

CONTRACT FOR PROFESSIONAL SERVICES
Contract No.: 2022-45

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 WIH Resource Group, Inc., an Arizona Corporation ("Firm").

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

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

SERVICES

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

Coordinate the Transition of the Materials Recovery Facility (MRF) to a Transfer Station

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

2. **Schedule of Services:** Firm shall perform all work per the schedule set forth in Exhibit A.
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. **Key Personnel/Subcontractors:** Firm'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 Representative for this Contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

CITY RESPONSIBILITIES

5. **City Representative:** The City Representative is Todd Hanson, Public Works Project Manager or his/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 City Buyer.
6. **City Cooperation:** The City will cooperate with Firm by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for Firm's performance of this Contract.

CONTRACT TERM

7. **Contract Term:** The Contract shall be effective as of the date signed by both parties. Performance shall commence within ten (10) days from the City's issuance of the Notice to Proceed and shall be in force for an initial term of three (3) consecutive years.
8. **Renewal:** The 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.

9. Termination: The Contract may be terminated pursuant to the Standard Terms and Conditions attached hereto as Exhibit B.

PAYMENT

10. Compensation: Upon satisfactory performance, Firm shall be paid for the materials and services provided not to exceed **one hundred three thousand four hundred seventy-two dollars (\$103,472.00)** in accordance with the Scope of Work identified in Exhibit A.
11. Price Adjustment: Any price adjustment must be approved by the City in writing as a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds \$50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.

DATA AND RECORDS

12. City Ownership of Document and Data: Any original documents prepared or collected by Firm 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. Firm 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 Firm may have in the materials it prepares under this Contract, including any right to derivative use of the material.
13. Re-Use: The City may use the City's work product without further compensation to Firm; provided, however, that the City's reuse without written verification or adaption by Firm for purposes other than contemplated herein is at the City's sole risk and without liability to Firm. Firm shall not engage in any conflict of interest nor appropriate any portion of the City's work product for the benefit of Firm or any third parties without the City's prior written consent.
14. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Firm shall immediately deliver to the City copies all of the City's work product and any other documents and data accumulated by Firm in performance of this Contract, whether complete or in process.

INSURANCE

15. Insurance: Firm shall meet insurance requirements of the City, as set forth in Exhibit C.

MISCELLANEOUS

16. Notice: Any notice concerning the 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
Flagstaff, Arizona 86001
emarkel@flagstaffaz.gov

To Firm:
Bob Wallace
WIH Resource Group
28528 N. 111TH Way
Scottsdale, AZ 85262
bwallace@wihresourcegroup.com

With a copy to:

Todd Hanson
Solid Waste Section Director
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001
THanson@flagstaffaz.gov

17. 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.

WIH Resource Group, Inc.:

Print name: _____

Title: _____

CITY OF FLAGSTAFF

Print name: _____

Title: _____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

Notice to Proceed issued: _____, 20__

Exhibit A

4.0 (Tab D.) Price - Proposed Cost of Services

Table 5 summarizes the WIH team's proposed level of effort (hours) and cost of service for this project by task. We propose to be compensated on a time-and-materials basis at the hourly rates shown and direct expenses paid at cost and as incurred, without any mark-up. WIH Resource Group's policy is to invoice for services rendered and direct expenses based on the standard hourly rates of the staff member assigned, multiplied by the time required to perform the client-related tasks.

