CITY COUNCIL REGULAR MEETING AGENDA

REGULAR COUNCIL MEETING
TUESDAY
NOVEMBER 5, 2024

COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
3:00 P.M.

All City Council Meetings are live streamed on the city's YouTube page (https://www.youtube.com/@FlagstaffCityGovernment)

PUBLIC COMMENT

Verbal public comments not related to items appearing on the posted agenda may be provided during the "Open Call to the Public" at the beginning and end of the meeting and may only be provided in person.

Verbal public comments related to items appearing on the posted agenda may be given in person or online and will be taken at the time the item is discussed.

To provide online verbal comment on an item that appears on the posted agenda, use the link below.

ONLINE VERBAL PUBLIC COMMENT

Written comments may be submitted to publiccomment@flagstaffaz.gov. All comments submitted via email will be considered written comments and will be documented in the record as such.

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1. CALL TO ORDER

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for discussion and consultation with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

2. ROLL CALL

NOTE: One or more Councilmembers may be in attendance through other technological means.

MAYOR DAGGETT
VICE MAYOR ASLAN
COUNCILMEMBER HARRIS
COUNCILMEMBER HOUSE
COUNCILMEMBER MATTHEWS
COUNCILMEMBER MCCARTHY
COUNCILMEMBER SWEET

3. PLEDGE OF ALLEGIANCE, MISSION STATEMENT, AND LAND ACKNOWLEDGEMENT

MISSION STATEMENT

The mission of the City of Flagstaff is to protect and enhance the quality of life for all.

LAND ACKNOWLEDGEMENT

The Flagstaff City Council humbly acknowledges the ancestral homelands of this area's Indigenous nations and original stewards. These lands, still inhabited by Native descendants, border mountains sacred to Indigenous peoples. We honor them, their legacies, their traditions, and their continued contributions. We celebrate their past, present, and future generations who will forever know this place as home.

4. OPEN CALL TO THE PUBLIC

Open Call to the Public enables the public to address the Council about an item that is not on the prepared agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. Open Call to the Public appears on the agenda twice, at the beginning and at the end. The total time allotted for

the first Open Call to the Public is 30 minutes; any additional comments will be held until the second Open Call to the Public.

If you wish to address the Council in person at today's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Open Call to the Public and Public Comment. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

5. PROCLAMATIONS AND RECOGNITIONS

A. **Presentation of Leadership in Energy Efficiency Award**

6. COUNCIL LIAISON REPORTS

7. CONSENT AGENDA

All matters under Consent Agenda are considered by the City Council to be routine. Unless a member of City Council expresses a desire at the meeting to remove an item from the Consent Agenda for discussion, the Consent Agenda will be enacted by one motion approving the recommendations listed on the agenda. Unless otherwise indicated, expenditures approved by Council are budgeted items.

STAFF RECOMMENDED ACTION:
Approve the Consent Agenda as posted.

A. Consideration and Approval of Contract: Award the Design-Build Services Agreement for the Montalvo Science, Technology, Engineering and Mathematics (STEM) Education Community Center to Loven Contracting, Inc.

STAFF RECOMMENDED ACTION:

1. Approve the Design Build contract to Loven Contracting, Inc. for the construction of the Montalvo Science, Technology, Engineering and Mathematics (STEM) Education Community Center in an amount not to exceed $2,400,000; and
2. Authorize the City Manager to execute the necessary documents.

B. Consideration and Approval of Contract: Contract for Professional Services with J.E. Fuller and Associates for $100,000.00 to develop a Surface Water - Groundwater Recharge Model

STAFF RECOMMENDED ACTION:

1. Approve the Contract for Professional Services with J.E. Fuller for $100,000.00 to develop a Surface Water - Groundwater Recharge Model; and
2. Authorize the City Manager to execute the necessary documents.

C. Consideration and Approval of Contract: Cooperative Purchase Contract with Empire Southwest, LLC for the purchase of two (2) 2024 CAT AWD Motor Graders in an amount not to exceed $868,457.73.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract with Empire Southwest, LLC for the purchase of two (2) 2024 Caterpillar 140 AWD Motor Graders in an amount not to exceed $868,457.73; and
2. Authorize the City Manager to execute the necessary documents.

D. **Consideration and Approval of Contract:** Renewal of a Contract for Digital Ad Serving for a one-year term in the amount of $160,000.00, with authority for the City Manager to approve the final one-year term in an additional amount of $160,000 (total of $320,000).

STAFF RECOMMENDED ACTION:

1. Approve renewal of contract with Datafy with authority for the City Manager to approve the final one-year term in an additional amount of $160,000 (total of $320,000) through September 14, 2026, and
2. Authorize the City Manager to execute the necessary documents.

E. **Consideration and Approval of Contract:** Approve the Construction Contract with Summit Construction Company, LLC for the Spruce Wash Water & Sewer Replacement at North First Street.

STAFF RECOMMENDED ACTION:

1. Approve the construction contract with Summit Construction Company, LLC ("Contractor") in the amount of $613,650.00 and a contract time duration of 290 calendar days;
2. Approve a contract allowance of $46,023.75, which is 7.5% of the Contractor's Bid;
3. Approve Change Order Authority to the City Manager in the amount of $61,365.00 (10% of the contract amount, less allowances); and
4. Authorize the City Manager to execute the necessary documents.

8. ROUTINE ITEMS

A. **Consideration and Adoption of Resolution No. 2024-43 and Ordinance No. 2024-26:** A resolution of the Flagstaff City Council declaring as a public record that certain document filed with the City Clerk entitled "*Animal Keeping Code Amendments*" and an ordinance of the City Council of the City of Flagstaff, Coconino County, Arizona, amending the Flagstaff City Code, Title 6, Police Regulations, Chapter 6-03, Animal Keeping.

STAFF RECOMMENDED ACTION:

1. Adopt Resolution No. 2024-43
2. Read Ordinance No. 2024-26 by title only for the final time
3. City Clerk reads Ordinance No. 2024-26 by title only (if approved above)
4. Adopt Ordinance No. 2024-26

9. REGULAR AGENDA

A. **Consideration and Adoption of Resolution No. 2024-44:** A resolution of the Flagstaff City Council, approving an Intergovernmental Agreement between the City of Flagstaff and Coconino County for submission of a grant application and approval upon award of the U.S. Department of Justice, Fiscal Year 2024 Edward Byrne Memorial Justice Assistance (JAG) Grant.

STAFF RECOMMENDED ACTION:

1. Read Resolution No. 2024-44 by title only
2. City Clerk reads Resolution No. 2024-44 by title only (if approved above)
3. Adopt Resolution No. 2024-44

B. **Consideration and Approval of Budget Adjustment:** Fiscal Year 2023-24 Year End Budget Adjustment for Police and City Manager Divisions and Fiscal Year 2024-35 Budget Adjustments for City Manager Division

STAFF RECOMMENDED ACTION:

1. Approve the transfer of FY2023-24 budget appropriations from the General Fund Non-Department account to the Police Department and City Manager Division in the amounts of $1,900,000 and $9,800, respectively.
2. Approve the transfer of FY2024-25 budget appropriation from the General Fund Non-Department account to City Manager Division in the amount of $65,000.

10. OPEN CALL TO THE PUBLIC

11. INFORMATIONAL ITEMS TO/FROM MAYOR, COUNCIL, AND STAFF, AND FUTURE AGENDA ITEM REQUESTS

12. ADJOURNMENT

CERTIFICATE OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on _____, at _____ a.m./p.m. in accordance with the statement filed by the City Council with the City Clerk.

Dated this _____ day of _____, 2024.

_____
Stacy Saltzburg, MMC, City Clerk

THE CITY OF FLAGSTAFF ENDEAVORS TO MAKE ALL PUBLIC MEETINGS ACCESSIBLE TO PERSONS WITH DISABILITIES. With 48-hour advance notice, reasonable accommodations will be made upon request for persons with disabilities or non-English speaking residents. Please call the City Clerk (928) 213-2076 or email at stacy.saltzburg@flagstaffaz.gov to request an accommodation to participate in this public meeting.

NOTICE TO PARENTS AND LEGAL GUARDIANS: Parents and legal guardians have the right to consent before the City of Flagstaff makes a video or voice recording of a minor child, pursuant to A.R.S. § 1-602(A)(9). The Flagstaff City Council meetings are live-streamed and recorded and may be viewed on the City of Flagstaff's website. If you permit your child to attend/participate in a televised Council meeting, a recording will be made. You may exercise your right not to consent by not allowing your child to attend/participate in the meeting.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Scott Overton, Public Works Director

Date: 10/31/2024

Meeting Date: 11/05/2024

TITLE:

Consideration and Approval of Contract: Award the Design-Build Services Agreement for the Montalvo Science, Technology, Engineering and Mathematics (STEM) Education Community Center to Loven Contracting, Inc.

STAFF RECOMMENDED ACTION:

1. Approve the Design Build contract to Loven Contracting, Inc. for the construction of the Montalvo Science, Technology, Engineering and Mathematics (STEM) Education Community Center in an amount not to exceed $2,400,000; and
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

The property located at 2230 E. Spruce Ave is a former fire station site located adjacent to the Joel Montalvo baseball complex. The former fire station was deemed to be at the end of public use and service and has sat empty and underutilized for many years. In early 2020, discussions about a Science, Technology, Engineering and Mathematics (STEM) Edcuation Community Center Project occurred, leading to the development of a facility concept. Additional due diligence, involving building analysis by Public Works, Sustainability and an outside construction consultant resulted in concurrence of a complete demolition of the existing structure. Funding for this project comes from the General Fund resources which were made available through the American Rescue Plan act from the revenue replacement category. A preliminary concept and thorough review in Community Development has been completed using the site planning process. During that process, supporting infrastructure, site plan engineering, landscape planning and overall concept approvals were obtained. The issuance of a Request of Statement of Qualifications (RSOQ) seeking firms interested in the design and delivery of a STEM project at the site was opened in the Summer of 2024.

Today's action is to consider and approve the result of solicitation 2024-138 and approve the Design-Build Services Agreement with Loven Contracting, Inc., in an amount not to exceed $2,400,000. Once the master agreement is approved, there will be a series of Guaranteed Maximum Price (GMP) contract amendments that clearly define delivery scope, costs and timelines to perform. Each GMP is unique to a scope and often bundled as the project progresses through delivery until final acceptance of the project by the city.

Financial Impact:

Project Name: Montalvo STEM Education Commnuity Center
Construction Cost: $2,400,000.00
Account Number Budgeted: 001-09-402-6321-1-4435 and 001-09-402-6321-1-4421
FY Budgeted Amount: $2,400,000.00 Construction and $335,011.00 Design
Funding Source: American Rescue Plan Act (ARPA) Pub. L. No. 117-2

Policy Impact:

This action fulfills the initial commitment by the city to utilize a portion of the American Rescue Plan for the

delivery of an education community center project.

Previous Council Decision or Community Discussion:
Council Budget Retreats and direction has been provided previously. Sunnyside Neighborhood Association has been active in occasional updates.

Options and Alternatives to Recommended Action:
1. Reject all proposals and decline to enter into the Design-Build Services Agreement and refer the item back to staff for an alternative solicitation.
2. Do not proceed with the delivery of this project and provide staff with alternative direction or guidance on the site use or funding allocations.
3. Continue to negotiate the terms or conditions with respondent based on City Council feedback or direction.

Background and History:
The City of Flagstaff Procurement Department and Project Manager solicited a Request for Statement of Qualifications - Design Build on PlanetBids. This was published July 20th & August 3rd, 2024, in Arizona Daily Sun, open on PlanetBids from July 7th to August 16th, 2024. A group of evaluators from the City and one County staff evaluated the submission and decided to move forward with request to award Loven Contracting, Inc.

Connection to PBB Priorities and Objectives:
1. Ensure City facilities, services, and programs are accessible for all residents and representative of Flagstaff's diverse community.
2. Support the community's social infrastructure needs; assist those partner organizations that provide services the City does not.
3. Enhance relationships between the development community, the City, and Flagstaff residents.
4. Create a welcoming community through partnerships, resilient neighborhoods.
5. Provide amenities and activities that support a healthy lifestyle.
6. Work with regional partners that provide equitable and inclusive educational and cultural opportunities for Flagstaff residents of all ages.

Connection to Regional Plan:
1. Goal CC.5. Support and promote art, science, and education resources for all to experience.
2. Goal LU.1. Invest in existing neighborhoods and activity centers for the purpose of developing complete, and connected places.
3. Goal PF.2. Provide sustainable and equitable public facilities, services, and infrastructure systems in an efficient and effective manner to serve all population areas and demographics.
4. Goal NH.1. Foster and maintain healthy and diverse urban, suburban, and rural neighborhoods in the Flagstaff region.
5. Goal NH.6. Neighborhood conservation efforts of revitalization, redevelopment, and infill are compatible with and enhance our overall community character.

Connection to Carbon Neutrality Plan:

IR-3	Plan for changes to recreation, reduce emissions, and respond to the impacts of climate change on current Parks and Recreation facilities and operations.
FS-1	Reduce or remove natural gas usage in municipal buildings
CE-2	Increase renewable energy installations and usage in new buildings.
IR-2	Ensure equity, accessibility, and inclusion across all City of Flagstaff Parks and Recreation facilities, helping all members of the Flagstaff community to meet their health and wellness needs.

Connection to 10-Year Housing Plan:

N/A

Connection to Division Specific Plan:

N/A

Attachments: Design Build Agreement

CITY OF FLAGSTAFF, ARIZONA

CITY OF FLAGSTAFF
MONTALVO SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS EDUCATION COMMUNITY CENTER
Design-Build Services Agreement

Contract No. 2024-138
Project No. CL6321M

Mayor
Becky Daggett

City Council

Austin Aslan	Lori Matthews
Deborah Harris	Jim McCarthy
Khara House	Miranda Sweet

City Manager
Greg Clifton

Public Works Director
Scott Overton

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS 1

ARTICLE 2 – DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES 5

ARTICLE 3 – CITY'S SERVICES AND RESPONSIBILITIES 22

ARTICLE 4 – CONTRACT TIME 24

ARTICLE 5 – CONTRACT PRICE 26

ARTICLE 6 – CHANGES TO CONTRACT PRICE AND TIME 30

ARTICLE 7 – PROCEDURE FOR PAYMENT 33

ARTICLE 8 – CLAIMS AND DISPUTES 37

ARTICLE 9 – SUSPENSION AND TERMINATION 39

ARTICLE 10 – INSURANCE AND BONDS 42

ARTICLE 11 – INDEMNIFICATION 46

ARTICLE 12 – GENERAL PROVISIONS 47

EXHIBIT A – PROJECT DESCRIPTION 47

EXHIBIT B – SCOPE OF SERVICES 48

EXHIBIT C – MONTHLY ANTICIPATED ADVERSE WEATHER DAYS 49

DESIGN-BUILD SERVICES AGREEMENT

PROJECT NO. CL6321M

CONTRACT NO. 2024-138

THIS AGREEMENT is made and entered by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation, hereinafter designated the “CITY,” and Loven Contracting, Inc, an Arizona corporation, hereinafter designated the "DESIGN-BUILDER.”

RECITALS

A. The City Manager of the City of Flagstaff, Arizona, is authorized and empowered by provisions of the City Charter to execute contracts for professional services and construction services.

B. The City intends to construct the Montalvo STEM Education Community Center Project as more fully described in Exhibit A attached hereto, hereinafter referred to as the “Project.”

C. The City is a recipient of funds through the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021). It is anticipated that a portion of this Project will be financed by the Revenue Replacement allocation for Education Assistance in Flagstaff.

D. The Design-Builder has represented to the City its ability to design and construct the Project, and based on this representation the City has engaged Loven Contracting, Inc., to design and construct the Project.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the Design-Builder as follows:

Article 1 - Definitions

“Addenda” written or graphic instruments issued prior to the submittal of the GMP proposal(s), which clarify, correct, or change the GMP proposal(s) requirements.

“Agreement” or “Contract” means this written document signed by the City and Design-Builder covering the design and construction of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract. This term shall also include the RSOQ, all Attachments and Exhibits, and all Appendices.

“Change Order” (Amendment) means a written instrument issued after execution of this Agreement, signed by City and Design-Builder, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; the extent of the adjustment to the Contract Time(s) or modifications of other contract terms.

“City” (Owner) means the City of Flagstaff, a municipal corporation, with whom Design-Builder has entered into this Contract and for whom the services are to be provided pursuant to this Agreement.

“City’s Representative” means the designated City Representative.

"City’s Senior Representative" means the designated Senior Representative.

"Commissioning" means the process prescribed in this Agreement for achieving, validating, and documenting the performance of the total Project and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications, and drawings prepared by the Design-Build team and include documents as prescribed by this Agreement.

"Construction Drawings" means the detailed drawings, corrected for permit requirements, approved as part of the Construction Documents.

"Construction Fee" means the Design-Builder's administrative costs, home office overhead, and profit.

"Contract Documents" means the following items and documents in descending order of precedence executed by the City and the Design-Builder: (i) all written modifications, amendments, and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) Design-Builder's GMP proposal; and (v) Design-Builder's Statement of Qualifications.

"Contract Price" means the amount or amounts set in this Contract, subject to adjustment in accordance with this Agreement.

"Contract Time" means the period of time, as set forth in this Agreement, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

"Cost of the Work" means the direct costs necessarily incurred by the Design-Builder in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees (if not paid for by City), materials testing, and related items. The Cost of the Work shall not include the Design-Builder's Construction Fee, General Conditions Costs, or applicable State of Arizona and City of Flagstaff transaction privilege taxes.

"Critical Path" means the sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work product(s) prepared by the Design-Builder in performing the scope of work described in this Contract. Some of the major Deliverables to be prepared and provided by the Design-Builder during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP proposals, Subcontractor procurement plan, Statement of Proposed MBE/WBE Utilization as may be required or appropriate, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

"Design Services" means all professional services to be performed or procured by the Design-Builder to provide required Project design under this Agreement and any subsequent amendments.

“Design-Builder” means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract.

"Design-Builder’s Contingency” means a fund to cover cost growth during the Project used at the discretion of the Design-Builder, usually for costs that result from Project circumstances. The amount of the Design-Builder’s Contingency will be negotiated as a separate line item in each GMP package. Use and management of the Design-Builder’s Contingency is described in this Agreement.

"Design-Builder’s Senior Representative" means the person designated in this Agreement.

“Design-Builder’s Representative” means the person designated in this Agreement.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that: (i) materially differ or are not reasonably inferable from the conditions indicated in the Contract Documents; or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Completion” means the completion of the Project as prescribed in this Agreement.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“General Conditions Costs” includes but is not limited to the following types of costs for the Design-Builder during the construction phase: (i) payroll costs for project manager or construction manager for work conducted at the Site; (ii) payroll costs for the superintendent and full-time general foremen; (iii) payroll costs for other management personnel resident and working at the Site; (iv) workers not included as direct labor costs engaged in support (e.g., loading/unloading, clean-up, etc.); (v) administrative office personnel; (vi) costs of offices and temporary facilities set up solely for this Project including office materials, office supplies, office equipment, and minor expenses; (vii) utilities, fuel, sanitary facilities, and telephone services at the Site; (viii) costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs; (ix) costs of bond premiums; and (x) cost of consultants not in the direct employ of the Design-Builder or Subcontractors.

“Guaranteed Maximum Price” or “GMP” means the sum of the cost for design, permitting, and maximum cost of the construction including the Design-Builder’s Construction Fee, General Conditions Costs; sales tax; and Design-Builders Contingency.

“GMP Plans and Specifications” means the plans and specifications upon which the Guaranteed Maximum Price proposal is based.

“Legal Requirements” means all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders, and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project, Site, or Work.

“Notice to Proceed” or “NTP” means the directive issued by the City authorizing the Design-Builder to start Work.

“Owner’s Contingency” means a fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City’s directed changes or Differing Site Conditions, or as the City may otherwise elect. The amount of the Owner’s Contingency will be set solely by the City and will be in addition to the Project costs included in the Design-Builder’s

GMP packages. Use and management of the Owner's Contingency is described in this Agreement.

"Payment Request" means the City form used by the Design-Builder to request payment for Work in accordance with this Agreement.

"Performance Period" means the period of time allotted in the Contract Documents to complete the construction comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Schedule.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the construction.

"Project" means the Work to be completed in the execution of this Agreement and as amended and as described in the Recital above and in Exhibit A.

"Project Schedule" means a schedule as prescribed in this Agreement.

"Record Documents" means the documents created pursuant to this Agreement.

"Recovery Schedule" means a schedule created pursuant to this Agreement, which clearly and realistically identifies adjustments proposed to bring the Project back to the initial project Substantial Completion date.

"Samples" means physical examples which illustrate materials, equipment, or workmanship and establish standards by which the construction will be judged.

"Scheduled Substantial Completion Date" means the date on which the Work, or an agreed upon portion of the Work, is anticipated to be sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes.

"Schedule of Values (SOV)" means the document specified in the construction phase which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Project Schedule depending on if the Project Schedule is cost-loaded or not.

"Shop Drawings" means drawings, diagrams, schedules, and other data specially prepared for the construction by the Design-Builder or a Subcontractor, Sub-subcontractor, manufacturer, Supplier, or distributor to illustrate some portion of the construction.

"Site" means the land or premises on which the Project is located.

"Subcontractor" or "Subconsultant" means an individual or firm having a direct contract with the Design-Builder or any other individual or firm having a contract with the aforesaid contractors at any tier who undertakes to perform a part of the Work for which the Design-Builder is responsible.

"Substantial Completion" means the established date when the Work or designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so that the City may occupy the Work, or designated portion thereof, for the use for which it is intended. This may include but is not limited to: (i) approval by the City or State Fire Marshall and/or other state or local authorities having jurisdiction over the Work or a portion thereof (Certificate of Occupancy);

(ii) all systems in place, functional, and displayed to, and accepted by, the City or it's representative; (iii) City operation and maintenance training complete; (iv) HVAC test and balance completed with reports provided to the Design Professional for review; (v) operational and maintenance manuals and final Project Record Documents delivered to the City or Design Professional for review; (vi) landscaping and site work complete; and (vii) final cleaning complete.

"Supplier" means a manufacturer, fabricator, supplier, distributor, material manager, or vendor having a direct contract with Design-Builder or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by Design-Builder or any Subcontractor.

"Work" means all design, construction, and Commissioning services, including procuring and furnishing materials, equipment, services, and labor reasonably inferable from the Contract Documents.

Article 2 – Design-Builder's Services and Responsibilities

The following sections prescribe the services and responsibilities required for the proper execution and completion of the Work by the Design-Builder. They are not organized in any specific order and may pertain to all phases of the Work.

2.1 General Services.

2.1.1 Design-Builder shall, through personnel employed by Design-Builder, or procured from qualified Subconsultants or Subcontractors, perform all Work, and provide all material, equipment, tools, and labor necessary to complete the Work described in and reasonably inferable from this Agreement.

2.1.2 This Agreement shall be executed and signed by City and Design-Builder, stating their agreement to proceed with design in accordance with all codes, standards and requirements as adopted by ordinance or as may be referenced in Exhibit B – Scope of Services.

2.1.3 An amendment to this Agreement may be executed and signed by City and Design-Builder, stating their agreement to a GMP, or multiple GMP's, and to proceed with the completion of the design and construction of the Project.

2.1.4 The City hereby acknowledges its acceptance of the key personnel of the design-build team as submitted by the Design-Builder in its statement of qualifications or as amended subsequently during the selection process. At any time hereafter that the Design-Builder desires to reassign or change key personnel while performing under this Agreement, the Design-Builder shall submit a request to reassign or change key personnel and the qualifications of the proposed new key personnel to the City for prior approval.

2.1.5 The Design-Builder will maintain an adequate and competent staff of qualified persons, as may be determined by the City, throughout the performance of this Agreement. If the City objects, with reasonable cause, to any of the Design-Builder's design professionals, the Design-Builder shall take prompt corrective action acceptable to the City and, if required, remove such persons from the Project and replace with new design professionals agreed to by the City.

2.1.6 Design-Builder's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with City and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced as described in this Agreement.

2.1.7 The parties will meet within seven (7) Days after execution of this Agreement to discuss issues affecting the administration of the Work, the Project Schedule, and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under this Agreement. The Notice to Proceed (NTP) date prescribed in this Agreement will be established.

2.2 Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed design consultants, the necessary Design Services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. The Design-Builder's design professionals shall seal with an Arizona registered professional seal all plans, works, and Deliverables prepared by them for this Agreement as required by state law.

2.2.2 The Design-Builder understands and agrees that the City's Senior City Representative or City Representative, shall be the sole contacts for administering this Agreement. The Design-Builder is not precluded from discussing the Project, or its requirements with the tenants or other entities which will ultimately use the facility, but all specific directions to or requests of the Design-Builder must be authorized by the Senior City Representative or the City Representative.

2.3 Standard of Care for Design Professional Services and Corrections.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the services, which standards are to be set forth in an exhibit to this Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

2.3.2 The Design-Builder shall be responsible for the completeness and accuracy of the plans, specifications, supporting data, and other work prepared or compiled under its obligation for this Project and shall correct, at its expense, all errors, omissions and negligent acts therein which may be discovered. Correction of errors, omissions and negligent acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design-Builder. The cost of the design necessary to correct those errors attributable to the Design-Builder shall not be reimbursable costs to the Design-Builder. Any damage incurred by the City as a result of additional construction cost caused by such errors, omissions or

negligent acts shall not be reimbursed to the Design-Builder to the extent that such errors, omissions and negligent acts fall below the standard of care and skill that a registered professional in Arizona would exercise under similar conditions. The fact that the City has accepted or approved the Design-Builder's product shall in no way relieve the Design-Builder of any of its responsibilities.

2.4 Project Schedule.

2.4.1 The Project Schedule shall be established within seven (7) Days of the NTP and updated and maintained throughout the Work. An updated Project Schedule shall be part of any GMP amendment.

2.4.2 The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents.

2.4.3 An updated Project Schedule shall be submitted monthly to the City five (5) working Days prior to the Design-Builder's monthly Payment Request as prescribed in this Agreement.

2.4.4 Design-Builder shall provide City with a monthly status report with each Project Schedule detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, and (iii) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price(s) and within the Contract Time(s).

2.4.5 With each Project Schedule submitted, the Design-Builder shall include a transmittal letter including the following.

- Description of problem tasks (referenced to field instructions, requests for information (RFIs), change order or claim numbers) as appropriate.
- Current and anticipated delays not resolved by approved change order, including:
  - Cause of the delay
  - Corrective action and schedule adjustments to correct the delay
  - Known or potential impact of the delay on other activities, milestones, and the date of Substantial Completion
  - Changes in construction sequence
- Pending items and status thereof including but not limited to:
  - Pending change orders
  - Time extension requests
  - Other items
- Substantial Completion date status:
  - If ahead of schedule, the number of Days ahead
  - If behind schedule, the number of Days behind
- Other Project or scheduling concerns

2.4.6 City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the Design-Builder from compliance with the requirements

of the Contract Documents or be construed as relieving the Design-Builder of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

2.4.7 Upon the City's request, the Design-Builder shall participate in the review of the Design-Builder's Project Schedule submissions. The City may request the participation of Subconsultants and/or Subcontractors in these reviews, as determined necessary by the City.

