

ATTACHMENT A
AGREEMENT FOR PROFESSIONAL SERVICES
Contract No. 2019-03

This Contract is entered into this 21ST day of NOVEMBER, 2018 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Housing Solutions of Northern Arizona, Inc., an Arizona nonprofit corporation ("Provider").

RECITALS

WHEREAS, the City of Flagstaff desires to enter into this Contract to obtain services related to housing assistance and Provider is able to provide those services;

NOW THEREFORE, in consideration for the mutual promises contained herein, the parties agree as follows:

SERVICES

1. Scope of Work: Provider shall provide the services generally described as follows:

**FIRST TIME FLAGSTAFF HOMEBUYERS ASSISTANCE PROGRAMS &
HOUSING EDUCATION AND COUNSELING ADMINISTRATION**

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

2. Schedule of Services: Provider shall perform all work per the schedule set forth in Exhibit A.

3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B, are hereby incorporated by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.

4. Key Personnel/Subcontractors: Provider'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 Sarah Darr, Housing Director or her designee. All communications to the City shall be through the City Representative. City Representative is responsible for bringing any request for a contract amendment or price adjustment to the attention of the City Buyer.

6. City Cooperation: City will cooperate with Provider by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for Provider's performance of this Contract.

CONTRACT TERM

7. Contract Term: The Contract shall be effective as of the date signed by both parties for a term of one (1) year. Performance shall commence within ten (10) days from the City's issuance of

the Notice to Proceed, and shall be completed on or before _____, consistent with the Schedule of Services.

8. Renewal: This Contract may be renewed for four (4) additional one (1) year terms, upon the same terms by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
9. Termination: This Contract may be terminated pursuant to the Standard Terms and Conditions attached hereto.

PAYMENT

10. Compensation: Provider shall be paid for satisfactory performance of the work, in accordance with the Compensation Schedule attached hereto as part of Exhibit A.
11. Price Adjustment: If price adjustments are permitted (see Exhibit A), any price adjustment must be approved by the City in writing as a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds \$50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.

DATA AND RECORDS

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

INSURANCE

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

MISCELLANEOUS

16. Monthly Reports to City. During the entire Contract period, the Provider shall prepare and submit to the City by the second (2nd) Friday of each month a Monthly Performance Report. If the scope of the Contract has been fully completed and implemented, no further updates will be required. When the scope of this Contract is complete, Provider will provide a final report. The

final report should be marked as final and should be inclusive of all necessary and pertinent information regarding the Contract as deemed necessary by the City. Notwithstanding anything to the contrary, the Provider shall not be required to provide any of the Provider's confidential or proprietary information in reports provided to the City, including without limitation, any information regarding research collaborators, research plans or any data, results or other information resulting from Provider's performance of research or any other activities relating thereto.

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

City of Flagstaff:
Patrick Brown, C.P.M. CPPB
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001
pbrown@flagstaffaz.gov


To Provider:
Devonna McLaughlin
Housing Solutions of Northern Arizona
2304 N 3rd Street
Flagstaff, AZ 86004
devonnam@housingnaz.org

Copy to:
Leah Bloom
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001
lbloom@flagstaffaz.gov
Phone: (928) 213-2752


Copy to:

18. 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.

HOUSING SOLUTIONS OR NORHTERN ARIZONA, INC.



Print name: Devonna McLaughlin
Title: Chief Executive Officer

CITY OF FLAGSTAFF


Print name: BARBARA GOODRICH
Title: CITY MANAGER

Attest: 

City Clerk

Approved as to form:



City Attorney's Office

Notice to Proceed issued: _____, 2018

EXHIBIT A SCOPE OF WORK

Community Homebuyer Assistance Program

1. SCOPE OF WORK

The intent of the City of Flagstaff's Community Homebuyer Assistance Program (CHAP) is to make homeownership possible for citizens in the City of Flagstaff. CHAP is a one-time benefit per eligible household. This program will assist households with the up-front costs of homeownership who are mortgage eligible based on credit and income, but lack the cash necessary for the down payment and closing costs associated with purchasing a home. Housing Solutions of Northern Arizona, Inc. (HSNA), a local HUD-approved housing counseling agency and nonprofit organization, has been selected by the City of Flagstaff through a competitive RFP process to administer the program. HSNA will determine eligibility for program participation, provide one-on-one housing counseling and general homebuyer education services, and administer the financial assistance at the time of purchase.

The program will be funded from City of Flagstaff General Funds.

2. PROGRAM ELIGIBILITY CRITERIA

2.1 City of Flagstaff CHAP buyer eligibility criteria is as follows:

- 2.1.1 To be eligible such homebuyers must be US Citizens or legal permanent residents of the United States.
- 2.1.2 Eligible Buyers must be first-time homebuyers as defined by the Department of Housing and Urban Development (HUD). The definition is as follows "FHA defines First-Time Homebuyer (FTHB) as an individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase (closing date) of the property.

"A FTHB includes any individual that has only owned with a former spouse while married.

