

CONTRACT FOR PURCHASE OF MATERIALS

Contract No. 2024-03

This Contract is made and entered into this ____ day of _____, 20__ by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City") and Mountain States Pipe & Supply Co., a Colorado Corporation ("Contractor").

WHEREAS, the City desires to receive, and Contractor is able to provide materials; and

NOW THEREFORE, in consideration for the mutual promises contained herein, the Parties agree:

1. Bid Form and Fee Schedule: Contractor shall provide the materials described as:

Water Meters

and as more specifically described in the Bid Form and Fee Schedule, attached hereto as Exhibit A.

2. Compensation:

- A. Contractor shall be compensated for the materials provided as priced in the Bid Form and Fee Schedule attached hereto as Exhibit A. Payment shall be compensation in full for all terms necessary to provide each Bid item or purchase order.

- B. There may be more than one (1) contractor selected to provide the materials that are the basis of this Contract. The budgeted amount for this purchase is the total the City will pay to all contractors combined.

- C. The City may review fully documented requests for price increases after the Contract has been in effect for one (1) year. The price increase shall be based upon a proven market increase in the price of the materials at the time of the request. The City Purchasing Director and the Water Services Section Director shall determine whether the requested price increase, or an alternative option, is in the best interest of the City.

- D. A formal written amendment to the Contract is required for any price increases above those agreed upon in the Bid Form and Fee Schedule attached hereto as Exhibit A.

- E. Any charges from unilateral price increases made by Contractor, without a formal written amendment, will be deducted from any payment to Contractor.

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

4. Insurance (Commodities): Contractor shall meet the insurance requirements of the City, attached hereto as Exhibit C, are incorporated by reference.

5. Contract Term: The Contract term is for a period of five (5) years unless terminated pursuant to the Terms and Conditions (Commodities), attached hereto as Exhibit B. The Contract will be effective as of the date signed by both parties.

6. Renewal: The 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 Manager or his/her designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
7. Notice: Any formal notice required under the Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Patrick O'Connor
City of Flagstaff
Water Services Section Director – Field
Operations
5401 E Commerce Ave
Flagstaff, AZ 86004
poconnor@flagstaffaz.gov

To Contractor:

Paul Carroll
Chief Executive Officer
Mountain States Pipe & Supply Co.
7765 Electronic Dr.
Colorado Springs, CO 80922
719-351-4120
pcarroll@msps.com

With a copy to:

Teddy Callan
Procurement Specialist
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Teddy.Callan@flagstaffaz.gov

(The remainder of the page intentionally blank.)

8. Authority: Each Party warrants that it has authority to enter into the Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into the Contract.

CONTRACTOR:

By: _____

Title: _____

CITY OF FLAGSTAFF

By: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Notice to Proceed issued: _____, 20__

December 20, 2023 (commodities)

EXHIBIT A

<p align="center">SPECIFICATIONS</p> <p align="center">City of Flagstaff Water Services - Water Meters (Ultrasonic - For residential installation. Ultrasonic water meters being used for residential fire service applications must be UL 327B Certified) Sizes: 3/4" through 2"</p>	<p align="center">COMPLY YES OR NO</p>	<p align="center">COMMENTS</p>
<p>No 5/8" x 3/4" meters are requested.</p>	<p align="center">Yes</p>	
<p>Meters shall use solid state technology in a totally integrated unit waterproof housing. Meter and register shall be a single unit with no moving parts in the flow path.</p>	<p align="center">Yes</p>	
<p>Meters and registers shall be compatible with Itron ERT's.</p>	<p align="center">Yes</p>	
<p>Compatible with AMR, AMI Systems and cellular network systems.</p>	<p align="center">Yes</p>	
<p>Meters shall be lead-free bronze per AWWA C715 and NSF/ANSI 61, NSF/ANSI 372 specifications that became effective January 2014.</p>	<p align="center">Yes</p>	
<p>Meter operating ranges by size below, shall be at a minimum:</p>		
<p>3/4" x 3/4" = 0.5 to 30 gpm</p>	<p align="center">Yes</p>	
<p>1" = 0.75 to 50 gpm</p>	<p align="center">Yes</p>	
<p>1 1/2" = 0.80 to 125 gpm</p>	<p align="center">No</p>	<p>Max is 100 gpm</p>
<p>2" = 1.5 to 160 gpm</p>	<p align="center">Yes</p>	

