

RATIFICATION OF CONTRACT FOR PROFESSIONAL SERVICES

Contract No. 2023-77

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 Water Resources Economics, a California Limited Liability Company ("Consultant").

WHEREAS, the City has engaged the professional services of Consultant and desires to continue to receive those professional 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 the professional services generally described as follows:

Stormwater Utility Rate Adjustment Study

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

2. Schedule of Services: Consultant shall perform all work per the schedule set forth in Exhibit A.
3. Special Terms and Conditions: The City of Flagstaff Special 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: Consultant's Key Personnel, Subcontractors (if any), and contact information are designated in Exhibit A. Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The City 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 Ed Schenk, Water Resources Manager - Stormwater, or his 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 Procurement Agent.
6. 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

7. Contract Term: The Contract term is for a period of two (2) years unless terminated pursuant to the Standard Terms and Conditions.

8. Renewal: This Contract may be renewed or extended for up to two (2) additional one (1) year terms by mutual written consent of the parties. The City reserves the right to unilaterally extend the period of the contract for ninety (90) days beyond the stated expiration date. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.

PAYMENT

9. Compensation: Consultant shall be paid an amount **not to exceed sixty-five thousand dollars (\$65,000.00)** for performance of the services in accordance with the Scope of Work identified in Exhibit A.
10. 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

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 the City ("City's work product"), unless otherwise agreed by the parties in writing. Consultant agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and hereby assigns to the City all rights and interests Consultant may have in the materials it prepares under this Contract, including any right to derivative use of the material. Notwithstanding the foregoing, Consultant shall retain ownership of the software used to complete the Scope of Work and any updates or improvements to the software created during the course of the Contract. The City shall retain a worldwide, perpetual, non-transferrable and royalty-free license to use such intellectual property to the extent embodied or reflected in the City's work product.
12. Re-Use: The City may use the City's work product without further compensation to Consultant; provided, however, that the City's reuse without written verification or adaption by Consultant for purposes other than contemplated herein is at the City's sole risk and without liability to Consultant. Consultant shall not engage in any conflict of interest nor appropriate any portion of the City's work product for the benefit of Consultant or any third parties without the City's prior written consent.
13. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Consultant shall immediately deliver to the City copies all of the City's work product and any other documents and data accumulated by Consultant in performance of this Contract, whether complete or in process.

INSURANCE

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

MISCELLANEOUS

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

To the City:

Emily Markel
Senior Procurement Specialist
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
emarkel@flagstaffaz.gov

To Consultant:

Sanjay Gaur
Principal Consultant
Water Resources Economics
10830 Pickford Way
Culver City, CA 90230
(213) 327-4405
sgaur@water-economics.com

With a copy to:

Ed Schenk
Water Services Manager – Stormwater
City of Flagstaff
2323 N. Walgreen Blvd.
Flagstaff, AZ 86004
Edward.Schenk@flagstaffaz.gov

16. 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.

CONSULTANT

Print name: _____

Title: _____

CITY OF FLAGSTAFF

Print name: _____

Title: _____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

EXHIBIT A
SCOPE OF WORK

Approach

Task 1: Project Initiation, Management, Data Collection and Policy Framework

WRE believes that the most effective way to begin a project of this nature is to conduct a productive kick-off webinar with city staff. The shared goals for these webinars include:

- Providing a forum to finalize the work plan and schedule with staff
- Ensuring that both WRE and the city have an understanding of the overall goals of the study
- Reviewing the data needs for the project
- Discussing the city's policy goals

A successful meeting ensures that project participants are in agreement on project goals, expectations, and assignment of responsibilities. Accomplishing these objectives will help ensure the project progresses as smoothly as possible. Prior to the kick-off webinar, WRE will prepare a detailed data request list that identifies the information needed to complete the scope of work.

An important element of this task is development of a policy framework covering all aspects of this study, including the city's policy on debt issuances and reserve targets.

Meetings: One (1) kick-off webinar with staff to discuss policy and goals of the study.

Deliverables: Data request list, presentation materials, meeting minutes, and project schedule.

Task 2: Water Commission Policy Framework

With the completion of Task 1, WRE will conduct an in-person workshop with the Water Commission. This workshop will provide the opportunity to discuss the challenges associated with the Stormwater Enterprise Fund. It will provide both a historical framework of past funding and consider future needs. The goal of the workshop is to discuss whether the Stormwater Enterprise should fund operating costs and future capital needs and determine the appropriate reserve policy. This will be an opportunity for the Water Commission to provide broad direction on the level of services and associated rates that should be achieved.