2.4.8 The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the path of critical activities.

2.4.8.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates, and total Float times for all activities except critical activities. The CMP diagram shall be presented in a time scaled graphical format for the Project as a whole.

2.4.8.2 The CPM diagram schedule shall indicate all relationships between activities.

2.4.8.3 The activities making up the schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

2.4.8.4 The CPM diagram construction schedule shall be based upon activities, which would coincide with the Schedule of Values.

2.4.8.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

2.4.8.6 The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the Design-Builder's activities.

2.4.8.7 The schedule shall include a Critical Path activity that reflects anticipated weather delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on the information set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.

2.4.9 The Project Schedule shall consider the City's occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.

2.4.10 In the event of significant delays, lags or changes in the planned sequence of activities, as determined by Owner, Contractor shall provide to Owner a Recovery Schedule indicating proposed rescheduling of activities to achieve completion of the Project by the Scheduled Substantial Completion Date.

2.4.11 Float time shall be as prescribed below:

2.4.11.1 The total Float within the overall schedule, is not for the exclusive use of either the City or the Design-Builder, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.

2.4.11.2 The Design-Builder shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date, and then only if such extensions or damages are shown to be justified under the Contract Documents.

2.4.11.3 Since Float time within the construction schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., Critical Path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in a savings of time to the Design-Builder, etc.). In such an event, the Design-Builder shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

2.5 Cost Estimates.

2.5.1 The Project budget available for the Work will be communicated to the Design-Builder through separate correspondence. The Design-Builder is responsible for the delivery of the Project covered by the Contract Documents within the Project budget.

2.5.2 With each Project Schedule submittal pursuant this Agreement, the Design-Builder shall provide a detailed cost estimate and a written review of the documents.

2.5.3 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project budget, the Design-Builder shall make at its sole expense appropriate recommendations on methods and materials to the City that it believes will bring the Project back into the Project budget. Additionally, consideration will be made whether any budget overruns are a result of City requested scope modifications, deletions, or additions. Any portion of the budget overruns attributable to the City, in part or in whole, as a variance from any previously accepted budget, will not be required to be reconciled at the expense of the Design-Builder.

2.5.4 In between these milestone estimates, the Design-Builder shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the Design-Builder to keep the City informed as to the major trend changes in costs relative to the City's budget.

2.5.5 If requested by the City, the Design-Builder shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

2.6 Not Used.

2.7 Construction Management Plan.

2.7.1 The Design-Builder will prepare a Construction Management Plan (CMP).

2.7.2 The CMP shall include:

- Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project;
- Investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities;
- Alternate strategies for fast-tracking and/or phasing the construction,
- Goal compliance strategy;
- The number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction;
- Permitting strategy;
- Safety and training programs;
- Construction quality control;
- Commissioning program;
- Cost estimate and basis of the model; and
- Matrix summarizing each Project Team member's responsibilities and roles.

2.7.3 The Design-Builder shall add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of construction.

2.8 Design Services.

2.8.1 Design-Builder shall provide all interim design submissions and Deliverables as prescribed in the Performance Standards Requirements provided by the City, and as shown on the Project Schedule.

2.8.2 Within seven (7) Days after a scheduled submission, the Design-Builder and City shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or previously submitted design submissions.

2.8.3 The Design-Builder, with each required submittal, shall submit and distribute ten, or as otherwise identified in the Performance Standards Requirements, hard copy sets of plans and specifications.

2.8.4 Minutes of the meetings will be maintained by Design-Builder and provided within five Days following the design review meeting to all attendees for review.

2.8.5 City shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's Owner approved Project Schedule.

2.8.6 Design-Builder shall not cause the design to proceed until City approves the interim design submissions as prescribed in this Agreement. If the Design-Builder allows the design to proceed without City approval, the cost of any resultant redesign is not a reimbursable cost. The interim design submission and approval of the same shall include defined design documents, master schedule, and design phase budget (cost model, estimate and or GMP).

2.8.7 City's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Project. Neither City's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability to the City.

2.8.8 The Project design must meet all applicable (i) Maricopa Association of Governments (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; (ii) the City of Flagstaff Supplements and Amendments to the latest revision of the MAG Uniform Standard Technical Specifications and Uniform Details and Drawings; (iii) the City of Flagstaff Engineering Design and Construction Standards and Specifications, latest edition; (iv) all City building standards; and (v) shall include any general provisions provided by the City.

2.8.9 The Project design criteria and specifications shall be in accordance with all codes, standards and requirements as adopted by ordinance or as may be referenced in Exhibit C – Performance Standards Requirements. Variances from the standards and guidelines must be identified in writing by the Design-Builder and approved by the City. The Design Builder shall identify conflicts between the design standards and guidelines and the requirements in this Agreement or Legal Requirements and shall obtain concurrence with resolution of the conflict. The design standards and guidelines or approval of variances or resolution of conflicts shall not be deemed to transfer any design liability to the City.

2.8.10 The Design-Builder shall not specify any construction materials known to be hazardous or potentially hazardous, including asbestos, lead or any derivative thereof unless specifically approved in writing by the City.

2.8.11 The Design-Builder shall coordinate with private, public, and City utilities (i.e., Information Technology Division, Water Services Division) regarding standard utility issues and incorporate pertinent information in the plans.

2.8.12 The Design-Builder shall be responsible for scheduling, submitting to, obtaining approval, and retrieving all required Construction Documents from the various required reviewing agencies.

2.8.13 Until such time as a GMP amendment has been executed, Design-Builder when requested by the City, will attend, make presentations, and participate as may be appropriate in public agency and/or community meetings relative to the Project. Design-Builder will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any

such meetings.

2.8.14 Design-Builder shall submit to the City, Construction Documents setting forth in detail drawings and specifications describing the requirements for construction.

2.8.14.1 The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting.

2.8.14.2 The Design-Builder shall provide the drawings in digital compatible with City of Flagstaff Community Development Department CADD technology using City layering standards.

2.8.14.3 The drawing format will be a 24" x 36" sheet size unless otherwise authorized in writing by the City.

2.8.14.4 The parties shall have a design review meeting to discuss, and City shall review and approve the Construction Documents in accordance with the procedures set forth this Agreement.

2.8.15 Prior to commencement of construction, Design-Builder shall submit to the City the following.

- One set of approved Construction Drawings in AutoCAD format on electronic media (CD-ROM);
- Five print sets of approved Construction Drawings and five half-size sets; and
- Five sets of specifications.

2.8.16 To the extent not prohibited by Legal Requirements, Design-Builder may arrange for interim design submissions and Construction Documents for a portion of the construction to permit construction to proceed on that portion prior to completion of the Construction Documents for the entire construction.

2.9 Not Used.

2.10 Government Approvals and Permits.

2.10.1 Design-Builder shall obtain all necessary permits, approvals, and licenses required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project. The Design-Builder is specifically reminded of the need to obtain the necessary environmental permits and/or file the necessary environmental notices.

2.10.2 Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. This provision does not constitute an assumption by the City of any obligation of any kind for violation of said permit or notice requirements.

2.10.3 City shall be responsible for City of Flagstaff review and permit(s) fees for building and demolition permits. City will also pay review fees for grading and drainage, water, sewer, and landscaping. City shall also pay for utility fees for permanent services.

2.10.4 Design-Builder shall be responsible for all other permits and review fees not specifically listed in this Agreement.

2.10.5 City is responsible for the cost of water meter(s), water and sewer taps and fire lines and taps, and all utility fees including incremental billings until Substantial Completion. Arrangements for construction water and associated fees are the Design-Builder's responsibility.

2.11 Subcontractor Selection.

2.11.1 Subcontractors shall be selected by a combination of qualifications and price derived through competitive bidding.

2.11.2 Design-Builder shall employ only Subcontractors who are duly licensed in Arizona and qualified to perform the Work per the requirements of the Contract Documents.

2.11.3 The Design-Builder will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors selected pursuant to a qualifications based procedure, for each trade in the Project for approval by the City and solicit bids for the various construction categories. If there are not three qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, the Design-Builder may request approval by the City to submit less than three names. Without prior approval by the City, no change in the City-approved Subcontractors will be allowed.

2.11.4 If the Design-Builder desires to self-perform certain portions of the construction, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The Design-Builder's bid will be evaluated in accordance with the process identified below. If after selection of a Subcontractor, events warrant and the City concurs, the Design-Builder may self-perform construction without bidding or re-bidding.

2.11.5 If the City objects to any nominated Subcontractor or to any nominated self-performed construction for good reason, the Design-Builder will nominate a substitute Subcontractor.

2.11.6 The Design-Builder will distribute drawings and specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

2.11.6.1 The Design-Builder shall receive, open, record, and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals, the Design-Builder, in addition to bid price, shall consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor bids will be done with the City Representative in attendance to observe and witness the process. The Design-Builder will resolve any Subcontractor bid withdrawal, protest, or disqualification in connection with the award at no increase in the cost of the construction.

2.11.7 Upon completion of the Subcontractor selection process, the Design-Builder shall submit a summary report to the City of the entire Subcontractor selection process. The report will indicate, by bid process, all Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received and costs negotiated, and the selected Subcontractors for each category of Work.

2.11.8 The selected Subcontractors will provide a Schedule of Values, which will be used to create the overall Project Schedule of Values.

2.12 General Construction Services.

2.12.1 Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, taxes, inspection, testing, start-up, material, equipment, machinery, and arrangements for temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.12.2 The Design-Builder shall completely and totally construct the Project and install the material therein for the City, in a good and workmanlike and substantial manner. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Contract Documents as amended.

2.12.3 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction.

2.13 Pre-construction Conference.

2.13.1 After approval of Construction Documents, and prior to the commencement of any construction, the City's Representative will schedule a pre-construction conference.

2.13.2 The purpose of this conference is to establish a working relationship between the Design-Builder, utility firms, and various City agencies. The agenda will include critical elements of the construction schedule, submittal schedule, cost breakdown of major lump sum items, the level of Record Project Documents required, Payment Requests and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.

2.13.3 The construction start date will be concurred with Loven Contracting, Inc. After the meeting, a Notice to Proceed letter will be issued confirming the construction start date, duration of the construction, and, if applicable, the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion will be listed.

2.13.4 The Design-Builder shall provide a Schedule of Values based on the categories used in the buy out of the construction, but not greater than the approved GMP, and identifying the construction contingency. The Schedule of Values will subdivide the construction into all items comprising the construction.

2.13.5 Minimum attendance by the Design-Builder shall be the Design-Builder's Representative who is authorized to execute and sign documents on behalf of the firm, the Design-Builder's Design and Construction Representatives, the job superintendent, and the Design-Builder's safety officer.

2.14 Supervision of Construction.

2.14.1 Design-Builder or the Design-Builder's Representative shall at all times be present at the Site when construction activities are taking place.

2.14.2 All elements of the construction, such as concrete work, pipe work, etc., shall be under the direct supervision of a foreman or his designated representative on the Site, who shall have the authority to take actions required to properly carry out that particular element of the construction.

2.14.3 In the event of noncompliance of this Agreement, the City may require the Design-Builder to stop or suspend the construction in whole or in part. Such suspension, due to the Design-Builder's noncompliance shall not be considered a basis for an increase in the Contract Price or extension of Contract Time.

2.14.4 Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the Design-Builder's responsibility to ensure the Subcontractor employed for such Work is approved.

2.14.5 During construction, the City may reasonably object to any Subcontractor and the Subcontractor shall be removed from the construction, provided that the Contract Price and/or Contract Time(s) may be adjusted to the extent that City's decision impacts Design-Builder's cost and/or time of performance.

2.14.6 Any person employed by the Design-Builder or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful, and safe manner, or is intemperate or disorderly, shall, at the written request of the City, be removed from the construction by Design-Builder or Subcontractor employing such person, and shall not be employed again in any portion of construction without the written approval of the City. The Design-Builder or Subcontractor shall keep the City harmless from damages or claims, which may occur in the enforcement of this Agreement.

2.14.7 Design-Builder shall be solely responsible to City for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor, including but not limited to any third-party beneficiary rights.

2.14.8 Design-Builder shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.15 Control of Construction Site.

2.15.1 Throughout all phases of construction, including suspension of Work, Design-Builder shall keep the Site reasonably free from debris, trash, and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the construction, or a portion of the construction, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the construction or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

2.15.2 Design-Builder shall take whatever steps, procedures, or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the Arizona Department of Environmental Quality (ADEQ).

2.15.3 Design-Builder shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Design-Builder shall be responsible for the coordination of all Work to minimize disruption to building occupants and facilities.

2.15.4 In the event of abnormal weather conditions, such as windstorms, rainstorms, snowstorms, etc., the Design-Builder shall immediately inspect the work site and take all necessary actions, subject to schedule and cost adjustments, to ensure public access and safety are maintained, and that the Work in place and site conditions are protected from damage.

2.15.5 Only materials and equipment, which are to be used directly in the construction, shall be brought to and stored on the Site by the Design-Builder. When equipment is no longer required for the construction, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the Design-Builder.

2.16 Shop Drawings, Product Data and Samples.

2.16.1 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the construction for which submittals are required the way the Design-Builder proposes to conform to the information given and the design concept expressed in the Construction Documents.

2.16.2 The Design-Builder shall review, approve, verify, and submit to the City three copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Construction Documents in accordance with the approved construction schedule as prescribed in this Agreement as to cause no delay in the Work or in the activities of the City or of separate contractors.

2.16.3 By approving, verifying, and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements, and field construction

criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the construction and of the Construction Documents.

2.16.4 The Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents unless the Design-Builder has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation.

2.16.5 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.17 Quality Control, Testing, and Inspection.

2.17.1 All materials used in the construction shall be new and unused, unless otherwise agreed to in writing by the parties, and shall meet all quality requirements of the Contract Documents.

2.17.2 All construction materials to be used on the construction or incorporated into the construction, equipment, plant, tools, appliances or methods to be used in the construction may be subject to the inspection and approval or rejection of the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.

2.17.3 The procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and tests shall be made in accordance with: (i) Maricopa Association of Governments (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; (ii) the City of Flagstaff Supplements and Amendments to the latest revision of the MAG Uniform Standard Technical Specifications and Uniform Details and Drawings; (iii) City of Flagstaff Engineering Design and Construction Standards and Specifications latest revision; and (iv) ASHTO and ASTM standards, latest revisions.

2.17.4 The City will select a pre-qualified City or independent testing laboratory and will pay for initial City acceptance testing.

2.17.4.1 When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and the cost of all tests, except the first test, will be paid for by the Design-Builder. Construction contingency cannot be utilized for the cost of re-testing.

2.17.4.2 When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

2.17.5 The Design-Builder will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the Work and shall provide them access to the Work at all times.

2.17.6 At the option of the City, materials may be approved at the source of supply before delivery is started.

2.17.7 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the Design-Builder, unless otherwise provided in the Contract Documents.

2.17.8 Design-Builder's convenience and quality control testing and inspections shall be the sole responsibility of the Design-Builder and paid by the Design-Builder.

2.18 Trade names and Substitutions. Construction Document references to equipment, materials, or patented processes by manufacturer, trade name, make, or catalog number, unless indicated that no substitutions are permitted, may be substituted. Substitute or alternate items may be permitted, subject to the following:

2.18.1 The substitution shall be submitted by Design-Builder in writing to the City.

2.18.2 The Design-Builder shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

2.18.3 The submittal shall state any required changes in the Construction Documents to adapt the design to the proposed substitution.

2.18.4 The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution. Substitutions will only be considered if they do not extend Contract Time.

2.18.5 The Design-Builder if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

2.18.6 The City will make the final decision and will notify the Design-Builder in writing as to whether the substitution has been accepted or rejected. If accepted, the Design-Builder will cause the Construction Documents to be revised as approved at the Design-Builder's cost.

2.18.7 The Design-Builder shall continue to perform the construction in accordance with the Construction Documents unless the City accepts the substitution and there is no extension of Contract Time.

2.19 Project Record Documents.

2.19.1 During the construction period, the Design-Builder shall maintain at the Site a set of blueline or blackline prints of the Construction Drawings and Shop Drawings for Project Record Document purposes. Redline drawings may also be maintained in PDF format at the jobsite.

2.19.2 The Design-Builder shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Drawings. The Design-Builder shall give particular attention to information on concealed

elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order, Field Order, Report of Field Change, ASI or RFI.
- Details not on original Construction Drawings.

2.19.3 The Design-Builder shall mark completely and accurately Project record drawing prints of Construction Drawings or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on Construction Drawings location.

2.19.4 The Design-Builder shall mark Project record drawings sets with red erasable colored pencil.

2.19.5 The Design-Builder shall note RFI Numbers, ASI Numbers, and Change Order numbers, etc., as required to identify the source of the change to Construction Drawings.

2.19.6 The Design-Builder shall, as a condition of Substantial Completion, submit Project record drawing prints and Shop Drawings to the City or its representative for review and comment.

2.19.7 Final Project Record Drawings. Upon receipt of the reviewed Project record drawings from the City, the Design-Builder shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:

2.19.7.1 On electronic media: (i) a complete set of Project record drawings prepared in AutoCAD format compatible with City of Flagstaff Community Development Department CADD technology using City layering standards, each drawing shall be clearly marked with “As-Built Document"; (ii) a complete set of Project specifications in Microsoft Word format; and (iii) Shop Drawings in CADD or graphic file format.

2.19.7.2 On hard copy media: (i) a complete set of electronic media from the final AutoCAD drawings in the format compatible with City of Flagstaff Community Development Department CADD technology using City layering standards; and (ii) two edge bound blueline or blackline sets reproduced from these mylars.

2.19.7.3 The original copy of the Project record drawings (redline mark-ups).

2.20 Project Safety.

2.20.1 Design-Builder recognizes the importance of performing the construction in a safe manner so as to prevent damage, injury, or loss to: (i) all individuals at the Site, whether working or visiting; (ii) the construction, including materials and equipment incorporated into the construction or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto.

2.20.2 Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the construction.

2.20.3 Design-Builder shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the construction. Unless otherwise required by the Contract Documents, Design-Builder's safety representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.

2.20.4 The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors, and others as applicable.

2.20.5 Design-Builder and Subcontractors shall comply with all legal requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable legal requirement.

2.20.6 Design-Builder will immediately report in writing any safety-related injury, loss, damage, or accident arising from the construction to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the construction.

2.20.7 Design-Builder's responsibility for safety under this Agreement is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for: (i) complying with all legal requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages, or accidents resulting from their performance of the construction.

2.21 Commissioning.

2.21.1 The Design-Builder shall develop a Commissioning program, subject to the City's approval, as part of its CMP pursuant to this Agreement.

2.21.2 The Commissioning program shall include the roles and responsibilities of the City, tenants, and the Design-Builder.

2.21.3 The Design-Builder will provide a final Commissioning report indicating that the Project and all its systems and components are functioning as prescribed in the Contract Documents and training has been completed as required by the Contract Documents.

2.22 Design-Builder's Warranty.

2.22.1 Design-Builder warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

2.22.2 Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Project by persons other than Design-Builder and anyone for whose acts Design-Builder may be liable.

2.22.3 Design-Builder's warranty obligation shall be for one (1) year (from the date of Owner's acceptance of the project and issuance of a Certificate of Substantial Completion), except for such greater periods as may be required by the technical specifications for specific pieces of equipment.

2.22.4 Nothing in this warranty is intended to limit any manufacturer's warranty, or any other remedy at law available to the City, which provides City with greater warranty or other rights than set forth in this Agreement or the Construction Documents.

2.22.5 Design-Builder will provide City with all manufacturers' warranties upon Substantial Completion.

2.23 Correction of Defective Construction.

2.23.1 Design-Builder agrees to correct any construction that is found to not be in conformance with the Construction Documents, including that part of the construction subject to this Agreement. A progress payment or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of construction not in accordance with the Construction Documents.

2.23.2 Design-Builder shall, within seven Days of receipt of written notice from City that the construction is not in conformance with the Construction Documents, take meaningful steps to commence correction of such nonconforming construction, including the correction, removal, or replacement of the nonconforming construction and any damage caused to other parts of the construction affected by the nonconforming construction.

2.23.3 If Design-Builder fails to commence the necessary steps within such seven Day period, City, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that City will commence correction of such nonconforming construction with its own forces. If City does perform such corrective construction, Design-Builder shall be responsible for all reasonable costs incurred by City in performing such correction. Any such Work performed by the City as a result of the Design-Builder's failure to commence corrective action shall not impact, in any way, the remaining warranty of the affected construction.

2.23.4 If the nonconforming construction creates an emergency requiring an immediate response, the Design-Builder will respond and initiate corrections within twenty-four hours.

2.23.5 This Agreement shall not limit any rights or remedies the City may have regarding Design-Builder's obligations under the Contract Documents.

Article 3 - City's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 City shall, throughout the performance of Work, cooperate with Design-Builder and perform its responsibilities, obligations, and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 City shall provide timely reviews (14 days unless otherwise agreed) and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in the Project Schedule.

3.1.3 City's Representative as identified in this Agreement shall be responsible for providing City-supplied information and approvals in a timely manner (14 days unless otherwise agreed) to permit Design-Builder to fulfill its obligations under the Contract Documents. City's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.1.4 Appropriate City staff will be available and will participate in required training as part of the Commissioning activities.

3.1.5 If requested by the Design-Builder, the City's Representative will provide assistance and guidance in obtaining necessary permits. Regulating agencies of the City, such as the Community Development Department and the Utilities Department, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

3.2 Furnishing of Services and Information.

3.2.1 The City will be responsible for the payment of the following:

3.2.1.1 City review and permit(s) fees for building and demolition permits.

3.2.1.2 City review fees for grading and drainage, water, sewer, and landscaping.

3.2.1.3 Utility fees for permanent services.

3.2.2 Unless expressly stated to the contrary in the Contract Documents, City will provide, at its own cost and expense, for Design-Builder's information, the following:

3.2.2.1 To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines.

3.2.2.2 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work.

3.2.2.3 A legal description of the Site.

3.2.2.4 To the extent available, as-built record and/or historical drawings of any existing structures at the Site.

3.2.2.5 To the extent available, environmental studies, reports, and impact statements describing the environmental conditions, including hazardous materials, in existence at the Site.

3.2.2.6 To the extent available, geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site.

3.2.3 City will provide all City standards and guidelines, supplementary conditions, and special provisions that shall be included in the plans and specifications for the Project. These may include but are not limited to: disposal of surplus material, special security provisions, investigation of underground facilities, traffic controls and regulations, special quality control testing, and termite treatment requirements.

3.2.4 City is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the construction. City is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Field Inspections.

3.3.1 The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the Design-Builder. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an inspector from a City laboratory pursuant to this Agreement.

3.3.2 Through onsite observation of the Work in progress and field checks of materials and equipment, the inspector shall endeavor to provide protection against defects and deficiencies in the Work.

3.3.3 The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.

3.3.4 The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as foremen for the Design-Builder.

3.3.5 The inspector shall have the authority to reject Work or materials until any questions at issue can be decided by the City's Representative.

3.3.6 The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequence or procedures or for safety precautions or programs or responsibility for the Design-Builder's failure to perform the Work in accordance with Contract Documents.

3.4 City's Separate Contractors. City is responsible for all Work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents. The Owner shall be responsible for the means, methods, and safety of, as well as the completed work of the Contractors under the Owner's control. Separate contractors shall provide certificates of insurance listing the Design-Builder and additionally insured.

Article 4 – Contract Time

4.1 Contract Time.

4.1.1 Contract Time shall start with the Notice to Proceed (NTP) and end with Substantial Completion.

4.1.2 The City shall issue a NTP letter establishing the mutually agreed upon NTP date for this Agreement and design.

4.1.3 The Design-Builder shall provide a Project Schedule of the design activities within seven (7) Days after the NTP.

4.1.3.1 The Project Schedule shall provide fourteen (14) Days to be used by the City or its designee for reviews and approvals for any interim design submissions pursuant to this Agreement.

4.1.3.2 Failure on the part of the Design-Builder to adhere to the Project Schedule may be the basis for termination of this Agreement by the City.

4.1.4 Each GMP amendment to this Agreement will establish a separate construction NTP date Performance Period and Substantial Completion date for the entire Project. The Performance Period(s) for individual GMP's may be sequential or concurrent as established in the individual Notices To Proceed.

4.1.5 Design-Builder agrees that it will commence performance of the Work and achieve Performance Periods and the Contract Time.

4.1.6 All of the times set forth in this Agreement or by amendments to this Agreement shall be subject to adjustment.

4.2 Construction Schedule. Each approved GMP proposal shall include a Project Schedule as prescribed in this Agreement with a CPM diagram construction schedule that will indicate the path of critical activities and establish the Performance Period encompassed by the GMP. The Design-Builder will maintain the construction schedule throughout the construction.

4.3 Substantial Completion.

4.3.1 Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in this Agreement and with the criteria set forth in the Notice to Proceed.

4.3.2 Prior to notifying the City in accordance with this Agreement, the Design-Builder shall inspect the construction and prepare and submit to the City a comprehensive list of items to be completed or corrected. The Design-Builder shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all construction in accordance with the Construction Documents.

4.3.3 Design-Builder shall notify City when it believes the construction, or a portion of the construction, is substantially complete.

4.3.4 Within five Days of City's receipt of Design-Builder's notice, City and Design-Builder will jointly inspect such construction to verify that it is substantially complete in accordance with the requirements of the Construction Documents.

4.3.5 If such construction is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth: (i) the date of Substantial Completion of the construction or portion thereof; (ii) the remaining items of construction that have to be completed within thirty Days before Final Acceptance; (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

4.3.6 City, at its option, may use a portion of the construction which has been determined to be substantially complete, provided, however, that: (i) a Certificate of Substantial Completion has been issued for the portion of construction addressing the items set forth in this Agreement; (ii) Design-Builder and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) City and Design-Builder agree that City's use or occupancy will not interfere with Design-Builder's completion of the remaining construction.

4.4 Final Completion and Acceptance. The Work or identified portions of the Work must be finally complete within thirty Days from the date the Certificate of Substantial Completion is issued unless there is a written agreement of the parties that establishes another date for Final Completion. Upon receipt of written notice that the construction or identified portions of the Work is ready for final inspection and acceptance, City and Design-Builder will jointly inspect to verify that the remaining items of Work have been completed as set forth in this Agreement. The City will issue a Final Acceptance letter when the City finds the Work or identified portions of the Work to be finally complete.

4.5 Waiver of Claims for Consequential Damages. City and Design-Builder waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, by way of example, only:

4.5.1 Damages incurred by the Design-Builder for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

4.5.2 Damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, including, without limitation, anticipated profit arising directly from the Work.

4.5.3 This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination in accordance with the Contract. Nothing contained in this section shall be deemed to preclude recovery by City of: (i) an assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents or (ii) any damages arising out of claims made against the City by a third party, provided that such claim (a) pertains to the Project, and (b) arises out of, or results from death, bodily injury or property damage, or any other claim within the scope of the Design-Builder's defense or indemnity obligations or under applicable law.