	COMPLY YES OR NO	COMMENTS
Meter register shall contain programmable up to nine (9) digit LCD display with the following features:	Yes	
Non-removable from meter	Yes	
Rate of flow (gpm)	Yes	
Reverse-flow indicator or detection	Yes	
Leak indicator or detection	Yes	
High resolution ASCII encoder protocol	Yes	
Absolute encoder register shall have a five (5) foot Itron quick connect/in-line connector (potted at the factory)	Yes	
Serial numbers shall be stamped onto the register lid	Yes	Stamped on meter body/lid
Meter size, model, registration (gallons), and date of manufacture shall be printed on the register face.	Yes	
Meters and registers shall be submersible in pit/vault environments and shall be waterproof and weatherproof.	Yes	
Meters shall be maintenance free and contain no internal moving parts.	Yes	
The maximum operating pressure of 175 psi.	Yes	Max operating pressure of 300
The electronic register shall have a twenty (20) year battery life.	Yes	

	COMPLY YES OR NO	COMMENTS
Meters shall meet or exceed AWWA C700 new meter low, normal, and high flow new meter accuracy standards for a period of twenty (20) years from date of manufacture or total cumulative consumption per meter specifications.	Yes	
No polymer or composite bodies or meter threads will be accepted.	Yes	
Meter deliveries must include an inventory upload file for the City to upload serial numbers into its meter inventory system.	Yes	
All meters shall conform to the proposed AWWA standards for ultrasonic meters and the latest AWWA C700, and be AWWA C715 compliant.	Yes	
All technical specification sheets for each meter shall be included in the final bid. Such information shall include accuracy versus flow and head loss versus flow curves as well as physical dimensions.	Yes	
Lay length requirements for meter up to 2" are as follows:		
3/4" x 3/4" = 7 1/2"	Yes	
1" - 10 3/4"	Yes	
1 1/2" = 13"	Yes	
2" = 17"	Yes	

	COMPLY YES OR NO	COMMENTS
Annual estimated quantities below are indicated below for year one and may vary for this and subsequent years.		
3/4" x 3/4" = 1,200	Yes	
1" = 50	Yes	
1 1/2" = 50	Yes	
2" = 50	Yes	

Manufacturers shall be a member of the AWWA with a minimum of twenty-five (25) years of field and production experience in water measurement technologies and serving water utilities in the United States.	Yes	
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<p align="center">SPECIFICATIONS</p> <p>City of Flagstaff Water Services - Meters Meters for Commercial and Fire Service Applications) Sizes: 3" through 10"</p>	<p align="center">COMPLY YES OR NO</p>	<p align="center">COMMENTS</p>
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Requested meter sizes are: 3", 4", 6", 8" and 10"	No Bid	Electromagnetic Meters Not Accepted
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Requested meter types are Turbine Type II, Compound, Ultrasonic and Fire Service.		
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Meters shall be lead-free bronze or of stainless steel construction per NSF/ANSI 61 specifications.		
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Registers shall be direct/straight read permanently sealed magnetic drive. Registers shall be waterproof and have a minimum of six odometer wheels for totalization display. Registers shall have a center sweep hand and low flow indicator.		
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Register measurement shall be to the 100 gallons or less.		
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Meter and registers shall be compatible with Itron ERT's.		
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Compatible with AMR, AMI Systems and cellular network systems.		
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Registers shall have a twenty-five (25) foot Itron quick connects for Itron ERT's (potted at factory).		
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Serial numbers shall be stamped onto register lid as well as the meter body.		
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	COMPLY YES OR NO	COMMENTS
Meter size, model, registration, and date of manufacture shall be printed on the register face.		
Registers must affix to the meter body with a tamper-proof mechanism.		
All registers shall have a warranty for a minimum of five years from date of shipment from manufacturer.		
All meters shall operate at a minimum of 150 psi.		
Turbine type meters shall comply with AWWA C701 Class II standards. NSF/ANSI 372.		
Turbine meter operating ranges by sizes shall conform with the latest AWWA C701 standards below:		
4" = 15 to 750 US gpm		
6" = 30 to 1,600 US gpm		
8" = 50 to 2,800 US gpm		
10" = 75 to 4,200 US gpm		
Turbine meter shall have a warranty to meet AWWA C701 accuracy standards for a minimum of twelve (12) months after shipment from the manufacturer.		
Local registers on the nutating disk low flow meter shall have a warranty for at least one (1) year from date of shipment from the manufacturer.		