"A FTHB would also include an individual who has only owned a principal residence not permanently affixed to a permanent foundation, or a property that was not in compliance with State, local or model building codes and cannot be brought into compliance for less than the cost of constructing a permanent structure."
- 2.1.3 Eligible Buyers must complete online homebuyer education course and one-on-one housing counseling through HSNA prior to closing on their home.
- 2.1.4 Eligible Buyers must occupy the home purchase with CHAP funds as their principal place of residence.
- 2.1.5 Eligible Buyers must meet income guidelines, demonstrating that total household income for all members of the household does not exceed 125% of the area median income, based on household size. This income information is published by the City of Flagstaff Housing Section, based on calculations from HUD annually. HSNA will utilize the "Technical Guide for Determining Income and Allowances for the HOME Program, Third Edition," or its successor, or another methodology agreed-to by HSNA and the City of Flagstaff Housing Section, to determine household income.

2.2 CHAP housing unit eligibility is as follows:

- 2.2.1 Home to be purchased must be located within the City of Flagstaff. Eligible housing types include single family detached, townhouses, and condominiums. Manufactured homes that meet FHA requirements and that are permanently affixed to and purchased with real property are eligible.
- 2.2.2 Home purchase price may not exceed 125% of the FHA 203(b) mortgage insurance limit for Coconino County.
- 2.2.3 The home must be livable, passing lender guidelines for occupancy and purchase.
- 2.2.4 Home purchase must be an arms-length transaction.
- 2.2.5 Buyers must obtain a professional, impartial third-party home inspection by a licensed inspector.

2.3 Agency shall document and retain all eligibility with client records. Client records will be transferred to the City of Flagstaff Housing Section within 60 days of home purchase for ongoing loan servicing.

3. ASSISTANCE LEVELS AND LENDING PARAMETERS

3.1 The intent of the City's CHAP program is to provide citizens of Flagstaff with up-front financial assistance to enable creditworthy first-time homebuyers to open the door to homeownership.

The maximum assistance provided through the CHAP program is as follows:

- 3.1.1 Maximum amount of financial assistance is \$15,000.00 per household.
- 3.1.2 Total amount of financial assistance provided will be based on household contribution. The program will match household contribution to the home purchase on a 3 to 1 basis with up to \$5,000.00 of household funds matched with up to \$15,000.00 of CHAP funds.
- 3.1.3 Households must contribute at least 1% of the purchase price through documented buyer funds. The remaining household contribution may come from gifts from immediate family members, as documented.
- 3.1.4 CHAP financial assistance will be repaid based on an **equity-share model**. CHAP funds will NEVER be forgiven. Repayment will be triggered when one of the following occurs: (1) home is sold; (2) home is no longer owner-occupied; (3) household refinances home to access home equity – refinance with no cash-out is permitted and CHAP assistance will subordinate; or (4) information provided to HSNA or City of Flagstaff at time of assistance is determined to be fraudulent.
- 3.1.5 In order to ensure affordability and long-term sustainability for the household, his/her housing ratio cannot exceed 35% of gross monthly income (unless lender guidelines or layered assistance program has more conservative requirements).
- 3.1.6 Debt-to-Income Ratio does not exceed 45% of gross monthly income. Exceptions to affordability requirements may be made on a case-by-case basis, as recommended by the HSNA Homebuyer Assistance Programs Committee, and based on compensating factors.
- 3.1.7 Mortgage is a 30-year fixed-rate mortgage with competitive interest rate.
- 3.1.8 Closing costs are reasonable and consistent with industry norms.
- 3.1.9 CHAP assistance is recorded in second position behind the primary mortgage, unless approved to subordinate behind another subordinate deed of trust.

3.2 The Agency may, with City staff approval, vary slightly from the above loan parameters on a case-by-case basis to assist with a particular hardship or when doing so can derive some other program benefit.

4. LOAN TERMS

The financial assistance loans will be secured on each property by a Deed of Trust and Promissory Note payable to the City of Flagstaff. The original recorded Deed of Trust and Promissory Note will be delivered to the City of Flagstaff Housing Section within 60 days of purchase, as part of the client file. The Note will never be forgiven. When the household repays CHAP assistance, the City of Flagstaff Housing Section will record with Coconino County Recorder's Office a Deed of Release and Reconveyance. The City of Flagstaff Housing Section will process payoff requests from the Title Company. The City of Flagstaff will subordinate to a second lien position to a primary mortgage lender. The City of Flagstaff, at its own discretion, may decide to subordinate to a third lien position. Refinancing to obtain a lower payment only and no cash out (no cash is borrowed) will be allowed. The City reserves the right to review each subordination as a lender. Prior to subordination, borrower will complete housing counseling with HSNA to ensure they understand costs associated with the refinance. HSNA will provide refinance housing counseling at no additional charge to the City of Flagstaff.

5. LOAN SERVICING

The City of Flagstaff will service the loans. When client loan files are transferred to the City of Flagstaff, the files will contain, at a minimum, a copy of the recorded Deed of Trust, the Promissory Note and all other pertinent documents necessary to service the loans.