4.6 Liquidated Damages – Substantial Completion. Design-Builder understands that if Substantial Completion is not attained within the Contract Time as may be adjusted, City will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained within the Contract Time as may be adjusted, Design-Builder shall pay the City (to be determined separately for each GMP) as liquidated damages, and not as a penalty, for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

4.7 Liquidated Damages – Final Completion. Design-Builder understands that if Final Completion is not attained within the time allowed in this Agreement, as may be adjusted, the City will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not attained within the specified time as may be adjusted, Design-Builder shall pay the City (to be determined separately for each GMP) as liquidated damages, and not as a penalty, for each Day that Final Completion extends beyond the date for Final Completion as determined by the Agreement and further agrees that such amount is reasonable under the circumstances.

Article 5 – Contract Price

5.1 Contract Price.

5.1.1 The Contract Price will be the amounts prescribed for design in this Agreement plus GMPs and Owner's Contingency. The Contract Price is subject to adjustments made in accordance with this Agreement and by amendment.

5.1.2 GMP amendments are cumulative except for contingency. The amount of contingency for each GMP amendment will be negotiated separately.

5.1.3 If the GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to this Agreement. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

5.1.4 Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

5.2 Design.

5.2.1 The Design-Builder's fee for providing, through personnel employed by Design-Builder or procured from qualified Subconsultants, Design Services and GMP preparation for the construction of the Montalvo STEM Education Community Center Project. The Fee Schedules in Exhibit B shall determine the basis for payment depending on how and when the individual Sites become available. Any savings from the design shall revert to the City for use during construction.

5.2.2 The contract fees for Design-Builder and Subconsultants are based upon the approved cost proposal included in a subsequent GMP.

5.3 GMP.

5.3.1 At the end of the design phase or at a time determined by the City, the City will request the Design-Builder to provide a GMP or series of GMP's at the same or different times. The approved GMP(s) will be made part of this Agreement by amendment. The GMP(s) will include amounts for completion of design, if applicable, in the same format as prescribed above and a price for construction in accordance with this Agreement.

5.3.2 The Design-Builder guarantees to bring the completion of the design and construction within the GMP, subject to approvals and modifications per this Agreement, or Design-Builder alone will be required to pay the difference between the actual cost and the GMP. Factors that are outside the control on the Design-Builder are subject to extensions of time or increase in costs.

5.3.3 Any savings of the Design-Builder's bid contingency used to buy out the construction at the conclusion of the selection of Subcontractors may be used during construction by the Owner as a construction contingency.

5.3.4 Any savings realized during construction may be, at the City's sole discretion, incorporated into the construction of the Project to fund additional scope items or will be returned to the City upon the City's request.

5.3.5 The GMP is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below:

5.3.3.1 The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.

5.3.3.2 The General Conditions Costs are firm fixed lump sum amount which will include bonds and insurance premiums based on the full Contract Price for construction.

5.3.3.3 The Construction Fee is a firm fixed lump sum.

5.3.3.4 Design-Builder's Contingency is an amount the Design-Builder may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. Design-Builder Contingency is assumed to be a direct Project cost so will receive all markups at the time of GMP submission.

5.3.3.5 Taxes are deemed to include all sales, use, consumer, and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

5.3.3.6 When the Design-Builder utilizes Design-Builder's Contingency funds, the Design-Builder shall make the appropriate changes to the Schedule of Values with the next regular progress Payment Request. The Design-Builder shall deduct the amount of Design-Builder's Contingency funds used from the Design-Builder's Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. If the Design-Builder's Contingency funds are used for a new line item that was not given with the original Schedule of Values, that will be so indicated.

5.3.4 The Owner's Contingency is funds to be used at the sole discretion of the City to cover any increases in Project costs that result from City directed changes, Differing Site Conditions, or as the City may otherwise elect. Owner's Contingency will be added to the GMP amount provided by the Design-Builder, the sum of which will be the full Contract Price for construction. Markups for Construction Fee and taxes will be applied by the Design-Builder at the time that Owner's Contingency is used.

5.3.5 GMPs are cumulative except for Design-Builder's Contingency. The amount of Design-Builder Contingency for each GMP amendment will be negotiated separately and shall reflect the Design-Builder's risk from that point in the Project forward.

5.4 GMP Proposal.

5.4.1 When requested, the Design-Builder shall submit three (3) sets of the approved sealed design submittal to be used to establish the GMP.

5.4.2 The Design-Builder shall sign and date the face of each document of each set used as the basis of the proposed GMP.

5.4.3 The Design-Builder shall send two (2) sets of these documents to the City's Representative, while keeping one set for itself.

5.4.4 The GMP proposal shall include:

5.4.4.1 A list of the documents including the latest approved plans and design criteria, with latest issuance date including all Addenda thereto which were used in preparation of the GMP proposal;

5.4.4.2 A list of allowances and a statement of their basis;

5.4.4.3 A list of the clarifications and assumptions made by the Design-Builder in the preparation of the GMP proposal, to supplement the information contained in the documents;

5.4.4.4 A summary of the GMP with a total for each of the components of the GMP as shown in the table below. On the table the percentages requested should be calculated as the percent of the "Total Construction Cost." The sub-amount shown under General Conditions should be included in the General Conditions amount.

5.4.4.5 A spread sheet showing the basis for professional services, with hours and hourly costs for basic services and Subconsultant services indicating overhead and profit.

5.4.4.6 A list and estimated cost of reimbursables and other not-to exceed costs.

5.4.4.7 An itemized detail of any costs proposed to be included in the General Conditions.

5.4.4.8 A statement of proposed additional services, if any.

5.4.4.9 The GMP shall include in the Cost of the Work those taxes that are applicable at the time the GMP is executed. If, in accordance with the City's express written direction an exemption is claimed for taxes, the City agrees to indemnify, defend and hold Design-Builder harmless for any liability, penalty, interest, fine, tax assessment, attorney's fees or other expense or cost incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with the City's direction relative to the taxes as described in this Agreement.

5.4.4.10 The GMP shall exclude the actual costs of any jurisdictional or regulatory agency permit or fee as well as those for testing and inspection services that are to be paid per this Agreement. However, a detailed estimate of all anticipated direct costs for permits, fees, inspection and testing shall be attached to the GMP.

5.4.4.11 A Schedule of Values for the construction, with the costs organized by subcontract categories, allowances, contingency, General Conditions Costs, and the Design-Builder's construction phase fee.

5.4.4.12 A Project Schedule as prescribed in this Agreement and establishing the Performance Period and the Scheduled Substantial Completion Date.

5.4.4.13 The updated CMP as prescribed in this Agreement.

5.4.4.14 The street or physical address of the Site of the Work for each GMP, phased GMP, or separate location at which Work, or a portion of the Work, will be performed shall be set forth in each GMP amendment.

5.5 GMP Approval.

5.5.1 The Design-Builder shall meet with the City to review the GMP proposal and the written statement of its basis. In the event that the City discovers any inconsistencies or inaccuracies in the information presented, the City shall promptly notify the Design-Builder, who shall make appropriate adjustments to the GMP proposal, its basis, or both.

5.5.2 Upon receiving the GMP proposal from the Design-Builder, the City may submit the same documents that were used by Design-Builder in developing its GMP to an independent third party for review and verification. The third party shall develop an independent estimate and review the CPM schedule.

5.5.2.1 If the Design-Builder's GMP proposal is greater than the independent third-party estimate, the City may require the Design-Builder to reconfirm its proposal.

5.5.2.2 The Design-Builder shall describe the differences between the two and explain why its GMP reflects the scope of the Work and is correct.

5.5.3 If the City accepts the Design-Builder's GMP proposal and the GMP proposal is within the City's budget, the City may accept the Design-Builder's GMP proposal without comment. If the GMP proposal exceeds the City's budget, the City must indicate in writing to the Design-Builder that the budget has been increased to fund the excess cost.

5.5.4 If the City accepts the Design-Builder's GMP, the City and the Design-Builder will execute an amendment to this Agreement for the GMP amending the Contract Price and establishing the Performance Period and the Contract Time.

5.5.5 The City shall authorize and cause the Design-Builder to revise the documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP proposal.

5.5.6 After final submission of the GMP the City may, at the City's sole discretion and for any or no reason, accept or reject the GMP. If the City rejects the Design-Builder's GMP, the City may terminate the Design-Builder's Contract. If the Contract is terminated pursuant to this Agreement, the Design-Builder's compensation shall be limited to the direct cost of its completed Work and materials supplied as of the date of termination. Design-Builder shall not be entitled to any unearned or anticipated profit or overhead. If the Contract is terminated pursuant to this Agreement, Design-Builder shall deliver to the City all drawings, plans, specifications, special provisions, estimates and other work entirely or partially completed, together with all unused materials supplied by the City.

Article 6 – Changes to Contract Price and Time

6.1 Delays.

6.1.1 If Design-Builder is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or of those for whom Design-Builder is responsible, the Contract Times for performance

and Contract Price may be reasonably extended or increased by Change Order.

6.1.2 The Design-Builder shall request an increase in the Contract Time or Contract Price by written notice including an estimate of probable effect of delay on progress or Cost of the Work.

6.1.2.1 In the case of a continuing delay, only one (1) request is necessary.

6.1.2.2 Written notice by the Design-Builder shall be provided to the City within thirty (30) Days of the commencement of the cause.

6.1.2.3 If written notice is received by the City more than thirty (30) Days after commencement of the cause, the period of delay shall be deemed to commence thirty (30) Days prior to the giving of such notice.

6.1.3 By way of example, events that may entitle Design-Builder to an extension of the Contract Time or increase in Contract Price include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, hazardous conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

6.1.4 If adverse weather conditions are the basis for a request for additional Contract Time or increased Contract Price, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled Substantial Completion. All terms, conditions and definitions necessary for the application of this paragraph shall be as set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.

6.1.5 It is understood, however, that permitting the Design-Builder to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.

6.1.6 In addition to Design-Builder's possible right to a time extension for those events set forth in this Agreement, Design-Builder may also be entitled to an appropriate adjustment of the Contract Price.

6.2 Differing Site Conditions.

6.2.1 If Design-Builder encounters a Differing Site Condition, Design-Builder may be entitled to a Change Order to adjust the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are impacted by the Differing Site Condition.

6.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to City of such condition, which notice shall not be later than seven Days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

6.3 Legal Requirements. The Contract Price and/or Contract Time(s) shall be adjusted by Change Order to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of this Agreement negatively affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of this Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

6.4 City Requested Change in Work.

6.4.1 The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or desirable in the City's sole discretion.

6.4.2 Such alterations and changes shall not invalidate this Agreement, and the Design-Builder agrees to perform the Work as altered, the same as if it has been a part of the original Contract.

6.4.3 Upon receipt of a request for proposal for a change in Work, the Design-Builder shall prepare a proposal in significant detail, using the rates and markups established in the Contract Documents as a basis of the Contract Price adjustment. The Design-Builder's proposal shall include a detailed description of any schedule impact.

6.4.4 City and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

6.4.5 If City requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order may be issued to reimburse Design-Builder for reasonable costs incurred for estimating services and other services involved in the preparation of proposed revisions to the Contract Documents.

6.5 Minor Changes. The City may make minor changes in the Work that do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall immediately inform City, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

6.6 Emergencies. In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time on account of emergency work shall be determined as provided in this Agreement.

6.7 Force Majeure.

6.7.1 There may be events that occur during the term of this Contract that are beyond the control of both the Owner 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 this Contract.

6.7.2 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.

6.7.3 The Parties shall act in good faith to extend the Contract completion date without any penalty to Contractor and 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.

Article 7- Procedure for Payment

7.1 Design Services.

7.1.1 Design-Builder will be paid 100% of the amount earned for Design Services minus the value or cost arising from any deficiencies or defects in the Design Services.

7.1.2 The Design-Builder shall pay all sums due to Subconsultants for services and reimbursable expenses within fourteen calendar Days after the Design-Builder has received payment for those services from the City.

7.1.3 Requests for monthly payments by the Design-Builder shall be submitted on the City's "Payment Request" form and shall be accompanied by a design progress report, detailed invoices and receipts, if applicable. This submittal shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and the Subconsultants' actual requests for payment plus similar narrative and listing of their Work.

7.1.4 After approved completion of design and GMP(s) for the total construction of the Project in accordance with this Agreement, Design-Builder will be paid 100% of the amount for Design Services less the total of payments previously made, subject to this Agreement.

7.1.5 Payments for those services negotiated as a lump sum shall be made in accordance with the percentage of the services completed during the preceding month. Those services negotiated as a not-to-exceed fee shall be paid in accordance with the actual cost of the service expended during the preceding month.

7.1.6 All Payment Requests shall be submitted to the City for review and approval.

7.2 Request for Payment for Construction Services. The Design-Builder agrees at its own cost and expense, to perform all construction, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in this Agreement.

7.2.1 The Schedule of Values submitted as prescribed in this Agreement, subject to adjustment in accordance with this Agreement will serve as the basis for monthly progress payments made to Design-Builder throughout the construction.

7.2.2 Design-Builder shall submit to City's Representative the construction phase services "Payment Request" form no later than the 3rd of the month to be paid on the 15th check run, or by the 19th of the month to be paid on the 30th check run. If the 3rd or 19th falls on a Saturday or Sunday invoices are due on the preceding Friday.

7.2.3 At least five (5) working Days prior to the date established for a Payment Request, the Design-Builder shall submit an updated Project Schedule and meet with the City's Representative to review the progress of the construction, as it will be reflected on the Payment Request.

7.2.4 The Design-Builder Payment Request may request payment for equipment and materials not yet incorporated into the Project if construction progress is in reasonable conformance with the approved schedule.

7.2.4.1 For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.

7.2.4.2 For materials and equipment stored off the Site, the City must approve the storage facility. The material and equipment must be stored within Coconino County or other sites as may be approved and be accessible for City's inspection. The Design-Builder must establish City title to such materials and equipment or otherwise protect the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.

7.2.4.3 All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.

7.2.5 The Payment Request shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and all construction will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the construction into the Project.

7.3 Progress Payment.

7.3.1 City shall make payment in accordance with A.R.S. § 34-607 such that payment will be made no later than fourteen (14) Days after Payment Request is certified and approved. City shall review Payment Request and make recommendation of approval or denial within seven (7) Days after City's receipt of each properly submitted and accurate Payment Request, but in each case less the total of payments previously made, and less amounts properly withheld under this Agreement.

7.3.2 City shall pay Design-Builder all amounts properly due. If City determines that Design-Builder is not entitled to all or part of the Payment Request, it will notify Design-Builder in writing at least seven (7) Days after the date the Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify City's concerns. Design-

Builder and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under this Agreement.

7.3.3 Notwithstanding anything to the contrary in the Contract Documents, City shall pay Design-Builder all undisputed amounts in a Payment Request within the times required by the Agreement.

7.4 Retention on Progress Payments.

7.4.1 City will retain ten percent (10%) of the amount on each Payment Request provided, however, that when fifty percent (50%) of the construction has been completed by Design-Builder, upon request of the Design-Builder, City may reduce the amount retained to five percent (5%) from Design-Builder's subsequent Payment Requests, if the Design-Builder's performance of construction has been satisfactory.

7.4.2 In lieu of retention, the Design-Builder may provide as a substitute any of the following: an assignment of time certificates of deposit (CDs) from a bank licensed by Arizona; securities guaranteed by the United States; securities of the United States, the State of Arizona, Arizona counties, Arizona municipalities, or Arizona school districts; or shares of savings and loan institutions authorized to transact business in Arizona.

7.4.2.1 CDs assigned to the City must be maintained at the City's single servicing bank, currently Wells Fargo, Arizona, in the form of time deposit receipt accounts.

7.4.2.2 Securities deposited in lieu of retention must be deposited into a separate account with a financial institution within the state of Arizona.

7.4.2.3 CDs and Securities shall be assigned exclusively for the benefit of the City of Flagstaff pursuant to the City's form of escrow agreement. Escrow agreement forms may be obtained from the Management Services Division.

7.5 Substantial Completion. Upon Substantial Completion of the entire construction or, if applicable, any portion of the construction, City shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount up to two and one half times (2.5) the reasonable value of all remaining, deficient or incomplete items of construction as noted in the Certificate of Substantial Completion.

7.6 Final Payment.

7.6.1 After receipt of a final Payment Request from Design-Builder, City shall make final payment within 60 Days after the receipt by the City, provided that a Final Acceptance Letter has been issued by the City in accordance with this Agreement.

7.6.2 At the time of submission of its final Payment Request, Design-Builder shall provide the following information:

7.6.2.1 An affidavit that there are no claims, obligations or liens outstanding or

unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the construction which will in any way affect City's interests.

7.6.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment, and

7.6.2.3 Consent of Design-Builder's surety, if any, to final payment.

7.7 Payments To Subcontractors or Suppliers.

7.7.1 Design-Builder shall pay its Subcontractors or Suppliers within seven Days of receipt of each progress payment from the City. The Design-Builder shall pay for the amount of construction performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the Design-Builder shall result in a corresponding reduction to Subcontractors or Suppliers who have performed satisfactory work. Design-Builder shall pay Subcontractors or Suppliers the reduced retention within fourteen Days of the payment of the reduction of the retention to the Design-Builder. No contract between Design-Builder and its Subcontractors and Suppliers may materially alter the rights of any Subcontractor or Supplier to receive prompt payment and retention reduction as provided herein.

7.7.2 If the Design-Builder fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and Design-Builder agrees that the City may take such actions:

7.7.2.1 To hold the Design-Builder in default under this Agreement;

7.7.2.2 Withhold future payments including retention until proper payment has been made to Subcontractors or Suppliers in accordance with these provisions;

7.7.2.3 Reject all future offers to perform work for the City from the Design-Builder for a period not to exceed one year from Substantial Completion date of this Project.

7.7.2.4 Terminate this Agreement.

7.7.3 If Design-Builder's payment to a Subcontractor or Supplier is in dispute, it shall act in compliance with A.R.S. § 32-1129.02 and related statutes as amended, and shall further hold the City harmless from any ensuing damages, claims or costs.

7.7.4 Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Agreement, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Agreement or of any of the terms or provisions thereof.

7.7.5 Design-Builder shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.8 Record Keeping and Finance Controls.

7.8.1 Records of the Design-Builder's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and Design-Builder shall be kept on a generally recognized accounting basis and shall be available for up to three (3) years following Final Completion of the Project.

7.8.2 The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the Design-Builder's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.

7.8.3 The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the Design-Builder's records, the audit discloses the Design-Builder has provided false, misleading, or inaccurate cost and pricing data.

7.8.4 The Design-Builder shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

7.8.5 The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

Article 8- Claims and Disputes

8.1 Requests for Contract Adjustments and Relief.

8.1.1 If either Design-Builder or City believes that it is entitled to relief against the other for any event arising out of or related to the Work, such party shall provide written notice to the other party of the basis for its claim for relief.

8.1.2 Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.

8.1.3 In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one Days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

8.1.4 Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

8.2 Dispute Avoidance and Resolution.

8.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

8.2.2 Design-Builder and City will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and City's Representative.

8.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and City's Representative, Design-Builder's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) Days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

8.2.4 Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court and Arizona law shall apply and control. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

8.3 Duty to Continue Performance. Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and City shall continue to satisfy its payment obligations to Design-Builder pending the final resolution of any dispute or disagreement between Design-Builder and City.

8.4 Representatives of the Parties.

8.4.1 City's Representative.

8.4.1.1 City designates the individual listed below as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under this Agreement:

Scott Overton, Project Manager
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001

8.4.2 Design-Builder's Representative.

8.4.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under this Agreement:

Jon Hansen, President
Loven Contracting, Inc.
1100 South Pinnacle Street
Flagstaff, Arizona 86001
jhansen@lovencontracting.com

Article 9 – Suspension and Termination

9.1 City's Right to Stop Work.

9.1.1 City may, at its discretion and without cause, order Design-Builder in writing to stop and suspend the Work. Immediately after receiving such notice, the Design-Builder shall discontinue advancing the Work specified under this Agreement.

9.1.2 Such suspension shall not exceed one hundred eighty (180) consecutive Days during the duration of the Project.

9.1.3 Design-Builder may seek an adjustment of the Contract Price and Time, if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

9.2 Termination for Convenience.

9.2.1 Upon receipt of written notice to Design-Builder, City may, at its discretion and without cause, elect to terminate this Agreement. If the City suspends the Work for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.

9.2.2 Upon such termination during Design Services, the Design-Builder shall deliver to the City all drawings, plans, specifications, special provisions, estimates, and other Work entirely or partially completed, together with all unused materials supplied by the City.

9.2.3 The Design-Builder shall estimate the value of the Work it has completed and submit its appraisal to the City for evaluation. The City shall have the right to inspect the Subconsultant's Work to appraise the Work completed.

9.2.4 The Design-Builder shall receive compensation for services performed to the date of such termination as set forth in this Agreement The fee shall be paid in accordance with this Agreement, and shall be an amount mutually agreed upon by the Design-Builder and the City. If there is no mutual agreement, the final determination shall be made in accordance with this Agreement.

9.2.5 Design-Builder shall not be entitled to anticipated profit or anticipated overhead. In no event shall the fee exceed that set forth in this Agreement or as amended.

9.2.6 The City shall make the final payment within sixty Days after the Design-Builder has delivered the last of the partially completed items and the final fee has been agreed upon.

9.2.7 If City terminates this Agreement pursuant to this Agreement and proceeds to design and construct the Project through its employees, agents or third parties, City's rights to use the work product shall be as set forth in this Agreement.

9.2.8 Upon such termination during construction services, the Design-Builder shall proceed with the following obligations:

9.2.8.1 Stop Work as specified in the notice.

9.2.8.2 Place no further subcontracts or orders.

9.2.8.3 Terminate all subcontracts to the extent they relate to the Work terminated.

9.2.8.4 Assign to the City all right, title and interest of the Design-Builder under the subcontracts terminated, in which case the City shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

9.2.8.5 Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the Design-Builder and which the City has or may acquire an interest.

9.2.9 The Design-Builder shall submit complete termination inventory schedules no later than sixty (60) Days from the date of the notice of termination.

9.2.10 The City shall pay Design-Builder the following:

9.2.10.1 The direct value of its completed Work and materials supplied as of the date of termination.

9.2.10.2 The reasonable costs and expenses attributable to such termination.

9.2.10.3 Design-Builder shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead. If it appears the Design-Builder would have sustained a loss on the entire Work had the Project been completed, the Design-Builder shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.

9.2.11 The Design-Builder shall maintain all records and documents for three years after final settlement. These records shall be maintained and subject to auditing as prescribed in this Agreement.

9.3 City's Right to Perform and Terminate for Cause.

9.3.1 If the City provides the Design-Builder with a written order to correct deficiencies to provide adequate maintenance of traffic, adequate cleanup, adequate dust

control, or to repair damage resulting from abnormal weather conditions, and the Design-Builder fails to comply in a time frame specified, the City may have Work accomplished by other sources at the Design-Builder 's expense.

9.3.2 If Design-Builder persistently fails to: (i) provide a sufficient number of skilled workers; (ii) supply the materials required by the Contract Documents; (iii) comply with applicable Legal Requirements; (iv) timely pay, without cause, Subconsultants and/or Subcontractors; (v) prosecute the Work with promptness and diligence to ensure that the Work are completed by the Contract Time, as such times may be adjusted; or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in this Agreement.

9.3.3 Upon the occurrence of an event set forth in this Agreement, City may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) Days of Design-Builder's receipt of such notice.

9.3.3.1 If Design-Builder fails to cure, or reasonably commence to cure, such problem within such seven (7) Day period, then City may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) Day period.

9.3.3.2 If Design-Builder, within such second seven (7) Day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

9.3.4 Upon declaring the Agreement terminated pursuant to this Agreement, City may enter upon the Site and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

9.3.5 In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the Design-Builder will only be entitled to be paid for Work performed and accepted by the City prior to its default.

9.3.6 If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the re-procurement and defense of claims arising from Design-Builder's default.

9.3.7 If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of this Agreement.

Article 10 – Insurance and Bonds

10.1 Insurance Requirements.

10.1.1 Design-Builder and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the Design-Builder, his agents, representatives, employees or Subcontractors.

10.1.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

10.1.3 The City in no way warrants that the minimum limits contained herein are sufficient to protect the Design-Builder from liabilities that might arise out of the performance of the Work under this Agreement by the Design-Builder, his agents, representatives, employees, or subcontractors. Design-Builder is free to purchase such additional insurance as may be determined necessary.

10.2 Minimum Scope And Limits Of Insurance. Design-Builder shall provide coverage with limits of liability not less than those stated below:

10.2.1 Commercial General Liability – Occurrence Form. Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate/for this Project	$2,000,000/$1,000,000
Products – Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Design-Builder."

10.2.2 Automobile Liability. Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL)	$1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Design-Builder, including automobiles owned, leased, hired or borrowed by the Design-Builder."

10.2.3 Worker's Compensation and Employers' Liability.

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$100,000
Disease - Each Employee	$100,000

Disease – Policy Limit $500,000

10.2.4 Professional Liability

Each Claim $1,000,000

10.2.4.1 The required professional liability coverage must cover Work done or to be done or on the behalf of the Design-Builder.

10.2.4.2 In the event that professional liability insurance required by this Agreement is written on a “claims made” basis, coverage shall be maintained for two years past completion and acceptance of the Work or services required by this Contract.

10.2.4.3 Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

10.2.5 Builders' Risk Insurance or Installation Floater: $Construction Contract Price. In an amount equal to the initial Agreement amount plus additional coverage equal to Agreement amount for all subsequent Change Orders.

10.2.5.1 The City of Flagstaff, the Design-Builder, Subcontractors, design professional, and design professional’s consultant and any others with an insurable interest in the Work shall be Named Insureds on the policy.

10.2.5.2 Coverage shall be written on an all risk, replacement cost basis and shall include coverage for soft costs, flood and earth movement.

10.2.5.3 Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or (ii) until no person or entity, other than the City of Flagstaff, has an insurable interest in the property required to be covered.

10.2.5.4 Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

10.2.5.5 Policy must provide coverage from the time any covered property becomes the responsibility of the Design-Builder, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off Site.

10.2.5.6 Policy shall contain a waiver of subrogation against the City of Flagstaff.

10.2.5.7 Design-Builder is responsible for the payment of all policy deductibles.

10.3 Additional Insurance Requirements. The policies shall include, or be endorsed to include, the following provisions:

10.3.1 The City, its officers, officials, agents, employees and volunteers shall be additional insured to the full limits of liability purchased by the Design-Builder even if those limits of liability are in excess of those required by this Agreement.

10.3.2 The Design-Builder's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

10.3.3 Coverage provided by the Design-Builder shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

10.3.4 The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, and employees for losses arising from Work performed by the Design-Builder and Subcontractors for the City.

10.4 Notice Of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) Days prior written notice has been given to the City. Such notice shall be sent directly to the City Senior Representative and shall be sent by certified mail, return receipt requested.

10.5 Acceptability Of Insurers. Insurance is to be placed with insurers duly licensed companies in the state of Arizona and with an “A.M. Best” rating of not less than A-,7, or as approved by the City and licensed in the State of Arizona with policies and forms satisfactory to the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Design-Builder from potential insurer insolvency.

10.6 Verification Of Coverage.

10.6.1 Design-Builder shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

10.6.2 All certificates and endorsements are to be received and approved by the City before Work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

10.6.3 All certificates required by this Agreement shall be sent directly to City’s Procurement Section. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

10.6.4 If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the Design-Builder or Subcontractors, as the case may be, must:

10.6.4.1 Submit a current insurance certificate (dated within 15 Days of the Payment Request submittal) with each form. The Payment Request will be rejected if the insurance certificate is not submitted with the Payment Request.