Table 5: Price - Cost of Services / Project Budget

Task No.	Task Detail	Hours	Cost
A	Project Admin	12	\$ 2,340
B	Data Collection and Review	14	\$ 2,680
C	Project Kick-Off Meeting	30	\$ 5,710
1.1	Develop Project Timeline	10	\$ 1,922
2.1.A	Assess High Value Material Analysis	14	\$ 2,696
2.1.B	Opportunities for Local Diversion	38	\$ 7,358
	Hard to Recycle / Facility Purposes	22	\$ 4,250
2.4	Calculate Transport Cost	12	\$ 2,322
	Draft Phase 1 Technical Memorandum	40	\$ 7,720
	Total Phase One	192	\$ 36,998
1.2	Research Project Firms	14	\$ 2,634
2.1	Assess MRF physical changes	26	\$ 4,894
2.2	Research Facility Design Changes	24	\$ 4,504
2.5	Equipment Layout for Hard to Recycle / Drop Off	16	\$ 2,992
2.3	Dismantle / Equipment Disposition Plan	22	\$ 4,130
3.5	Develop Interim Operational Plan	32	\$ 6,030
3.4	Assess Staffing Requirements	16	\$ 3,032
	Draft Phase 2 Technical Memorandum	44	\$ 8,392
	Additional Meetings	24	\$ 4,578
	Total Phase Two	218	\$ 41,186
3.1	Assist with RFP for Material Processing	56	\$ 10,784
3.2	Contractor Selection	26	\$ 4,998
3.3	Solicit Transport Bids	24	\$ 4,656
	Total Phase Three	106	\$ 20,438
	Sub Total Project Labor Cost	516	\$ 98,622
	Total Travel Costs		\$ 4,850
	Total Project Cost		\$ 103,472
	Optional Tasks		
2.6	MRF Lighting Enhancement Evaluation	0	\$ 2,610
	Total Optional Tasks	0	\$ 2,610

This project cost estimate is based on WIH's experience with similar studies and correlates to the Proposed Scope of Work. WIH is open to modifying our approach and related cost of services upon further discussions with City Staff to meet the project goals. Any related travel expenses that may be required are reimbursable by the City to WIH Resource Group.

5.0 Scope of Work and Project Tasks

Table 6 provides a summary of the work plan, tasks, and subtasks outlined in the City’s RFP. The following tasks also outline the proposed scope of work and details for this in-depth project by the WIH Project Team.

Table 6: Summary of Work Plan and Tasks

Task	Description of Task / Subtask
Task A	Project Management & Administration
Task B	Data Collection and Review
Task C	Project Kick-Off Meeting / Site Visit and Staff Interviews
Task 1	Project Planning
Task 1.1	Develop Timeline and Implementation schedule for uninterrupted transition to transfer station.
Task 1.2	Research & interview engineering, design, and construction firms for MRF redesign to transfer station.
Task 2	Facility Changes Planning
Task 2.1	Assess MRF physical changes needed, and cost estimate and alternatives analysis for consideration.
Task 2.1. A	Conduct a cost/benefit analysis of sorting out high valuable materials before shipping to 3 rd party MRF. Include the following in the cost/benefit analysis: <ul style="list-style-type: none"> • Staffing / personnel needs • Impacts on the price per ton to potential 3rd party MRFs and marketing strategies for materials of less aggregate value. • Identify current inbound material blended value per ton.
Task 2.1. B	Explore partnering with local businesses to divert waste from the landfill and support economic development & identify best practices for providing local entrepreneurs with access to materials from single stream and drop-off collection. Also, investigated best practices for facilitating the startup of new business that divert these materials.
Task 2.2	Conduct assessment to identify best practices to remove the existing sort line from the MRF to the transfer station redesign with minimal disruption of the current operations.
Task 2.3	Determine the most cost-effective means for removal of the existing MRF sort line and associated processing equipment, and considering the following alternatives: <ul style="list-style-type: none"> • Dismantle and scrap the MRF equipment • Execute a sale of the MRF processing equipment • Repurpose the MRF sort line and processing equipment
Task 2.4	Develop trucking payload impacts and an operational cost analysis for transporting the recycled materials loose, bales, compacted on a 3-,5- and 20-year cost projection.
Task 2.5	Determine the spacing and equipment needs for the collection of hard to recycle and hazardous materials including paints, batteries, and electronics through a drop of program on site. Also identify other potential high-value hard-to-recycle materials based on ROI, such as mattresses, film plastics, textiles, paper shredding, etc.
Phase Three	Operational Transition
Task 3.1	Draft and issue an RFP or RFI from public and private sector recycling processors.
Task 3.2	Recycling processing operator / contractor selection including:
Task 3.2. A	Determining the ideal operating Agreement lengths.
Task 3.2. B	Assess negotiating with City of Phoenix, entering an IGA, or issuing an RFI/RFP for private sector processing.
Task 3.3	Solicit bids from trucking companies for transportation of the City’s recycled materials to selected processor with consideration of findings from Task 2.4.
Task 3.4	Assess and recommend staffing requirements, duties, responsibilities, and planning level cost estimates for operating the converted transfer station.
Task 3.5	Develop interim staffing and operational plan for use while the MRF is being transitioned to a transfer station, including timeline, where the recyclables will be transported for processing during that time and the costs.

