

CONTRACT FOR PURCHASE OF MATERIALS/SERVICES

Contract No. 2024-145

This Contract is entered into this ____ day of _____, 2024, by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Southwest Tank and Steel, Inc., an Arizona Corporation ("Contractor").

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

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

1. Scope of Work: Contractor shall provide the materials and/or services generally described as follows:

**Water Storage Tank Maintenance and Painting
(Railroad Springs Tank, Kinlani Tank, Woody Mountain Booster Tank, and Buffalo Park Tank)**

and as more specifically described in the Scope of Work attached hereto as Exhibit A.

2. Compensation: City will pay Contractor for satisfactory performance of the Contract in an amount not to exceed **three hundred fifty-three thousand five hundred eighteen dollars and zero cents (\$353,518.00)** including fees and taxes, made in accordance with the Bid Schedule. Any price adjustment must be approved by mutual written consent of the parties through a formal amendment. The City Manager or his/her designee (the Purchasing Director) may approve an amendment if the total amount of the contract as amended is less than \$100,000; otherwise, City Council approval is required.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are incorporated by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. Special Terms and Conditions: The City of Flagstaff Special Terms and Conditions attached hereto as Exhibit C are incorporated by reference and shall apply to the performance of this Contract, except to the extent modified in Exhibit A. If there are conflicts between the Standard Terms and Conditions and the Special Terms and Conditions, the terms contained in the Special Terms and Conditions shall prevail.
5. Insurance: Contractor shall meet insurance requirements of the City, attached hereto as Exhibit D.
6. Contract Term:
 - A. The Contract term is for a period of three (3) years unless terminated pursuant to the Standard Terms and Conditions and/or Special Terms and Conditions.
 - B. The Scope of Work for each of the water tanks identified within this contract shall be completed within 18 months of the Notice to Proceed.

- B. The Contract will be effective as of the date signed by both parties. Performance shall commence within ten (10) days from the City's issuance of the Notice to Proceed.
7. Renewal: The Contract may be renewed for up to two (2) additional one-(1) year terms by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
 8. Extension or Renewal for Procurement: The City may unilaterally extend or renew this Contract for up to four additional ninety-day terms to allow for procurement processes upon the completion of the term of the Contract. The City Manager or his designee (the Purchasing Director) shall have authority to approve extension on behalf of the City.
 9. Notice: Any formal notice required under this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

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

With a copy to:

Brian Huntzinger
Water Production Manager
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, Arizona 86001
Bhuntzinger@flagstaffaz.gov

To Contractor:

Brandon Bentley
Project Manager/Estimator
Southwest Tank and Steel, Inc.
4900 Hayfield Draw Dr
Camp Verde, AZ, 86322
brandon@southwesttank.com

With a copy to:

Jana L. Weldon
Beautification, Arts & Sciences Program
Manager
City of Flagstaff
6 E. Aspen Ave., Suite 200
Flagstaff, AZ 86001
Jana.Weldon@flagstaffaz.gov

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10. 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.

CONTRACTOR:

By: _____

Title: _____

CITY OF FLAGSTAFF

By: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Notice to Proceed issued: _____, 20__

EXHIBIT A

CITY OF FLAGSTAFF PURCHASING DIVISION
211 WEST ASPEN AVE.
FLAGSTAFF, ARIZONA 86001

Solicitation No. 2024-145
Procurement Specialist: Teddy Callan
PH: (928) 213-2275

CITY OF FLAGSTAFF

Water Storage Tank Maintenance and Painting

BID NUMBER 2024-145

BID FORM

PLEASE SEE THE SCOPE OF WORK ATTACHED TO THE CONTRACT AS *EXHIBIT A* FOR REQUIRED MATERIALS. ENTER THE SERVICE CHARGES/BID AMOUNTS FOR THE FOLLOWING AREAS AND ALL MATERIALS SPECIFIED IN THIS SOLICITATION.

Explanation of Bid Items

Abrasive Blast Cleaning, Coat & Paint Exterior Surface, and Disposal of waste material Railroad Springs Tank. The lump sum price shall constitute full compensation for furnishing all labor, materials, tools, and equipment necessary to complete the Work.. The lump sum bid price shall include all work related to abrasive blast cleaning, preparation, painting removal and disposal of waste material. The Bid includes costs associated with the anniversary (one year) inspection.