6. CLIENT AND PROGRAM FILES

HSNA will keep and maintain program files on file for a minimum of five years after the contract close out and be available to the City of Flagstaff for monitoring of the files. Original Deeds of Trust and Promissory Notes will be submitted to the City of Flagstaff as part of the client file within 60 days of client purchase. Client files will be available to HSNA, if requested, for HUD or grant funder audits.

7. HOMEBUYER COUNSELING & EDUCATION

7.1 HSNA will follow the National Housing Counseling Standards for pre-purchase homebuyer education & counseling, which have been adopted by HSNA. HSNA's housing counseling staff will complete continuing education and abide by HUD requirements in the delivery of both one-on-one housing counseling and education. The intent of homebuyer education is to provide clients with general information regarding the home-buying process, credit and savings information, lending details and how to shop for a home. In addition, Fair Housing and Home Inspection information is presented to potential homebuyers.

7.2 All homebuyer aspirants, regardless of income, are invited to complete HSNA's online Homebuyer Education Course. The standard course cost is \$99 per household. HSNA offers a discount code to homebuyers who participate in one-on-one housing counseling – the discounted cost of the course is \$50 per household. The workshop fee will be paid by the household at the time of course registration.

7.3 Throughout the home-buying process, clients are encouraged to meet one-on-one with a certified homebuyer counselor who will help them navigate the home-buying process, determine their individual housing needs and wants, and overcome challenges to make homeownership feasible. The counselor will also help clients understand and access additional available financial assistance programs including WISH and EAH.

7.4 Financial assistance available through the City's CHAP program will be committed on a first come, first served basis. Clients will be determined to be eligible for funds when they meet the following criteria: (1) have an accepted purchase contract with a closing date within 60 days; (2) have loan approval from a lender, demonstrating their loan meets HSNA's

guidelines; (3) have completed one-on-one homebuyer counseling and the required pre-purchase education class; (4) have provided all required documentation to the counselor to determine eligibility. Once a client is determined to be eligible for financial assistance, the HSNA Homebuyer Assistance Programs committee, comprised of experts in the lending field, will review the purchase, loan and financial assistance package to determine if the client is eligible to receive financial assistance.

7.5 The HSNA's homebuyer counselor will prepare loan documents and draw funds in preparation for close of escrow.

8. GENERATING MORTGAGE RESOURCES

Agency agrees that the Eligible Buyers shall obtain the mortgage financing from the lender of their choice and shall choose the title company of their choice. The Agency shall use its best efforts to generate mortgage resources for Eligible Buyers through (1) relationships with lending institutions; and (2) gaining approval of "soft second" mortgage products by the Federal Housing Administration (FHA), the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Veterans Administration (VA).

9. PROGRAM MARKETING

The Agency shall affirmatively market the program through media, literature, announcements through the Realtors' multiple listing service meetings, mailing to Realtors and other activities as appropriate.

10. PROJECT ADMINISTRATION

Administrative fees to HSNA are \$1,250 per matching loan, to be at the point of closing. The Agency will provide all of the necessary services to carry out the daily tasks of ensuring that the project progresses satisfactorily and that all of the administrative functions associated with the project are properly executed in accordance with the contract. Agency responsibilities include: (1) keeping project files detailing expenses, procurement, project information, and correspondence, in addition to any other necessary information; (2) submitting applicable reports to the Housing Section; (3) keeping client files detailing eligibility, income, ethnicity, age, special needs and income information, in addition to any other necessary information; (4) project accounting, including documentation of expenditures and receipts; (5) managing personnel; (6) completing audits and other submissions; (7) overseeing project to ensure a cost-effective and efficient delivery of services; and (8) ensuring that an open process is conducted in all outreach activities and equal opportunity is provided to all persons regardless of race, color, sex, religion, disability, familial status or national origin.

Employer Assisted Housing (EAH) Program

1. SCOPE OF WORK

The intent of the City of Flagstaff's Employer Assisted Housing Program (EAH) is to make homeownership possible for all eligible personnel working for the City of Flagstaff. EAH is a one-time benefit per household. This program will assist employees with the up-front costs of homeownership who are mortgage eligible based on credit and income, but lack the cash necessary for the down payment and closing costs associated with purchasing a home. Housing Solutions of Northern Arizona, Inc. (HSNA), a local HUD-approved housing counseling agency and nonprofit organization, has been selected by the City of Flagstaff through a competitive RFP process to administer the program. HSNA will determine eligibility for program participation, provide one-on-one housing counseling and general homebuyer education services, and administer the financial assistance at the time of purchase.

The program will be funded from City of Flagstaff General Funds.