Proposal for the City of Flagstaff MRF to Transfer Station Transition

Task A – Project Management and Administration

WIH Resource Group's Project Manager, Bob Wallace, will facilitate all project management and administrative functions relating to communications with the client, coordinate the direction of the WIH Project Team Subcontractors, and conduct all administrative functions for the Project and Project Team.

Task B – Data Collection & Review

We will prepare an initial data request to identify specific information to be collected from City staff prior to our first meeting. Once we have received and reviewed the requested data, we will schedule a virtual project team meeting with City staff to discuss the information and gather responses to our initial questions and data request. Once we have received and reviewed the City's preliminary response to the data request, we will schedule the onsite kick-off meeting.

Task C – Project Kick-Off Meeting / Site Visits & Staff Interviews

Once we have thoroughly reviewed the requested information, we will schedule a series of onsite meetings and assessments over two days with appropriate City staff and stakeholders. The kick-off meeting will serve as a mechanism to discuss preliminary findings of the data requested, our research, inventory of the existing data and additional needed data, continue the data collection process through the onsite visits, staff interviews, and observations, and identify project issues, goals, priorities, roles, and responsibilities. We will conduct field observations and tour the city facilities. In addition, interviews will be conducted with City managers / staff, and to collect additional background information to determine at a minimum, but not limited to, the following:

- Understanding and refining the City's overall goals and needs.
- Verifying City management's specific desired outcomes from this project.
- Identifying any unique parameters that need to be addressed as part of the project.
- Opportunities and limitations related to the project's desired outcomes.
- Assessment of existing MRF equipment and condition.
- Facilities operations, location, and personnel knowledge and training.
- Initial facility upgrades and modifications assessment.
- Potential alternatives assessment.
- MRF traffic, volumes, facility needs, operational constraints – current and future growth for the transition planning.

Task 1 – Project Planning

Task 1.1 - Develop a timeline and implementation schedule for an uninterrupted MRF transition.

Task 1.2 - Research and interview engineering, design, and construction firms for MRF redesign and transition to transfer facility.

Task 1 Approach

The realm of companies that manufacture sorting equipment that specialize in updating and transforming MRFs is limited. Therefore, we would invite representatives from those companies to complete a site visit to Flagstaff. The Project Team and City staff will host a facility tour and solicit their input on facility options, level of difficulty, and costs to transform the MRF. (Three of these companies are close to Flagstaff.) Finally, we will develop the overall

Proposal for the City of Flagstaff MRF to Transfer Station Transition

project schedule for facility completion, a tentative facility needs list, and a budget for the retrofit for review, input, and direction by City staff.

Task 1. Deliverable: Phase 1 Technical Memorandum with detailed schedule for project completion

Task 2 – Facility Change Planning

Task 2.1 - Assess MRF facility physical changes needed to convert to basic recyclable materials transfer operational facility. Complete a cost estimate and alternatives analysis for consideration.

Task 2.1.A - Conduct a cost/ benefit analysis on the impact of sorting out high value materials before shipping to a MRF.

- Include staffing/personnel needs
- Include impacts on price per ton to potential MRF and marketing strategies for material of less aggregate value.
- Identify current inbound material blended value per ton.

Task 2.1.B - The City and community stakeholders would like to explore opportunities for diverting materials delivered to the future transfer station through new, local businesses.

- Investigate opportunities for partnering with local businesses to divert waste from the landfill and support local economic development.
- Identify best practices for providing entrepreneurs with access to materials from single-stream and drop-off collection.
- Investigate best practices for facilitating the startup of new businesses that divert these materials. Identify other potential high-value hard-to-recycle materials based on ROI, such as mattresses, film plastics, textiles, paper shredding, etc.

Task 2.2 - Conduct an assessment by researching industry best practices to remove the existing sort line and related equipment for the MRF to transfer station redesign with minimal disruption of current operations.

Task 2.3 - Determine what is the most cost-effective means for the removal of existing MRF sort line and associated processing equipment, at a minimum considering the following alternatives:

- Dismantle and scrap the equipment
- Execute a sale of the processing equipment
- Repurpose the sort line and processing equipment

Task 2.4 - Develop payload impacts and operational cost analysis for transporting recycled loose, baled or otherwise compacted material on 3-, 5- & 10-year cost projections.