Additive Alternatives 1-3 (Bid Items 2-4) Kinlani Tank, Woody Mountain Booster Station Forebay, and Buffalo Park Tanks. The lump sum prices for the Additive Alternates 1-3 (Bid Items 2-4) shall constitute full compensation for furnishing all labor, materials, tools, and equipment necessary to complete the Work. The lump sum bid price shall include all work related to abrasive blast cleaning, preparation, painting removal and disposal of waste material; or surface preparation using SSPC WJ4 Low Pressure Water Jetting to remove surface contaminants as defined below for each tank. The Bid includes costs associated with the anniversary (one year) inspection.

BID ITEM #1: RATE FOR RAILROAD SPRINGS #1 TANK

	COST
<i>See Attached for Price Clarification</i>	
Project	\$133,337 ⁰⁰

BID ITEM #2: RATE FOR KINLANI TANK

	COST
<i>See Attached for Price Clarification</i>	
Additive Alternative Project	\$ 45,758 ⁰⁰

BID ITEM #3: RATE FOR WOODY MOUNTAIN BOOSTER TANK

	COST
<i>See Attached for Price Clarification</i>	
Additive Alternative Project	\$ 24,662 ⁰⁰

BID ITEM #4: RATE FOR BUFFALO PARK

	COST
<i>See Attached for Price Clarification</i>	
Additive Alternative Project	\$ 149,761 ⁰⁰

CITY OF FLAGSTAFF PURCHASING DIVISION
211 WEST ASPEN AVE.
FLAGSTAFF, ARIZONA 86001

Solicitation No. 2024-145
Procurement Specialist: Teddy Callan
PH: (928) 213-2275

(All charges must be included; no extra charges will be considered at a later date. Miscellaneous charges will be considered in determining the low Bid)

Brandon Bentley
Signature of Person Authorized to Sign Bid

Project Manager/ Estimator
Title

Brandon Bentley
Printed Name

5/9/24
Date

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May 9, 2024

Re: City of Flagstaff Exterior recoat projects

Below is the pricing for the exterior coatings on the (4) projects for the City of Flagstaff

Exterior: Buffalo Park and Woody Mountain

1. Prep- WJ4 Pressure Wash
2. Spot Prime- Epoxy applied at 5-7 Mils as needed on bare metal areas.
3. Full Prime- Epoxy Applied at 5-7Mils
4. Intermediate- Polyurethane Applied at 3-5 Mils
5. Finish- Fluoropolymer applied at 2-5 Mils

Exterior: Railroad Springs and Kinlani

1. Prep- SSPC SP6 Commercial blast
2. Primer- Epoxy applied at 5-7 Mils
3. Intermediate- Polyurethane applied at 3-5 Mils
4. Finish- Fluoropolymer applied at 2-5 Mils

Buffalo Park:

Exterior coatings	\$141,874.00
New LLI	\$4,887.00
Anniversary	\$3,000.00

Woody Mountain:

Exterior coatings	\$21,687.00
LLI Re number	\$975.00
Anniversary	\$2,000.00

Railroad Springs:

Exterior Coatings	\$125,950.00
New LLI	\$4,887.00
Anniversary	\$2,500.00

Kinlani:

Exterior coatings	\$38,871.00
New LLI	\$4,887.00
Anniversary	\$2,000.00



Southwest Tank and Steel, Inc.
Office 928.646.5900 Fax 928.646.5908
AZ ROC 281376

***Prices do not include, Containment system, Permits, NACE Inspector or Prevailing wages.**

***STS requires Full payments on all Invoices no later than net 30.**

By acceptance of this bid you agree to our above terms and conditions.

Sincerely,
Brandon Bentley
Project Manager/ Estimator

SBA WOSB
Woman Owned Small Business



4900 N Hayfield Draw Suite I, Camp Verde Az 86322

EXHIBIT B

STANDARD TERMS AND CONDITIONS

(Last Updated January 19, 2023)

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

IN GENERAL

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

MATERIALS

7. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
8. **QUALITY:** Contractor warrants that all materials supplied under the Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials and will be safe and appropriate for use as normally used. The City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
9. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.
10. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to the City upon the City's acceptance of the materials.

11. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.
12. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.
13. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.
14. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor 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 and/or materials were received by the City.
- 24. AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to the City or fees and charges owed to the City under the Contract.
- 25. OFAC:** No payments may be made to any person in violation of Office of Foreign Assets Control regulations. 31 C.F.R. Part 501.

SERVICES

- 26. INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
- 27. CONTROL:** Contractor shall be responsible for the control of the work.
- 28. WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
- 29. SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
- 30. QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
- 31. ACCEPTANCE:** If the City rejects Contractor's work due to noncompliance with the Contract, the City, after notifying Contractor in writing, may require Contractor to correct the

deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.

32. **WARRANTY:** Contractor warrants all work for a period of one year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one year warranty is in addition to and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

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

INDEMNIFICATION

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

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

- 39. NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from an against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense arising out of all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, including but not limited to, consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the City. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

- 40. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 41. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the Parties.
- 42. AMENDMENTS:** The Contract may be amended by written agreement of the Parties.
- 43. SEVERABILITY:** If any term or provision of the Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted and the remainder of the Contract shall remain in full force and effect.
- 44. NO WAIVER:** Both Parties have the right insist upon strict performance of the Contract, and the prior failure of a Party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
- 45. ASSIGNMENT:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. Any

assignment without such consent shall be null and void. No assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to the City. The Purchasing Director shall have authority to consent to an assignment on behalf of the City.

46. **BINDING EFFECT:** The Contract shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

47. **SUBCONTRACTING:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. The City reserves the right to withhold consent if the subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.

48. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition, any Contractor whose business is located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02, *Civil Rights*, which also prohibits discrimination based on sexual orientation, or gender identity or expression.

49. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor's personnel shall abstain from use or possession of illegal drugs while engaged in performance of the Contract.

50. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors shall comply with all state and federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of state and federal immigration laws and regulations shall constitute a material breach of the Contract and shall subject Contractor to penalties up to and including termination of the Contract. The City may, at its sole discretion, conduct random verification of the employment records of the employees of the Contractor and any subcontractors to ensure compliance with all state and federal immigration laws and regulations. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contract if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

DEFAULT AND TERMINATION

51. **TERMINATION FOR DEFAULT:** Prior to terminating the Contract for a material breach, the non-defaulting Party shall give the defaulting Party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting Party in writing. In the event the breach is not timely cured,

or in the event of a series of repeated breaches the non-defaulting Party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the Parties may execute all remedies available at law in addition to the Contract remedies provided for herein.

52. **CITY REMEDIES:** In the event of Contractor's default, the City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. The City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
53. **CONTRACTOR REMEDIES:** In the event of the City's default, Contractor may pursue all remedies available at law, except as provided for herein.
54. **TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of the Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
55. **TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, the Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor. If the Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by the City before the effective date of termination.
56. **TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate the Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.
57. **PAYMENT UPON TERMINATION:** Upon termination of the Contract, the City will pay Contractor for satisfactory performance up until the effective date of termination. The City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
58. **CANCELLATION FOR GRATUITIES:** The City may cancel the Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with award or performance of the Contract.
59. **CANCELLATION FOR CONFLICT OF INTEREST:** Pursuant to A.R.S. § 38-511, if the City identifies a conflict of interest in the award or performance of the Contract, the City may cancel the Contract within three years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

- 60. COOPERATIVE PURCHASE CONTRACTS:** Presuming that Contractor agreed to such during the procurement process, Contractor will enter into cooperative purchase arrangements, as sanctioned by state and federal law, to allow Contractor to sell materials and services to any member of a cooperative group under the same pricing, terms and conditions of the contract awarded to the Contractor by the public procurement unit, following a competitive procurement process.
- 61. ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with the City without the prior written consent of the City.
- 62. NOTICES:** All notices given pursuant to the Contract shall be delivered at the addresses as specified in the Contract or updated by Notice to the other Party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four days after being sent; or (c) sent by overnight courier, with receipt deemed effective two days after being sent. Notice may be sent by email as a secondary form of notice.
- 63. THIRD PARTY BENEFICIARIES:** The Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
- 64. GOVERNING LAW:** The Contract shall be construed in accordance with the laws of Arizona.
- 65. FORUM:** In the event of litigation relating to the Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
- 66. ATTORNEYS' FEES:** If any action at law or in equity is necessary to enforce the terms of the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.
- 67. FORCE MAJUERE:**
- a. There may be events that occur during the term of the Contract that are beyond the control of both the City and Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God ("Events"). These Events may result in a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of the Contract.
 - b. There shall be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the Events and the City shall not pay additional costs incurred by Contractor as a result of such Events.
 - c. The Parties shall act in good faith to extend the Contract completion date without any penalty to Contractor and that the extension will be in an amount of time equal to any temporary delay. This provision of the Contract supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