10.7 Subcontractors. The City, its officers, officials, agents, employees and volunteers shall be listed as additional insured on all Subcontractor certificates of insurance. All coverages for Subcontractors shall be subject to the minimum requirements identified above.

10.8 Approval. Any modification or variation from the insurance requirements in this Contract shall be made by the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

10.9 Bonds and Other Performance Security.

10.9.1 Prior to execution of this Agreement and/or amendment to this Agreement for any Work that includes construction, the Design-Builder must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the construction set forth in the GMP.

10.9.2 Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of this Agreement.

10.9.3 The bonds shall be made payable and acceptable to the City of Flagstaff.

10.9.4 The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

10.9.4.1 If one Power of Attorney is submitted, it shall be for twice the total GMP amount.

10.9.4.2 If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.

10.9.5 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

10.9.6 All bonds submitted for this Project shall be provided by a company which has been rated “A-, 7, or better" by the A.M. Best Company.

Article 11 - Indemnification

11.1 Intellectual Property.

11.1.1 The Design-Builder shall pay all royalties and license fees associated with its performance of services herewith.

11.1.2 The Design-Builder shall defend any action or proceeding brought against City based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. City shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify, defend and hold harmless City from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against City or Design-Builder in any such action or proceeding. Design-Builder agrees to keep City informed of all developments in the defense of such actions.

11.1.3 If City is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense: (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

11.1.4 This Agreement not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer required by City and not offered or recommended by Design-Builder to City and to which Design-Builder has objected in writing or (ii) arising from modifications to the Work by City or its agents after acceptance of the Work

11.1.5 The obligations set forth in this Agreement shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

11.2 General Indemnification.

11.2.1 The Design-Builder hereby agrees to indemnify, defend and hold harmless the City, any of its departments, agencies, officers, or employees from all damages, claims or liabilities and expenses (including reasonable Attorneys' fees) arising out of or resulting in any way from the performance of professional services for the City in the Design-Builder's capacity as a Design-Builder, and caused by any error, omission, or negligent act of the Design-Builder or any person employed by it or anyone for whose acts the Design-Builder is legally liable. In consideration of the award of this Contract, the Design-Builder agrees to waive all rights of subrogation against the City, its officers, agents and employees for losses arising from the Work performed by the Design-Builder for the City. The Design-Builder's obligation to indemnify and hold harmless shall only be to the extent caused by any act or omission of Design-Builder, its employees, representatives, affiliates, subcontractors, and suppliers.

11.2.2 The Design-Builder agrees to indemnify, defend and save harmless the City of Flagstaff, its officers, agents and employees, and any jurisdiction or agency issuing permits for any Work included in the Project, their officers, agents and employees, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the Work done in fulfillment of the terms of this Agreement or on account of any act, claim or amount arising or recovered under workmen's compensation law or arising out of the failure of the Design-Builder to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the Design-Builder will be responsible for primary loss investigation, defense and judgment costs where this Agreement of indemnity applies. In consideration of the award of this Agreement, the Design-Builder agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the Work performed by the Design-Builder for the City. The Design-Builder's obligation to indemnify and hold harmless shall only be to the extent caused by any act or omission of Design Builder, its employees, representatives, affiliates, subcontractors, and suppliers.

Article 12 – General Provisions

12.1 Interpretation and Intent.

12.1.1 The Contract Documents form the entire Agreement between City and Design-Builder and by incorporation herein are as fully binding on the parties as it repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

12.1.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

12.1.3 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents. In the event conflicts occur between the drawings and specifications, the Design-Builder is deemed to have estimated the more expensive method unless he has asked for and receive a written decision from the City determining which method or material will be required.

12.2 Time is of the Essence. City and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

12.3 Mutual Obligations. City and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

12.4 Work Product.

12.4.1 All Work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes or CD's, and other related documents which are prepared or procured in the performance of this Agreement (collectively referred to as documents) are to be and remain the property of the City and are to be delivered to the City before the final payment is made to the Design-Builder or pursuant to this Agreement. In the event these documents are altered, modified or adapted without the written consent of the Design-Builder or the Subconsultants, which consent the Design-Builder or the Subconsultants shall not unreasonably withhold, the City agrees to hold the Design-Builder and the Subconsultants harmless to the extent permitted by law from any liability arising out of the City's alteration, modification or adaption of the documents.

12.4.2 City acknowledges Design-Builder's plans and specification as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become property of the City upon completion and approval of the Construction Documents and payment in full of all monies then due to Design-Builder for services, or upon termination of this Agreement at an earlier time and upon City payment of any pro rata amount due Design-Builder for Design Services at the time of such termination. Design-Builder shall not use the drawings and specifications, therefore, for any purpose not related to the Project without City's consent. City will not reuse, for matters unrelated to the Work any phase of the Work as set forth in the Scope of Work in Exhibit A and its subsequent usage, or make any modification to the plans and specifications without the prior written authorization of the Design-Builder. City agrees to hold the Design-Builder harmless, to the extent permitted by law, from any liability arising out of the City's modification or alteration of the Construction Documents without the written authorization of Design-Builder. The City specifically reserves the right to use or reuse any design concept, feature, or aspect of the Work incorporated into the plans and specifications in any subsequent City project. The City specifically reserves the right to use or reuse any design concept or aspect of the Work incorporated into the plans and specifications to complete the Project in the event that the City and Design-Builder are unable, after good faith efforts, to execute a GMP. Design-Builder shall incorporate such use rights into any agreement with a Subcontractor or consultant, and shall indemnify the City from any claims from such for copyright or patent infringement.

12.4.3 With this Agreement, the Design-Builder and its Subconsultants hereby grant a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the documents, works or Deliverables developed or created as a result of the Project and this Agreement and to which Design-Builder and its Subconsultants may retain rights. This license also includes the making of derivative works. In the event that the derivative works require the City to alter or modify the documents, then the provisions of this Agreement apply.

12.5 Assignment. Design-Builder shall not, without the written consent of the City, assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents. Notwithstanding the City's consent to assignment, Contractor as Assignor, and the Assignee shall both remain liable under all rights, obligations, terms and

conditions of the contract.

12.6 Successorship. Design-Builder and City intend that the provisions of the Contract Documents are binding upon the parties and their successors and assigns.

12.7 Third Party Beneficiary. Nothing under this Agreement shall be construed to give any rights or benefits in the Agreement to anyone other than the City and the Design-Builder, their successors and assigns, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and the Design-Builder and not for the benefit of any other party.

12.8 Governing Law. The Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, Coconino County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

12.9 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

12.10 No Waiver. The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

12.11 Headings. The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.12 Notice.

12.12.1 Any notices or demands required to be given, pursuant to the terms of the Agreement, may be given to the other party in writing, delivered in person, sent by facsimile transmission, emailed, deposited in the United States mail, postage prepaid, or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the parties may substitute by written notice, given in the manner prescribed in this paragraph. However, notices of termination, notices of default, and any notice regarding warranties shall be sent via registered or certified mail, return receipt requested, at the addresses set forth below and to legal counsel for the party to whom the notice is being given.

If to City:	If to Contractor:
Emily Markel	Jon Hansen
Purchasing Manager	President
City of Flagstaff	Loven Contracting, Inc.
211 W. Aspen Ave	100 South Pinnacle Street
Flagstaff, AZ 86001	Flagstaff, AZ 86001

or to such other place and with such other copies as either party may designate as to itself by written notice to the other party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

12.12.2 Notices Related to Payment, Securities-In-Lieu, Bonds. Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, or payment bonds shall be in writing and shall be delivered in person or by courier or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business Days after the Day mailed by certified mail, to the parties listed in this Agreement with a copy to:

Emily Markel
Purchasing Manager
City of Flagstaff
211 W. Aspen Ave
Flagstaff, AZ. 86001

or to such other place and with such other copies as either party may designate as to itself by written notice to the other party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

12.13 Amendments. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.14 Equal Opportunity/Affirmative Action.

12.14.1 The Design-Builder shall comply with the provisions of this Agreement, including the requirements of the City of Flagstaff Employee Handbook of Regulations pertaining to discrimination and accepting applications or hiring employees. The Design-Builder shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The Design-Builder will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: employment, promotion,

demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. The Design-Builder further agrees that this clause will be incorporated in all subcontracts, job-consultant contracts of this Contract entered into by the Design-Builder.

12.14.2 The City of Flagstaff extends to each individual, firm, vendor, Supplier, contractor, and Subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of Disadvantaged and/or Minority-owned or Woman-owned business to reflect both the industry and community ethnic composition.

12.14.3 The following two paragraphs apply to the Design-Builder named herein and shall appear in all contracts between the Design-Builder and any and all Subcontractors who are employed on this Project. The Design-Builder further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract.

"Any Party (Subcontractor), in performing under this Contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship."

The Design-Builder further agrees that the above two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract.

12.15 Compliance with Federal Laws. Design-Builder understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989 to it. The Design-Builder agrees to comply with these laws in performing this Agreement and to permit the City to verify such compliance.

12.16 Independent Contractor. The Design-Builder is and shall be an independent contractor. Any provisions in this Agreement that may appear to give the City the right to direct the Design-Builder as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the Design-Builder shall follow the wishes of the City as to the results of the Work only.

12.17 City's Right Of Cancellation. All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Flagstaff pursuant to the provisions of A.R.S. § 38-511.

12.18 Data Confidentiality.

12.18.1 As used in this Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the Design-Builder in the performance of this Agreement.

12.18.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Design-Builder in connection with the Design-Builder's performance of this Agreement is confidential and proprietary information belonging to the City.

12.18.3 The Design-Builder shall not divulge data to any third party without prior written consent of the City. The Design-Builder shall not use the data for any purposes except to perform the services required under this Agreement. These prohibitions shall not apply to the following data provided the Design-Builder has first given the required notice to the City:

12.18.3.1 Data which was known to the Design-Builder prior to its performance under this Agreement unless such data was acquired in connection with Work performed for the City;

12.18.3.2 Data which was acquired by the Design-Builder in its performance under this Agreement and which was disclosed to the Design-Builder by a third party, who to the best of the Design-Builder's knowledge and belief, had the legal right to make such disclosure and the Design-Builder is not otherwise required to hold such data in confidence; or

12.18.3.3 Data which is required to be disclosed by virtue of law, regulation, or court order to which the Design-Builder is subject.

12.18.4 In the event the Design-Builder is required or requested to disclose data to a third party, or any other information to which the Design-Builder became privy as a result of any other contract with the City, the Design-Builder shall first notify the City as set forth in this Agreement of the request or demand for the data. The Design-Builder shall give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

12.18.5 Unless prohibited by law, within ten (10) Days after completion of services for a third party on real or personal property owned or leased by the City, the Design-Builder shall promptly deliver, as set forth in this Agreement, a copy of all data to the City. All data shall continue to be subject to the confidentiality agreements of this Agreement.

12.18.6 The Design-Builder assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Agreement are violated by the Design-Builder, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Agreement shall be deemed to cause irreparable harm that justifies injunctive relief in court.

12.19 Conflict Of Interest.

12.19.1 To evaluate and avoid potential conflicts of interest, the Design-Builder shall provide written notice to the City, as set forth in this Agreement, of any work or services performed by the Design-Builder for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice shall be given seven (7) business Days prior to commencement of the Project by the Design-Builder for a third party, or seven (7) business Days prior to an adverse action as defined below. Written notice and disclosure shall be sent to the City Senior Representative identified in this Agreement.

12.19.2 Actions that are considered to be adverse to the City under this Agreement include but are not limited to:

12.19.2.1 Using data as defined in this Agreement acquired in connection with this Agreement to assist a third party in pursuing administrative or judicial action against the City;

12.19.2.2 Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and

12.19.2.3 Using data to produce income for the Design-Builder or its employees independently of performing the services under this Agreement, without the prior written consent of the City.

12.19.3 The Design-Builder represents that except for those persons, entities and projects identified to the City, the services to be performed by the Design-Builder under this Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

12.19.4 The Design-Builder's failure to provide a written notice and disclosure of the information as set forth in this Agreement shall constitute a material breach of this Agreement.

12.19.5 This Contract is subject to the conflict of interest provisions of A.R.S. § 38-511.

12.20 Legal Requirements. Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

12.21 Confidentiality of Plans and Specifications.

12.21.1 Any plans or specifications the Design-Builder generates regarding this Project are for official use only. They may not be shared with others except as required to fulfill the obligations of the Design-Builder's contract with the City.

12.21.2 All Record Documents, Shop Drawings, and other plans or drawings prepared or submitted by the Design-Builder shall include the following language: “These plans are official use only and may not be shared with others except as required to fulfill the obligations of the Design-Builder’s contract with the City of Flagstaff.”

12.22 Hazardous Materials.

12.22.1 Unless included in the Work, if the Design-Builder encounters onsite or as material to be incorporated in the Work any material which it reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by public health laws, it shall immediately stop work and report the condition to the City.

12.22.2 If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by public health laws, the Design-Builder shall not resume work in the affected area until the material has been abated or rendered harmless. The Design-Builder and the City may agree, in writing, to continue work in non-affected areas onsite.

12.22.3 An extension of Contract Time, and Contract Price as applicable, may be granted in accordance with this Agreement.

12.22.4 The Design-Builder will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

12.22.5 Notwithstanding the preceding provisions of this Agreement, the City is not responsible for hazardous conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend, and hold harmless the City and City’s officers, directors, employees, and agents from and against all claims, losses, damages, liabilities, and expenses, including attorneys’ fees and expenses, arising out of or resulting from those hazardous conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

12.23 Design-Builder and Subcontractor Employee Security Inquiries. The parties acknowledge that security measures required in this Agreement are necessary in order to preserve and protect the public health, safety, and welfare. In addition to the specific measures set forth below, Design-Builder shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety, and welfare.

12.24 Security Inquiries. Design-Builder acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). Design-Builder shall perform all such security inquiries and shall make the results available to City for all employees considered for performing Work (including supervision and oversight) under this Agreement. City may make further security inquiries. Whether or not further security inquiries are made by City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by Design-Builder for performing Work under this Agreement. Employees rejected by City for performing services under this Agreement may still be engaged by Design-Builder for other Work not involving the City of Flagstaff. An employee rejected for work under this Agreement shall not be proposed to perform Work under other City contracts or engagements without City 's prior approval.

12.25 Criteria for Evaluating Security Inquiries. Once formally adopted by City, criteria for excluding an individual from performing Work under this Agreement shall be communicated by City to Design-Builder and used by Design-Builder as a factor in making its decision. Prior to such adoption, Design-Builder shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state and local agencies concerned with Work performed under this Agreement, specific local concerns that deal with the specific Work and Work location(s) of the project, and standards used by City in evaluating its own personnel.

12.26 Additional City Rights Regarding Security Inquiries. In addition to the foregoing, City reserves the right to: (i) have an employee/prospective employee of Design-Builder be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (ii) act on newly acquired information whether or not such information should have been previously discovered; (iii) unilaterally change its standards and criteria relative to the acceptability of Design-Builder 's employees and/or prospective employees; and (iv) object, at any time and for any reason, to an employee of Design-Builder performing Work (including supervision and oversight) under this Agreement.

12.27 Terms of This Provision Applicable to all of Design-Builder 's Contracts and Subcontracts. Design-Builder shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for Work performed under this Agreement, including supervision and oversight.

12.28 Materiality of Security Inquiry Provisions. The Security Inquiry provisions of this Agreement, as set forth above, are material to City 's entry into this Agreement and any breach thereof by Design-Builder may, at City 's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject Design-Builder to liability for its breach of contract.

12.29 Computer Systems. Design-Builder shall warrant fault free performance in the processing of date and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work. Fault free performance shall include the manipulation of data when dates are in the 20th or 21st centuries and shall be transparent to the user. Failure to comply with "Year 2000" requirements shall be considered a breach of contract.

12.30 Traffic Control. Design-Builder will comply with all provisions of the latest version of the Manual on Uniform Traffic Control Devices and any other traffic control provisions as may be provided in the technical specifications.

12.31 Covenant Against Contingent Fees. The Design-Builder warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Flagstaff has any interest, financially, or otherwise, in the Design-Builder's firm, or the firms of Design-Builder's Design Consultant, or Design-Builders other consultants or Subcontractors. For breach or violation of this warrant, the City of Flagstaff shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

12.32 Fair Treatment of Workers. The Design-Builder shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having jurisdiction or authority, which in any way affects the conduct of Work. The Design-Builder shall at all times observe and comply with all such laws, ordinances, regulations, codes. orders and decrees; this includes but is not limited to laws and regulations ensuring fair and equal treatment for all employees against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The Design-Builder shall protect, defend and indemnify the City and its representatives against any claim or liability arising from or based on the violation of such, whether by itself or its employees.

12.33 All Work performed shall conform to all applicable City of Flagstaff codes, ordinances, and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and those in Exhibit "A", the provisions in this Agreement shall prevail.

12.34 The following exhibits are included in this Agreement:

Exhibit A – Project Description
Exhibit B – Scope of Services
Exhibit C – Performance Standards Requirements
Exhibit D – Monthly Anticipated Adverse Weather Days

12.35 Compliance with Federal Immigration Laws and Regulations. Proposer warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A. Proposer acknowledges that pursuant to A.R.S. § 41-4401 a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the City retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

12.36 No Boycott of Israel. Under A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least $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.

12.37 Forced Labor of Ethnic Uyghurs. Contractor hereby certifies that it does not use the forced labor of ethnic Uyghurs in the People's Republic of China as defined in A.R.S. § 35-394, et seq.

Montalvo STEM Education Community Center Project
DESIGN-BUILD CONTRACT
PROJECT NO. CL6321M

CONTRACT NO. 2024-138

This Agreement will be in full force and effect only when it has been approved and executed by the Design-Builder and the duly authorized City officials.

(Please sign in blue ink. Submit original signatures – photocopies not accepted.)

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the ____ day of _____, 2024.

DESIGN-BUILDER:

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 – PROJECT DESCRIPTION

The Owner (City) is planning to design and construct a STEM Educational Community Center approximately 3000 square feet, associated site improvements as agreed upon during the IDS process and new restroom facilities to support the Montalvo baseball complex on a city owned property located at 2230 E. Spruce Ave, Flagstaff Arizona.

EXHIBIT B – SCOPE OF SERVICES

To complete Design-Build Services including project design, agency/public coordination, budget control/value engineering, and construction services for creation of the Montalvo STEM Education Community Center Project (Project) located on a city owned parcel at 2230 E. Spruce Ave in Flagstaff, Arizona. The budgeted amount for the total construction cost for this Project is $2,400,000.00. The funding source is an allocation of American Rescue Plan Act (ARPA) funds as an identified use of education assistance, a revenue replacement allocation.

The Design-Builder will take the lead role for design phase services and will hold the construction contract with the City for construction of the Project. Project scope for the Design-Build team will be as follows:

• Build to the expectations outlined in the Sustainable Building Resolution

• Control and maintain project critical path schedule and available budget, including cost estimating, value engineering, and constructability analysis throughout design and construction of the Project. Project completion is anticipated Spring 2026.

• Refinement and completion of Project scope with the Owner.

• Environmental clearance of existing structures (Existing Environmental reports will be provided to awarded/negotiating contractor) and performing environmental requirements for abatements, demolitions, and any Phase II activities, etc. Work will include hazardous material surveys (asbestos and lead based paint, etc.), abatement, and disposal.

• Cultural/historical clearance of the existing structure.

• Thorough Public Involvement and construction design input and construction progress. This may include but not limited to; meetings, website, graphics, notices, e-newsletters, and/or presentations at Flagstaff City Council, etc.

• Development of 100% construction plans and specification documents for the Project both on-site and off-site as developed in the site plan process.

• Franchise (private) utility coordination throughout design and construction. Gain design approvals and coordinate the design and construction of site utility relocations as required.

• Acquire all necessary permits.

• Environmental remediation, demolition, utility securing, disposal services, and materials management plan. (The mural wall will be salvaged if possible for incorporation into the future Project but at the least replaced in kind with cooperation of stakeholders as a last result).

• Complete Project construction services.

• Establish maintenance/operations (M/O) procedures at Project close out and turn over. • Coordination with Owner-testing and inspection staff and all third party (special) inspections if needed.

• As-built documents and certification/permit completions.

Using the Site Plan and Concept renderings as the general basis of design, the Design-Builder will develop design plans to a minimum 60%, 95% and final level. The engineering design plans must meet all City of Flagstaff Codes, Standards, City reviews, approvals and permitting, and all standards and requirements from cooperating agencies as applicable.

Prior to construction, the Design-Builder will assume the risk of delivering the Project through a Guaranteed Maximum Price. Multiple construction-phase contracts may be anticipated to gain value engineering and expedite the Project schedule. The Design-Builder will be responsible for construction means and methods and will be required to solicit bids from pre-qualified subcontractors to perform the work. The Design-Builder will not be required to self-perform portions of the work but may competitively bid to do so. There will be no limit to the amount of self-performance allowed by the Owner.

The Design-Builder agrees, at its own cost and expense as outlined within the GMP, to do all work necessary and required to fully, timely and properly complete the construction of the Project in strict accordance with the Contract Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified, and within the schedule, set forth in the Contract Documents, including without limitation, all articles of this Agreement and the General Conditions.

The Final GMP price shall not exceed the Owner's budget for full construction of the work. Prior to start of construction, the Design-Builder will prepare and provide to the Owner a written accident prevention and safety plan (including compliance with partner agency requirements), waste management and environmental protection plan, noise and dust control plan, and quality control plan and shall report all safety violations resulting in injury or death within 24 hours of occurrence. The Design-Builder shall hold mitigation of public impacts at a high priority throughout all activity on site and shall act as the Owner's representative for public involvement.

EXHIBIT C – MONTHLY ANTICIPATED ADVERSE WEATHER DAYS

The Contractor will be entitled to a Contract Time extension if the actual adverse weather Days experienced during the Work exceed the anticipated adverse weather Days shown in Table 108.7. Table 108.7 as follows is the monthly schedule of adverse weather Days that shall be anticipated by the Contractor in scheduling the Work:

TABLE 108.7 – MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS

MONTH	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE
Monthly Anticipated Adverse Weather Calendar Days	**7 days**	**7 days**	**8 days**	**6 days**	**4 days**	**3 days**
Average Monthly Precipitation	1.98”	1.96”	2.05”	1.84”	0.68”	0.51”
Monthly Daily High Temperature ≤32º F	5 days	3 days	2 days	0 days	0 days	0 days
MONTH	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
Monthly Anticipated Adverse Weather Calendar Days	**12 days**	**11 days**	**7 days**	**5 days**	**5 days**	**6 days**
Average Monthly Precipitation	2.78”	2.68”	1.82”	1.52”	1.49”	1.90”
Monthly Daily High Temperature ≤32º F	0 days	0 days	0 days	0 days	1 day	5 days

The above schedule of anticipated adverse weather days establishes the base line for the project’s monthly weather impacts, based on historical records, as recorded by the National Weather Service at Pulliam Airport, for precipitation in excess of 0.01 inch and daily high temperatures below 32º Fahrenheit.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Erin Young, Water Resources Manager

Co-Submitter: Edward Schenk

Date: 10/31/2024

Meeting Date: 11/05/2024

TITLE:

Consideration and Approval of Contract: Contract for Professional Services with J.E. Fuller and Associates for $100,000.00 to develop a Surface Water - Groundwater Recharge Model

STAFF RECOMMENDED ACTION:

1. Approve the Contract for Professional Services with J.E. Fuller for $100,000.00 to develop a Surface Water - Groundwater Recharge Model; and
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

The City received a grant of $80,000.00 from the Arizona Water Infrastructure Finance Authority (WIFA) to develop a Surface Water - Groundwater Recharge Model. The Contract with J.E. Fuller is for a total of $100,000.00 where the grant will provide $80,000.00 in funding to Water Services $20,000.00 (80/20 match). More specifically, the City would like to fully couple its current MIKSHE surface water model with its groundwater model, the "Flagstaff Model", which uses the United States Geological Survey Northern Arizona Regional Groundwater-Flow Model NARGFM as the base model. The Surface Water - Groundwater Recharge Model will help us simulate water availability and groundwater movement. The model will be calibrated through time to help locate areas in the greater Flagstaff area that are most sustainable locations for C aquifer development and where groundwater recharge is most beneficial to replenishing the C aquifer.

Financial Impact:

Project Name: Surface Water - Groundwater Recharge Model
Total Project cost: $100,000.00
Account Number Budgeted: 202-08-304-6334-0-4290
FY2024-25 Budgeted Amount: $100,000.00
Grant Funded: $80,000.00
Match: $20,000.00
Funding Source: Water Fund and WIFA grant. The grant must be fully expended by June of 2026, and the funds will be disbursed during FY25, and FY26.

Policy Impact:

Council-adopted Utilities Integrated Master Plan Water Policies Chapter Policy B2.2 Adequate Water Supply Program: Strategy B2.2a The Utilities Division shall conduct hydrologic studies necessary to estimate its 100-year volume of water supplies considering groundwater, surface water and reclaimed water per state regulations. These studies should at a minimum include partnering in the development, maintenance and update of a computerized groundwater flow model of the Coconino Plateau's regional hydrology in order to assist in evaluating the sustainability of the City's groundwater supplies over the long-term, their resilience from drought, and to support the City's Designation of Adequate Water Supply. These studies should be reviewed and updated on a regular basis as more technical information becomes available.

Previous Council Decision or Community Discussion:
Flagstaff City Council signed the grant agreement to accept the funds for this project from WIFA on June 13, 2024.

Options and Alternatives to Recommended Action:
None

Background and History:
As required under the Procurement Code, Water Services provided purchasing the information regarding J.E. Fuller's sole source status to develop a Surface Water - Groundwater Recharge Model. Purchasing reviewed and vetted the information provided and confirmed and approved J.E. Fuller as the only known firm with expertise in both the MIKESHE surface water model and the MODFLOW groundwater model, making them uniquely qualified for this project. Water Services already utilizes a MIKESHE model and JE Fuller is the only firm Water Services has identified who has worked with both MIKE SHE and MODFLOW.

In addition, the funding agency, Water Infrastruture Finance Authority (WIFA) approved the sole source with JE Fuller.

Connection to PBB Priorities and Objectives:

- Maintain the organization's fiscal stability through strong financial policies and best practices
- Promote, protect, and enhance a healthy, sustainable environment and its natural resources

Connection to Regional Plan:

- Goal WR.2. Manage a coordinated system of water, wastewater, and reclaimed water utility service facilities and resources at the City level and identify funding to pay for new resources.
- Goal WR.3. Satisfy current and future human water demands and the needs of the natural environment through sustainable and renewable water resources and strategic conservation measures.

Connection to Carbon Neutrality Plan:

- Improve water infrastructure and expand water reuse.
- Continue to support water conservation efforts across the Flagstaff community.
- Improve the resilience of public infrastructure and City facilities.

Connection to 10-Year Housing Plan:
None

Connection to Division Specific Plan:
Water Services Strategic Plan 2025:
Standard:

- Maintain a diverse and redundant water-supply portfolio, including optimizing the use of reclaimed water

Challenge:

- Although Flagstaff currently maintains its 100-year Adequate Water Supply Designation, the City pumps more groundwater in certain well fields than is naturally replenished by snowpack and rain.