Meetings: One (1) in-person workshop with the Water Commission

Deliverables: Presentation materials

Task 3 – Ten-Year Stormwater Financial Plan Model

WRE will develop forecasts of revenue requirements for the Stormwater Enterprise over a ten-year planning horizon. This model will include estimates of revenues based on current rates, usage characteristics, and other non-operating revenues. Revenue requirements will be projected based on historical figures, the current budget, capital improvement plans, existing debt service and other bond compliance requirements, as well as any other obligations and current economic trends.

WRE will model a ten-year cash flow analysis to determine revenue adjustments needed to meet projected revenue requirements for the planning period, while minimizing sharp rate fluctuations and maintaining debt coverage requirements. Revenue requirements will be calculated for each year in the forecast period and adjusted to provide for a smooth forecast of revenue adjustments. For example, changes in the timing of capital

expenditures and the use of reserve funds to mitigate short-term rate impacts are two ways that revenue smoothing could be addressed. The objective is to minimize the magnitude of customer impacts while still achieving long-term revenue objectives.

WRE understands the importance of developing user-friendly, flexible models that the city can use for future financial planning development. The financial plans will be presented in an easy-to-understand format on an interactive dashboard that shows the impacts of various assumptions so that decisions regarding revenue adjustments, capital financing through pay-as-you-go (PAY-Go) or debt, and reserve balances can be made quickly and efficiently. The Financial Plan Models will have the ability to examine the following factors:

- Revenue increases implemented in a particular year and a specific month
- Debt issuances for capital improvement financing

Upon completion of the Financial Plan Model, WRE will hold several webinars with city staff to review the models and the relevant assumptions, and to finalize the financial plans to be used for the rate models. Based on the city's request for proposals, it is assumed that the current rate structure will be maintained and only a percentage increase on the current rates will be examined.

WRE can provide the financial model in two formats, MS Excel 365 or Waterworth, a web-based platform. WRE will work with staff to determine which option is best suited for the city. Details about Waterworth are included in Appendix A.

Meetings: Three (3) webinars with staff

Deliverables: Financial Plan Models in MS Excel 365 or a one-year subscription to Waterworth (web-based platform)

Task 4 – Rate Workshops

With the completion of the financial model, WRE will conduct two webinars with executive staff, including the City Manager, to discuss the proposed level of service and associated rates. With the buy-in from executive staff, WRE will conduct an in-person workshop with the Water Commission to present up to three financial scenarios for consideration. Based on the Commission's input, WRE will present up to three financial scenarios to the City Council for consideration. It is anticipated that the City Council will provide direction on which scenarios should be considered for adoption. WRE will work closely with executive staff to determine if a recommended scenario should be presented or if City Council should select a scenario.

Meetings: Two (2) webinars with executive staff, one in-person meeting with the Water Commission and one in-person meeting with the City Council

Deliverables: Presentation materials

Task 5 – Report Development

The process for developing proposed rates and an associated financial plan for stormwater will be described in a draft report. Comments from city staff will be incorporated into the final report as appropriate. The final report will be submitted to the city and will include appropriate supporting data from the models to document the process developed.

Meetings: Up to two (2) webinars to finalize the report

Deliverables: Draft report, final report

Task 6 – City Council Workshop

WRE will attend and be available to present at the City Council Meeting. WRE will develop the appropriate presentation materials that summarize the findings of the study and explain the importance of adopting these rates.

Meetings: One (1) City Council Meeting

Deliverables: Presentation materials

Additional Tasks:

Task 7 – Additional Scenario Requested

As requested by the City, WRE will develop five (5) different financial plan scenarios associated with the Stormwater Fund. The goal of this task is to determine which scenarios to be presented to the City Manager.

Meetings: Two (2) webinars with staff

Deliverables: As needed information

Task 8 – Virtual City Manager Presentations

WRE will present to the City Manager the updated financial plan scenarios. WRE will receive feedback from the City Manager and update the information as needed. The goal of the study is to present the updated financial plan to City Council for their consideration.