- 68. NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no cents (\$100,000), the Party shall certify that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.
- 69. CHANGES TO CONTRACT:** The Contract shall not be modified within the first year after Contract award where: (a) an amendment may result in a competitive advantage that was not made available to other proposers/bidders; or (b) requests for changes may delay commencement of performance.
- 70. 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 terminations on the Contract termination date.

EXHIBIT C

CITY OF FLAGSTAFF SPECIAL TERMS AND CONDITIONS

Working Conditions

1. No work will be performed on Saturdays, Sundays, Holidays, or after dark without previous written permission of the City.
2. Under no circumstances will any abrasive blasting or painting operation be conducted when the relative humidity is 85% or above, when the temperature is within 5 degrees of the dew point, or when the surface of the steel is wet. No work is to be done during damp, foggy weather or when it is raining.
3. Proper spray techniques, where specified, shall be followed at all times. Only competent workmen, experienced in the application of the specified coatings, shall operate spray equipment. The use of pole guns or spray gun extensions exceeding 12" is prohibited. Brushes shall be used to work paint into cracks, corners, or "blind" spots not adequately painted by spray. The rigging used in painting this tank will be left in position, in order that all surfaces may be observed after the coatings have cured.
4. The Contractor is to be aware that all cleaning operations are to conform to all Federal, State and Local regulations. If elevated lead and/or other toxin levels are discovered by any of the governing agencies, the Contractor will be solely responsible and be prepared to contain and dispose of these materials in an established fashion which meets with the written approval of these governing agencies. The Contractor shall assume all costs in meeting these governing agencies' requirements and shall not delay or suspend any abrasive blasting or painting operations in the process. The cleaning operations will also be regulated by wind velocity and/or direction. Abrasive blasting and/or painting operations may be suspended by the on-site observer or the City if in their opinion the wind is adversely affecting the quality of the work being performed. Failure to comply with the regulations stated herein shall be cause to suspend the Contractor's work at no further cost to the City, until the containment operation functions within the stipulated requirements.

Safety & Health Requirements

1. This project is subject to all the Safety and Health Regulations (29 CFR Part 1926 and all subsequent amendments) as promulgated by the U.S. Department of Labor on June 24, 1974, as well as 29 CFR 1910 Permit Required Confined Spaces for General Industry: Final Rule and the Contract work hours and Safety Standards Act (40 U.S.C. 327 et. Seg.) as supplemented by the Department of Labor Regulations (29 CFR Part 5). Contractors are urged to become familiar with the requirements of these regulations.
2. The Contractor shall comply with the requirements and standards of the William's-Steiger Occupational Safety and Health Act of 1970 and all other state and local laws, ordinances, codes, etc., governing all work to be provided under the Contract documents.
3. General: In accordance with requirements set forth by regulatory agencies applicable to the construction industry and manufacturer's printed instructions and appropriate technical bulletins and manuals, the Contractor shall provide and require use of personnel protective lifesaving equipment for persons working in or about the project site.

- A. Head and Face Protection and Respiratory Devices: Equipment shall include protective helmets which shall be worn by all persons while in the vicinity of the work. In addition, workers engaged in or near the work during sandblasting shall wear eye and face protection devices and air purifying, half mask or mouthpiece respirator with appropriate filter. Barrier creams shall be used on any exposed areas of skin.
- B. Ventilation: Where ventilation is used to control hazardous exposure, all equipment shall be explosion-proof. Ventilation shall reduce the concentration of air contaminant to the degree a hazard does not exist. Air circulation and exhausting of solvent vapors shall be continued until coatings have fully cured.
- C. Illumination: Adequate illumination shall be provided while work is in progress, including explosion proof lights and electrical equipment. Whenever required by the City, the Contractor shall provide additional illumination and necessary supports to cover all areas to be observed. The level of illumination for observation purposes shall be determined by the City.
- D. Temporary Ladders and Scaffolding: All temporary ladders and scaffolding shall conform to applicable safety requirements. They shall be erected where requested by the City to facilitate observation and be moved by the Contractor to locations requested by the City.