Attachments: Contract with Revisions

CONSULTANT SERVICES AGREEMENT
Contract No. 2025-48

This Contract is entered into this _____ day of _____, 20___ by and between the City of Flagstaff, a political subdivision of the State or Arizona ("City"), and JE Fuller/Hydrology and Geomorphology, Inc. an S Corporation ("Consultant").

WHEREAS, the City desires to receive and Consultant is able to provide consulting services;

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

1. Scope of Work: Consultant shall provide the consulting services generally described as:

MIKESHE RIO DE FLAG MODEL UPDATE

and as more specifically described in the Quote attached here to as *Exhibit A* (the "Services").

2. Term and Renewal: The Contract is for one (1) year and will be effective as of the date signed by both parties. The Contract may be renewed or extended for up to two (2) additional six (6) month 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.

3. Compensation: Consultant shall be paid for satisfactory performance of the Contract in an amount not to exceed **one hundred thousand dollars and zero cents ($100,000.00)** made in accordance with the Quote attached hereto as *Exhibit A.* Any price adjustment must be approved by mutual written consent of the parties through a formal amendment.

4. Termination & Cancellation Clauses.

   4.1 Non-Appropriation: The City may terminate the Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Consultant.

   4.2 For Convenience: Either Party may terminate the Contract for any reason by giving the other Party written notice of such termination no less than fifteen (15) days prior to the date of termination. If the Contract is so terminated, the City's only payment obligation under the Contract shall be for those services completed prior to the effective date of the termination.

   4.3 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 (3) years after its execution, without penalty or further liability to Consultant.

5. Compliance with Laws: Consultant shall comply with all applicable federal, state, and local laws, regulations, standards, codes, and ordinances, including acquiring the requisite insurance, licenses, permits, and approvals, required to perform the Contract, and provide copies to City upon request.

6. Indemnity: Consultant shall be fully liable for the actions of its agents, employees, partners, and assigns and shall fully indemnify, defend, and hold harmless the City, and their officers, agents, and employees from third party suits, actions, damages, and costs of every name and description, including attorneys' fees to the extent arising from or relating to personal injury and damage to real or personal property, caused in whole or in part by the negligence or willful misconduct of Consultant, its agents, employees, partners, or assigns. This indemnification shall survive termination or expiration of the Contract.

Consultant shall be fully liable for the actions of its agents, employees, partners, and assigns and shall fully indemnify, defend (to the extent coverage exists under the General Liability policy required in Article 3.2.1 of Exhibit D) , and hold harmless the City, and their officers, ~~agents,~~ and employees from third party suits, actions, damages, ~~and costs of every name and description,~~ including reasonable attorneys' fees to the extent arising from or relating to personal injury and damage to real or personal property, caused ~~in whole or in part~~ by the negligence or willful misconduct of Consultant, its agents, employees, partners, or assigns. This indemnification shall survive termination or expiration of the Contract.

7. Assignment/Subcontracting: Consultant shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without prior written approval of the City.

8. Independent Contractor: Consultant 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.

9. Nondiscrimination: Consultant 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, ordinances and executive orders regarding employment.

10. City Ownership of Document and Data: Any original documents prepared or collected by Consultant in performance of this Contract such as models, samples, reports, surveys, survey results, graphics, tables, charts, plans, computations and other data shall be the property of City ("City's work product"). Consultant agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and hereby assigns to the City all rights and interests Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the material.

11. Re-Use: The City may use the City's work product without further compensation to Consultant; provided, however, that the City's reuse without written verification or adaption by Consultant for purposes other than contemplated herein is at the City's sole risk and without liability to Consultant. Consultant shall not engage in any conflict of interest nor appropriate any portion of the City's work product for the benefit of Contractor or any third parties without the City's prior written consent.

12. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Consultant shall immediately deliver to the City copies all of the City's work product and any other documents and data accumulated by Consultant in performance of this Contract, whether complete or in process.

13. Immigration Laws: Pursuant to A.R.S. § 41-4401, Consultant hereby warrants that it 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.

14. Forced Labor of Ethnic Uyghurs: Consultant hereby certifies that it does not use the forced labor of ethnic Uyghurs in the People's Republic of China as defined in A.R.S. § 35-394, et seq.

15. Notice: Any formal notice under the Contract shall be in writing via certified mail and email as follows:

To the City:
Erin Young
Water Services Manager
City of Flagstaff
2323 N. Walgreens Blvd.
Flagstaff, AZ 86001
eyoung@flagstaffaz.gov

To Contractor:
Karlie R. Kessel
8400 S. Kyrene Rd. Ste. 201
Tempe, AZ 85284
[INSERT EMAIL]
[INSERT PHONE]

Please change to:
Cyrus D. Miller
(520)270-1650
cyrus@jefuller.com

With a copy to:
Teddy Callan
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Teddy.callan@flagstaffaz.gov

16. 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.

CONSULTANT:	CITY OF FLAGSTAFF
By:_____	By:_____
Title:_____	Title:_____
Date:_____	Date:_____
ATTEST:	APPROVED AS TO FORM:
_____	_____
City Clerk	City Attorney's Office

Notice to Proceed issued:_____, 20___

Last Updated August 26, 2024

EXHIBIT A
SCOPE OF WORK

(Attached)

October 10th, 2024

TO: Erin Young, Water Resources Manager
City of Flagstaff Water Services
2323 N Walgreens St.
Flagstaff, AZ 86004

RE: MIKE SHE Rio de Flag Model Update Proposal

Dear Erin,

Thank you for requesting this proposal for professional engineering services from JE Fuller/Hydrology & Geomorphology, Inc. (JE Fuller) for the above-referenced project. This letter outlines our anticipated scope and fee estimate for work to be completed in FY 2024-2025.

BACKGROUND

The City of Flagstaff (City) worked with a consultant (EN3 Professionals, LLC) to develop a MIKE SHE Hydrologic and Hydraulic model for the City of Flagstaff as a part of a 2018 FEMA grant. In 2022-2023 JE Fuller was contracted to update the model including updated drainage infrastructure and updated hydrology to reflect recent wildfires.

The City has recently received a WIFA water conservation grant and JE Fuller is now being contracted to update the MIKESHE model further to include the Lake Mary watershed and to incorporate detailed hydrogeologic information using available data sources to inform the subsurface portion of the model. JE Fuller will work with Dr. Bob Prucha (EN3) who is an independent software consultant, to gain information on a new detailed geologic model funded by Yavapai Apache Nation (YAN) that spans most of the model domain. Dr. Prucha will also provide modeling support throughout the project.

SCOPE OF WORK

The MIKE SHE Rio de Flag Model update scope includes the following Tasks:

Task 1 – Data Collection and Review/Software Requirements

JE Fuller will obtain (from Dr. Prucha) and review the current integrated model that was previously coupled to the Northern Arizona Regional Groundwater Flow Model (NARGFM). JE Fuller will also review the new, more detailed Verde River geologic model funded by YAN, which spans most (if not all) of the proposed model domain. Other data collection and review will include any available information the City provides related to subsurface geology and current groundwater conditions (borehole logs, geophysics, pumping logs, etc). All information will be compiled to complete a detailed subsurface model of the RDF and Lake Mary watersheds. Dr. Prucha will be hired by JE Fuller to provide support and technical review of the model as needed throughout the project.

JE Fuller will purchase a 6–12-month subscription for the MIKE SHE: Hydrology and Hydraulics package to complete the requested project work. This package includes MIKE SHE, MIKE HYDRO River, MIKE HYDRO Basin,

MIKE+ Data Assimilation, and MIKE+ Rainfall, Runoff, Control and Transport modules. A 6-month subscription will cost around $7,100 and a 1-year subscription will cost approximately $11,300. JE Fuller will determine which subscription will be necessary to complete the following updates and simulations.

Task 2– Model Updates, Simulations and Reporting

JE Fuller will expand the current MIKESHE surface water model to include the Lake Mary watershed utilizing the most recent LiDAR available for the area. Detailed geologic information will then be incorporated into the expanded model using data collected in Task 1. JE Fuller will incorporate the regional C-aquifer and shallow perched aquifers as available information allows. The model currently utilizes the Green and Ampt infiltration method and may be updated to the more robust Richard's equation which will allow for more accurate solutions when simulating long-term recharge. The anticipated resolution of the model will be approximately 400 meters to match the resolution of the YAN geologic model. The model can be refined in key areas of managed or incidental recharge (ie: regional detention basins) to analyze recharge on a finer scale. This finer resolution modeling may be started during this current project phase, as time allows, but will likely need to be refined during subsequent phases of this effort.

Upon completion of the model, simulations will be run to determine groundwater impacts from both typical monsoonal storm events and spring snowmelt. Because of the anticipated long recharge times, due to deep/complex groundwater systems, long simulation runs are needed to determine the impacts of these events on both shallow and deep aquifers. If desired, simulations can be run with and without the 2019 Museum Fire and the 2022 Pipeline Fire, providing insight into long-term groundwater impacts after the wildfires. Information on the interaction between shallow and deep aquifers may also be available depending on the amount of information available for mapping/modeling the shallow aquifers.

JE Fuller acknowledges that one of the goals of this modeling will ultimately be to achieve an Underground Storage Facility permit and will attempt to comply with criteria required by ADWR as that information becomes available.

Deliverable: JE Fuller will provide a technical report detailing the model updates and simulation results. The final model files will be submitted to the City for storage on their server.

FEE ESTIMATE/SCHEDULE

The time and materials, not to exceed fee for this work is $100,000. Time spent will be billed at current City of Flagstaff On-Call rates. JE Fuller anticipates that approximately one (1) year will be needed to complete this project.

We greatly appreciate the opportunity to continue to serve the City. If you have any questions regarding this request, please do not hesitate to contact me.

Sincerely,

Karlie Kessel

Karlie R. Kessel, EIT
JE Fuller/Hydrology and Geomorphology, Inc.

GRANT PROVISIONS

Grant Project Title: City of Flagstaff Groundwater Recharge Model Development

Funding Agency: Water Infrastructure Finance Authority of Arizona

Grant Agreement No.: WC3-128-2024

EXHIBIT D
General Terms and Conditions

All defined terms used herein that are not otherwise defined or described herein, shall have the meanings ascribed to them in the Agreement attached hereto.

1. Agreement Interpretation.

1.1. Captions and Headings. The captions and headings contained in this Agreement are included for convenience of reference only and are not intended to limit or enlarge the terms of this Agreement.

1.2. Choice of Law. The substantive laws of Arizona shall govern the interpretation, validity, performance and enforcement of this Agreement. A tribal government, by executing this Agreement, hereby waives any defense it may have of tribal sovereign immunity for the limited purpose of providing for the enforcement of this Agreement in accordance with its terms.

1.3. Date Calculation. If the last day of any time stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

1.4. Implied Agreement Terms. Each provision of law and any terms required by law to be in this Agreement are a part of this Agreement as if fully stated in it.

1.5. Order of Precedence. In the event of a conflict in the provisions of the Agreement, as accepted by the Grantee and the Authority, and as they may be amended from time to time, the following shall prevail in the order set forth below:

1.5.1. Federal provisions;
1.5.2. Agreement Amendments;
1.5.3. Agreement; then
1.5.4. General Terms and Conditions.

1.6. Relationship of Parties. Neither Party to this Agreement shall be deemed to be the employee or agent of the other Party to the Agreement.

1.7. Severability. If any provision of this Agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.

1.8. Third-Party Rights. Nothing in this Agreement is intended to create any third-party beneficiary rights; and Grantee and the Authority expressly state that this Agreement does not create any third-party rights of enforcement.

1.9. Waivers. No term or provision hereof will be considered waived by either Party, and no breach is excused or consented to by either Party, unless such waiver or consent is in writing and signed on behalf of the Party against whom the waiver is asserted. No express or implied consent by either Party to, waiver of, or failure of a Party to enforce its rights with respect to a breach by the other Party shall constitute consent to or, waiver of any subsequent or other breach by the other Party. Neither the failure nor the delay of the Authority to exercise any right, power or privilege under this Agreement

shall operate as a waiver thereof or shall any single or partial exercise of any right, power or privilege preclude any further exercise of any other right, power or privilege.

2. Agreement Administration and Operation.

2.1. Accounting. Grantee shall maintain for the purposes of this Agreement an accounting system or procedures and practices that conforms to generally accepted accounting procedures.

2.2. Audits and Inspections. The Authority shall have the right of access to records of the Grantee in order to conduct audits or other investigations. Upon request, the Authority's authorized representatives shall be provided with access and shall have the right to examine all documents, financial records, facilities, and activities related to Grantee's performance of this Agreement and to the receipt and expenditure of the Award. Grantee agrees to rectify issues identified in audits within the Authority prescribed time periods. Failure to comply with the request for audit or inspection, or a lack of documentation and records, is cause for termination of this Agreement or withholding of future disbursements.

2.3. Audit Exceptions. If federal or state audit exceptions are made relating to this Agreement, Grantee shall reimburse all costs incurred by the State of Arizona and the Authority associated with defending against the audit exception or performing an audit or follow-up audit including but not limited to: audit fees, court costs, attorney's fees, travel costs, penalty assessments, and all other costs of whatever nature. Immediately upon notification from the Authority, Grantee shall reimburse the amount of the audit exception and any other related costs directly to the Authority as specified by the Authority in the notification.

2.4. Procurement. Procurement of labor, services, supplies, materials, and equipment shall be conducted according to applicable federal, state, and local statutes. The Authority may review any procurement solicitations that Grantee issues. The Authority's review and comments will not constitute an approval of the solicitation. Regardless of the Authority's review, the Grantee remains bound by all applicable laws, regulations, and Agreement terms. If during its review, the Authority identifies any deficiencies, then the Authority shall communicate those deficiencies to the Grantee within seven (7) business days.

2.5. Retention. Pursuant to A.R.S. § 35-214 and 35-215, Grantee shall retain all records relating to this Agreement for a period of five years from the date of final payment to Grantee or as required by applicable law, whichever is longer.

3. Insurance. Grantee and its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Grantee, its agents, representatives, employees or subcontractors.

3.1. The Insurance Requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Grantee from liabilities that arise out of the performance of the work under this Agreement by the Grantee, its agents, representatives, employees or subcontractors, and the Grantee is free to purchase additional insurance.

3.2. Minimum Scope and Limits of Insurance. Grantee shall provide coverage with limits of liability not less than those stated below.

3.2.1. Commercial General Liability (CGL) – Occurrence Form. Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate $2,000,000
- Products – Completed Operations Aggregate $1,000,000
- Personal and Advertising Injury $1,000,000
- Damage to Rented Premises $50,000
- Each Occurrence $1,000,000

3.2.1.1. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Grantee.

3.2.1.2. The policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Grantee.

3.2.2. Business Automobile Liability. Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) $1,000,000

3.2.2.1. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Grantee involving automobiles owned, hired and/or non- owned by the Grantee.

3.2.2.2. The policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Grantee.

3.2.3. Workers' Compensation and Employers' Liability.

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident $1,000,000
  - Disease – Each Employee $1,000,000
  - Disease – Policy Limit $1,000,000

3.2.3.1. The policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Grantee.

3.2.3.2. This requirement shall not apply to any entity that is exempt under A.R.S. § 23-901, and when such entity executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

3.3. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

3.3.1. The Grantee's policies, as applicable, shall stipulate that the insurance afforded the Grantee shall be primary and that any insurance carried by the Authority, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621(E).

3.3.2. Insurance provided by the Grantee shall not limit the Grantee's liability assumed under the indemnification provisions of this Agreement.

3.4. Notice of Cancellation. Applicable to all insurance policies required within the Insurance Requirements of this Agreement, Grantee's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Grantee must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

3.5. Acceptability of Insurers. Grantee's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Grantee from potential insurer insolvency.

3.6. Verification of Coverage. Contractor shall furnish the Authority with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Grantee has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates. All such certificates of insurance and policy endorsements must be received by the State before work commences. The Authority's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement. Each insurance policy required by this Agreement must be in effect at, or prior to, commencement of work under this Agreement. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of the Agreement. All certificates required by this Agreement shall be sent directly to the Authority. The State of Arizona project/Agreement number and project description shall be noted on the certificate of insurance. The Authority reserves the right to require complete copies of all insurance policies required by this Agreement at any time.

3.7. Subcontractors. Grantee's certificate(s) shall include all subcontractors as insureds under its policies or Grantee shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Authority reserves the right to require, at any time throughout the life of this contract, proof from the Grantee that its subcontractors have the required coverage.

3.8. Exceptions. In the event the Grantee or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self- insurance. If the Grantee or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

4. Certifications Required by State Law.

4.1. If the Grantee is a Company as defined in A.R.S. § 35-393, the Grantee certifies that it is not currently engaged in a boycott of Israel as described in A.R.S. § 35-393 and will refrain from any such boycott for the duration of this Agreement.

4.2. The Grantee further certifies that it shall comply with A.R.S. § 35-394, regarding use of the forced labor of ethnic Uyghurs, as applicable.

4.3. Immigration Laws. Grantee certifies and warrants that it is in compliance with A.R.S. § 41-4401 and further acknowledges that any contractor or subcontractor who is contracted by Grantee to perform work related to this Agreement shall warrant its compliance with all federal immigration laws and regulations that relate to its employees and its compliance with A.R.S. § 23-214(A). Any breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement. The Authority retains the legal right to inspect the employment records of any employee of any contractor or subcontractor who performs work related to this Agreement to ensure that the contractor or subcontractor is complying with the warranty in this paragraph and that the contractor agrees to make all employment records of said employee available during normal working hours to facilitate such an inspection.

4.4. Non-Discrimination. Grantee certifies and warrants that it shall comply with the provisions of State Executive Order 2009-9. In performing this Agreement, Grantee shall not, and shall ensure that any and all contractors, subcontractors, employees, agents, volunteers, officers, officials, directors, volunteers, and affiliates, also shall not discriminate, harass, or allow harassment against any person on the basis of sex, race, color, ancestry, religious cred, national origin, physical disability, mental disability, medical condition, age, marital status, or any other basis prohibited under law. Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

5. Reversion of Remaining Funds. Upon expiration or termination of this Agreement, Grantee shall transfer to the Authority any unexpended funds provided to Grantee by the Authority under this Agreement.

Acknowledgment

The Grantee, _____, hereby acknowledges and accepts the above terms and conditions. I hereby certify that I represent a legal entity with authority to enter into this Agreement.

By:_____ Date:_____
Signature

For: _____
Print Name and Title

EXHIBIT E
Federal Provisions

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Grantee provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Grantee's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance.

Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits. The assurances apply to all federal financial assistance from, or funds made available through the Department of the Treasury, including any assistance that the Grantee may request in the future. The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Grantee's program(s) and activity(ies), so long as any portion of the Grantee's program(s) or activity(ies) is federally assisted in the manner prescribed above.

All defined terms used herein that are not otherwise defined or described herein, shall have the meanings ascribed to them in the Agreement attached hereto.

ARTICLE I - ARPA Terms and Conditions

1.1. Accounting. Grantee shall maintain for the purposes of this Agreement an accounting system or procedures and practices that conforms to Generally Accepted Accounting Principles. As defined by 2 C.F.R. Part 200, Subpart A, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board and the Financial Accounting Standards Board.

1.2. Use of Funds. Grantee understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

1.3. Capabilities. Grantee will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

1.4. Reporting. The Grantee agrees to comply with any reporting obligations established by Treasury as they relate to this award.

1.5. Maintenance of and Access to Records. Grantee shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. The Treasury Office of the Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Grantee in order to conduct audits or other investigations. Records shall be maintained by Grantee for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

1.6. Pre-Award Costs. Pre-award costs are allowable only to the extent permitted in 2 C.F.R. § 200.458. Pursuant to the Treasury's SLFRF FAQ, Section 2.6, the ARPA final rule permits funds to be used to cover costs incurred beginning on March 3, 2021. Pre-award costs shall be allowable subject to the terms and conditions of the Agreement.

1.7. Administrative Costs. Grantee may use funds provided under this award to cover both direct and indirect costs.

1.8. Compliance with Applicable Law and Regulations. Grantee agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Grantee also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Grantee shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award. Federal regulations applicable to this award include, without limitation, the following:

1.8.1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

1.8.2. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

1.8.3. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

1.8.4. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

1.8.5. Grantee Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

1.8.6. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

1.8.7. New Restrictions on Lobbying, 31 C.F.R. Part 21.

1.8.8. Generally applicable federal environmental laws and regulations.

1.9. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

1.9.1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.

1.9.2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

1.9.3. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;

1.9.4. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto; and

1.9.5. The Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

1.10. Remedial Actions. In the event of Grantee's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.

1.11. False Statements. Grantee understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

1.12. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Grantee] by the U.S. Department of the Treasury."

1.13. Debts Owed the Federal Government. Any funds paid to Grantee: (1) in excess of the amount to which Grantee is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Grantee shall constitute a debt to the federal government. Any debts determined to be owed the federal government must be paid promptly by Grantee. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Grantee knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

1.14. Disclaimer. The United States expressly disclaims all responsibility or liability to Grantee or third persons for the actions of Grantee or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award. The acceptance of this award by Grantee does not in any way establish an agency relationship between the United States and Grantee.

1.15. Protections for Whistleblowers. In accordance with 41 U.S.C. § 4712, Grantee may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of

gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. The list of persons and entities referenced in the paragraph above includes the following:

1.15.1. A member of Congress or a representative of a committee of Congress.

1.15.2. An Inspector General.

1.15.3. The Government Accountability Office.

1.15.4. A Treasury employee responsible for contract or grant oversight or management. An authorized official of the Department of Justice or other law enforcement agency;

1.15.5. A court or grand jury; or

1.15.6. A management official or other employee of Grantee, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

1.15.7. Grantee shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

1.16. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Grantee should encourage its contractors to adopt and enforce on-the job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1.17. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Grantee should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Grantee should establish workplace safety policies to decrease accidents caused by distracted drivers.

ARTICLE II – Civil Rights Compliance

2.1. Grantee ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2.2. Grantee acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Grantee understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Grantee shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Grantee understands and

agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Grantee's programs, services, and activities.

2.3. Grantee agrees to consider the need for language services for LEP persons when Grantee develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit http://www.lep.gov. OMB Approved No. 1505-0271 Expiration Date: April 30, 2025.

2.4. Grantee acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Grantee and Grantee's successors, transferees, and assignees for the period in which such assistance is provided.

2.5. Grantee acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Grantee and the Grantee's sub-grantees, contractors, subcontractors, successors, transferees, and assignees: The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Grantees of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

2.6. Grantee understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Grantee, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Grantee for the period during which it retains ownership or possession of the property.

2.7. Grantee shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Grantee shall comply with information requests, on-site compliance reviews and reporting requirements.

2.8. Grantee shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Grantee also must inform the Department of the Treasury if Grantee has received no complaints under Title VI.

2.9. Grantee must provide documentation of an administrative agency or court's findings of non-

compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other OMB Approved No. 1505-0271 Expiration Date: April 30, 2025, agreements between the Grantee and the administrative agency that made the finding. If the Grantee settles a case or matter alleging such discrimination, the Grantee must provide documentation of the settlement. If Grantee has not been the subject of any court or administrative agency finding of discrimination, please so state.

2.10. If the Grantee makes sub-awards to other agencies or other entities, the Grantee is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of subrecipients. The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law. Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Grantee's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Grantee is in compliance with the aforementioned nondiscrimination requirements.

ARTICLE III - Conflicts of Interest Acknowledgment

3.1. Conflicts of Interest. Grantee understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity (program or project) funded under this award. Grantee must disclose in writing to the Authority, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

3.1.1. The Grantee must maintain standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Grantee.

3.1.2. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

3.1.3. The officers, employees, and agents of the Grantee may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. However, Grantees may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value.

ARTICLE IV - Debarment and SAM.GOV Certification

4.1. The Grantee certifies that, neither the Grantee nor any owner, partner, director, officer, or principal of the Grantee, nor any person in a position with management responsibility or responsibility for the administration of federal funds:

4.1.1. Is presently debarred, suspended, proposed for debarment, and declared ineligible or

voluntarily excluded from covered transactions by any federal or state department/agency;

4.1.2. Has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

4.1.3. Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or

4.1.4. Has within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

4.2. The Grantee is "Actively" registered with SAMS (Service for Award Management) and has been assigned the following UEI Number: _____ found at www.sam.gov.

Include date SAM.GOV registration begins_____and ends _____.

4.3. The Grantee further certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

ARTICLE V - Lobbying Certificate Disclosure

5.1. For each bid, request for reimbursement, or offer, that exceeds $100,000, the Grantee certifies, to the best of his or her knowledge and belief, that:

5.1.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

5.1.2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

5.1.3. The Grantee shall require that the language paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

5.2. This certification is a material representation of the fact upon which reliance was placed when this

transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by 31 CFR Part 21.

ARTICLE VI - Audit Statement

6.1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

6.2. If Grantee expends more than seven hundred and fifty thousand dollars ($750,000) in federal awards during a fiscal year, Grantee will be subject to an audit under the Single Audit Act and its implementing regulation at 2 C.F.R. Part 200, Subpart F regarding audit requirements and Grantee must:

6.2.1. Provide a copy of Grantee's single audit in the eCivis file reporting area; and

6.2.2. Upload a copy of Grantee's alternative audit or financial budget audit in the eCivis file reporting area.

ARTICLE VII – Non-supplanting Certification

7.1. Supplanting. Federal funds must be used to supplement existing funds for program activities and must not replace those funds that have been appropriated for the same purpose. Supplanting shall be the subject of application review, as well as pre-award review, post-award monitoring, and audit. If the Authority has reason to believe supplanting has or will occur, the Grantee shall supply documentation demonstrating that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

7.2. Certification. By signing this Agreement, the Grantee certifies that any funds awarded under this Agreement shall be used to supplement existing funds for activities contemplated under this Agreement and will not supplant or replace nonfederal funds that have been appropriated for the purposes and goals of the Agreement.

7.3. Penalties. The Grantee understands that supplanting violations may result in a range of penalties, including but not limited to suspension of future funds awarded under the Agreement, suspension or debarment from federal grants, recoupment of monies provided under this Agreement, and civil and/or criminal penalties.

ARTICLE VIII – Miscellaneous

8.1. Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms. Grantee shall take affirmative steps to solicit and include small, minority, and women owned businesses, when possible, in an effort to encourage participation and fair competition in providing supplies/services described in this solicitation. As set forth in 2 C.F.R. § 200.321(b)(1)-(5), such affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum

participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. If subcontracts are to be let, Grantee shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used as required by 2 C.F.R. § 200.321.

ARTICLE IX - Acknowledgment

The Grantee, _____, hereby acknowledges and accepts the above terms and conditions. I hereby certify that I represent a legal entity with authority to enter into this Agreement.

By:_____ Date:_____

Signature

For: _____

Print Name and Title

OMB Approved No. 1505-0271
Expiration Date: April 30, 2025

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUNDS

Recipient name and address: [*Recipient to provide*]	DUNS Number: [*Recipient to provide*] Taxpayer Identification Number: [*Recipient to provide*] Assistance Listing Number: 21.027

Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient:

_____

Authorized Representative:

Title:

Date signed:

U.S. Department of the Treasury:

_____

Authorized Representative:

Title:

Date:

PAPERWORK REDUCTION ACT NOTICE
The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.
   a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

   b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.

