip cost for one person @ two nights								
Item	Cost	Quantity						
Typical hotel night	\$120.00	2						
Typical roundtrip flight	\$430.00	1						
Typical car rental, daily	\$110.00	2						
Federal per diem (meals and incidentals)	\$74.00	2						
Federal mileage rate	\$0.00	0						
Total per trip per person cost estimate	\$ 1,038.00							

**EXHIBIT B**

**CITY OF FLAGSTAFF  
SPECIAL TERMS AND CONDITIONS  
FOR PROFESSIONAL SERVICES**

\*The term "Contractor" may substitute for the term "vendors," "consultants," or "firms," depending on the purpose of the underlying Contract.

**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.

**PAYMENT**

5. **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.
6. **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.
7. **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.

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

12. **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.

### **INSPECTION, RECORDS, ADMINISTRATION**

13. **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.
14. **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.
15. **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.
16. **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.

### **INSURANCE & IDEMNIFICATION**

17. **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.

18. **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**

19. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
20. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
21. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.
22. **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.
23. **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.
24. **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.
25. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

### **EMPLOYEES AND SUBCONTRACTORS**

26. **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.
27. **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.

28. **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.
29. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that 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**

30. **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 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 to Contract remedies provided for herein.
31. **CITY REMEDIES:** In the event of Contractor's default, the 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. The 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.
32. **CONTRACTOR REMEDIES:** In the event of the City's default, Contractor may pursue all remedies available at law, except as provided for herein.

33. **SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
34. **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.
35. **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.
36. **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.
37. **PAYMENT UPON TERMINATION:** Upon termination of this Contract, the City will pay Contractor for satisfactory performance up until the effective date of termination. The City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
38. **CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Contractor, if the 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.
39. **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**

40. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with the City, without the prior written consent of the City.
41. **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) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; or (b) sent by email.
42. **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.
43. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.

- 44. FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
- 45. 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.
- 46. FORCE MAJUERE:**
- a. There may be events that occur during the term of the Contract that are beyond the control of both the City and Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God ("Events"). 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 the Contract.
  - b. There shall be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the Events and the City shall not pay additional costs incurred by Contractor as a result of such Events.
  - c. The Parties shall act in good faith to extend the Contract completion date without any penalty to Contractor and that the extension will be in an amount of time equal to any temporary delay. This provision of the Contract supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.
- 47. NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten employees and the Contract is worth at least \$100,000, the Party shall certify 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

**CITY OF FLAGSTAFF  
STANDARD INSURANCE REQUIREMENTS**

\*The term "Contractor" may substitute for the term "vendors," "consultants," or "firms," depending on the purpose of the underlying Contract.

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 the Contract by Contractor, its agents, representatives, employees, and/or subcontractors.
2. **REQUIREMENT TO PROCURE AND MAINTAIN:** Each insurance policy required by the Contract shall be in effect at, or before, commencement of work under the Contract and shall remain in effect until all of Contractor's obligations under the Contract have been met, including any warranty periods. Contractor's failure to maintain the insurance policies as required by the Contract, or to provide timely evidence of renewal, will be considered a material breach of the Contract.
3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** The following insurance requirements are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. The City does not represent or warrant that the minimum limits set forth in the Contract are sufficient to protect Contractor from liabilities that might arise out of the 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	\$1,000,000
Combined Single Limit Per Accident for Bodily Injury & Property Damage	

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
f. Network Security and Privacy Liability	
Per claim	\$1,000,000
Annual Aggregate	\$1,000,000

- 4. NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall maintain the requisite insurance requirements covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, including but not limited to, consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the City. The insurance policy shall include coverage for third-party claims. The insurance policy shall contain an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided.
- 5. SELF-INSURED RETENTION:** Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that Contractor reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and/or subcontractors. Contractor shall be solely responsible for any self-insured retention amounts. The 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.
- 6. OTHER INSURANCE REQUIREMENTS:** The insurance 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, employees, and/or subcontractors shall be named and endorsed as additional insureds with respect to liability arising out of the Contract and activities performed by or on behalf of Contractor, including products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
  - b. Broad Form: Contractor's insurance policy shall contain broad form contractual liability coverage.
  - c. Primary Insurance: Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and/or subcontractors. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and/or subcontractors shall be in excess of the coverage of Contractor's insurance and shall not contribute to it.
  - d. Each Insured: Contractor's insurance policies 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 Contractor shall not be limited to the liability assumed under the indemnification provisions of the Contract.
  - f. Waiver of Subrogation: The insurance policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees, and/or subcontractors for losses arising from work performed by Contractor for the City.
7. **NOTICE OF CANCELLATION**: Each insurance policy required by the insurance provisions of the Contract shall provide the required coverage and shall not be suspended, voided, cancelled, and/or 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 Procurement Agent and shall reference the Contract Number.
8. **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 Contractor from potential insurer insolvency.
9. **CERTIFICATES OF INSURANCE**: Contractor shall furnish the City with certificates of insurance (ACORD form) as required by the 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 Contract number shall be noted on the certificates of insurance. If requested by the City, all certificates of insurance and endorsements must be received and approved by the City before the Contractor commences work.
10. **POLICIES**: The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by the Contract. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under the Contract.
11. **MODIFICATIONS**: Any modification or variation from the insurance requirements in the 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.