Sanitary Requirements

The Contractor and all workmen employed by him shall conduct all operations in a clean and sanitary manner. No nuisance shall be committed in a tank; the workmen shall either use proper waste receptacles or leave the tank whenever necessity arises. The Contractor shall make arrangements for portable sanitary facilities to be located onsite.

Protection of Surrounding Property

The Contractor shall be responsible for protection of all other property surrounding the tank and guarantee by use of the necessary precautions against any damage to same caused by falling materials or paint. In any case where property is damaged, the Contractor shall correct same prior to any payment.

Personnel Supervision of Contractor

The Contractor or his duly authorized and approved representative shall give personal attention to the fulfillment of the Contract. The Contractor shall have on the work site, at all times, a competent, English-speaking representative authorized to receive and execute any orders or directions of the City and/or any emergency personnel. The representative should also accept any notices given to the Contractor under the provisions of the Contract.

Application

The Contractor shall apply the paint to the tank by the method which protects surrounding property or equipment.

The Contractor should note that the paint manufacturer or the City does not assume any responsibility for damage to property or equipment. Accordingly, the Contractor is hereby given notice that he shall be required to use the utmost precaution and to take special care in the

method and manner of applying the paint to the structures and facilities of the City and nearby residents. Furthermore, by the execution of this Contract to paint the structures and facilities in question, the Contractor shall be deemed to have agreed to indemnify and save harmless the City, from and against all liability and cost, which the City may incur as the result of any damage to property of any nature in the surrounding area, attributable to and /or caused by the application of the paint to the structures and facilities of the City. Paint thickness and methods of application shall be as specified. If the thickness of the coatings is less than that specified, additional coats will be required.

Submittals

1. Schedule: Prior to ordering any coatings or doing any field work, the Contractor shall submit to the City a complete listing of all products he intends to use, indicating the surfaces and areas for each product, and stating the number of coats and the dry film thickness (DFT) of each coat. Such schedule shall be submitted sufficiently in advance of field work to allow the City to prepare a color scheme. All coatings to conform to materials outlined herein.
2. Color Cards: A minimum of 3 drawdowns of City selected color in the selected finish on 8X11 cards shall be submitted prior to the work. Contractor shall note that the project may require custom colors and the Contractor may be required to match existing site color.
3. Performance Criteria: Performance criteria indicating the proposed coating meets or exceeds ASTM test requirements for abrasion resistance, chemical resistance, adhesion, accelerated weathering, and any other pertinent test methods associated with water tank interior and exterior coating performance.
4. The Contractor is to submit a preliminary construction schedule for completion of the project and abrasive blasting procedure to be used on the project.
5. Failure to include items 1, 2, 3 and 4 will be considered an incomplete submittal.

Extra Work and Material

No claims for any extra work or materials will be allowed, unless it is ordered in writing by the City and the price to be paid is agreed upon by a written agreement before the work is done or material furnished.

Legal Requirements

The Contractor shall keep himself fully informed of, and comply with, all laws, ordinances and regulations of the Federal, State and Municipal governments, which may be in force during the life of the Contract, and in any manner affecting his employees or the conduct of the work or materials used on said work.

Subletting and Assigning Contract

The Contractor shall not sell, transfer, assign or otherwise dispose of the Contract to any third-party.