3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.

4. Maintenance of and Access to Records
   a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

   b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.

   c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.

7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.

8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.
   a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

   b. Federal regulations applicable to this award include, without limitation, the following:

      i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

      ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

      iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

      iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

      v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

      vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

      vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

      viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

      ix. Generally applicable federal environmental laws and regulations.

   c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

      i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.

11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.
    a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.

    b. Any debts determined to be owed the federal government must be paid promptly by

Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.
    a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.

    b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.
    a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

    b. The list of persons and entities referenced in the paragraph above includes the following:
        i. A member of Congress or a representative of a committee of Congress;
        ii. An Inspector General;
        iii. The Government Accountability Office;
        iv. A Treasury employee responsible for contract or grant oversight or management;
        v. An authorized official of the Department of Justice or other law enforcement agency;
        vi. A court or grand jury; or
        vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

    c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Sam Beckett, Public Works Streets Section Director

Co-Submitter: Justin Cuevas

Date: 10/31/2024

Meeting Date: 11/05/2024

TITLE:

Consideration and Approval of Contract: Cooperative Purchase Contract with Empire Southwest, LLC for the purchase of two (2) 2024 CAT AWD Motor Graders in an amount not to exceed $868,457.73.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract with Empire Southwest, LLC for the purchase of two (2) 2024 Caterpillar 140 AWD Motor Graders in an amount not to exceed $868,457.73; and
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

The Streets Section is responsible for the ongoing maintenance of our local transportation network. The Streets Section has a road grader fleet for use in road grading activities and snow operations. A reliable grader fleet is essential to meet the community expectations and service maintenance of our dirt road inventory and the snow operations tasked with clearing the 700 lane miles of transportation infrastructure during winter events. The request is to bolster our existing fleet by 2 road graders to address the community's physical infrastructure growth and demand for timely service, especially during snow operations neighborhood services.

Financial Impact:

Project Name: Purchase of 2- CAT Motor Graders from Empire Southwest, LLC
Cost: $868,457.37
Account Number Budgeted:040-06-161-0614-6-4401, Remaining balance to be utilized from the previously budgeted Mini EV Road Sweeper which cannot be obtained at this time.
FY Budgeted Amount: $700,000 in 040-06-161-0614-6-4401 plus $250,000 in 040-06-161-0611-6-4401 that was originally budgeted of the Mini EV Road Sweeper
Grant Funded: No
Funding Source: Highway User Revenue Funds (HURF)

Policy Impact:

Snow operations are a substantial element of the Streets work program. The City's Snow Operations Manual maps the entire community by zone. Equipment and operators are tasked with the plowing of snow for over 700 lane miles of City owned roadways. This operation can last a few days to over a week depending on the snow event or weather conditions. This equipment directly supports City policy to provide snow plowing for City owned roadways along with daily operations from dirt road maintenance to asphalt repair and in an emergency, debris removal. These machines are a versatile asset that will expand the capabilities of the work we do for years to come. In addition to this, one of the outgoing motor graders will transition to Landfill Operations to help them increase their services which will continue a successful partnership between divisions.

Previous Council Decision or Community Discussion:

No

Options and Alternatives to Recommended Action:
N/A

Background and History:
The City of Tucson conducted a competitive and open procurement process through a Request for Proposal Solicitation No. 212816 that resulted in Contract No. 212816-01 with Empire Southwest, LLC. The City of Flagstaff Purchasing Section has verified the cooperative purchase contract as valid, appropriate and presents the best value to the City.

Connection to PBB Priorities and Objectives:
High Performing Governance - Serve the public by providing high quality customer service
Sustainable and Innovative Infrastructure - Deliver outstanding services to residents through a healthy, well-maintained infrastructure system

Connection to Regional Plan:
N/A

Connection to Carbon Neutrality Plan:

DD-2	Create inclusive networks for walking and biking that are continuous, attractive, safe, comprehensive, and convenient for people of all ages.
HS-4	Improve the resilience of public infrastructure and City facilities.

Connection to 10-Year Housing Plan:
N/A

Attachments: Cooperative Purchase Contract
Grader Picture

COOPERATIVE PURCHASE CONTRACT
Contract No. 2025-83

This Cooperative Purchase Contract is made and entered into this _____ day of _____, 20_____by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona ("City") and Empire Southwest, LLC, a Delaware Limited Liability Company ("Contractor").

RECITALS:

A. Contractor is a fully authorized vendor of **Heavy Equipment, Parts, Accessories, Supplies and Related Services**

B. The City of Tucson conducted a competitive and open procurement process through Request for Proposal Solicitation No. 212816 that resulted in Contract No. 212816-01 with Contractor ("Agency Contract");

C. The City has authority to enter into a cooperative purchase contract with Contractor utilizing the Agency Contract.

AGREEMENT:

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

1. Materials and or Services Purchased: Contractor shall provide to the City the materials and/or services, as specified in the Scope of Work attached as ***Exhibit A***, and in accordance with the Agency Contract. A general description of materials and/or services being purchased is:

2024 New Caterpillar 140-13 AWD (Lever) Motor Grader

2024 New Caterpillar 140-15 AWD Motor Grader (joystick)

2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options of City, as specified in the Scope of Work attached as ***Exhibit A*** and incorporated by reference.

3. Terms and Conditions of Agency Contract Apply: All provisions of the Agency Contract documents attached as ***Exhibit B***, including any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein. Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract, including, specifically changes in price for materials and/or services.

4. Payment: Payment to Contractor for the materials and/or services not to exceed **Eight hundred sixty-eight thousand four hundred fifty-seven dollars and thirty-seven cents ($868,457.37)**; made in accordance with the price list and terms set forth in the Agency Contract. 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 amendment price increase is less than $100,000; otherwise, City Council approval is required.

5. Certificates of Insurance: All insurance provisions of the Agency Contract shall apply, including any requirement to name the City as an additional insured. Prior to commencing performance under this Contract, Contractor shall furnish City with a copy of the current Certificate of Insurance required by the Agency Contract.

6. Term: This Cooperative Purchase Contract shall commence upon execution by the Parties and shall continue until expiration or termination of the underlying Agency Contract, unless sooner terminated by City in writing.

7. Renewal: This Cooperative Purchase Contract shall be automatically renewed if the underlying Agency Contract is renewed, for the same renewal period, unless City provides advance written notice to Contractor of its intention to non-renew.

8. Notice: Any formal notice required under the Contract shall be in writing and sent by certified mail and email as follows:

To the City:
Justin V. Cuevas
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Justin.cuevas@flagstaffaz.gov
928-606-7131

To Contractor:
Allen Seabolt
Empire Southwest, LLC
Account Manager
Allan.Seabolt@empire-cat.com
928-522-4448

With a copy to:
Liane Garcia
Buyer
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
lgarcia@flagstaffaz.gov
928-213-2279

(Remainder of Page Intentionally Blank)

9. 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.

EMPIRE SOUTHWEST, LLC:

By:_____

Title:_____

CITY OF FLAGSTAFF

By:_____

Title:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney's Office

Notice to Proceed issued:_____, 20___

Last Updated September 4, 2024

EXHIBIT A
SCOPE OF WORK
(attached)

1. Empire-Cat Quote; 9 pages

MIKE STRESS
CITY OF FLAGSTAFF
211 W ASPEN AVE
FLAGSTAFF, AZ 86001-5399

9/11/2024

Dear MIKE, On behalf of Empire Machinery and Caterpillar Inc., we are pleased to quote the following.

2024 New Caterpillar 140-13 AWD (Lever) Motor Grader
Standard Equipment

POWERTRAIN

Air cleaner, dual stage dry type radial seal with service indicator and automatic dust ejector
Air-to-air after cooler (ATAAC)
Belt, serpentine, automatic tensioner
Brakes, oil disc, four-wheel, hydraulic
Demand fan, hydraulic
Electronic over-speed protection
Engine, C9 with ACERT technology, diesel with automatic engine derate and idle control. EPA/ARB tier 4 final & EU stage IV certified engine & aftertreatment
Parking brake, multi-disc, sealed and oil cooled
Sediment drain, fuel tank
Tandem drive
Transmission, 8 speed forward and 6 speed reverse, power shift, direct drive
VHP Plus (Variable Horse Power Plus)

ELECTRICAL

Alarm, back-up
Alternator, 150 ampere, sealed
Batteries, maintenance free, heavy duty, 1125 CCA
Breaker panel
Electrical system, 24 volt

OPERATOR ENVIRONMENT (continued)

Radio ready, entertainment
ROPS cab, 77dB(A) ISO 6394
Storage area for cooler/lunchbox
Throttle control, electronic
Windows: laminated glass
Fixed front with intermittent wiper windows: tempered
Left and right side wipers
Cab Storage

TECHNOLOGY PRODUCTS

RADIOS

Authorization varies by country, please contact your Cat marketing representative with questions or click on the link below: https://dealer.cat.com/en/products/technology.html

PRODUCT LINK

Availability varies by country, please contact your Cat marketing representative with questions or click on the link below: https://dealer.cat.com/pl/certification

SAFETY AND SECURITY

Clutch, circle drive slip
Doors, 2 engine compartment, (two left hand, two right hand) locking

ELECTRICAL (continued)

Lights, reversing
Starter, electric

OPERATOR ENVIRONMENT

Steering wheel
Air Conditioning with heater
Articulation
Centershift pin indicator
Display, digital speed and gear
Load sensing hydraulic controls:
-Right/left blade lift
-Circle drive
-Center shift
-Side shift
-Blade tip
-Front wheel lean
Doors, left and right side
Gauge, machine level
Gauges (analog) inside the cab
(includes fuel, articulation, engine
coolant temp, engine RPM and hydraulic
oil temp, DEF/AdBlue)
Lights, night time cab
Messenger Display
-Meter
-Hour digital
Mirror
Inside rearview, wide angle
Power port, 12V

SAFETY AND SECURITY (continued)

Doors, 2 service, left and right locking
Ground level engine shutdown
Hammer (emergency exit)
Horn, electric
Seat belt, retractable 3"
Secondary steering
Tandem walkway/guards

FLUIDS

Antifreeze
Extended life coolant -35C/-30F

OTHER STANDARD EQUIPMENT

Accumulators -brake -dual certified
Drawbar,6 shoe w/replaceable wear strips
Fluid check, ground level
Fuel tank, 100 gallon (378 L)
Ground level fueling
DEF/AdBlue Tank, 3.3 gallon (12.5 L)
Hydraulic lines for base functions
Pump, hydraulic, high capacity
(100cc / 6 cu in)
Radiator, cleanout access
(both sides with swing doors)
SOS ports - engine -hydraulic
-transmission -coolant -fuel
Tool box
Debris guard

Additional Configuration Included in the Sales Price:

Ref #	Description	Price
5158361	140LVR MOTOR GRADER	$521,110
0P2265	ROLL ON-ROLL OFF	$405
0P3978	FUEL ANTIFREEZE, -25C (-13F)	$0
4K3330	SHANKS/TEETH, RIPPER/SCARIFIER	$1,861
8J1434	TOOTH, STRAIGHT (2)	$2,120
2495516	HEATER, ENGINE COOLANT, 120V	$326
2497841	TIRES, 17.5R25 BS VKT * D2A MP	$13,640
3361559	PUSH PLATE, COUNTERWEIGHT	$5,320

Additional Configuration Included in the Sales Price (continued):

3806774	PRECLEANER, NON SY-KLONE	$0
4218926	SERIALIZED TECHNICAL MEDIA KIT	$0
4399110	MOLDBOARD, 14' PLUS	$1,820
4532908	LOCK OUT, MANUAL	$1,780
5152231	STARTER, HEAVY DUTY	$0
5154649	RIPPER-SCARIFIER, REAR	$27,080
5162552	DECALS, ENGLISH (US)	$0
5183026	PREMIUM CORP RADIO (12V)	$770
5183382	SEAT, CLOTH AIR SUSPENSION	$3,400
5193712	PRODUCT LINK, CELLULAR PLE641	$0
5213250	CIRCLE SAVER	$318
5222419	GUARD, TRANSMISSION	$4,520
5226395	COLD WEATHER, AWD	$1,005
5226654	COOLANT (-40C)	$0
5226688	CAB, PLUS	$2,450
5226756	DRAWBAR, TOP ADJUST	$0
5226757	CAT GRADE ARO	$8,850
5241763	ACCUMULATORS, WITH ARO	$6,200
5241768	CAMERA, REAR VISION	$0
5243111	MIRRORS, HEATED EXTERNAL	$235
5583845	FAN, STANDARD AWD	$0
5585822	LOW BAR, LED, AWD	$1,815
5586474	LIGHTS, CAB ROOF, LED	$1,650
5592201	LINK BAR, HYDRAULIC	$0
5623742	ROADING LIGHTS W/FOLD DOWN ARM	$2,500
5632272	LIGHTS, WORK PLUS, LED	$3,445
5999890	BASE+1 (RIP) ARO	$11,190
	CATERPILLAR LIST PRICE	**$623,810**

Pricing Summary

Caterpillar List Price:	**$623,810.00**
Lees City of Tucson/OMNIA Partners Cooperative Contract #212816 Discount (30%):	($187,143.00)
Less Additional Empire Discount (7%):	(43,666.70)
Sub Total:	$393,000.30
Delivery Freight:	$2,100.00
Sales Price:	**$395,200.30**
Sales Tax (8.9%):	$35,163.93
Total Sales Price Including Tax :	**$430,264.23**

Machine Warranty: 7 years or 7,000 hour Caterpillar Premier Warranty. Travel time and mileage cost for warrantable repairs covered for first 12 months.

Training: On-site operating and safety training provided by CAT certified product specialist to ensure machine is run properly to reduce operating costs, reduce unnecessary machine wear and tear, maximize productivity, and increase safety awareness.

Additional Options to Consider that's not Included in the Sales Price:

Snow Wing - Mastless		**LIST PRICE**
5672731	WING, HYD PUSH POLE, RM	$35,833.00
Less City of Tucson/OMNIA PARTNERS Discount (15%):		($5,374.95)
	Sales Price:	**$30,458.05**

**Empire has one of the mastless snow wings in stock that is brand new but has been in inventory for two (2) years. For the single snow wing we have in inventory the following pricing is available for that unit based upon its availability at time of purchase order:

Snow Wing - Mastless		**LIST PRICE**
5672731	WING, HYD PUSH POLE, RM	$35,833.00
Less City of Tucson/OMNIA PARTNERS Discount (15%):		($5,374.95)
Less Additional Empire Discount (Aged inventory discount):		($15,000.00)
	Sales Price:	**$15,458.05**

Additional Hydraulic Valves and Snow Wing Installation:

If Empire delivered stock Motor Graders, additional hydraulic valves, hoses, mounting plates, and labor will be required. The estimated cost to make a stock machine ready to run snow wings would be:
approximately $13,500.00 each machine.

If Empire custom ordered Motor Graders from the factory "snow wing" ready, they would still require labor to install the snow wings and additional factory configuration cost. I have estimated that there would be some cost savings, but very little.
The savings would be +/- $2,500.00 per machine.

*New custom order machines will not likely arrive until January, 2025.

***Empire currently has two Caterpillar 140-13 AWD's available in stock that would ensure the City of Flagstaff would have machines ready for work for this coming year's snow season**.

If you have any questions regarding this information please let me know. Thank you for allowing Empire Machinery to assist with your Caterpillar equipment needs.

Sincerely,

Allan Seabolt
Empire Southwest
Account Manager
(928)522-4448
Allan.Seabolt@empire-cat.com

MIKE STRESS
CITY OF FLAGSTAFF
211 W ASPEN AVE
FLAGSTAFF, AZ 86001-5399

9/19/2024

Dear MIKE, On behalf of Empire Machinery and Caterpillar Inc., we are pleased to quote the following.

2024 New Caterpillar 140-15 AWD Motor Grader (joystick)
Standard Equipment

POWERTRAIN

Air cleaner, dual stage dry type radial seal with service indicator and automatic dust ejector
Air-to-air after cooler (ATAAC)
Belt, serpentine, automatic tensioner
Brakes, oil disc, four-wheel, hydraulic
Demand fan, hydraulic
Differential, lock/unlock, Automatic
Drain, engine oil, ecology
Electronic over-speed protection
Parking brake, multi-disc, sealed and oil cooled.
Sediment drain, fuel tank.
Transmission, 8 speed forward and 6 speed reverse, power shift, direct drive
VHP Plus (Variable Horse Power Plus)

ELECTRICAL

Alarm, back-up
Alternator, 150 ampere, sealed
Batteries, maintenance free, heavy duty, 1125 CCA
Breaker panel, ground accessible
Electrical hydraulic valves
Electrical system, 24V
Grade Control Ready (Cab harness, software, electrical hydraulic valves, bosses and brackets)

OPERATOR ENVIRONMENT (continued)

-Fixed front with intermittent wiper
-Door with intermittent wipers (3)
Windows tempered:
-Left and right side wipers
-Rear with intermittent wiper
Cab storage

TECHNOLOGY PRODUCTS

RADIOS

Authorization varies by country, please contact your Cat marketing representative with questions or click on the link below: https://dealer.cat.com/en/products/technology.html

PRODUCT LINK

Availability varies by country, please contact your Cat marketing representative with questions or click on the link below: https://dealer.cat.com/pl/certification

SAFETY AND SECURITY

Clutch, circle drive slip
Doors, 2 engine compartment, (two left hand, two right hand) locking
Doors, 2 service, left and right locking
Ground level engine shutdown
Hammer (emergency exit)

ELECTRICAL (continued)

Lights, reversing
Lights, roading, roof-mounted, stop and tail, LED
Starter, electric

OPERATOR ENVIRONMENT

Air Conditioning with heater
Articulation, automatic return to center
Centershift pin indicator
Display, digital speed and gear
Doors, left and right side with wiper
Gauge, machine level
Gauges (analog) inside the cab (includes fuel, articulation, engine coolant temp, engine RPM, and hydraulic oil temp, DEF/AdBlue)
Joystick, adjustable armrests
Joystick gear selection, hydraulic power steering hydraulic controls (right/left, blade lift w/ float position, blade sideshift and tip, circle drive, centershift, front wheel lean and articulation and steering)
Lights, night time cab
Messenger operator information system
Meter, hour, digital
Mirror, inside rearview, wide angle
Power port, 12V
Radio ready, entertainment
ROPS cab, sound suppressed - 69dB(A) - ISO 6394
Seat,cloth-covered, comfort suspension
Storage area for cooler/lunchbox
Throttle control, electronic
Windows laminated glass:

SAFETY AND SECURITY (continued)

Horn, electric
Lockout, hydraulic implement (for roading and servicing)
Seat belt, retractable 76.2 (3")
Secondary steering
Tandem walkway/guards

TIRES, RIMS, AND WHEELS

A partial allowance for tires on 254mm x 609.6mm (10" x 24") multi-piece rims is included in the base machine price and weight.

FLUIDS

Antifreeze
Extended life coolant -35C/-30F

OTHER STANDARD EQUIPMENT

Accumulators -brake -dual certified
Drawbar,6 shoe w/replaceable wear strips
Fluid check, ground level
Fuel tank, 398 liters (105 gallon)
Ground level fueling
DEF/AdBlue Tank, 21 liters (5.5 gallon)
Hydraulic lines for base functions
Pump, hydrailic, high capacity (98cc / 15 cu in)
Radiator, cleanout access (both sides with swing doors)
SOS ports - engine -hydraulic -transmission -coolant -fuel
Tool box
Debris guard

Additional Configuration Included in the Sales Price:

Ref #	Description	Price
5773022	140 AWD (joystick) MOTOR GRADER	$535,820
3493048	MOLDBOARD, 14' PLUS	$3,595
3240889	RIPPER/SCARIFIER	$27,080
3533330	WEATHER, STANDARD, AWD	$1,005
3589338	ACCUMULATORS, BLADE LIFT	$6,200
3806774	PRECLEANER, NON SY-KLONE	$0
5674685	ENGINE, TIER IV	$0
3245328	DRAIN, GRAVITY, ENGINE OIL	$0
3858094	BASE + 1 (RIP)	$3,050
3953547	STARTER, ELEC, EXTREME DUTY	$540
5506608	LIGHTS, ROADING, LED	$1,650
3859554	CAB, PLUS (STANDARD GLASS)	$1,470
3977457	CAB, PLUS (INTERIOR)	$4,000
3941132	SEAT BELT W/INDICATOR	$257
4646442	PRODUCT LINK, CELLULAR PLE742	$0
5836977	CAT GRADE ARO, AWD	$6,410
4352072	CONTROL,AUTO ARTICULATION-FULL	$2,400
4588701	JOYSTICK CONTROLS, ADVANCED	$2,685
5402373	TANK, FUEL, STANDARD	$0
5858822	FAN, STANDARD, AWD	$0
2497841	TIRES, 17.5R25 BS VKT * D2A MP	$13,640
3236970	GUARD GP, HITCH	$0
4698157	COOLANT, 50/50, -35C (-31F)	$0
0P3978	FUEL ANTIFREEZE, -25C (-13F)	$0
5369969	LIGHTS, ARM, FOLD DOWN	$2,500
5527285	LIGHTS, WORKING, PLUS, LED	$3,445
5532588	HEADLIGHTS, FRONT, LOW, LED	$1,815
3963921	CAMERA, REAR VISION	$0
2333295	MIRRORS, OUTSIDE MOUNTED	$650
2495516	HEATER, ENGINE COOLANT, 120V	$326
3662459	GUARD, TRANSMISSION	$4,520
3676842	PUSH PLATE, COUNTERWEIGHT HD	$7,500
5213250	CIRCLE SAVER	$318
8J1434	TOOTH, STRAIGHT (2)	$2,630
4K3330	SHANKS/TEETH, RIPPER/SCARIFIER	$1,861
0P2265	ROLL ON-ROLL OFF	$0
	CATERPILLAR LIST PRICE	**$635,367**

Pricing Summary

Caterpillar List Price:	**$635,367.00**
City of Tucson / Omnia Partners Cooperative Contract #212816 Discount (30%):	($190,610.10)
Less Additional Empire Machinery Discount (7.0%):	($44,475.69)
Sub Total:	$400,281.21
Extended Warranty (see details below):	$0.00
Delivery Freight to City of Flagstaffs Yard:	$2,100.00
Sale Price:	**$402,381.21**
Sales Tax (8.9%):	$35,811.93
Total Sales Price Including Tax:	**$438,193.14**

Warranty: 7 years or 7,000 hour Caterpillar Premier Warranty. Travel time and mileage cost for warrantable repairs covered for first 12 months.

Training: On-site operating and safety training provided by CAT certified product specialist to ensure machine is run properly to reduce operating costs, reduce unnecessary machine wear and tear, maximize productivity, and increase safety awareness.

Additional Options to Consider that's not Included in the Sales Price:

Snow Wing - Mastless		**LIST PRICE**
5672731	WING, HYD PUSH POLE, RM	$35,833.00
Less City of Tucson/OMNIA PARTNERS Discount (15%):		($5,374.95)
	Sales Price:	**$30,458.05**

Additional Hydraulic Valves and Snow Wing Installation:

If Empire delivered stock Motor Graders, additional hydraulic valves, hoses, mounting plates, and labor will be required. The estimated cost to make a stock machine ready to run snow wings would be:
approximately **$13,500.00 each machine.**

If Empire custom ordered Motor Graders from the factory "snow wing" ready, they would still require labor to install the snow wings and additional factory configuration cost. I have estimated that there would be some cost savings, but very little.
The savings would be +/- $2,500.00 per machine.

*New custom order machines will not likely arrive until January, 2025.

***Empire currently has two Caterpillar 140-15 AWD's (joystick steering) available in stock that would ensure the City of Flagstaff would have machines ready for work for this coming year's snow season**.

If you have any questions regarding this information please let me know. Thank you for allowing Empire Machinery to assist with your Caterpillar equipment needs.

Sincerely,

Allan Seabolt
Empire Southwest
Sales Account Manager
(928)522-4448
Allan.Seabolt@empire-cat.com

This quote is good for thirty days and prices are subject to change. All finance options are subject to credit approval. By purchasing goods or services from Empire, you agree to Empire's Terms (www.empire-cat.com/salesserviceterms), which are incorporated into this quote. Due to market issues outside of Empire's control, any tires listed on this quote may not be available at time of shipment. All tire makes, models and costs are subject to change.

City of Tucson, AZ

Contract #212816-01

for

Heavy Equipment, Parts, Accessories, Supplies and Related Services

with

Caterpillar, Inc.

Effective: October 3, 2022

The following documents comprise the executed contract between the City of Tucson, AZ and Caterpillar, Inc. effective October 3, 2022:

I. Vendor Contract and Signature Form
II. Supplier's Response to the RFP, incorporated by reference

Contract # 212816-01

Heavy Equipment, Parts, Accessories, Supplies and Related Services

Caterpillar, Inc.

Table of Contents

Negotiation Confirmation Letter
(BAFO) – Price Page
Negotiated Exceptions
Request for Clarifications
Offer and Acceptance
Caterpillar, Inc. - Response to RFP 212816
Caterpillar, Inc. Insurance Documents
Caterpillar, Inc. and OMNIA Partners
National Cooperative Agreement

Contract # 212816-01

Heavy Equipment, Parts, Accessories, Supplies and Related Services

Caterpillar, Inc.

Negotiation Confirmation Letter

September 6, 2022 ***Sent via email, this day***

Tirena Pavelka, Government Sales Account Manager
Caterpillar Inc.
100 NE Adams St.
Peoria, IL 61629
Email: Pavelka_tirena_l@cat.com

Subject: Request for Proposal No. 212816 -Heavy Equipment, Parts, Accessories, Supplies and Related Services
Negotiation Confirmation Letter

Dear Ms. Tirena Pavelka:

Based on previous responses, discussions and negotiations, this letter serves as a request for confirmation that the statements below represent your firm's best and final offer to the City of Tucson regarding the subject solicitation. Specifically, you are asked to provide written confirmation by signing the concurrence line below. Points of agreement not identified below are not included in the offer. In the event there is any disagreement with this document or if there is other information that must be included in this document, **Caterpillar, Inc.,** must specify such in a written response to this request.

The following agreement has been made between the City of Tucson and **Caterpillar, Inc.,** with regard to Request for Proposal No. 212816 and incorporates the documentation as delineated in the following order of precedence.

Order of Precedence:

The following documents comprise the order of precedence of the executed contract.

Item 1. Negotiated Confirmation Letter, dated September 6th, 2022.

Item 2. Caterpillar Inc., Intent to Negotiate and BAFO response and email and attachments, dated August 17th and 23rd, 2022.

Item 3. Caterpillar Inc., Intent to Negotiate – Exceptions response and email dated July 29th, 2022.

Item 4. Caterpillar Inc., Request for Clarifications response and email dated December 1st, 2021.

Item 5. Caterpillar Inc., Response to Request for Proposal dated September 10th, 2021.

Your response to this letter must be received by the City's Business Services Department no later than ***Friday, September 9th, 2022, 4:00 PM Local Arizona Time.***

Sincerely,

Cynthia Thompson

Cynthia Thompson, NIGP-CPP, CPPB
Principal Contract Officer

Concurrence: Tirena Pavelka Date: 9/9/2022

Tirena Pavelka, Government Sales Account Manager
Caterpillar, Inc.