2. PROGRAM ELIGIBILITY CRITERIA

2.1 City of Flagstaff EAH buyer eligibility criteria is as follows:

- 2.1.1 To be eligible such homebuyers must be employed by the City of Flagstaff.
- 2.1.2 Eligible buyers must meet employment guidelines, have worked for the City of Flagstaff in a non-temporary position for a minimum of twelve (12) consecutive months, have the most recent performance evaluation demonstrate work performance meeting or exceeding expectations, and not be on a performance work plan.
- 2.1.3 Eligible Buyers must not have owned a home within the Flagstaff Metropolitan Planning Organization (FMPO) boundary within the last three years and be a first-time homebuyer in Flagstaff, Arizona, defined by the Department of Housing and Urban Development (HUD). The definition is as follows "FHA defines First-Time Homebuyer (FTHB) as an individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase (closing date) of the property.

A FTHB includes any individual that has only owned with a former spouse while married.

A FTHB would also include an individual who has only owned a principal residence not permanently affixed to a permanent foundation, or a property that was not in compliance with State, local or model building codes and cannot be brought into compliance for less than the cost of constructing a permanent structure."

- 2.1.4 Eligible Buyers must complete online homebuyer education course and one-on-one housing counseling through HSNA prior to closing on their home.
- 2.1.5 Eligible Buyers must occupy the home purchase with EAH funds as their principal place of residence.

2.2 EAH housing unit eligibility is as follows:

- 2.2.1 Home to be purchased must be located within a prescribed area of Flagstaff. The prescribed area shall be defined as a 12-mile radius from City Hall or 35 miles eastbound, westbound and southbound from the 1-17 and I-40 exchanges with a five-mile-wide corridor (2 ½ miles on each side). Eligible housing types include single family detached, townhouses, and condominiums. Manufactured homes that meet FHA requirements and that are permanently affixed to and purchased with real property are eligible.
- 2.2.2 Home purchase price may not exceed 125% of the FHA 203(b) mortgage insurance limit for Coconino County.
- 2.2.3 The home must be livable, passing lender guidelines for occupancy and purchase.
- 2.2.4 Home purchase must be an arms-length transaction.
- 2.2.5 Buyers must obtain a professional, impartial third-party home inspection by a licensed inspector.

2.3 Agency shall document and retain all eligibility with client records. Client records will be transferred to the City of Flagstaff Housing Section within 60 days of home purchase for ongoing loan servicing.

3. ASSISTANCE LEVELS AND LENDING PARAMETERS

3.1 The intent of the City's EAH program is to provide an employee benefit to eligible employees, helping them to open the door to homeownership. The EAH program is an employee retention and attraction tool. The purpose of this program is to enhance recruitment efforts and improve retention of identified personnel.

The maximum assistance provided through the EAH program is as follows:

3.1.1 Maximum amount of financial assistance is \$10,000.00 per household.

3.1.2 Total amount of financial assistance provided will be based on employee contribution. The program will match employee contribution to the home purchase on a 1 to 1 basis with up to \$10,000.00 of employee funds matched with up to \$10,000.00 of EAH funds. The EAH program will also match gifts from immediate family members, as documented

3.1.3 EAH financial assistance will be forgiven over a 10-year period. Financial assistance will be immediately repaid on a pro-rated basis by the employee if any of the following were to occur: (1) employment with City of Flagstaff terminates for any reason; (2) home is no longer owner-occupied; (3) employee refinances home to access home equity – refinance with no cash-out is permitted and EAH assistance will subordinate; (4) information provided to HSNA or City of Flagstaff at time of assistance is determined to be fraudulent.

3.1.4 In order to ensure affordability and long-term sustainability for the employee, his/her housing ratio cannot exceed 35% of gross monthly income (unless lender guidelines or layered assistance program has more conservative requirements).

3.1.5 Debt-to-Income Ratio does not exceed 45% of gross monthly income. Exceptions to affordability requirements may be made on a case-by-case basis, as recommended by the HSNA Homebuyer Assistance Programs Committee, and based on compensating factors.

3.1.6 Mortgage is a 30-year fixed-rate mortgage with competitive interest rate.

3.1.7 Closing costs are reasonable and consistent with industry norms.

3.1.8 EAH assistance is recorded in second position behind the primary mortgage, unless approved to subordinate behind another subordinate deed of trust.

3.2 The Agency may, with City staff approval, vary slightly from the above loan parameters on a case-by-case basis to assist with a particular hardship or when doing so can derive some other program benefit.

4. LOAN TERMS

The financial assistance loans will be secured on each property by a Deed of trust and Promissory Note payable to the City of Flagstaff. The original recorded Deed of Trust and Promissory Note will be delivered to the City of Flagstaff Housing Section within 60 days of purchase, as part of the client file. The Note will be forgiven over a ten-year period. At the end of ten years, the City of Flagstaff Housing Section will record with Coconino County Recorder's Office a Deed of Release and Reconveyance. If repayment is triggered prior to the ten-year recapture period, the City of Flagstaff Housing Section will process payoff requests from the Title Company. Assistance is forgiven on a pro-rated basis over the ten-year life of the loan. The City of Flagstaff will subordinate to a second lien position to a primary mortgage lender. The City of Flagstaff, at its own discretion, may decide to subordinate to a third lien position. Refinancing to obtain a lower payment only and no cash out (no cash is borrowed) will be allowed. The City reserves the right to review each subordination as a lender. Prior to subordination, borrower will complete housing counseling with HSNA to ensure they understand costs associated with the refinance. HSNA will provide refinance housing counseling at no additional charge to the City of Flagstaff.