General Requirements

1. The Contractor shall examine the specifications and the drawings for the various trades, in connection with painting and finishing, and shall understand that all materials and equipment throughout the work which obviously require a painter's finish, and which are left unfinished by others, shall be painted to completion by this Contractor as a part of the work.
2. All exterior coatings are to comply with all current regulations and standards carrying the appropriate approvals from National Sanitation Foundation (N.S.F.) Standard 61 and 600 for Coatings and Linings; and meet current US EPA requirements for Volatile Organic Compounds (VOC) Compliance Level. All coatings shall meet and shall limit VOCs to the maximum allowable under the current VOC Compliant Regulations.
3. Guarantee. It will be the Contractor's obligation to guarantee his workmanship. Such guarantees shall state the products used will adhere to the surface without peeling and cracking, scaling, alligatoring, blistering, or fading for a period of at least **one year** from the date of acceptance of the painting work. Upon written notice of paint failure by any of the above, or similar reasons, the Contractor shall prepare surfaces, repaint the surface without additional cost to the City. If it is determined that the product chosen was faulty, the Contractor will still have the obligation of removing and replacing the coating without further expense to the City. Should the Contract have any reservation that the product specified will not perform as intended, he shall so notify the City and shall not proceed with that work until agreement is reached on mutually acceptable products.

Quality Assurance

1. Quality assurance procedures and practices shall be utilized to monitor all phases of surface preparation, application, and observation throughout the duration of the project. Procedures or practices not specifically defined herein may be utilized provided they meet recognized and accepted professional standards and are approved by the City. The City reserves the right to have observation performed by an "City's Representative" during the project.
2. Competent Workers to be Employed: The Contractor shall employ only competent and skillful men to do the work, and whenever the City shall notify the Contractor in writing that any man on the work is, in his opinion, disrespectful, or otherwise unsatisfactory, the Contractor, on receiving such notice shall forthwith dismiss such person and shall not again employ him on any part of the work without the written consent of the City. The Contractor shall also employ a full-time supervisor/ foreman, who will be on-site at all times and responsible for the coordination of all activities and schedules between the Contractor and City as well as the performance of all work outlined herein.
3. Surface Preparation: Surface Preparation will be based upon comparison with "Pictorial Surface Preparation Standard for Painting Steel Surfaces" SSPC-Vis 1- (Latest Version Thereof) Visual Standard for Abrasive Blast Cleaned Steel.
4. Application: No coating or paint shall be applied when the surrounding air temperature of the surface to be coated or painted is below manufacturers printed instructions; to wet or damp surfaces or in rain, snow, fog or mist; when the surface temperature is less than 5 degrees Fahrenheit above the dewpoint; when it is expected the air temperature will drop below recommended temperatures six hours after application of coating or paint. Dewpoint shall

be measured by use of an instrument such as a Sling Psychrometer in conjunction with US Department of Commerce Weather Bureau Psychrometric Tables.

5. Thickness checking and Observation Devices: The Contractor shall furnish their own equipment for quality control, until final acceptance of coatings and painting, observation devices in good working condition for detection of holidays and measurement of dry-film thickness gauge and certified instrumentation to test accuracy. Thickness of coatings and paint shall be checked with a non-destructive, magnetic type thickness gauge, which shall be supplied by the Contractor and available for use at the site in accordance with SSPC-PA 2. Dry film measurement should be performed in accordance with SSPC-PA 2 measurement of dry paint thickness with magnetic gages. Use an instrument such as a Tooke Gage if a destructive tester is deemed necessary.

Warranty

1. The Contractor agrees to make good, without cost to the City, any defects in the work or parts of the work furnished or built by him, and any damages due to faulty workmanship, on his part, or due to faulty or imperfect materials or equipment furnished by him, which may appear within one year from the "Date of Completion" of the work agreed to under this Contract.
2. Just prior to the expiration of one year immediately following the "Date of Completion", it is agreed that a representative of the City, a representative of the Contractor and a representative of the Manufacturer, whose paint is used for the work, shall make a complete observation of the tank to determine whether the painting work has stood up satisfactorily. A majority vote of the three parties, making the observation, shall determine whether there are any defects in the Contractor's work, which he shall repair.
3. The Contractor shall re-paint the tank or otherwise make good any defects in the work agreed to under this Contract which may be discovered by the aforesaid observation.
4. THE PERFORMANCE BOND SHALL REMAIN IN FULL FORCE AND EFFECT THROUGH THE GUARANTEE PERIOD.