Contract # 212816-01

Heavy Equipment, Parts, Accessories, Supplies and Related Services

Caterpillar, Inc.

(BAFO) – Price Page - Redacted

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Effective with sales to the first user on or after July 1, 2021

CATERPILLAR LIMITED WARRANTY

Rubber Track used on Multi Terrain Loader, Compact Track Loader and Mini Hydraulic Excavator

Worldwide

Caterpillar Inc. or any of its subsidiaries ("Caterpillar") warrants Cat® and Yellowmark™ new rubber tracks sold by it for use on Compact Construction Equipment Multi Terrain Loaders, Compact Track Loaders and Mini Hydraulic Excavators to be free from defects in material and workmanship. The warranty is subject to the following:

Warranty Period

The standard warranty period for all new Premium rubber tracks used on Multi Terrain Loaders, Compact Track Loaders and Mini Hydraulic Excavators is 12 months, or 1500 operating hours, whichever occurs first, starting from the date of delivery to the first user.

The standard warranty period for new General Duty rubber tracks used on Multi Terrain Loaders and Compact Track Loaders is 12 months or 1000 operating hours, whichever occurs first, starting from the date of delivery to the first user.

The standard warranty period for new Yellowmark rubber tracks used on Multi Terrain Loaders , Compact Track Loaders and Mini Hydraulic Excavators is 12 months or 750 operating hours, whichever occurs first, starting from the date of delivery to the first user.

Caterpillar Responsibilities

If a disabling defect in material or workmanship is found during the warranty period, Caterpillar will, during normal working hours and at a place of business of a Cat® dealer or other source approved by Caterpillar:

- At Caterpillar's choice, repair or provide an allowance toward the purchase of a new rubber track. Such allowance will be based on accrued hours. Allowance will be calculated as follows:

User Allowance for Multi Terrain Loaders, Compact Track Loaders and Mini Hydraulic Excavators with Premium rubber tracks:

Allowance (%) = (1-Track hours/1500 hours) X 100

User Allowance for Multi Terrain Loaders and Compact Track Loaders with General Duty rubber tracks:

Allowance (%) = (1-Track hours /1000 hours) X 100

User Allowance for Multi Terrain Loaders, Compact Track Loaders and Mini Hydraulic Excavators with Yellowmark rubber tracks:

Allowance (%) = (1-Track hours/750 hours) X 100

- Provide reasonable and customary repair labor needed to correct the defect if product found to be defective and its replacement are both installed by a Cat dealer or other source approved by Caterpillar, or installed on machine prior to sale.

User Responsibilities

The user is responsible for:

- Providing proof of the delivery date to the first user.
- All cost associated with transporting the product to and from the place of business of a Caterpillar dealer or other source approved by Caterpillar.
- Labor costs, except as stated under "Caterpillar Respons bilities."
- Local taxes, if applicable.
- Any remaining costs of a new rubber track after the calculation of the "User Allowance" as stated under "Caterpillar Responsibilities."
- Parts shipping charges in excess of those that are usual and customary.
- Costs to investigate complaints, unless the problem is caused by a defect in material or workmanship.
- Giving timely notice of a warrantable failure and promptly making the product available for repair.

Limitations

Caterpillar is not responsible for:

- Failures resulting from any use or installation that Caterpillar judges improper.
- Failures resulting from abuse, neglect, or improper repair.
- Failures resulting from user's delay in making the product available after being notified of a potential product problem.
- Failures resulting from unauthorized repair or adjustments and unauthorized fuel setting changes.
- Failures resulting from attachments, accessory items, and parts not sold or approved by Caterpillar.

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This warranty covers every major component of the products. Claims under this warranty should be submitted to a place of business of a Cat dealer or other source approved by Caterpillar. For further information concerning either the location to submit claims or Caterpillar as the issuer of this warranty, write Caterpillar Inc., 100 N. E. Adams St., Peoria, IL USA 61629, telephone 1 (309) 675-1000, or go to URL www.cat.com, Find Your Dealer

Caterpillar's obligations under this Limited Warranty are subject to, and shall not apply in contravention of, the laws, rules, regulations, directives, ordinances, orders, or statutes of the United States, or of any other applicable jurisdiction, without recourse or liability with respect to Caterpillar.

A) For products operating outside of Australia, Fiji, Nauru, New Caledonia, New Zealand, Papua New Guinea, the Solomon Islands, and Tahiti, the following is applicable:

NEITHER THE FOREGOING EXPRESS WARRANTY NOR ANY OTHER WARRANTY BY CATERPILLAR, EXPRESS OR IMPLIED, IS APPLICABLE TO ANY ITEM CATERPILLAR SELLS THAT IS WARRANTED DIRECTLY TO THE USER BY ITS MANUFACTURER.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT CATERPILLAR EMISSION-RELATED COMPONENTS WARRANTY FOR NEW ENGINES, WHERE APPLICABLE. REMEDIES UNDER THIS WARRANTY ARE LIMITED TO THE PROVISION OF MATERIAL AND SERVICES, AS SPECIFIED HEREIN.

CATERPILLAR IS NOT RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

CATERPILLAR EXCLUDES ALL LIABILITY FOR OR ARISING FROM ANY NEGLIGENCE ON ITS PART OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS, OR REPRESENTATIVES IN RESPECT OF THE MANUFACTURE OR SUPPLY OF GOODS OR THE PROVISION OF SERVICES RELATING TO THE GOODS.

IF OTHERWISE APPLICABLE, THE VIENNA CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXCLUDED IN ITS ENTIRETY.

B) For products operating in Australia, Fiji, Nauru, New Caledonia, New Zealand, Papua New Guinea, the Solomon Islands, and Tahiti, the following is applicable:

THIS WARRANTY IS IN ADDITION TO WARRANTIES AND CONDITIONS IMPLIED BY STATUTE AND OTHER STATUTORY RIGHTS AND OBLIGATIONS THAT BY ANY APPLICABLE LAW CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED ("MANDATORY RIGHTS"). ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED (BY STATUTE OR OTHERWISE), ARE EXCLUDED. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS PARAGRAPH, WHERE A PRODUCT IS SUPPLIED FOR BUSINESS PURPOSES, THE CONSUMER GUARANTEES UNDER THE CONSUMER GUARANTEES ACT 1993 (NZ) WILL NOT APPLY.
NEITHER THIS WARRANTY NOR ANY OTHER CONDITION OR WARRANTY BY CATERPILLAR, EXPRESS OR IMPLIED (SUBJECT ONLY TO THE MANDATORY RIGHTS), IS APPLICABLE TO ANY ITEM CATERPILLAR SELLS THAT IS WARRANTED DIRECTLY TO THE USER BY ITS MANUFACTURER.

IF THE MANDATORY RIGHTS MAKE CATERPILLAR LIABLE IN CONNECTION WITH SERVICES OR GOODS, THEN TO THE EXTENT PERMITTED UNDER THE MANDATORY RIGHTS, THAT LIABILITY SHALL BE LIMITED AT CATERPILLAR'S OPTION TO (a) IN THE CASE OF SERVICES, THE SUPPLY OF THE SERVICES AGAIN OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN AND (b) IN THE CASE OF GOODS, THE REPAIR OR REPLACEMENT OF THE GOODS, THE SUPPLY OF EQUIVALENT GOODS, THE PAYMENT OF THE COST OF SUCH REPAIR OR REPLACEMENT OR THE ACQUISITION OF EQUIVALENT GOODS.

CATERPILLAR EXCLUDES ALL LIABILITY FOR OR ARISING FROM ANY NEGLIGENCE ON ITS PART OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES IN RESPECT OF THE MANUFACTURE OR SUPPLY OF GOODS OR THE PROVISION OF SERVICES RELATING TO THE GOODS.

CATERPILLAR IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES UNLESS IMPOSED UNDER MANDATORY RIGHTS.

IF OTHERWISE APPLICABLE, THE VIENNA CONVENTION (CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS) IS EXCLUDED IN ITS ENTIRETY.

C) For products supplied in Australia:

IF THE PRODUCTS TO WHICH THIS WARRANTY APPLIES ARE:

I. PRODUCTS OF A KIND ORDINARILY ACQUIRED FOR PERSONAL, DOMESTIC OR HOUSEHOLD USE OR CONSUMPTION; OR

II. PRODUCTS THAT COST AUD 100,000 OR LESS,

WHERE THOSE PRODUCTS WERE NOT ACQUIRED FOR THE PURPOSE OF RE-SUPPLY OR FOR THE PURPOSE OF USING THEM UP OR TRANSFORMING THEM IN THE COURSE OF PRODUCTION OR MANUFACTURE OR IN THE COURSE OF REPAIRING OTHER GOODS OR FIXTURES, THEN THIS SECTION C APPLIES.

THE FOLLOWING MANDATORY TEXT IS INCLUDED PURSUANT TO THE AUSTRALIAN CONSUMER LAW AND INCLUDES REFERENCES TO RIGHTS THE USER MAY HAVE AGAINST THE DIRECT SUPPLIER OF THE PRODUCTS: OUR GOODS COME WITH GUARANTEES THAT CANNOT BE EXCLUDED UNDER THE AUSTRALIAN CONSUMER LAW. YOU ARE ENTITLED TO A REPLACEMENT OR REFUND FOR A MAJOR FAILURE AND COMPENSATION FOR ANY OTHER REASONABLY FORESEEABLE LOSS OR DAMAGE. YOU ARE ALSO ENTITLED TO HAVE THE GOODS REPAIRED OR REPLACED IF THE GOODS FAIL TO BE OF ACCEPTABLE QUALITY AND THE FAILURE DOES NOT AMOUNT TO A MAJOR FAILURE. THE INCLUSION OF THIS TEXT DOES NOT CONSTITUTE ANY REPRESENTATION OR ACCEPTANCE BY CATERPILLAR OF LIABILITY TO THE USER OR ANY OTHER PERSON IN ADDITION TO THAT WHICH CATERPILLAR MAY HAVE UNDER THE AUSTRALIAN CONSUMER LAW.

TO THE EXTENT THE PRODUCTS FALL WITHIN THIS SECTION C BUT ARE NOT OF A KIND ORDINARILY ACQUIRED FOR PERSONAL, DOMESTIC OR HOUSEHOLD USE OR CONSUMPTION, CATERPILLAR LIMITS ITS LIABILITY TO THE EXTENT IT IS PERMITTED TO DO SO UNDER THE AUSTRALIAN CONSUMER LAW TO, AT ITS OPTION, THE REPAIR OR REPLACEMENT OF THE PRODUCTS, THE SUPPLY OF EQUIVALENT PRODUCTS, OR THE PAYMENT OF THE COST OF SUCH REPAIR OR REPLACEMENT OR THE ACQUISITION OF EQUIVALENT PRODUCTS.

THE WARRANTY SET OUT IN THIS DOCUMENT IS GIVEN BY CATERPILLAR INC. OR ANY OF ITS SUBSIDIARIES, 100 N. E. ADAMS ST, PEORIA, IL USA 61629, TELEPHONE 1 309 675 1000,THE USER IS RESPONSIBLE FOR ALL COSTS ASSOCIATED WITH MAKING A CLAIM UNDER THE WARRANTY SET OUT IN THIS DOCUMENT, EXCEPT AS EXPRESSLY STATED OTHERWISE IN THIS DOCUMENT, AND THE USER IS REFERRED TO THE BALANCE OF THE DOCUMENT TERMS CONCERNING CLAIM PROCEDURES, CATERPILLAR RESPONSIBILITIES AND USER RESPONSIBILITIES.

TO THE EXTENT PERMISSIBLE BY LAW, THE TERMS SET OUT IN THE REMAINDER OF THIS WARRANTY DOCUMENT (INCLUDING SECTION B) CONTINUE TO APPLY TO PRODUCTS TO WHICH THIS SECTION C APPLIES.

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Effective with sales to the first user on or after July 1, 2021

CATERPILLAR LIMITED WARRANTY

Earthmoving, Construction, Material Handling, Forestry and Paving Machines

Worldwide

Caterpillar Inc. or any of its subsidiaries ("Caterpillar") warrants the following new products sold by it to be free from defects in material and workmanship:

- Earthmoving, construction, material handling, forestry and paving machines (except as listed below).
- HPU300 for use with 300.9D VPS
- Attachments/work tools installed on such machines prior to delivery (unless covered by the Cat® Work Tool warranty statement or another manufacturer's warranty). Hammer tool points and compacting plates used on hydraulic hammers are not warranted.

Additional warranties are applicable against breakage for certain Cat Ground Engaging Tools and for wear on all landfill compactor tips. Refer to the applicable warranty statements for coverage detail.

This warranty does not apply to:

- Cat Batteries
- Mobil-trac belts, rubber tracks used on multi terrain loaders, compact track loaders, and mini hydraulic excavators
- Cat Work Tools
- 424 Backhoe Loaders, 216 and 226 Skid Steer Loaders, and 320 & 323 Excavators sold in India
- Prentice brand forestry machines
- Longwall mining machines
- 777, 785, 789, 793, 794, 795, 796, 797 and 798 Off-Highway Trucks sold in regions other than the Commonwealth of Independent States ("CIS")
- 16, 18 & 24 Motor Graders sold in regions other than the CIS
- 854, 992, 993, 994 Wheel Loaders sold in regions other than CIS
- Cat Utility Vehicles (UTV)
- Compact Construction Equipment including Compact Track & Multi Terrain Loaders, Mini Hydraulic Excavators, Skid Steer Loaders, and HPU300 sold in USA or Canada.

These products are covered by other Caterpillar warranties.

This warranty is subject to the following:

Warranty Period

For new machines, HPU300, and work tools/attachments the warranty period is 12-months/unlimited hours, starting from date of delivery to the first user.

Note:

- For hydraulic line's quick connect/disconnect components sold on telehandlers, compact wheel loaders, mini hydraulic excavators, skid steer loaders, multi terrain loaders, and compact track loader machines, the warranty period is 50 hours starting from the date of delivery to the first user.
- For work tool line's quick connect/disconnect components sold on Telehandler Work Tools installed with the machine at time of sale, the warranty period is 3 months starting from date of delivery or sale to the first user.
- For Draglines, Electric Rope Shovels, Hard Rock Movers, Hard Rock Feeders, Hard Rock Miners, Hard Rock Conveyors, Hard Rock Roof Supports; the warranty period is not to exceed 24 months from shipment of the last major component from the Caterpillar place of manufacture.

Caterpillar Responsibilities

If a defect in material or workmanship is found during the warranty period, Caterpillar will, during normal working hours and at a place of business of a Cat dealer or other source approved by Caterpillar

- Provide (at Caterpillar's choice) new, remanufactured, or Caterpillar approved repaired parts or assembled components needed to correct the defect.

Note: New, remanufactured, or Caterpillar approved replacement parts provided under the terms of this warranty are warranted for the remainder of the warranty period applicable to the product in which installed as if such parts were original components of that product. Items replaced under this warranty become the property of Caterpillar.

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- Replace lubricating oil, filters, antifreeze, and other service items made unusable by the defect.
- Provide reasonable and customary labor needed to correct the defect.

User Responsibilities

The user is responsible for:

- Providing proof of delivery date to the first user.
- Labor costs, except as stated under “Caterpillar Responsibilities.”
- Transportation costs, except as stated under “Caterpillar Responsibilities.”
- Premium or overtime labor costs.
- Parts shipping charges in excess of those that are considered usual and customary.
- Local taxes, if applicable.
- Costs to investigate complaints, unless the problem is caused by a defect in Caterpillar material or workmanship.
- Giving timely notice of a warrantable failure and promptly making the product available for repair.
- Performance of the required maintenance (including use of proper fuel, oil, lubricants, and coolant) and items replaced due to normal wear and tear.
- Allowing Caterpillar access to all electronically stored data.

Limitations

Caterpillar is not responsible for:

- Failures resulting from any use or installation that Caterpillar judges improper.
- Failures resulting from attachments, accessory items, and parts not sold or approved by Caterpillar.
- Failures resulting from abuse, neglect, and/or improper storage or repair.
- Failures resulting from user’s delay in making the product available after being notified of a potential product problem.
- Failures resulting from unauthorized repair or adjustments, and unauthorized fuel setting changes.

PLEASE SEE IMPORTANT TERMS AND CONDITIONS ON PAGE 3 & 4

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This warranty covers every major component of the products. Claims under this warranty should be submitted to a place of business of a Cat dealer or other source approved by Caterpillar. For further information concerning either the location to submit claims or Caterpillar as the issuer of this warranty, write Caterpillar Inc., 100 N.E. Adams St., Peoria, IL USA 61629, , telephone 1 (309) 675-1000, or go to URL, www.cat.com, Find Your Dealer.

Caterpillar's obligations under this Limited Warranty are subject to, and shall not apply in contravention of, the laws, rules, regulations, directives, ordinances, orders, or statutes of the United States, or of any other applicable jurisdiction, without recourse or liability with respect to Caterpillar.

A) For products operating outside of Australia, Fiji, Nauru, New Caledonia, New Zealand, Papua New Guinea, the Solomon Islands, and Tahiti, the following is applicable:

NEITHER THE FOREGOING EXPRESS WARRANTY NOR ANY OTHER WARRANTY BY CATERPILLAR, EXPRESS OR IMPLIED, IS APPLICABLE TO ANY ITEM CATERPILLAR SELLS THAT IS WARRANTED DIRECTLY TO THE USER BY ITS MANUFACTURER.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT CATERPILLAR EMISSION-RELATED COMPONENT WARRANTIES FOR NEW ENGINES, WHERE APPLICABLE. REMEDIES UNDER THIS WARRANTY ARE LIMITED TO THE PROVISION OF MATERIAL AND SERVICES, AS SPECIFIED HEREIN.

CATERPILLAR IS NOT RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

CATERPILLAR EXCLUDES ALL LIABILITY FOR OR ARISING FROM ANY NEGLIGENCE ON ITS PART OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS, OR REPRESENTATIVES IN RESPECT OF THE MANUFACTURE OR SUPPLY OF GOODS OR THE PROVISION OF SERVICES RELATING TO THE GOODS.

IF OTHERWISE APPLICABLE, THE VIENNA CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXCLUDED IN ITS ENTIRETY.

For personal or family use engines or electric power generation products, operating in the USA, its territories and possessions, some states do not allow limitations on how long an implied warranty may last nor allow the exclusion or limitation of incidental or consequential damages. Therefore, the previously expressed exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights, which vary by jurisdiction. To find the location of the nearest Cat dealer or other authorized repair facility, call (800) 447-4986. If you have questions concerning this warranty or its applications, call or write:

In USA and Canada: Caterpillar Inc, 100 N.E. Adams St., Peoria, IL USA 61629, Attention: Customer Service Manager, Telephone 1 (309) 675-1000. Outside the USA and Canada: Contact your Cat dealer, go to URL, www.cat.com, Find Your Dealer.

B) For products operating in Australia, Fiji, Nauru, New Caledonia, New Zealand, Papua New Guinea, the Solomon Islands, and Tahiti, the following is applicable:

THIS WARRANTY IS IN ADDITION TO WARRANTIES AND CONDITIONS IMPLIED BY STATUTE AND OTHER STATUTORY RIGHTS AND OBLIGATIONS THAT BY ANY APPLICABLE LAW CANNOT BE EXCLUDED, RESTRICTED, OR MODIFIED ("MANDATORY RIGHTS"). ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED (BY STATUTE OR OTHERWISE), ARE EXCLUDED. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS PARAGRAPH, WHERE A PRODUCT IS SUPPLIED FOR BUSINESS PURPOSES, THE CONSUMER GUARANTEES UNDER THE CONSUMER GUARANTEES ACT 1993 (NZ) WILL NOT APPLY.

NEITHER THIS WARRANTY NOR ANY OTHER CONDITION OR WARRANTY BY CATERPILLAR, EXPRESS OR IMPLIED (SUBJECT ONLY TO THE MANDATORY RIGHTS), IS APPLICABLE TO ANY ITEM CATERPILLAR SELLS THAT IS WARRANTED DIRECTLY TO THE USER BY ITS MANUFACTURER.

IF THE MANDATORY RIGHTS MAKE CATERPILLAR LIABLE IN CONNECTION WITH SERVICES OR GOODS, THEN TO THE EXTENT PERMITTED UNDER THE MANDATORY RIGHTS, THAT LIABILITY SHALL BE LIMITED AT CATERPILLAR'S OPTION TO (a) IN THE CASE OF SERVICES, THE SUPPLY OF THE SERVICES AGAIN OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN AND (b) IN THE CASE OF GOODS, THE REPAIR OR REPLACEMENT OF THE GOODS, THE SUPPLY OF EQUIVALENT GOODS, THE PAYMENT OF THE COST OF SUCH REPAIR OR REPLACEMENT OR THE ACQUISITION OF EQUIVALENT GOODS.

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CATERPILLAR IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES UNLESS IMPOSED UNDER MANDATORY RIGHTS.

IF OTHERWISE APPLICABLE, THE VIENNA CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXCLUDED IN ITS ENTIRETY.

C) For products supplied in Australia:

IF THE PRODUCTS TO WHICH THIS WARRANTY APPLIES ARE:

I. PRODUCTS OF A KIND ORDINARILY ACQUIRED FOR PERSONAL, DOMESTIC OR HOUSEHOLD USE OR CONSUMPTION; OR

II. PRODUCTS THAT COST AUD 100,000 OR LESS,

WHERE THOSE PRODUCTS WERE NOT ACQUIRED FOR THE PURPOSE OF RE-SUPPLY OR FOR THE PURPOSE OF USING THEM UP OR TRANSFORMING THEM IN THE COURSE OF PRODUCTION OR MANUFACTURE OR IN THE COURSE OF REPAIRING OTHER GOODS OR FIXTURES, THEN THIS SECTION C APPLIES.

THE FOLLOWING MANDATORY TEXT IS INCLUDED PURSUANT TO THE AUSTRALIAN CONSUMER LAW AND INCLUDES REFERENCES TO RIGHTS THE USER MAY HAVE AGAINST THE DIRECT SUPPLIER OF THE PRODUCTS: OUR GOODS COME WITH GUARANTEES THAT CANNOT BE EXCLUDED UNDER THE AUSTRALIAN CONSUMER LAW. YOU ARE ENTITLED TO A REPLACEMENT OR REFUND FOR A MAJOR FAILURE AND COMPENSATION FOR ANY OTHER REASONABLY FORESEEABLE LOSS OR DAMAGE. YOU ARE ALSO ENTITLED TO HAVE THE GOODS REPAIRED OR REPLACED IF THE GOODS FAIL TO BE OF ACCEPTABLE QUALITY AND THE FAILURE DOES NOT AMOUNT TO A MAJOR FAILURE. THE INCLUSION OF THIS TEXT DOES NOT CONSTITUTE ANY REPRESENTATION OR ACCEPTANCE BY CATERPILLAR OF LIABILITY TO THE USER OR ANY OTHER PERSON IN ADDITION TO THAT WHICH CATERPILLAR MAY HAVE UNDER THE AUSTRALIAN CONSUMER LAW.

TO THE EXTENT THE PRODUCTS FALL WITHIN THIS SECTION C BUT ARE NOT OF A KIND ORDINARILY ACQUIRED FOR PERSONAL, DOMESTIC OR HOUSEHOLD USE OR CONSUMPTION, CATERPILLAR LIMITS ITS LIABILITY TO THE EXTENT IT IS PERMITTED TO DO SO UNDER THE AUSTRALIAN CONSUMER LAW TO, AT ITS OPTION, THE REPAIR OR REPLACEMENT OF THE PRODUCTS, THE SUPPLY OF EQUIVALENT PRODUCTS, OR THE PAYMENT OF THE COST OF SUCH REPAIR OR REPLACEMENT OR THE ACQUISITION OF EQUIVALENT PRODUCTS.

THE WARRANTY SET OUT IN THIS DOCUMENT IS GIVEN BY CATERPILLAR INC. OR

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ANY OF ITS SUBSIDIARIES, 100 N. E. ADAMS ST, PEORIA, IL USA 61629, TELEPHONE 1 309 675 1000,THE USER IS RESPONSIBLE FOR ALL COSTS ASSOCIATED WITH MAKING A CLAIM UNDER THE WARRANTY SET OUT IN THIS DOCUMENT, EXCEPT AS EXPRESSLY STATED OTHERWISE IN THIS DOCUMENT, AND THE USER IS REFERRED TO THE BALANCE OF THE DOCUMENT TERMS CONCERNING CLAIM PROCEDURES, CATERPILLAR RESPONSIBILITIES AND USER RESPONSIBILITIES.

TO THE EXTENT PERMISSIBLE BY LAW, THE TERMS SET OUT IN THE REMAINDER OF THIS WARRANTY DOCUMENT (INCLUDING SECTION B) CONTINUE TO APPLY TO PRODUCTS TO WHICH THIS SECTION C APPLIES.

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INVOICE

EMPIRE CAT

MACHINERY

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PRESCOTT • SHOW LOW • YUMA • IMPERIAL • LAKE HAVASU

Questions: 1-800-EMPIRE1 / (480) 633-4000

SOLD TO

CITY OF TUCSON FLEET
FLEET DEPARTMENT-ATTENTION JIM SEEDS
PO BOX 27210
TUCSON AZ 85726-7210

SHIP TO

INVOICE NUMBER	INVOICE DATE	CLIENT NUMBER	CLIENT ORDER NUMBER	STORE	DIV.	SALESMAN	TERMS	PAGE
EMSL00061868	06-30-20	2206242	40493-13	00	G	CS2	2	1

AGREEMENT NUMBER	DOC. DATE	PC	LC	MC	SHIP VIA	INV. SEQ. NUMBER
S81214	06-12-20			10		779937

MAKE	MODEL	SERIAL NUMBER	EQUIPMENT NUMBER	METER READING	MACH. I.D. NUMBER
AA	246D3 CA	KC601016			2.00 E158366

CUSTOMER CONTACT: JIM SEEDS

	EQUIPMENT SALE CATERPILLAR MODEL 246D3 CA 246 CAB SKIDSTEER		
1.0	ID NO: E158366	SERIAL NO: KC601016 PIN: *CAT0246DPKC601016*	56531.00
1.0	.		
	WARRANTY: 36 MONTH/4000 HOUR PREMIER EPP TRAVEL AND MILEAGE FOR 12 MONTHS		
1.0	.		
	EQUIPMENT SALE CATERPILLAR MODEL 68"IG BU * SSL- GRAPPLE BUCKET		
1.0	ID NO: E159492	SERIAL NO: A419CGB30054	
	EQUIPMENT SALE CATERPILLAR MODEL DEBRIS KIT * MISC ATTACHMENTS		
1.0	ID NO: E159958	SERIAL NO: KIT.E159958	
	EQUIPMENT SALE CATERPILLAR MODEL TURBODBRKT * MISC ATTACHMENTS		
1.0	ID NO: E159960	SERIAL NO: KIT.E159960	
	EQUIPMENT SALE CATERPILLAR MODEL 246D3 CA 246 CAB SKIDSTEER		
1.0	ID NO: E159956	SERIAL NO: KC601071 PIN: *CAT0246DVKC601071*	56531.00

TERMS: Machine sales payments are due Net 10; all others Net 30. Unless otherwise agreed in writing by a vice president of Empire Southwest, LLC ("Empire"), the purchase of goods (including, but not limited to, new and used equipment, attachments, parts and technology) or services from Empire will be governed solely by Empire's Terms and Conditions of Sales and Service (the "Sales and Service Terms"), which are available at www.empire-cat.com/salesserviceterms, and the rental of equipment from Empire will be governed solely by Empire's Rental Terms and Conditions (the "Rental Terms"), which are available at www.empire-cat.com/rentalterms, or such other successor websites at which Empire posts its Sales and Service Terms and its Rental Terms (collectively, the "Terms") from time to time. A hard copy of the Terms is available upon written request to terms.conditions@empire-cat.com. Empire's Terms are hereby incorporated by reference into this document and all other documents related to your purchase of goods or services from Empire or the rental of equipment from Empire. By purchasing goods or services from Empire or renting equipment from Empire, you agree to be bound by Empire's Terms exactly as written.