	COMPLY YES OR NO	COMMENTS
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Compound meter operating ranges by size shall conform with the latest AWWA C702 standards below:		
3" = 2 to 350 gpm		
4" = 3 to 600 gpm		
6" = 5 to 1,350 gpm		
6" x 8" = 16 to 1,600 gpm		

Compound meters shall have a warranty to meet AWWA C702 accuracy standards for a minimum of twelve (12) months after shipment from the manufacturer.		
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Local registers on the nutating disk bypass low flow meter shall have a warranty for at least five (5) years from date of shipment from the manufacturer.		
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Fire Service Assembly meters operating ranges by size shall conform with the latest AWWA C703 standards below:		
4" = 4 to 700 US gpm		
6" = 5 to 1,600 US gpm		
8" = 8 to 2,800 gpm		
10" = 8 to 4,400 US gpm		

Fire Service Assemblies shall be able to operate at 175 psi.		
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Fire Service Assemblies shall be UL Certified.		
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Meter deliveries must include an inventory upload file for the City to upload serial numbers into its meter inventory system.		
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Specifications sheets shall be provided for each meter type and size in final bid.		
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	COMPLY YES OR NO	COMMENTS
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For Turbine, Compound and Fire Service Assembly, Ultrasonic type meters, lay lengths for each size and type shall be included in the bid.		
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Annual quantities below are estimates only and may vary per year.		
3" Turbine = 5		
3" Compound = 5		
3" Ultrasonic = 5		
4" Turbine = 5		
4" Compound = 5		
4" Ultrasonic = 5		
4" Fire Service = 5		
6" Turbine = 5		
6" Compound = 5		
6" Ultrasonic = 5		
6" Fire Service = 5		
8" Turbine = 5		
8" Compound = 5		
8" Ultrasonic = 5		
8" Fire Service = 5		
10" Turbine = 1		
10" Compound = 1		
10" Ultrasonic = 1		
10" Fire Service = 1		

<p align="center">SPECIFICATIONS</p> <p>City of Flagstaff Water Services - Water Meters (Large Meters for Commercial and Fire Service Applications - <i>Ultrasonic</i>) Sizes: 3" through 10" Ultrasonic water meters being used for fire service applications must be UL 327B Certified)</p>	<p align="center">COMPLY</p> <p align="center">YES OR NO</p>	<p align="center">COMMENTS</p>
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Requested meter sizes are: 3", 4", 6", 8" and 10"	No Bid	Electromagnetic Meters Not Accepted
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Requested meter type is Ultrasonic.		
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Meters shall use solid state technology in a totally integrated unit waterproof housing. Meter and register shall be a single unit with no moving parts in the flow path.		
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The meter main case shall be cast from NSF/ANSI 61 certified lead free bronze alloy containing a minimum of 85% copper per NSF/ANSI 61 specifications.		
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Meter register shall contain programmable up to nine (9) digit LCD display with the following features:		
The meter must have replaceable unitized measuring element (UME).		
Rate of flow (gpm)		
Reverse-flow indicator or detection		
Leak indicator or detection		
High resolution ASCII encoder protocol		

Register measurement shall be to the 100 gallons or less.		
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Meter and registers shall be compatible with Itron ERT's.		
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	COMPLY YES OR NO	COMMENTS
Compatible with AMR, AMI Systems and cellular network systems.		
Absolute Encoder registers shall have a twenty-five (25) foot Itron quick connects for Itron ERT's (potted at factory).		
Serial numbers shall be stamped onto register lid as well as the meter body.		
Meter size, model, registration (gallons), and date of manufacture shall be printed on the register face.		
Meters shall be maintenance free and contain no internal moving parts.		
The electronic register shall have a twenty (20) year battery life.		
The maximum operating pressure of 175 psi.		
Meters shall meet or exceed AWWA C700 new meter low, normal, and high flow new meter accuracy standards for a period of twenty (20) years from date of manufacture or total cumulative consumption per meter specifications.		
Ultrasonic meter operating ranges by sizes shall conform with the latest AWWA C700, C701 and C715 standards:		
3" = .75 to 500 US gpm		
4" = 1.5 to 1,250 US gpm		
6" = 2.0 to 2,000 US gpm		
8" = 6.0 to 4,000 US gpm		
10" = 10.0 to 6,500 US gpm		