Imperfect Work or Materials

Any defective or any imperfect work or materials furnished by the Contractor, that may be discovered before the final acceptance of the work as established by the City's "Certificate of Completion" shall be removed immediately even though it has been overlooked by the City and estimated for payment. Any materials condemned or rejected by the City shall be marked so conspicuously and shall, on demand, be at once removed to a satisfactory distance from the work. Satisfactory work or materials shall be substituted for that rejected.

Observation

1. All cleaning and painting shall be subject to routine observation by a representative of the City.
2. The City reserves the right to observe all cleaned surfaces prior to primer application and also each coat of paint prior to subsequent paint application. It is understood that such observation shall be made available to the City at any time during the performance of work.

The Contractor will give at least (24) hour notification to the City's representative as to insure availability for observation.

3. The Contractor shall correct such work as is found defective under the specification and supply such materials required to make the repairs at his own expense. If the dry film thicknesses of the applied coatings do not comply with the specified dry film thicknesses outlined, the Contractor shall apply additional coats of paint as necessary to ensure compliance with the contract specifications, at no extra cost to the City.
4. The Contractor shall maintain adequate and secure rigging facilities for use of the City's Observer. Scaffolding, boatswain chairs, spiders, or other rigging, removed prior to observation, shall be replaced at the Contractor's expense, as required by the City for thorough observation of the work. All applicable provisions of OSHA shall be adhered to.

Final Clean Up

Before the final acceptance of the Project, the Contractor shall remove all equipment, temporary work, unused and useless materials, rubbish, and temporary buildings, shall repair or replace in an acceptable manner other private or public property which may have been damaged or destroyed on account of the prosecution of the work and shall leave the site of the project and adjacent public and private property in a neat and presentable condition wherever his operations have disturbed conditions existing at the time starting work.

Release of Final Payment

1. The payment, for the final amount due under this Contract, shall release the City and every agent or employee of the City, and the agent and employees of any such agent, from any or all claims or liabilities on account of work performed under the Contract or any alteration thereof.
2. The Contractor shall be responsible for all damages caused to the surrounding landscaping and the City shall deduct from this Contract amount any damages not compensated by insurance of Contractor. Payment for final cleaning up and restoration of property, as above provided, will be included in the prices bid for the various scheduled items.

Products

1. Acceptable manufacturers are:
 - PPG/Amercoat
 - Tnemec Company
 - Sherwin Williams
2. Coating Systems shall conform to all current regulations and standards carrying the appropriate approvals from N.S.F. (National Sanitation Foundation) Standard 61 / 600 for Coatings and Linings. All coatings, both interior and exterior, shall meet all current U.S.E.P.A Requirements for V.O.C. (Volatile Organic Compounds) Compliance Level.
3. All materials shall be brought to the jobsite in original sealed containers. They shall not be used until the City has observed contents and obtained data from information on containers

or label. Materials exceeding storage life recommended by the manufacturer shall be rejected.

4. All coatings and paint shall be stored in enclosed structures to protect them from weather and excessive heat or cold. Flammable coatings or paint must be stored to conform with City, County, State and Federal safety codes for flammable coating or paint materials. At all times, coatings and paint shall be protected from freezing.
5. Paint Coordination:
 - A. Provide finish coats which are compatible with the prime coats used.
 - B. Review other Sections of these Specifications as required, verifying the prime coats to be used and assuring compatibility of the total coating system for the various sub-strata.
 - C. Upon request, furnish information on the characteristics of the specific finish materials to assure that compatible prime coats are used.
 - D. Provide barrier coats over non-compatible primers; or remove the primer and re-prime as required.
 - E. Notify the City in writing of anticipated problems in using the specified coating system over prime coatings supplied under other Sections.
 - F. Apply paint of specified Dry Film Thickness (DFT), which thickness shall be absolute minimum coverage at any point of measurement.

Painting

1. All paints and coatings shall be applied strictly in accordance with the manufacturer's instructions regarding surface preparation, pretreatments, mixing and thinning, temperature of material and substrate, curing or drying times before recoating, and all similar recommendations. Where pretreatments or subsequent coats required for film build with the products specified are omitted by virtue of the manufacturer's recommendations, a credit will be taken by the City for each coat omitted.
2. No painting shall be done when temperatures are outside of those recommended by the manufacturer in the respective product data sheets. No coating shall be applied when environmental conditions are not within the manufacturer's recommended ranges as provided in the respective product data sheets.
3. Manufacturer's Product Data Sheets are to be incorporated as part of this specification and the Safety Data Sheets (SDS) on all applicable paint materials and solvents shall be available and posted prior to commencement of work.
4. All painting practices shall be in complete accordance with the normal standards of good painting practice as outlined by the Steel Structures Painting Council in the SSPC Manuals Volume 1 and 2.

