

CONTRACT FOR PROFESSIONAL SERVICES

Contract No. 2022-80

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 Cooperative Personnel Services d/b/a CPS HR Consulting, a California Joint Powers Authority with offices at 2450 Del Paso Road, Suite 220, Sacramento, California 95834 ("Consultant").

WHEREAS, the City desires to receive and Consultant is able to provide Executive Recruitment Services; and

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 Executive Recruitment Services for the City's hiring process as generally described as followed:

EXECUTIVE RECRUITMENT SERVICES

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

2. Compensation: In consideration for Consultant's satisfactory performance, the City shall pay Consultant pursuant to the fee schedule in Exhibit A, excluding travel costs, pursuant to the fee structure identified in Exhibit A. Any price adjustment must be approved by mutual written consent of the parties. The City Manager or his/her designee (the Purchasing Director) may approve an adjustment if the annual Contract price adjustment and the original compensation is less than \$50,000; otherwise City Council approval is required.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B, are hereby incorporated into this Contract by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. Additional Services: The City reserves the right to add or remove services at any time as needed. Service revisions will be made through written amendment pursuant to the Standard Terms and Conditions contained in this contract as Exhibit B.
5. Insurance Requirements: The City of Flagstaff Insurance Requirements, attached hereto as Exhibit C, are hereby incorporated into this Contract by reference and shall apply to the performance of this Contract, except to the extent modified in Exhibit A.
6. Key Personnel/Subcontractors: Consultant shall provide the contact information for Key Personnel and Subcontractors (if any). Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The City Representative for this contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

CITY RESPONSIBILITIES

7. City Representative: The City Representative is Shannon Anderson, Senior Deputy City Manager or his designee(s). 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 Purchasing Director.
8. 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

9. Contract Term: The Contract term is for a period of three (3) years unless terminated pursuant to the Standard Terms and Conditions. The Contract shall be effective as of the date signed by both parties.
10. Extension: The Contract may be extended for up to two (2) 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.

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 the 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 the Contract, including any right to derivative use of the material.
12. Re-Use: City may use City's work product without further compensation to Consultant; provided, however, City's reuse without written verification or adaption by Consultant for purposes other than contemplated herein is at City's sole risk and without liability to Consultant. Consultant shall not engage in any conflict of interest nor appropriate any portion of City's work product for the benefit of Consultant or any third parties without 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 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 the Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Patrick Brown, C.P.M., CPPB
Purchasing Director
211 W. Aspen Avenue
Flagstaff, AZ 86001
pbrown@flagstaffaz.gov

To Consultant:

Melissa Asher
Senior Practice Leader
2450 Del Paso Road, Suite220
Sacramento, CA 95834
masher@cpshr.us

Copy to:

Shannon Anderson
Deputy City Manager
211 W. Aspen Avenue
Flagstaff, AZ 86001
sanderson@flagstaffaz.gov

15. 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.

(Signatures Appear on Following Page)

COOPERATIVE PERSONNEL SERVICES
D/B/A CPS HR CONSULTING

Print name: _____

Title: _____

Date: _____

CITY OF FLAGSTAFF

Print name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

EXHIBIT A

SCOPE OF WORK AND FEES

Key Stakeholder Involvement

The Hiring Manager must be intimately involved in the search for a new Incumbent. Our proposal assumes their direct participation in key phases of the search process. At the discretion of the Hiring Manager, other key stakeholders may also be invited to provide input for the development of the candidate profile.

City of Flagstaff's Needs

A critical first step in a successful executive search is for the Hiring Manager to define the professional and personal qualities required of the Incumbent. CPS HR has developed a very effective process that will permit the Hiring Manager to clarify the preferred future direction for the City; the specific challenges the City is likely to face in achieving this future direction; the working style and organizational climate the Hiring Manager wishes to establish with the Incumbent; and ultimately, the professional and personal qualities required of the Incumbent.

Commitment to Communication

Throughout the recruitment process, we are strongly committed to keeping you fully informed of our progress. We will collaborate with you to provide updates on the status of the recruitment via your preferred method of communication (phone conference, email, etc.).