5. LOAN SERVICING

The City of Flagstaff will service the loans. When client loan files are transferred to the City of Flagstaff, the files will contain, at a minimum, a copy of the recorded Deed of Trust, the Promissory Note and all other pertinent documents necessary to service the loans.

6. CLIENT AND PROGRAM FILES

HSNA will keep and maintain program files on file for a minimum of five years after the contract close out and be available to the City of Flagstaff for monitoring of the files. Original Deeds of Trust and Promissory Notes will be submitted to the City of Flagstaff as part of the client file within 60 days of client purchase. Client files will be available to HSNA, if requested, for HUD or grant funder audits.

7. HOMEBUYER COUNSELING & EDUCATION

7.1 HSNA will follow the National Housing Counseling Standards for pre-purchase homebuyer education & counseling, which have been adopted by HSNA. HSNA's housing counseling staff will complete continuing education and abide by HUD requirements in the delivery of both one-on-one housing counseling and education. The intent of homebuyer education is to provide clients with general information regarding the home-buying process, credit and savings information, lending details and how to shop for a home. In addition, Fair Housing and Home Inspection information is presented to potential homebuyers.

7.2 All homebuyer aspirants, regardless of income, are invited to complete HSNA's online Homebuyer Education Course. The standard course cost is \$99 per household. The workshop fee will be paid by the City of Flagstaff as part of the EAH contract. The City of Flagstaff employee will not be charged for that course and will be provided with a coupon code to enter, making the course free of charge to the employee participant.

7.3 Throughout the home-buying process, clients are encouraged to meet one-on-one with a certified homebuyer counselor who will help them navigate the home-buying process, determine their individual housing needs and wants, and overcome challenges to make homeownership feasible. The counselor will also help clients understand and access additional available financial assistance programs including WISH and CHAP.

7.4 Financial assistance available through the City's EAH program will be committed on a first come, first served basis. Clients will be determined to be eligible for funds when they meet the following criteria: (1) have an accepted purchase contract with a closing date within 60 days; (2) have loan approval from a lender, demonstrating their loan meets HSNA's guidelines; (3) have completed one-on-one homebuyer counseling and the required pre-purchase education class; (4) have provided all required documentation to the counselor to determine eligibility. Once a client is determined to be eligible for financial assistance, the HSNA Homebuyer Assistance Programs committee, comprised of experts in the lending field, will review the purchase, loan and financial assistance package to determine if the client is eligible to receive financial assistance.

7.5 The HSNA's homebuyer counselor will prepare loan documents and draw funds in preparation for close of escrow.

8. GENERATING MORTGAGE RESOURCES

Agency agrees that the Eligible Buyers shall obtain the mortgage financing from the lender of their choice and shall choose the title company of their choice. The Agency shall use its best efforts to generate mortgage resources for Eligible Buyers through (1) relationships with lending institutions; and (2) gaining approval of "soft second" mortgage products by the Federal Housing Administration (FHA), the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Veterans Administration (VA).

9. PROGRAM MARKETING

The Agency shall affirmatively market the program through media, literature, announcements through the Realtors' multiple listing service meetings, mailing to Realtors and other activities as appropriate.

10. PROJECT ADMINISTRATION

Administrative fees to HSNA are \$1,250 per matching loan, to be at the point of closing. The Agency will provide all of the necessary services to carry out the daily tasks of ensuring that the project progresses satisfactorily and that all of the administrative functions associated with the project are properly executed in accordance with the contract. Agency responsibilities include: (1) keeping project files detailing expenses, procurement, project information, and correspondence, in addition to any other necessary information; (2) submitting applicable reports to the Housing Section; (3) keeping client files detailing eligibility, income, ethnicity, age, special needs and income information, in addition to any other necessary information; (4) project accounting, including documentation of expenditures and receipts; (5) managing personnel; (6) completing audits and other submissions; (7) overseeing project to ensure a cost-effective and efficient delivery of services; and (8) ensuring that an open process is conducted in all outreach activities and equal opportunity is provided to all persons regardless of race, color, sex, religion, disability, familial status or national origin.

Additional Miscellaneous Household Eligibility Determination

1. SCOPE OF WORK

City of Flagstaff Homebuyer Programs have identified eligibility criteria to ensure low- and moderate-income benefit. Programs such as the City of Flagstaff Community Land Trust Program (CLT), work to ensure low- and moderate-income households can purchase a home below market-rate with restricted future resale requirements that create ongoing community benefit. It is the responsibility of the City of Flagstaff Housing Section to ensure ongoing program compliance. From time to time, the City of Flagstaff may outsource eligibility determination for programs such as the City's CLT program.

The program will be funded from City of Flagstaff General Funds.