	COMPLY YES OR NO	COMMENTS
Meter deliveries must include an inventory upload file for the City to upload serial numbers into its meter inventory system.		
All meters shall conform to the proposed AWWA standards for ultrasonic meters and the latest AWWA C700, and be AWWA C715 compliant.		
All technical specification sheets for each meter shall be included in the final bid. Such information shall include accuracy versus flow and head loss versus flow curves as well as physical dimensions.		
For Ultrasonic type meters, lay lengths for each size shall be included in the bid.		
Annual quantities below are estimates only and may vary per year.		
3" Ultrasonic = 5		
4" Ultrasonic = 5		
6" Ultrasonic = 5		
8" Ultrasonic = 5		
10" Ultrasonic = 1		

<p align="center">SPECIFICATIONS</p> <p align="center">City of Flagstaff Water Services -</p> <p align="center">Water Meters</p> <p align="center">(Positive Displacement)</p> <p align="center">Sizes: 3/4" through 2"</p>	<p align="center">COMPLY</p> <p align="center">YES OR NO</p>	<p align="center">COMMENTS</p>
Meters shall be magnetic drive, sealed register, positive displacement type, nutating disk cold water meters and with an analog register.		No Bid
Meters and registers shall be compatible with Itron ERT's.		No Bid
Compatible with AMR, AMI Systems and cellular network systems.		No Bid
Meters shall be lead-free bronze per NSF/ANSI 61 specifications.		No Bid
Registers shall be direct/straight read mechanical registers with absolute encoder technology. Registers shall have nine (9) dials.		No Bid
Absolute encoder register shall have a five (5) foot Itron quick connect/in-line connector (potted at the factory)		No Bid
Serial numbers shall be stamped onto the register lid as well as the meter body.		No Bid
Meter size, model, registration, and date of manufacture shall be printed on the register face.		No Bid
Registers shall affix to the meter body with a tamper-proof mechanism.		No Bid

	COMPLY YES OR NO	COMMENTS
The meter measuring chamber shall be constructed of a non-corrosive synthetic polymer and shall not be cast as part of the meter main case.		No Bid
Bolts that attach the bottom plate to the meter case shall be stainless steel.		No Bid
Meters shall utilize nutating disk technology. The motion of the measuring disc shall be transmitted to the sealed register through the use of a magnetic drive assembly. The disc center pin as well as the magnetic drive assembly shaft shall be stainless steel.		No Bid
No polymer or composite bodies or meter threads will be accepted.		No Bid
Meters shall provide a maximum operating pressure of at least 150 psi.		No Bid
Meter operating ranges by size shall conform with the latest AWWA C700 standards.		No Bid
3/4" = 2 to 30 gpm		No Bid
1" = 3 to 50 gpm		No Bid
1 1/2" = 5 to 100 gpm		No Bid
2" = 8 to 160 gpm		No Bid
All meters shall be constructed with an internal corrosion-resistant strainer which is easily removed from the meter body.		No Bid
Meter deliveries must include an inventory upload file for the City to upload serial numbers into its meter inventory system.		No Bid

	COMPLY YES OR NO	COMMENTS
All technical specification sheets and warranty documents for each meter shall be included in the final bid.		No Bid
Lay lengths requirements for meters up to 2" are as follows:		
3/4" x 3/4" = 7 1/2"		No Bid
1" = 10 3/4"		No Bid
1 1/2" = 13"		No Bid
2" = 17"		No Bid
Annual estimated quantities below are indicated below for year one and may vary for this and subsequent years.		
3/4" x 3/4" = 1,200		No Bid
1" = 50		No Bid
1 1/2" = 50		No Bid
2" = 50		No Bid
No 5/8" x 3/4" meters are being requested.		No Bid

City of Flagstaff - Water Services - Water Meter Bid (Ultrasonic - Residential)

Water Meter Offered (Ultrasonic Residential):

3/4" x 3/4"	UNIT PRICE	\$ <u>112.95</u>
1"	UNIT PRICE	\$ <u>168.20</u>
1 1/2"	UNIT PRICE	\$ <u>495.10</u>
2"	UNIT PRICE	\$ <u>636.40</u>

Water Meter Offered (Ultrasonic Residential - Fire Service):

3/4" x 3/4" Ultrasonic Residential - Fire Service	UNIT PRICE	\$ <u>No Bid</u>
1" Ultrasonic Residential - Fire Service	UNIT PRICE	\$ <u>No Bid</u>
	UNIT PRICE	\$ <u>No Bid</u>
1 1/2" Ultrasonic Residential - Fire Service		\$ <u>No Bid</u>
2" Ultrasonic Residential - Fire Service	UNIT PRICE	\$ <u>No Bid</u>
	FREIGHT	\$ <u>100.00</u>
	TAX (9.181) %	\$ <u>138.88</u>
	TOTAL UNIT PRICE	\$ <u>1,651.53</u>

OPTIONS (Please state additional cost from "base price")

(1) Discount for quantity purchase? \$ 0

Any other specifications not standard, but being specified, must be included here, with price:

Miscellaneous charges:

N/A

(All charges must be included, no extra charges will be considered at a later date.)