Meetings: One (1) webinar with City Manager

Deliverables: Presentation material

Task 9 – Virtual and/or In-Person City Council Presentation(s)

With the updated financial plan, WRE will present this information to the City Council for their adoption. WRE will be available to answer any questions from City Council or the public.

Meetings: Attend presentation(s) to City Council virtually and/or in-person

Deliverables: Presentation material

Task 10 – Updated Report

Upon final direction from City Council, WRE will conduct any necessary research and update the report to reflect the direction received.

Meetings: None

Deliverables: Updated report.

Fees

Based on the above outline of services, WRE can perform this scope of work for an estimated amount of \$56,220. WRE will invoice the city monthly based on time and materials. Below is an estimated budget showing the hourly rate and hours by task.

Task	Webinar Meetings	In Person Meetings	Project Manager	Total
			\$ 245	
Task 1: Project Initiation	1		10	\$ 2,450
Task 2: Water Commission Policy Framework		1	14	\$ 3,430
Task 3: Financial Model	3		40	\$ 9,800
Task 4: Workshops	2	2	46	\$ 11,270
Task 5: Report Development	2		20	\$ 4,900
Task 6: Public Hearing		1	12	\$ 2,940
Total	8	4	142	\$ 34,790
Travel Expense*				\$ 5,000
TOTAL				\$ 39,790
* \$1,250 per meeting for airfare, hotel, car and food				
Hourly Rate				
Additional Tasks	Webinar Meetings	In Person Meetings	\$ 265	Total
Task 1: Scenario Development: 5 potential scenarios to evaluate	2	0	26	\$ 6,890
Task 2: Virtual Presentation(s) to City Manager	1	0	6	\$ 1,590
Task 3: Presentation(s) for City Council - Meeting	Est. 1	0	6	\$ 1,590
Task 4: Additional Research & Updated Report		0	24	\$ 6,360
Additional Tasks Estimated Total	4		62	\$ 16,430
Estimated Grand Total				\$ 56,220

EXHIBIT B

SPECIAL TERMS AND CONDITIONS

(Updated December 27, 2022)

*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. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract and provide copies to City upon request.
3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of the Contract.
4. **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.

PAYMENT

5. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number and dates when goods 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.
6. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, the City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
7. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of 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.

8. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
9. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by the City.
10. **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.

11. **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.
12. **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

13. **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.
14. **CONTROL:** Contractor shall be responsible for the control of the work.
15. **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.
16. **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

17. **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.
18. **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.
19. **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.
20. **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

- 21. 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.
- 22. 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.
- 23. 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

24. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
25. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the Parties.
26. **AMENDMENTS:** The Contract may be amended by written agreement of the Parties.
27. **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.
28. **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.
29. **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.
30. **BINDING EFFECT:** The Contract shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

31. **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.
32. **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.
33. **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.
34. **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

- 35. 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.
- 36. 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.
- 37. CONTRACTOR REMEDIES:** In the event of the City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 38. 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.
- 39. 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.
- 40. 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.
- 41. 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.

- 42. 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.
- 43. 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

- 44. COOPERATIVE PURCHASE CONTRACTS:** Presuming that Contractor agreed to such during the procurement process, Contractor will enter 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.
- 45. ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with the City without the prior written consent of the City.
- 46. 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.
- 47. 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.
- 48. GOVERNING LAW:** The Contract shall be construed in accordance with the laws of Arizona.
- 49. FORUM:** In the event of litigation relating to the Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
- 50. 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.
- 51. 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.

- 52. 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.
- 53. 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 Contractors/bidders; or (b) requests for changes may delay commencement of performance.
- 54. FORCED LABOR OF ETHNIC UYGHURS:** If Contractor engages in for-profit activity and has ten (10) or more employees, pursuant to A.R.S. §35-394, the Contractor certifies that it does not currently, and agrees for the duration of the contract that it will not, use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and 3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Contractor becomes aware during the term of the contract that the company is not in compliance with the written certification, the Contractor shall notify the County within five business days after becoming aware of the noncompliance. If the Contractor does not provide the City with a written certification that the Contractor has remedied the noncompliance within 180 days after notifying the City of the noncompliance, this Contract terminates, except that if the contract termination date occurs before the end of the remedy period the Contract terminations on the Contract termination date.

EXHIBIT C

INSURANCE REQUIREMENTS

(Updated December 27, 2022)

*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.

Where applicable, as related to 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
\$1,000,000

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. **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.