2. PROGRAM ELIGIBILITY CRITERIA

2.1 City of Flagstaff eligibility criteria to purchase a restricted homeownership unit is as follows:

2.1.1 Homebuyer households must be first-time homebuyers, as defined by the Department of Housing and Urban Development (HUD). The definition is as follows "FHA defines First-Time Homebuyer (FTHB) as an individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase (closing date) of the property.

"A FTHB includes any individual that has only owned with a former spouse while married.

"A FTHB would also include an individual who has only owned a principal residence not permanently affixed to a permanent foundation, or a property that was not in compliance with State, local or model building codes and cannot be brought into compliance for less than the cost of constructing a permanent structure."

2.1.2 Clients must be income-eligible for the home they are seeking to purchase, based on income limits outlined in resale restriction documents, development agreements or City of Flagstaff program documents. HSNA will utilize the "Technical Guide for Determining Income and Allowances for the HOME Program, Third Edition," or its successor, or another methodology agreed-to by HSNA and the City of Flagstaff Housing Section, to determine household income.

- 2.1.3 Clients must be US Citizens or legal permanent residents, unless the specific program does not have this requirement.
 - 2.1.4 Clients may need to meet affordability requirements, demonstrating that the proposed monthly housing costs and total debt-to-income ratios do not exceed advertised limits.
 - 2.1.5 Eligible buyers must occupy the home purchased through the City of Flagstaff homeownership program as their principal place of residence.
3. **CLIENT AND PROGRAM FILES**

HSNA will keep and maintain program files on file for a minimum of five years after the contract close out and be available to the City of Flagstaff for monitoring of the files. Client files will be transferred to the City of Flagstaff Housing Section within 60 days of eligibility determination. If client is also receiving City of Flagstaff down payment assistance, City of Flagstaff may, at its discretion, allow HSNA to retain client file until home purchase, transferring client file to the City Housing Section within 60 days of home purchase.
4. **HOMEBUYER COUNSELING & EDUCATION**
 - 4.1 HSNA will follow the National Housing Counseling Standards for pre-purchase homebuyer education & counseling, which have been adopted by HSNA. HSNA's housing counseling staff will complete continuing education and abide by HUD requirements in the delivery of both one-on-one housing counseling and education. The intent of homebuyer education is to provide clients with general information regarding the home-buying process, credit and savings information, lending details and how to shop for a home. In addition, Fair Housing and Home Inspection information is presented to potential homebuyers.
 - 4.2 All homebuyer aspirants, regardless of income, are invited to complete HSNA's online Homebuyer Education Course. The standard course cost is \$99 per household. HSNA offers a discount code to homebuyers who participate in one-on-one housing counseling – the discounted cost of the course is \$50 per household. The workshop fee will be paid by the household at the time of course registration.
 - 4.3 Pre-purchase housing counseling is offered to clients in-person or via telephone. Throughout the home-buying process, clients are encouraged to meet one-on-one with a certified homebuyer counselor who will help them navigate the home-buying process, determine their individual housing needs and wants, and overcome challenges to make homeownership feasible. The counselor will also help clients understand and access additional available financial assistance programs including WISH, CHAP and EAH.
 - 4.4 As required by HUD, all clients receiving one-on-one housing counseling will have documented follow-up.
5. **GENERATING MORTGAGE RESOURCES**

As it furthers their mission to provide housing resources to the community, HSNA will work with the City of Flagstaff to identify and educate first mortgage lenders who can provide mortgage financing to homebuyers purchasing a CLT or deed restricted home. The Agency shall use its best efforts to generate mortgage resources for Eligible Buyers through (1) relationships with lending institutions; and (2) gaining approval of CLT mortgage products by the Federal Housing Administration (FHA), the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Veterans Administration (VA).
6. **PROGRAM MARKETING**

The Agency shall affirmatively market the program through media, literature, announcements through the Realtors' multiple listing service meetings, mailing to Realtors and other activities as appropriate.
7. **PROJECT ADMINISTRATION**

Administrative fees to HSNA are \$250 per household referred to HSNA by the City of Flagstaff and screened for eligibility for a City of Flagstaff Homebuyer Program.

Agency responsibilities include: (1) keeping project files detailing expenses, procurement, project information, and correspondence, in addition to any other necessary information; (2) submitting applicable reports to the Housing Section; (3) keeping client files detailing eligibility, income, ethnicity, age, special needs and income information, in addition to any other necessary information; (4) project accounting, including documentation of expenditures and receipts; (5) managing personnel; (6) completing audits and other submissions; (7) overseeing project to ensure a cost-effective and efficient delivery of services; and (8) ensuring that an open process is conducted in all outreach activities and equal opportunity is provided to all persons regardless of race, color, sex, religion, disability, familial status or national origin.