We place the highest level of importance on customer service and responding in a timely manner to all client and candidate inquiries. Our previous clients and candidates have expressed a sincere appreciation for our level of service and responsiveness to the management of the recruitment process. As a result, we have many long-term relationships with clients that have led to opportunities to assist them with multiple recruitments.

CPS HR's communication continues once you have selected the new Incumbent. We will contact the Hiring Manager and the newly appointed Incumbent within six months of appointment to ensure an effective transition has occurred.

Aggressive, Proactive, and Robust Recruitment

We take an aggressive approach in identifying and recruiting the best available candidates. There are those candidates who would gladly rise to the professional challenge and apply for this position; however, some of the best candidates are often not actively seeking a new position and may only consider a change once we present them with your opportunity. Evoking the sense of vision and opportunity in qualified persons is among the responsibilities of CPS HR, and we pride ourselves in our efforts to reach the best available potential candidates. We use advertisements, directly email the outreach brochure, post messages and connect with potential candidates on business media such as LinkedIn, and of course, pick up the phone and call qualified individuals and referral sources.

Diversity Outreach Process

CPS HR strives to attract the most highly qualified, diverse candidate pool possible. We are pleased that our diligent efforts have resulted in more than 57% of our executive level placements being minority and/or female candidates within the past three years. Our City Manager search for the City of East Palo Alto is an excellent example of our diverse outreach process. The City's demographics are 6% White, 16% Black, 4% Asian, 7% Pacific Islander, 64% Hispanic, and 3% Other. It was a high priority of the Mayor and City Council to pursue and demonstrate a diverse outreach process.

We accomplished this by advertising with organizations like the National Forum for Black Public Administrators and the Local Government Hispanic Network in order to reach these specific population groups. We also sought candidate referrals from local subject matter experts and the national leadership of groups like Women Leading Government. By taking the time to directly contact these influential industry experts, we ensured that we captured the maximum number of distinguished candidates – particularly those who are well-known in their industries, but who may not be actively looking for a new job.

The result was an incredibly diverse finalist group and our successful placement was an experienced Hispanic candidate. The elected officials were quite pleased with the process and end result. In fact, one Councilmember mentioned that he had checked with neighboring communities behind the scenes regarding their recent recruitments and could confirm that our candidate pool was most impressive in comparison – likely in terms of quantity, quality, and diversity.

Scope of Work

Our proposed executive search process is designed to provide the City with the full range of services required to ensure the ultimate selection of a new Incumbent uniquely suited to the City's needs.



Phase I: Our consultant will meet with the Hiring Manager to ascertain the City's needs and ideal candidate attributes, to target our search efforts, and maximize candidate fit with the City.

Phase II: The recruitment process is tailored to fit the City's specific wants and needs, with targeted advertising, combined with contacts with qualified individuals from our extensive database.

Phase III: The selection process is customized for the City. CPS HR will work with the Hiring Manager to determine the process best suited to the City of Flagstaff.

Phase I - Develop Candidate Profile and Recruitment Strategy

- Task 1 - Review and Finalize Executive Search Process and Schedule**
- Task 2 - Key Stakeholder Meetings**
- Task 3 - Candidate Profile and Recruitment Strategy Development**
- Task 4 – Develop Recruitment Brochure**

The first step in this engagement is a thorough review of the City’s needs, culture and goals; the executive search process; and the schedule. CPS HR is prepared to meet with key stakeholders to obtain input in developing the ideal candidate profile and to assist us in understanding key issues and challenges that will face a new Incumbent. Activities will include:

- Identifying key priorities for the new Incumbent and the conditions and challenges likely to be encountered in achieving these priorities.
- Describing the type of working relationship the Hiring Manager wishes to establish with the Incumbent.
- Generating lists of specific competencies, experiences, and personal attributes needed by the new Incumbent in light of the discussions above.
- Discussing recruitment and selection strategies for the Hiring Manager’s consideration to best produce the intended results.