Task 2.5 - Determine spacing and equipment needs to collect specific hard-to-recycle and hazardous materials, including paints, batteries, and electronics, through an onsite drop-off program on-site. Identify other potential high-value hard-to-recycle materials based on ROI, such as mattresses, film plastics, textiles, paper shredding, etc.

Proposal for the City of Flagstaff MRF to Transfer Station Transition

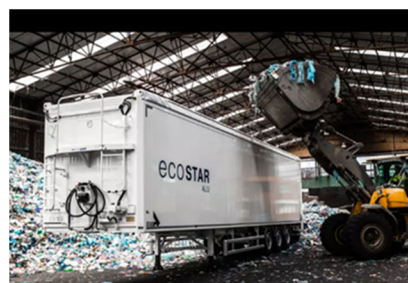
Task 2 Approach

The objective of Task 2 is to reach the decisions necessary to determine the purposes of the MRF facility. Are there opportunities to utilize the under-roof floor space and outside areas to maximize diversion? What is the input from the community on these questions? What local opportunities are available for diversion and what hard-to-recycle materials should be processed by the City?



JRMA, of the WIH Resource Group Project Team, will take the lead on Task 2.1 with the balance of the work completed by other team members. JRMA will evaluate three different loadout alternatives for the commingled recyclables including:

- Baling loose recyclables (commingled plastic/metal/paper) and using the existing loading dock to loadout the bales into trailers. This option assumes a baler system is maintained inside the existing MRF building. The WIHRG team will evaluate the condition of the existing baler infeed and baler to determine if this equipment can be kept as is, requires repairs, or should be replaced.
- Top load commingled recyclables into a walking floor trailer using a loader with sufficient reach to scoop recyclables off the MRF building tip floor and load over the side of a trailer parked inside the building. The JRMA team will confirm whether there's adequate clear height inside the MRF building to back in the walking floor trailer. Our team will also evaluate the need for push walls to facilitate on-floor compaction of the materials to enhance payloads. This option assumes purchase or lease of the appropriate loader needed for to loading operations.
- The third option will involve installation of a conveyor feed system to a compactor. It's assumed the compactor would be located outside the MRF building and along an exterior wall with the feed conveyor system inside the building. This option assumes the purchase of the conveyor feed system and compactor. It also assumes modification to an exterior wall of the MRF building to allow the conveyor system to connect to the compactor feed.

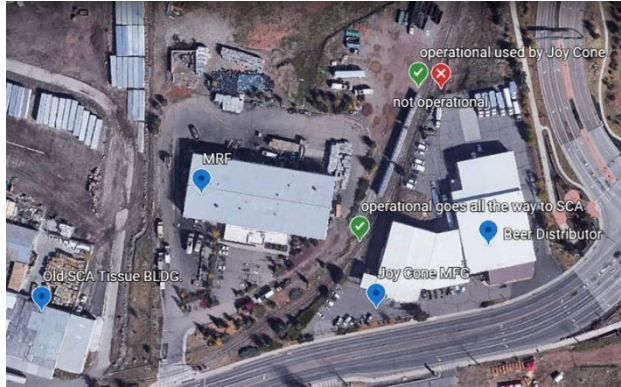


The high-value material analysis will determine if the additional cost of segregating materials in Flagstaff offsets the value received for segregated materials. Additionally, could there be savings on transport costs, or could the equipment necessary for segregation be used for other materials such as hard-to-recycle goods? Facility equipment and floor space requirements decided in this phase will directly impact the facility changes in the following phase.

While Norton has tentatively informed the City of its decision to scrap the existing sort line, we complete an assessment of the equipment to determine if all or parts of the line can be reused, repurposed, or rebuilt in the reconfigured facility. Whether some or none of the equipment can be reused, the removal will require a plan that will address what equipment needs to be removed, how it will be removed, and when it is removed, the expected condition of the building, and the coordination of resources between Norton and the City.



Proposal for the City of Flagstaff MRF to Transfer Station Transition



We will review the current traffic flow and the impact of facility changes on future operations. Space requirements for material storage and trans-loading will be calculated. We will check what program materials are included in the hard to recycle category and rationalize impact and flow on primary trans load operations. Planning the equipment needs, functional space, storage, and movement management of hard to recycle materials will be critical during this phase.