Homebuyer Counseling & Education

1. SCOPE OF WORK

The intent of the City of Flagstaff's Homebuyer Counseling and Education Program (HCEP) is to ensure potential first-time homebuyers in the City of Flagstaff are educated about the home-buying process, have resources to overcome barriers to homeownership and make informed decisions regarding their housing choices. Potential buyers will also be educated about financial assistance programs available in the community to first-time homebuyers. Housing Solutions of Northern Arizona, Inc. (HSNA), a local HUD-approved housing counseling agency and nonprofit organization, has been selected by the City of Flagstaff through a competitive RFP process to administer the program. HSNA will conduct one-on-one homebuyer counseling and online education, advertise services to the community and build relationships with community partners such as lenders and Realtors to ensure buyers and potential buyers are aware of program services.

The program will be funded from City of Flagstaff General Funds.

2. PROGRAM ELIGIBILITY CRITERIA

2.1 City of Flagstaff HCEP eligibility criteria is as follows:

2.1.1 Clients identify as potential or future first-time homebuyers, as defined by the Department of Housing and Urban Development (HUD). The definition is as follows "FHA defines First-Time Homebuyer (FTHB) as an individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase (closing date) of the property.

"A FTHB includes any individual that has only owned with a former spouse while married.

"A FTHB would also include an individual who has only owned a principal residence not permanently affixed to a permanent foundation, or a property that was not in compliance with State, local or model building codes and cannot be brought into compliance for less than the cost of constructing a permanent structure."

2.1.2 Clients have a current address is the Flagstaff FMPO boundaries and have expressed an interest in living in the greater Flagstaff area.

3. CLIENT AND PROGRAM FILES

HSNA will keep and maintain program files on file for a minimum of five years after the contract close out and be available to the City of Flagstaff for monitoring of the files. Client files will be "closed out" for two reasons: (1) client purchases a first home; or (2) client file is closed and client does not purchase a first home. Client files can be closed if the client determines homeownership is not feasible or desirable, client does not follow action plan to become home

purchase ready or client fails to follow up or discontinues contact with the Agency. If a client purchases a home, original Deeds of Trust and Promissory Notes will be submitted to the City of Flagstaff as part of the client file within 60 days of client purchase. Client files will be available to HSNA, if requested, for HUD or grant funder audits. If a client file is closed and the client does not purchase a first home, HSNA will retain the client file in electronic or hard-copy form, for a minimum of three years from the date of file termination. This record retention is consistent with HUD Housing Counseling requirements.

4. HOMEBUYER COUNSELING & EDUCATION

4.1 HSNA will follow the National Housing Counseling Standards for pre-purchase homebuyer education & counseling, which have been adopted by HSNA. HSNA's housing counseling staff will complete continuing education and abide by HUD requirements in the delivery of both one-on-one housing counseling and education. The intent of homebuyer education is to provide clients with general information regarding the home-buying process, credit and savings information, lending details and how to shop for a home. In addition, Fair Housing and Home Inspection information is presented to potential homebuyers.

4.2 All homebuyer aspirants, regardless of income, are invited to complete HSNA's online Homebuyer Education Course. The standard course cost is \$99 per household. HSNA offers a discount code to homebuyers who participate in one-on-one housing counseling – the discounted cost of the course is \$50 per household. The workshop fee will be paid by the household at the time of course registration.

4.3 Pre-purchase housing counseling is offered to clients in-person or via telephone. The purpose of housing counseling is to address the specific questions, concerns and barriers a household may face in purchasing a first home. Housing Counselors follow HUD guidelines for pre-purchase housing counseling, completing a financial and budget analysis, a personalized action plan for the client and covering important home purchase topics such as federal consumer protection and fair housing laws, the home purchase process, how to maintain homeownership, etc. The housing counselor will explain available financial assistance programs such as WISH, EAH and CHAP.

4.4 As required by HUD, all clients receiving one-on-one housing counseling will have documented follow-up.

5. PROGRAM MARKETING

The Agency shall affirmatively market the program through media, literature, announcements through the Realtors' multiple listing service meetings, mailing to Realtors and other activities as appropriate.

6. PROJECT ADMINISTRATION

Administrative fees to HSNA are \$150 per eligible household receiving one-on-one housing counseling. Households will be required to pay for the online homebuyer education course themselves. They will also be required to pay for tri-merge credit reports, if they elect to have HSNA pull credit. The cost of a credit report is \$14.50 per individual. The fee charged to clients for a tri-merge credit report is a cost-recovery fee to cover the cost incurred by HSNA to pull the credit report. All client-paid fees are disclosed to clients up-front by HSNA, in accordance with HUD requirements.

Agency responsibilities include: (1) keeping project files detailing expenses, procurement, project information, and correspondence, in addition to any other necessary information; (2) submitting applicable reports to the Housing Section; (3) keeping client files detailing eligibility, income, ethnicity, age, special needs and income information, in addition to any other necessary information; (4) project accounting, including documentation of expenditures and receipts; (5) managing personnel; (6) completing audits and other submissions; (7) overseeing project to ensure a cost-effective and efficient delivery of services; and (8) ensuring that an open process

is conducted in all outreach activities and equal opportunity is provided to all persons regardless of race, color, sex, religion, disability, familial status or national origin.