CPS HR will provide a summary to the City stemming from these activities as an additional source of information for developing the candidate profile and selection criteria.

Following the completion of the workshop session, CPS HR will work with a professional graphic artist to design a recruitment brochure and present it to the City for review. Sample brochures are available on our website at www.cpsr.us/recruitment-solutions/executive-search.

Phase II – Aggressive, Proactive, and Robust Recruitment

- Task 1 – Place Advertisements**
- Task 2 - Identify and Contact Potential Candidates**
- Task 3 – Resume Review and Screening Interviews**
- Task 4 – Hiring Manager Selects Finalists**

The recruitment process is tailored to fit the City's specific wants and needs, with targeted advertising, combined with personal contacts with qualified individuals from our extensive database.

CPS HR will prepare, submit for your approval, and publish advertisements on professional and affiliate websites to attract candidates on a nationwide, regional, local or targeted basis based on the recruitment strategy.

As a consulting firm that interacts with hundreds of public sector executives during engagements, we have a cadre of individuals who we inform of recruitments, both to increase the visibility of the opening and to attract appropriate individuals who fit the special needs of our client. Communication with these professionals ensures that an accurate picture of the requirements of the job is apparent and proliferated throughout their professional networks.

CPS HR is focused on reaching a diverse candidate pool and would recommend publications/websites that are targeted to minority and female candidates. In addition to placing ads on websites aimed at minority candidates, we will contact leaders within appropriate associations to gain their insight and referrals of possible candidates.

Within the past three years, more than 57% of our executive level placements have been minority and/or female candidates.

CPS HR will prepare an email distribution list containing prospective candidates and referral sources. These individuals will receive a link to the Incumbent brochure along with a personal invitation to contact CPS HR should they have any questions about the position.

CPS HR maintains a comprehensive, up-to-date database of industry leaders and experienced professionals; however, we do not rely solely upon our current database. We also conduct research to target individuals relevant to your specific needs and expectations to ensure that we are thorough in our efforts to market this position to the appropriate audience and to garner a diverse and quality pool of candidates.

We will:

- Convey a strong sense of the purpose and strategy of the City. For many talented individuals, understanding these aspects is one of the key motivators to compete in such an environment.
- Provide guidance and resources to candidates regarding the area's cost of living, mean and median housing prices, higher education opportunities, K-12 education information, and other aspects of interest to those who are considering relocating to the area.
- Actively seek highly qualified candidates who may be attracted by the prospect of collaboration with other departments, providing exceptional leadership to the City or continuing to ensure the public confidence in the integrity of the City.

CPS HR will directly receive and initially screen all resumes. This screening process is specifically designed to assess the personal and professional attributes the City is seeking and will include a thorough review of each candidate's resume, and if applicable, supplemental questionnaire responses and other supporting materials. CPS HR will personally speak to selected candidates during a preliminary screening interview and will spend extensive time ascertaining each candidate's long-term career goals and reasons why the candidate is seeking this opportunity, as well as gaining a solid understanding of the candidate's technical competence and management philosophy. We will gather data on any other unique aspects specific to this recruitment based upon the candidate profile, as well as conduct internet research on each candidate interviewed.

CPS HR will prepare a written report that summarizes the results of the recruitment process and recommends candidates for further consideration by the Hiring Manager. Typically, the report will recommend five to eight highly qualified candidates and will include resumes and a profile on each interviewee's background. CPS HR will meet with the Hiring Manager to review this report and to assist them in selecting a group of finalists for further evaluation.

<p>Phase III – Selection</p> <ul style="list-style-type: none">Task 1 - Design Selection ProcessTask 2 - Administer Selection ProcessTask 3 – Final Preparation for AppointmentTask 4 – Contract Negotiation (if requested)
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CPS HR will design a draft selection process based on information gathered in Phase I. We will meet with the City to review this process and discuss the City's preferred approach in assessing the final candidates. The selection process will typically include an in-depth interview with each candidate but may also include other selection assessments such as an oral presentation, preparation of written materials, and/or problem-solving exercises.