DELIVERY:

Maximum number of calendar days to deliver after receipt of a purchase order is Stk - 45 Days

City of Flagstaff - Water Services - Water Meter Bid (Large Meters - Commercial)

Water Meter Offered (Large Meters - Commercial):

3" Turbine	UNIT PRICE	\$ <u>0</u>
3" Compound	UNIT PRICE	\$ <u>0</u>
4" Turbine	UNIT PRICE	\$ <u>0</u>
4" Compound	UNIT PRICE	\$ <u>0</u>
6" Turbine	UNIT PRICE	\$ <u>0</u>
6" Compound	UNIT PRICE	\$ <u>0</u>
8" Turbine	UNIT PRICE	\$ <u>0</u>
8" Compound	UNIT PRICE	\$ <u>0</u>
10" Turbine	UNIT PRICE	\$ <u>0</u>
10" Compound	UNIT PRICE	\$ <u>0</u>
	FREIGHT	\$ <u>0</u>
	TAX () %	\$ <u>0</u>
	TOTAL UNIT PRICE	\$ <u>0</u>

OPTIONS (Please state additional cost from "base price")

(1) Discount for quantity purchase? \$ N/A

Any other specifications not standard, but being specified, must be included here, with price:

Miscellaneous charges:

(All charges must be included, no extra charges will be considered at a later date.)

DELIVERY:

Maximum number of calendar days to deliver after receipt of a purchase order is 0 Days

City of Flagstaff - Water Services - Water Meter Bid (Fire Service Assembly)

Water Meter Offered (Fire Service Assembly):

4" Fire Service Assembly	UNIT PRICE	\$ <u>0</u>
6" Fire Service Assembly	UNIT PRICE	\$ <u>0</u>
8" Fire Service Assembly	UNIT PRICE	\$ <u>0</u>
10" Fire Service Assembly	UNIT PRICE	\$ <u>0</u>
	FREIGHT	\$ <u>0</u>
	TAX () %	\$ <u>0</u>
	TOTAL UNIT PRICE	\$ <u>0</u>

OPTIONS (Please state additional cost from "base price")

(1) Discount for quantity purchase? \$ 0

Any other specifications not standard, but being specified, must be included here, with price:

Miscellaneous charges: N/A

(All charges must be included, no extra charges will be considered at a later date.)

DELIVERY:

Maximum number of calendar days to deliver after receipt of a purchase order is 0 Days

City of Flagstaff - Water Services - Water Meter Bid (Ultrasonic - Commercial)

Water Meter Offered (Ultrasonic - Commercial):

3" Ultrasonic - Commercial	UNIT PRICE	\$ _____
4" Ultrasonic - Commercial	UNIT PRICE	\$ _____
6" Ultrasonic - Commercial	UNIT PRICE	\$ _____
8" Ultrasonic - Commercial	UNIT PRICE	\$ _____
10" Ultrasonic - Commercial	UNIT PRICE	\$ _____
	FREIGHT	\$ _____
	TAX () %	\$ _____
	TOTAL UNIT PRICE	\$ _____

OPTIONS (Please state additional cost from "base price")

(1) Discount for quantity purchase? \$ _____

Any other specifications not standard, but being specified, must be included here, with price:

Miscellaneous charges: _____

(All charges must be included, no extra charges will be considered at a later date.)

DELIVERY:

Maximum number of calendar days to deliver after receipt of a purchase order is _____ Days

11. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address, and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.
12. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.
13. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.
14. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor may not substitute nonconforming materials and/or services. Delivery of nonconforming materials and/or services, or a default of any nature, shall constitute a breach of the Contract as a whole.
15. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
16. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens, other than the security interest held by Contractor, until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.
17. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

PAYMENT

18. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number and dates when goods had been shipped or work performed. Invoices shall be sent within thirty (30) days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
19. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, the City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.

- 20. TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of the Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line-item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.