Staffing of the facility post-Norton to the start of the reload operations will be developed based on the expected inflow of materials, floorspace capacity, and the ability to reload in the interim. The proposed Interim Operational Plan is a planning level effort that would provide the City with an overall operation view. The Operational Plan will be a collaborative process as it requires the engagement of City staff to develop a playbook that will breakout standard workflow requirements to facilitate and sustain interim operations.

Optional Task 2.6 - Evaluate Facility Improvements to Enhance Natural Lighting Inside the MRF Building

Task 2. Deliverable: Technical memorandum detailing the findings from Task 2, inclusive of a site plan, floor plan, and elevation drawing.

Task 3 – Operational Changes Planning

Task 3.1 – Draft and issue an RFP or RFI to collect and refine the actual costs from private and public sector recycling processors.

Task 3.2 – Recycling processing operator/contractor selection:

- Task 3.2.A - Determine the ideal Operating Agreement lengths.
- Task 3.2.B - Assess whether to negotiate with the City of Phoenix and enter an IGA or issue RFI / RFP for private sector processing.

Task 3.3 – Solicit bids from trucking companies to transport the City's recycled materials to the selected processor considering findings from Task 2.4.

Task 3.4 - Assess and recommend staffing requirements by outlining duties, responsibilities, and planning level cost estimates after the MRF is converted to a transfer operation.

Task 3.5 - Develop interim staffing and operational plan for use while the MRF is being transitioned to a transfer facility, including an estimated timeline and where the recyclable volumes will go for transport and processing during that time and costs.

Optional Task 3.6 – Prepare and Participate in City Council Meeting(s)

Members of the WIH Resource Group Project Team will be available to prepare for and participate in a presentation by City Staff to members of the City Council, as needed. Costs for this optional task are not included in the proposed budget contained in this proposal.

Proposal for the City of Flagstaff MRF to Transfer Station Transition

Task 3 Approach

The Project Team will utilize the findings from the first two tasks and review existing information provided by the City to develop the RFP proposal packages. The RFP will:

- a. Seek information on proposers' technical and financial qualifications, key staff committed to be involved, and litigation history.
- b. Request information on the number and types of trucks to be used, and the number of staff required.
- c. Request descriptions of their experience with the approach proposed for the City, including facility descriptions and references for comparable communities and services.
- d. Provide a process for proposers to take exception to the draft agreement.
- e. Include criteria for the evaluation of the qualifications and experience of proposers, the quality of their technical proposals (including company and individual's assigned knowledge and experience, financial capabilities, approach to scope of work, and client references/reputation) and the feasibility of cost proposals providing sufficient revenues to the proposer to support the services proposed.
- f. Include rate schedule forms for the evaluation of price proposals.
- g. Proposed cost / rate schedules will include categories for the services to be provided.

The Project Team will assist City staff with the review of the technical proposals to determine if there are any non-responsive proposals to the requirements of the RFP. Then the Project Team will identify any issues that may require clarifications from the proposers.

The development of the Interim Operation Plan is dependent on the plant operator – either Norton or the City. A consideration for the City during the transition plan is to utilize independent contractors, such as LeadPoint, to supplement City staff.

Task 3. Deliverables: RFP Documents, RFP evaluation template, and Interim Operational Plan

EXHIBIT B
CITY OF FLAGSTAFF
STANDARD TERMS AND CONDITIONS

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

IN GENERAL

1. **PARTIES:** The City of Flagstaff ("City") and the contractor identified in the Contract ("Contractor") may be referred to individually as "Party" or collectively as "Parties".
2. **NOTICE TO PROCEED:** Contractor shall not commence performance until after the City has issued a Notice to Proceed.
3. **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.
4. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of the Contract.
5. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, the Contract is non-exclusive and the City reserves the right to contract with others for materials or services.
6. **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

7. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
8. **QUALITY:** Contractor warrants that all materials supplied under the 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. The 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.
9. **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.
10. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to the City upon the City's acceptance of the materials.
11. **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.

12. **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.
13. **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.
14. **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.
15. **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.
16. **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.
17. **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

18. **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 had been shipped or work performed. Invoices shall be sent within thirty (30) days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
19. **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, the City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
20. **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 the 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.

21. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
22. **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 the City.
23. **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 the City.
24. **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 the City or fees and charges owed to the City under the Contract.
25. **OFAC:** No payments may be made to any person in violation of Office of Foreign Assets Control regulations. 31 C.F.R. Part 501.

SERVICES

26. **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.
27. **CONTROL:** Contractor shall be responsible for the control of the work.
28. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
29. **SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
30. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
31. **ACCEPTANCE:** If the City rejects Contractor's work 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.
32. **WARRANTY:** Contractor warrants all work for a period of one 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

33. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five years after completion of the Contract.
34. **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.
35. **PUBLIC RECORDS:** The 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.
36. **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

37. **GENERAL INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense, arising out of the acts, errors, or omissions of Contractor, its officers, agents, employees, and subcontractors, in performing or failing to perform the responsibilities identified in the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects, and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.
38. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense arising out of the alleged 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 the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.
39. **NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from an against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense

arising out of 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. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

40. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
41. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the Parties.
42. **AMENDMENTS:** The Contract may be amended by written agreement of the Parties.
43. **SEVERABILITY:** If any term or provision of the 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 the Contract shall remain in full force and effect.
44. **NO WAIVER:** Both Parties have 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.
45. **ASSIGNMENT:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. Any assignment without such consent shall be null and void. No assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to the City. The Purchasing Director shall have authority to consent to an assignment on behalf of the City.
46. **BINDING EFFECT:** The Contract shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

47. **SUBCONTRACTING:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. The City reserves the right to withhold consent if the 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.

48. **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 whose business is 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.
49. **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's personnel shall abstain from use or possession of illegal drugs while engaged in performance of the Contract.
50. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors shall comply with all state and federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of state and federal immigration laws and regulations shall constitute a material breach of the Contract and shall subject Contractor to penalties up to and including termination of the Contract. The City may, at its sole discretion, conduct random verification of the employment records of the employees of the Contractor and any subcontractors to ensure compliance with all state and federal immigration laws and regulations. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contract 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

51. **TERMINATION FOR DEFAULT:** Prior to terminating the 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 to the Contract remedies provided for herein.
52. **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.
53. **CONTRACTOR REMEDIES:** In the event of the City's default, Contractor may pursue all remedies available at law, except as provided for herein.
54. **TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of the 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, the 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 the Contract is terminated, City

shall be liable only for payment for satisfactory materials and/or services received and accepted by the 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 the 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 the 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.
58. **CANCELLATION FOR GRATUITIES:** The City may cancel the 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 in connection with award or performance of the Contract.
59. **CANCELLATION FOR CONFLICT OF INTEREST:** Pursuant to A.R.S. § 38-511, if the City identifies a conflict of interest in the award or performance of the Contract, the City may cancel the Contract within three years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

60. **COOPERATIVE PURCHASE CONTRACTS:** Presuming that Contractor agreed to such during the procurement process, Contractor will enter into cooperative purchase arrangements, as sanctioned by state and federal law, to allow Contractor to sell materials and services to any member of a cooperative group under the same pricing, terms and conditions of the contract awarded to the Contractor by the public procurement unit, following a competitive procurement process.
61. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with the City without the prior written consent of the City.
62. **NOTICES:** All notices given pursuant to the 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 days after being sent; or (c) sent by overnight courier, with receipt deemed effective two days after being sent. Notice may be sent by email as a secondary form of notice.
63. **THIRD PARTY BENEFICIARIES:** The Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
64. **GOVERNING LAW:** The Contract shall be construed in accordance with the laws of Arizona.
65. **FORUM:** In the event of litigation relating to the Contract, any action at law or in equity shall be filed in Coconino County, Arizona.

- 66. ATTORNEYS' FEES:** If any action at law or in equity is necessary to enforce the terms of the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.
- 67. 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.
- 68. NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no cents (\$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.
- 69. CHANGES TO CONTRACT:** The Contract shall not be modified within the first year after Contract award where: (a) an amendment may result in a competitive advantage that was not made available to other proposers/bidders; or (b) requests for changes may delay commencement of performance.

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	\$1,000,000
Disease - Each Employee	\$1,000,000
Disease - Policy Limit	\$1,000,000

e. Professional Liability \$2,000,000

f. Network Security and Privacy Liability

Per claim	\$2,000,000
Annual Aggregate	\$2,000,000

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.