We will coordinate all aspects of the selection process for the City. This includes preparing appropriate materials such as interview questions, evaluation manuals, and other assessment exercises; facilitating the interviews; assisting the City with deliberation of the results; and contacting both successful and unsuccessful candidates.

Following the completion of the selection process, CPS HR will be available to complete the following components:

- **Arrange Follow-up Interviews/Final Assessment Process:** Should the City wish to arrange follow-up interviews and/or conduct a final assessment in order to make a selection, CPS HR will coordinate this effort.

- **Conduct In-Depth Reference Checks:** The in-depth reference checks are a comprehensive 360-degree evaluation process whereby we speak with current and previous supervisors, peers, and direct reports. (It is our policy to not contact current supervisors until a job offer is made, contingent upon that reference being successfully completed, so as not to jeopardize the candidates' current employment situation.) Candidates are requested to provide a minimum of five references. CPS HR is able to ascertain significant, detailed information from reference sources due to our commitment to each individual of confidentiality, which leads to a willingness to have an open and candid discussion and results in the best appointment for the City. A written (anonymous) summary of the reference checks is provided to the City.
- **Conduct Background Checks:** Upon a conditional job offer, we will arrange for a background check of a candidate's records on driving, criminal and civil court, credit history, education, published news, and other sensitive items. Should any negative or questionable content appear during these checks, CPS HR will have a thorough discussion with the finalist(s) and will present a full picture of the situation to the City for further review.
- **Contract Negotiation (if requested):** Successful negotiations are critically important, and we are available to serve as your representative in this process. With our expertise, we can advise you regarding current approaches to various components of an employment package. We can represent your interests with regards to salary, benefits, employment agreements, housing, relocation, and other aspects, with the ultimate goal of securing your chosen candidate.

One-Year Service Guarantee

If the employment of the candidate selected and appointed by the City as a result of a **full executive recruitment (Phases I, II, and III)** comes to an end before the completion of the first year of service, CPS HR will provide the City with professional services to appoint a replacement. Professional consulting services will be provided at no cost. The City would be responsible only for expenses such as re-advertising, consultant travel, additional background checks, etc. **This guarantee does not apply to situations in which the successful candidate is promoted or re-assigned within the organization during the one-year period.** Additionally, should the initial recruitment efforts not result in a successful appointment, CPS HR will extend the aggressive recruiting efforts and screen qualified candidates until an offer is made and accepted. CPS HR does not provide a guarantee for candidates placed as a result of a partial recruitment effort.

Timeline

The project team CPS HR has selected is prepared to begin work upon receipt of a fully-executed contractual agreement. All search activities up to and including the selection of a new Incumbent can be completed in 12 to 14 weeks. The precise schedule will depend on the placement of advertising in the appropriate professional and affiliate websites, and the ability to schedule the initial meeting. A proposed schedule of major milestones is presented below.

FEE SCHEDULE

CPS HR can perform **Outreach/Advertising Only** or **Partial Recruitment** services if a **Full Recruitment** is not needed by the City for a specific position. Our professional fixed fee covers all CPS HR services and deliverables associated with **Outreach/Advertising, Partial Recruitment and Full Recruitment** of the recruitment process selected.

For a full recruitment travel expenses for candidates who are invited forward in the interview process are not included. However, should the City desire CPS HR's Travel Team to assist with these arrangements, we are happy to do so. This might require an amount to be added to our contract.

Professional Fixed Fees*	
Professional Services for Outreach/Advertising (Fixed Flat Fee)	\$7,500
Professional Services for Partial Recruitment (Phase I and II) (Fixed Flat Fee)	\$19,000
Professional Services for Full Recruitment (Phases I, II, and III) (Fixed Flat Fee)	\$25,000

**Professional fees for a full and partial recruitment would be billed and paid monthly. The Outreach/advertising project will be billed and paid at the completion of the project.*

EXHIBIT B

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, at its own 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

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.

Where applicable under the Scope of Work, 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.