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

INSPECTION, RECORDS, ADMINISTRATION

- 26. 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.
- 27. 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.
- 28. 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.
- 29. 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

- 30. 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.

CONTRACT CHANGES

- 31. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 32. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the Parties.
- 33. AMENDMENTS:** The Contract may be amended by written agreement of the Parties.
- 34. 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.
- 35. NO WAIVER:** Both Parties have the right to 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.
- 36. 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.
- 37. BINDING EFFECT:** The Contract shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

- 38. 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.

39. **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, and/or 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 Flagstaff City Code, Chapter 14-02, *Civil Rights*, which also prohibits discrimination based on sexual orientation or gender identity or expression.
40. **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.
41. **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/or 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

42. **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 defaulting Party, 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.
43. **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.
44. **CONTRACTOR REMEDIES:** In the event of the City's default, Contractor may pursue all remedies available at law, except as provided for herein.

45. **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.
46. **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.
47. **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.
48. **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.
49. **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.
50. **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

51. **COOPERATIVE PURCHASE CONTRACTS:** Presuming that Contractor agreed to such during the procurement process, Contractor will enter into cooperative purchase arrangements, as sanctioned by state and federal law, to allow Contractor to sell materials and services to any member of a cooperative group under the same pricing, terms, and conditions of the contract awarded to the Contractor by the public procurement unit, following a competitive procurement process.
52. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with the City without the prior written consent of the City.
53. **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.

54. **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.
55. **GOVERNING LAW:** The Contract shall be construed in accordance with the laws of Arizona.
56. **FORUM:** In the event of litigation relating to the Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
57. **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.
58. **FORCE MAJEURE:**
 - 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.
59. **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.
60. **CHANGES TO CONTRACT:** The Contract shall not be modified within the first year after Contract award where: (a) an amendment may result in a competitive advantage that was not made available to other proposers/bidders; or (b) requests for changes may delay commencement of performance.
61. **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 City within five (5) 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 terminates on the Contract termination date.

- 62. 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.

EXHIBIT C

INSURANCE REQUIREMENTS (COMMODITIES)

(Last Updated December 20, 2023)

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

1. **IN GENERAL:** Contractor shall maintain insurance against claims for injury to persons or damage to property arising from performance of or in connection with the Contract by Contractor, its agents, representatives, employees, and/or subcontractors.
2. **REQUIREMENT TO PROCURE AND MAINTAIN:** Each insurance policy required by the Contract shall be in effect at, or before, commencement of work under the Contract and shall remain in effect until all of Contractor’s obligations under the Contract have been met, including any warranty periods. Contractor’s failure to maintain the insurance policies as required by the Contract, or to provide timely evidence of renewal, will be considered a material breach of the Contract.
3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** The following insurance requirements are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. The City does not represent or warrant that the minimum limits set forth in the Contract are sufficient to protect Contractor from liabilities that might arise out of the Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Where applicable, 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

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 Contractor reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and/or subcontractors. Contractor shall be solely responsible for any self-insured retention amounts. The City at its option

may require Contractor to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

6. **OTHER INSURANCE REQUIREMENTS:** The insurance policies shall contain, or be endorsed to contain, the following provisions:
 - a. Additional Insured: In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents, employees, and/or subcontractors shall be named and endorsed as additional insureds with respect to liability arising out of the Contract and activities performed by or on behalf of Contractor, including products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
 - b. Broad Form: Contractor's insurance policy shall contain broad form contractual liability coverage.
 - c. Primary Insurance: Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and/or subcontractors. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and/or subcontractors shall be in excess of the coverage of Contractor's insurance and shall not contribute to it.
 - d. Each Insured: Contractor's insurance policies shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Not Limited: Coverage provided by Contractor shall not be limited to the liability assumed under the indemnification provisions of the Contract.
 - f. Waiver of Subrogation: The insurance policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees, and/or subcontractors for losses arising from work performed by Contractor for the City.
7. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of the Contract shall provide the required coverage and shall not be suspended, voided, cancelled, and/or reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Procurement Agent and shall reference the Contract Number.
8. **ACCEPTABILITY OF INSURERS:** Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency.
9. **CERTIFICATES OF INSURANCE:** Contractor shall furnish the City with certificates of insurance (ACORD form) as required by the Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City Contract number shall be noted on the certificates of insurance. If requested by the City, all certificates of insurance and endorsements must be received and approved by the City before the Contractor commences work.

10. **POLICIES:** The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by the Contract. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under the Contract.

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