**EXHIBIT B
CITY OF FLAGSTAFF STANDARD TERMS AND CONDITIONS**

IN GENERAL

1. **NOTICE TO PROCEED:** Contractor shall not commence performance until after City has issued a Notice to Proceed.
2. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.
3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.
4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive and the City reserves the right to contract with others for materials or services.
5. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

MATERIALS

6. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
7. **QUALITY:** Contractor warrants that all materials supplied under this Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials, and will be safe and appropriate for use as normally used. City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
8. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.
9. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to City upon City's acceptance of the materials.
10. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.
11. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery, and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.

12. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.
13. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor and may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute shall deliver conforming materials, or services, in each installment or lot of the contract a breach of the contract as a whole.
14. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
15. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens other than the security interest held by Contractor until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.
16. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

PAYMENT

17. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
18. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
19. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.
20. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.

21. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by City.
22. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by City.
23. **AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to City or fees and charges owed to City under this Contract.
24. **OFAC:** No City payments may be made to any person in violation of Office of Foreign Assets Control regulations, 31 C.F.R. Part 501.

SERVICES

25. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
26. **CONTROL:** Contractor shall be responsible for the control of the worksite.
27. **WORK SITE:** Contractor shall inspect the worksite and notify the City in writing of any deficiencies or needs prior to commencing work.
28. **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.
29. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
30. **ACCEPTANCE:** If work is rejected by the City due to noncompliance with the Contract, The City, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.
31. **WARRANTY:** Contractor warrants all work for a period of one (1) year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one-year warranty is in addition to, and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

32. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.

33. **RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.
34. **PUBLIC RECORDS:** This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as “confidential”, the City will endeavor to notify Contractor prior to release of such information.
35. **CONTRACT ADMINISTRATION:** Contractor will be required to participate in the City’s Contract Administration Process. Contractor will be closely monitored for contract compliance and will be required to promptly correct any deficiencies.

INDEMNIFICATION, INSURANCE

36. **GENERAL INDEMNIFICATION:** Contractor shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney’s fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents of Contractor or damages to any property arising or alleged to have arisen out of the negligent performance of the Contract, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the Contract. This indemnification clause shall not apply, if a different indemnification clause is included in the City’s Specific Terms and Conditions.
37. **INSURANCE:** Contractor shall maintain all insurance coverage required by the City, including public liability and worker’s compensation.
38. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this Contract. Contractor shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the City against any and all expenses, losses, royalties, profits and damages, attorneys fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

39. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
40. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
41. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.
42. **SEVERABILITY:** If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.

43. **NO WAIVER:** Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
44. **ASSIGNMENT:** This Contract may be assigned by Contractor with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to City. The Purchasing Director shall have authority to consent to an assignment on behalf of City.
45. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

46. **SUBCONTRACTING:** Contractor may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
47. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition any Contractor located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02 Civil Rights which also prohibits discrimination based on sexual orientation, or gender identity or expression.
48. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.
49. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

DEFAULT AND TERMINATION

- 50. TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition Contract remedies provided for herein.
- 51. CITY REMEDIES:** In the event of Contractor's default, City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
- 52. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 53. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 54. TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
- 55. TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination.
- 56. TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate this Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.
- 57. PAYMENT UPON TERMINATION:** Upon termination of this Contract, City will pay Contractor for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
- 58. CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant ("Gratuities") in connection with award or performance of the Contract.
- 59. CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

60. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.
61. **NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract, or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.
62. **THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
63. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
64. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
65. **ATTORNEYS FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.
66. **NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, the parties certify that they are not currently engaged in and agree, for the duration of the agreement, not to engage in a boycott of Israel.

**EXHIBIT C
CITY OF FLAGSTAFF STANDARD INSURANCE REQUIREMENTS**

1. In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.
2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.
3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability –
Any Automobile or Owned, Hired
and Non-owned Vehicles
Combined Single Limit Per Accident
for Bodily Injury & Property Damage \$1,000,000

d. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000

[OPTION: e. Professional Liability \$2,000,000]

4. Self-Insured Retention. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers. Contractor shall be solely responsible for any self-insured retention amounts. City at its option may require Contractor to secure payment of such self insured retention by a surety bond or irrevocable and unconditional letter of credit.
5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

- a. **Additional Insured.** In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.
 - b. **Broad Form.** The Contractor's insurance shall contain broad form contractual liability coverage.
 - c. **Primary Insurance.** The Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Contractor's insurance and shall not contribute to it.
 - d. **Each Insured.** The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. **Not Limited.** Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
 - f. **Waiver of Subrogation.** The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.
6. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:

Attention: Patrick Brown, Purchasing Manager
Contract No. 2019-03
Purchasing Section
City of Flagstaff,
211 W. Aspen Avenue
Flagstaff, Arizona 86001

7. **Acceptability of Insurers.** Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
8. **Certificates of Insurance.** The Contractor shall furnish the City with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City project/contract number and project description shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Contractor commences work.
9. **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 this Contract at any time. 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 this Contract.

10. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.