5. Any areas not finished to the complete satisfaction of the City, or City's representative shall either be removed and re-applied (all coats) or shall be given extra coats at his direction, to bring the total film thickness up to a minimum of dry mils.
6. The manufacturer's recommended drying time and application procedure will be strictly adhered to.
7. The coatings are to be cured in accordance with Manufacturer's recommendations, at the end of which time a solvent rub test will be performed to test the state of cure. If the coatings are not fully cured additional cure times will be outlined.
8. The City shall select the color(s) of the finish coats from color charts submitted by the Contractor. The intermediate and finish coat colors shall have sufficient color contrast to act as an indicator of coverage.
9. Paint System:
 - A. Number of coats and thickness requirements will vary with substrate, application method and exposure. The Contractor shall comply with requirements as stated by manufacturer.
 - B. Exterior coatings will be approved based on aesthetics as well as performance, no runs, drips, or embedded material will be accepted.
 - C. The stripe coat of paint will be brush applied to all weld seams, lap seams, bolted connections, angles, and areas of pitting and pitted areas to ensure total coverage.
 - D. No excessive spray dust or solvent entrapment will be allowed in the completed paint system.

General

1. The Contractor, in submitting his bid, acknowledges that he is aware of the importance associated with the containment and disposal requirements and that he accepts the responsibility for providing environmental protection to the satisfaction of the City and the state and local governing agencies.
2. All surface preparation, coating and painting shall conform to applicable standards of the Steel Structures Painting Council, and the manufacturer's printed instructions. Materials applied prior to approval of the surface by the City shall be removed and reapplied to the satisfaction of the City at the expense of the Contractor.
3. Dust, dirt, oil, grease, or any foreign matter that will affect the adhesion or durability of the finish must be removed by washing with clean rags dipped in an approved cleaning solvent and wiped dry with clean rags.
4. Coating and painting systems include surface preparations, prime coating, and finish coatings. Unless otherwise specified, prime coating shall be field applied. Where prime coatings are shop applied, the Contractor shall instruct suppliers to provide the prime coat compatible with the finish coat specified. Any off-site work which does not conform to this specification is subject to rejection by the City.

5. The Contractor's coating and painting equipment shall be designed for application of materials specified and shall be maintained in first class working condition. Compressors shall have suitable traps and filters to remove water and oils from the air.
6. Application of the first coat shall follow immediately after surface preparation and cleaning within an eight (8) hour work-day. Any cleaned areas not receiving a first coat within an eight (8) hour period or is exhibiting "Rust Bloom" shall be re-cleaned prior to application of the first coat.

Waste Disposal

1. The Contractor is responsible for the proper and legal disposal of all cleaning particulate at the completion of the surface preparation phase of the project. The disposal of the cleaning particulate as well as all paint containers shall conform to all federal, state, and local agency regulations for disposal of such debris as outlined below.
2. On-site treatment of any hazardous material will be allowed providing it complies with acceptable methods and practices as outlined by EPA regulations.
3. The Contractor will NOT be allowed to use recyclable abrasives.

Worker Protection

1. The Contractor shall minimize exposure using engineering controls, proper protective equipment, and good work practices.
2. The Contractor will be responsible for development and implementation of a worker protection program.
3. The Contractor will also provide the City's Observer with appropriate respirators, in addition to all other safety equipment he/she might require while on the job site.

Items to be Painted

It is not the objective of this specification to name every item which will require a painter's finish. Where items are noted, it is intended that all items of a similar material shall have the same decorative or protective coating within the same space or use area of the facility. However, as a guide to the Contractor, the following is given as typical of the items and surfaces requiring painter's finish: Exterior of steel tank and all appurtenances such as ladders, hatches, level indicators, safety railings and enclosures.

EXHIBIT D

INSURANCE REQUIREMENTS

(Updated April 10, 2024)

*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.