When operated in California, any on-road heavy-duty diesel vehicle, alternative-diesel vehicle, off-road diesel vehicle, or portable diesel engine may be subject to the California Air Resources Board's Regulation to Reduce Particulate Matter and Criteria Pollutant Emissions from In-Use Heavy-Duty Diesel Vehicles, In-Use Off-Road Diesel Vehicle Regulation, or Airborne Toxic Control Measure For Diesel Particulate Matter From Portable Engines Rated At 50 Horsepower And Greater. It therefore could be subject to retrofit, exhaust retrofit, or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board websites at https://www.arb.ca.gov/dieseltruck, https://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm, or https://www.arb.ca.gov/portable/portable.htm.

EMIN1811

PAY THIS AMOUNT USD	

Remit to: EMPIRE SOUTHWEST, LLC
PO BOX 29879
PHOENIX, AZ 85038-9879

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

INVOICE

EMPIRE CAT

MACHINERY

MESA • PHOENIX • TUCSON • KINGMAN • FLAGSTAFF
PRESCOTT • SHOW LOW • YUMA • IMPERIAL • LAKE HAVASU

Questions: 1-800-EMPIRE1 / (480) 633-4000

SOLD TO

CITY OF TUCSON FLEET
FLEET DEPARTMENT-ATTENTION JIM SEEDS
PO BOX 27210
TUCSON AZ 85726-7210

SHIP TO

INVOICE NUMBER	INVOICE DATE	CLIENT NUMBER	CLIENT ORDER NUMBER	STORE	DIV.	SALESMAN	TERMS	PAGE
EMSL00061868	06-30-20	2206242	40493-13	00	G	CS2	2	2

AGREEMENT NUMBER	DOC. DATE	PC	LC	MC	SHIP VIA	INV. SEQ. NUMBER
S81214	06-12-20			10		779937

MAKE	MODEL	SERIAL NUMBER	EQUIPMENT NUMBER	METER READING	MACH. I.D. NUMBER
AA	246D3 CA	KC601016			2.00 E158366

1.0 .
WARRANTY: 36 MONTH/4000 HOUR PREMIER EPP
TRAVEL AND MILEAGE FOR 12 MONTHS

1.0 .
EQUIPMENT SALE
CATERPILLAR MODEL 68"IG BU *
SSL- GRAPPLE BUCKET

1.0 ID NO: E159957 SERIAL NO: A4201GB30087

EQUIPMENT SALE
CATERPILLAR MODEL DEBRIS KIT *
MISC ATTACHMENTS

1.0 ID NO: E159959 SERIAL NO: KIT.E159959

EQUIPMENT SALE
CATERPILLAR MODEL TURBODBRKT *
MISC ATTACHMENTS

1.0 ID NO: E159961 SERIAL NO: KIT.E159961

* ATTACHMENT WARRANTY: STANDARD MANUFACTURER'S

S.O.S. (SCHEDULED OIL SAMPLING) IS REQUIRED TO MAINTAIN WARRANTY ELIGIBILITY

TERMS: NET 10

STATE/COUNTY TAX	6896.78
CITY/OTHER TAX	2261.24

.

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EMIN1811

PAY THIS AMOUNT USD	122220.02

Remit to: EMPIRE SOUTHWEST, LLC
PO BOX 29879
PHOENIX, AZ 85038-9879

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STATEMENT

FOR INQUIRIES REGARDING THIS STATEMENT, CALL THE EMPIRE SOUTHWEST ACCOUNTS RECEIVABLE DEPARTMENT AT (800) 367-4731 EXT. 24565.

EMPIRE MACHINERY ▪ EMPIRE RENTAL ▪ EMPIRE POWER SYSTEMS ▪ EMPIRE HYDRAULIC SERVICE ▪ EMPIRE TRANSPORT ▪ EMPIRE PRECISION MACHINING

CITY OF TUCSON
PO BOX 27210
TUCSON AZ 85726-7210

0097667	09/09/21	1
CUSTOMER NUMBER	STATEMENT DATE	PAGE

TERMS: Payment is due in accordance with the terms shown on each invoice.

INVOICE DATE	INVOICE / DOCUMENT TYPE NUMBER	REFERENCE	P.O. NUMBER	CHARGES	CREDITS
04/01/21	EMWK3120519	3360291	38720	859.98	
04/07/21	EMWK3122688	3367222	38720	430.63	
04/16/21	RTFR400906	3354693 98CR #2			516.75
04/23/21	EMWK3129062	3480724	38720	430.63	
05/27/21	EMRA0282745	B7192802	38720	15,489.75	
06/03/21	EMWK3149801	3484915	40493	7,074.60	
06/04/21	EMWK3150452	3491806	38720	722.11	
06/28/21	EMWK3159315	3496434	38720	438.63	
06/28/21	EMWK3159316	3497486	38720	263.18	
07/02/21	EMWK3163837	3492566	40493	7,074.60	
07/19/21	EMWK3169966	3505720	40493	11,472.62	
07/22/21	EMPC0727957	02R083012	3491361		2,253.77
08/02/21	EMWK3178006	3501589	40493	6,802.50	
08/09/21	EMWK3181021	3509532	38720	175.45	
08/09/21	EMWK3181022	3509559	38720	263.18	
08/09/21	EMWK3181023	3509637	38720	350.90	
08/11/21	EMWK3182184	3508669	38720	1,301.70	
08/11/21	EMWK3182185	3509920	38720	1,121.80	
08/11/21	EMWK3182186	3510286	38720	545.69	
08/11/21	EMWK3182187	3510770	38720	526.35	
08/11/21	EMWK3182188	3510894	38720	438.63	

ARSTAT 04/08

Remit to: EMPIRE SOUTHWEST
PO BOX 842381
LOS ANGELES, CA 90084-2381
(Please include your CUSTOMER NUMBER with your remittance.)

AMOUNT DUE	
CREDIT BALANCE	

MONTHLY AGING OF UNPAID INVOICES OR CREDITS ON ACCOUNT

CURRENT	30-60 DAYS	61-90 DAYS	91-120 DAYS	OVER 120 DAYS

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

STATEMENT

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EMPIRE MACHINERY ▪ EMPIRE RENTAL ▪ EMPIRE POWER SYSTEMS ▪ EMPIRE HYDRAULIC SERVICE ▪ EMPIRE TRANSPORT ▪ EMPIRE PRECISION MACHINING

CITY OF TUCSON
PO BOX 27210
TUCSON AZ 85726-7210

0097667	09/09/21	2
CUSTOMER NUMBER	STATEMENT DATE	PAGE

TERMS: Payment is due in accordance with the terms shown on each invoice.

INVOICE DATE	INVOICE / DOCUMENT TYPE NUMBER	REFERENCE	P.O. NUMBER	CHARGES	CREDITS
08/11/21	EMWK3182189	3511554	38720	175.45	
08/11/21	EMWK3182190	3511559	38720	175.45	
08/12/21	EMWK3182760	3503390	38720	350.91	
08/12/21	EMWK3182761	3506266	38720	626.97	
08/12/21	EMWK3182762	3508655	38720	263.18	
08/17/21	EMWK3184392	3507543	38720	1,767.80	
08/19/21	EMWK3185065	3501747	38720	5,181.37	
08/19/21	EMWK3185503	3510384	38720	2,137.38	
08/19/21	EMWK3185504	3511542	38720	438.63	
08/19/21	EMWK3185505	3511928	38720	263.18	
08/19/21	EMWK3185506	3511931	38720	350.90	
08/19/21	EMWK3185507	3511985	38720	175.45	
08/19/21	EMWK3185508	3512162	38720	350.90	
08/19/21	EMWK3185509	3512364	38720	701.80	
08/19/21	EMWK3185510	3512474	38720	438.63	
08/19/21	EMWK3185511	3512533	38720	350.90	
08/19/21	EMWK3185512	3512998	38720	964.98	
08/25/21	EMWK3187983	3515913	40493	10,890.90	
08/26/21	EMWK3188520	3506796	38720	934.78	
08/26/21	EMWK3188521	3511143	38720	4,869.55	
08/26/21	EMWK3188522	3513233	38720	2,294.08	

ARSTAT 04/08

Remit to: EMPIRE SOUTHWEST
PO BOX 842381
LOS ANGELES, CA 90084-2381
(Please include your CUSTOMER NUMBER with your remittance.)

AMOUNT DUE	
CREDIT BALANCE	

MONTHLY AGING OF UNPAID INVOICES OR CREDITS ON ACCOUNT

CURRENT	30-60 DAYS	61-90 DAYS	91-120 DAYS	OVER 120 DAYS

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

STATEMENT

EMPIRE CAT

FOR INQUIRIES REGARDING THIS STATEMENT, CALL THE EMPIRE SOUTHWEST ACCOUNTS RECEIVABLE DEPARTMENT AT (800) 367-4731 EXT. 24565.

EMPIRE MACHINERY ▪ EMPIRE RENTAL ▪ EMPIRE POWER SYSTEMS ▪ EMPIRE HYDRAULIC SERVICE ▪ EMPIRE TRANSPORT ▪ EMPIRE PRECISION MACHINING

CITY OF TUCSON
PO BOX 27210
TUCSON AZ 85726-7210

0097667	09/09/21	3
CUSTOMER NUMBER	STATEMENT DATE	PAGE

TERMS: Payment is due in accordance with the terms shown on each invoice.

INVOICE DATE	INVOICE / DOCUMENT TYPE NUMBER	REFERENCE	P.O. NUMBER	CHARGES	CREDITS
08/27/21	EMWK3189059	3514300	38720	175.45	
08/30/21	EMWK3189703	3510054	38720	525.46	
08/30/21	EMWK3189704	3512771	38720	1,392.32	
08/31/21	EMWK3192233	3513623	38720	1,643.89	
09/02/21	EMWK3193188	3514582	38720	350.90	
09/02/21	EMWK3193189	3514626	38720	207.51	
09/02/21	EMWK3193190	3514953	38720	757.36	
09/02/21	EMWK3193191	3515078	38720	350.90	
09/02/21	EMWK3193192	3518331	40493	12,781.51	
09/02/21	EMWK3193193	3518345	40493	12,112.35	
09/02/21	EMCT0018412	A9983157		6,358.50	
09/02/21	EMCT0018413	B1537344		10,531.84	
09/02/21	EMCT0018414	B4306724		3,058.60	
09/02/21	EMCT0018415	B5202417	40493/TM&R	4,285.38	
09/02/21	EMCT0018416	B6191611	40493/TM&R	9,910.64	
09/02/21	EMCT0018417	B7386403	38720	450.00	
09/03/21	EMWK3193535	3509699	40493	7,618.80	
09/03/21	EMWK3193536	3509724	38720	1,360.60	
09/07/21	EMWK3194161	3513753	38720	182.73	
09/07/21	EMWK3194162	3513760	38720	186.37	
09/07/21	EMWK3194163	3514875	38720	350.90	

ARSTAT 04/08

Remit to: EMPIRE SOUTHWEST
PO BOX 842381
LOS ANGELES, CA 90084-2381
(Please include your CUSTOMER NUMBER with your remittance.)

AMOUNT DUE	190,315.35
CREDIT BALANCE	

MONTHLY AGING OF UNPAID INVOICES OR CREDITS ON ACCOUNT

CURRENT	30-60 DAYS	61-90 DAYS	91-120 DAYS	OVER 120 DAYS
141,237.11	16,810.88	7,776.41	23,286.46	1,204.49

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

STATEMENT

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EMPIRE MACHINERY ▪ EMPIRE RENTAL ▪ EMPIRE POWER SYSTEMS ▪ EMPIRE HYDRAULIC SERVICE ▪ EMPIRE TRANSPORT ▪ EMPIRE PRECISION MACHINING

CITY OF TUCSON
PO BOX 27210
TUCSON AZ 85726-7210

0097667	09/09/21	4
CUSTOMER NUMBER	STATEMENT DATE	PAGE

TERMS: Payment is due in accordance with the terms shown on each invoice.

INVOICE DATE	INVOICE / DOCUMENT TYPE NUMBER	REFERENCE	P.O. NUMBER	CHARGES	CREDITS
09/07/21	EMWK3194164	3515144	38720	526.35	
09/08/21	EMWK3194841	3509727	38720	2,191.21	
09/08/21	EMWK3194842	3509730	38720	425.58	
09/08/21	EMWK3194843	3509737	38720	272.11	
09/08/21	EMWK3194844	3509742	38720	1,353.45	
09/08/21	EMWK3194845	3509747	38720	1,428.62	
09/08/21	EMWK3194846	3509749	38720	2,983.39	
09/08/21	EMWK3194847	3509750	38720	2,756.89	
09/08/21	EMWK3194848	3509753	38720	272.12	
09/08/21	EMWK3194849	3509754	38720	680.30	
09/08/21	EMWK3194850	3509756	38720	476.21	
09/08/21	EMWK3194851	3509758	38720	2,108.80	
09/08/21	EMWK3194852	3515176	38720	526.35	
09/08/21	EMWK3194856	3515701	38720	1,080.04	
09/08/21	EMWK3194857	3520127	38720	2,112.34	
09/08/21	EMRA0292827	B7671401	38720	9,813.98	

ARSTAT 04/08

Remit to: EMPIRE SOUTHWEST
PO BOX 842381
LOS ANGELES, CA 90084-2381
(Please include your CUSTOMER NUMBER with your remittance.)

AMOUNT DUE	190,315.35
CREDIT BALANCE	

MONTHLY AGING OF UNPAID INVOICES OR CREDITS ON ACCOUNT

CURRENT	30-60 DAYS	61-90 DAYS	91-120 DAYS	OVER 120 DAYS
141,237.11	16,810.88	7,776.41	23,286.46	1,204.49

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

EMPIRE CAT

SAFETY • RESPECT • INTEGRITY • TEAMWORK
EXCELLENCE • STEWARDSHIP • ASTONISHMENT

INVOICE #	EMWK3193535
Client PO #	40493
Client #	0097667
Invoice Date	09-03-21
AGMT/PSO/WO #	3509699

EM - TUCSON 2

SOLD TO

CITY OF TUCSON
ATTENTION JIM SEEDS
PO BOX 27210
TUCSON AZ 85726-7210

INITIAL SHIP TO

ORDER BY: GEORGE FREDRICKS

MAKE	MODEL	SERIAL NUMBER	EQUIPMENT NUMBER	METER READING	MACH. I.D. NUMBER
AA	MANY	FUEL		1.0	

QUANTITY	ITEM	*NON-RETURNABLE	DESCRIPTION	UNIT PRICE	EXTENSION

* * * INVOICE SUMMARY * * *

****
THANK YOU FOR CHOOSING THE EMPIRE SERVICE SOLUTION, WE VALUE YOUR BUSINESS. IF YOU HAVE QUESTIONS ABOUT THIS INVOICE, PLEASE CONTACT MEGAN BURTON AT (520) 730-4778 OR 1-800-EMPIRE1.
****
EMPIRE IS PROUD TO BE THE LEADING DEALER PROVIDING SECOND LIFE AND CUSTOM MACHINE REBUILDS AT 40 TO 60% THE COST OF A NEW MACHINE.
****
*

DELIVER FUEL
28X272.10=7618.80
*

TOTAL LABOR	7618.80 *
SEGMENT 02 TOTAL	7618.80 T

LABOR INVOICE TOTAL	7618.80 *

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PAY THIS AMOUNT	7618.80
CREDIT AMOUNT	

Remit to: EMPIRE SOUTHWEST, LLC
PO BOX 842381
LOS ANGELES, CA 90084-2381

480-633-4000 • 1-800-EMPIRE1 • WWW.EMPIRE-CAT.COM

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

EMPIRE CAT

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EXCELLENCE • STEWARDSHIP • ASTONISHMENT

INVOICE #	EMWK3194844
Client PO #	38720
Client #	0097667
Invoice Date	09-08-21
AGMT/PSO/WO #	3509742

2

SOLD TO

CITY OF TUCSON
ATTENTION JIM SEEDS
PO BOX 27210
TUCSON AZ 85726-7210

INITIAL SHIP TO

ORDER BY: GEORGE FREDRICKS

MAKE	MODEL	SERIAL NUMBER	EQUIPMENT NUMBER	METER READING	MACH. I.D. NUMBER
AA	980K	0W7K00927	7923	12601.0	E114828

QUANTITY	ITEM	*NON-RETURNABLE	DESCRIPTION	UNIT PRICE	EXTENSION

****
THANK YOU FOR CHOOSING THE EMPIRE SERVICE SOLUTION, WE VALUE YOUR BUSINESS. IF YOU HAVE QUESTIONS ABOUT THIS INVOICE, PLEASE CONTACT MEGAN BURTON AT (520) 730-4778 OR 1-800-EMPIRE1.
****
EMPIRE IS PROUD TO BE THE LEADING DEALER PROVIDING SECOND LIFE AND CUSTOM MACHINE REBUILDS AT 40 TO 60% THE COST OF A NEW MACHINE.
****
*

CLEAN MACHINE

CLEANING FOR THE MONTH OF AUGUST 2021
---
*
8/2/2021 FLB 0.5 LUBE RATE
8/3/2021 FLB 0.5 LUBE RATE
8/5/2021 FLB 0.5 LUBE RATE
8/6/2021 FLB 0.5 LUBE RATE
8/9/2021 FLB 0.5 LUBE RATE
8/10/2021 FLB 0.5 LUBE RATE
8/12/2021 FLB 0.5 LUBE RATE
8/13/2021 FLB 0.5 LUBE RATE
8/16/2021 FLB 0.5 LUBE RATE
8/17/2021 FLB 0.5 LUBE RATE
8/18/2021 FLB 0.5 LUBE RATE
8/19/2021 FLB 0.5 LUBE RATE
8/20/2021 FLB 0.5 LUBE RATE
8/23/2021 FLB 0.5 LUBE RATE
8/24/2021 FLB 0.5 LUBE RATE
8/25/2021 FLB 0.5 LUBE RATE
8/27/2021 FLB 0.5 LUBE RATE
8/30/2021 FLB 0.5 LUBE RATE
8/31/2021 FLB 0.5 LUBE RATE

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PAY THIS AMOUNT	CONT'D
CREDIT AMOUNT	

Remit to: EMPIRE SOUTHWEST, LLC
PO BOX 842381
LOS ANGELES, CA 90084-2381

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

EMPIRE CAT

SAFETY • RESPECT • INTEGRITY • TEAMWORK
EXCELLENCE • STEWARDSHIP • ASTONISHMENT

INVOICE #	EMWK3194844
Client PO #	38720
Client #	0097667
Invoice Date	09-08-21
AGMT/PSO/WO #	3509742

SOLD TO

CITY OF TUCSON
ATTENTION JIM SEEDS
PO BOX 27210
TUCSON AZ 85726-7210

INITIAL SHIP TO

ORDER BY: GEORGE FREDRICKS

MAKE	MODEL	SERIAL NUMBER	EQUIPMENT NUMBER	METER READING	MACH. I.D. NUMBER
AA	980K	0W7K00927	7923	12601.0	E114828

QUANTITY	ITEM	*NON-RETURNABLE	DESCRIPTION	UNIT PRICE	EXTENSION
*					
	FLD LUBE - REVE		7.50 RT HOURS		1020.45
	FLD LUBE - REVE		2.00 RT HOURS		272.12
			TOTAL LABOR SEG. 90		1292.57 *
14.00			GREASE - LB		56.00
			TOTAL MISC CHGS SEG. 90		56.00 *
			SEGMENT 90 SEQNO 90 TOTAL		1348.57 T
			STATE/COUNTY TAX		3.42 T
			CITY/OTHER TAX		1.46 T

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PAY THIS AMOUNT	1353.45
CREDIT AMOUNT	

Remit to: EMPIRE SOUTHWEST, LLC
PO BOX 842381
LOS ANGELES, CA 90084-2381

480-633-4000 • 1-800-EMPIRE1 • WWW.EMPIRE-CAT.COM

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

City of Tucson

License Certificate

Business Name and Mailing Address:

EMPIRE SOUTHWEST LLC
PO BOX 2985
PHOENIX AZ 85062-2985

License Number: 3006282

Type: NAICS Code Not Yet Assigned

Issue Date: April 22, 2021

Expiration Date: December 31, 2021

Owner:
EMPIRE SOUTHWEST LLC

This license / permit is **non-transferable** and must be posted in a conspicuous place at the business location.

THE ISSUANCE OF THIS LICENSE / PERMIT SHALL NOT BE CONSTRUED AS PERMISSION TO OPERATE IN VIOLATION OF ANY LAW OR REGULATION.

FOLD HERE

CITY OF TUCSON, ARIZONA

LICENSE SECTION

Expiration Date: December 31, 2021

Non-Transferable

3006282

MUST BE DISPLAYED IN A CONSPICUOUS PLACE

Business License

For the payment of the license fee, the person or firm below is hereby licensed to conduct business in the City of Tucson. Tax accruing to the City of Tucson shall be paid under provisions of Ch. 19, Tucson City Code. This license is subject to revocation for violation of Ch. 7 or Ch. 19 of the Tucson City Code.

Issued To: EMPIRE SOUTHWEST LLC

Located At: 7600 S NOGALES HY, TUCSON, AZ 85756

Effective: January 01, 2021

Please refer to license number in all correspondence.

By _____
Director, Business Services

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

ADDITIONAL SERVICES INCLUDED IN THIS RFP

Parts Pricing

The City of Tucson's current parts pricing is available online at parts.cat.com.
Please visit this website using your Caterpillar CWS login to view the City of Tucson's parts prices.

Oil Sampling

There is no stated discount off list for this product offering. Depending on the quantity, order volume discounts may be available.

Maintenance Plans

Empire offers a variety of maintenance plans available on this contract. There is no stated discount off list for this product offering. Empire will offer the City of Tucson, and other participating agencies, any and all discounts that are available at the time we are requested to quote any and all maintenance plans. Maintenance plans need to be custom built as pricing can vary by the hours of usage, machine model, machine location and the types and quantity of fluids used.

Training – Operator and Service

Empire offers multiple training programs that can be tailored to the City of Tucson and other participating agency's needs.

There is no stated discount off list for this product offering. Empire will offer any and all discounts that are available at the time we are requested to quote any and all training programs.

Service Related Repairs/Rebuilds

All service related repairs and/or services, including rebuilds, are available on this contract.

There is no stated discount off list for this product offering. All service related repairs and/or rebuilds will be quoted utilizing any and all discounts that are available at that time.

Financing

Financing options are available on this contract. Depending on the type of financing, Empire will shop rates with a minimum of three (3) lenders to offer the best rates possible.

Telematics Installs – Subscription Fees/Software Updates/Technology Updates

Updating, and/or adding technology, fees for subscriptions, or updates is included in this contract. There is no stated discount off list for this product offering. Empire will provide quotes upon request and offer any and all discounts that are available at that time.

Transport

Empire transport has the ability to move the largest to smallest freight for the City of Tucson and other participating agencies. There is no stated discount off list for this product. Empire will apply any and all discounts on freight services at the time we are requested to quote.

New or Future Services

For any new or future service(s), that is not included in our response, we will provide the City of Tucson a written letter requesting approval to add any new services we provide. We will include a detailed description of the type of service(s) we offer, as well as any stated discounts (if applicable) that would be available to the City of Tucson and to other participating agencies.

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OMNIA PARTNERS TRADEMARK LICENSE ADDENDUM

This Addendum is by and between OMNIA PARTNERS, 840 Crescent Centre Dr, Suite 600, Franklin, TN 37067 ("OMNIA") and Caterpillar Inc., having its principal place of business at 510 Lake Cook Road, Suite 100, Deerfield, Illinois 60015, and offices at 100 NE Adams Street, Peoria, Illinois, 61629 ("Caterpillar" or "Vendor"). Omnia and Caterpillar may be referred to in this Agreement as a "Party" and collectively as the "Parties."

The Parties maintain a contractual relationship for Vendor to offer for sale equipment, products, and/or services to OMNIA and entities that access OMNIA'S cooperative purchasing contracts ("Contract").

OMNIA and Vendor each own all right, title, and interest in their respective names, trademarks, service marks, related logos, and all other rights in the names, designs, likenesses, and visual representations thereof ("Licensed Trademarks"), and desire to grant each other a royalty-free license to use certain Licensed Trademarks owned by the other Party under the terms and conditions set forth herein.

A. GRANT OF LICENSE. During the term of the Contract:

1. OMNIA grants to Vendor a royalty-free, worldwide, non-exclusive, non-transferable right and license to use OMNIA's Licensed Trademarks in advertising and promotional materials for the purpose of marketing OMNIA's relationship with Vendor.

2. Vendor grants to OMNIA a royalty-free, non-exclusive, nontransferable right and license to use Vendor's Licensed Trademarks in the United States in advertising and promotional materials for the purpose of marketing Vendor's relationship with OMNIA.

C. OWNERSHIP; USE; QUALITY CONTROL.

1. The Parties agree that each is the owner of all rights, including without limitation common law rights and goodwill, in relation to their respective Licensed Trademarks, and that any goodwill derived from the use of Licensed Trademarks by the other Party shall inure to the owner of the respective Licensed Trademarks.

2. Neither Party may alter the other Party's Licensed Trademarks from the form and use guidelines provided by the other Party, and must comply with the other Party's removal requests as to specific uses of its Licensed Trademarks.

3. Each Party agrees to use the other Party's Licensed Trademarks only in good faith and in a dignified manner consistent with such Party's use of the Licensed Trademarks. Upon written notice to the breaching Party, the breaching Party have thirty (30) days of the date of the written notice to cure the breach or the license will be terminated.

CAT #: TM-
Caterpillar: Confidential Green

3. Beyond what is permitted in this Addendum, neither Party will:

a. attempt to register, or register any trademark, service mark, symbol, logo, get-up, or device which is confusingly similar to any of the other Party's Licensed Trademarks in any jurisdiction;

b. represent that it has any rights of any nature in the Licensed Trademarks other than those enjoyed under the terms of this Agreement;

c. use the other Party's trademarks, service marks or copyrights, translations thereof or marks similar thereto, as part of its corporate name, trade name or a d/b/a name, favicons, social media names/handles, email addresses, email extensions, or domain names without prior written approval from the other Party; or

d. use the other Party's trade names, trademarks, or service marks on any collateral business materials (e.g., business cards, letterhead, invoices, pens, notepads, fax cover sheets, etc.), unless otherwise approved in writing by the other Party.

D. EFFECTIVE DATE. This Addendum is effective upon the date of the final signature below.

E. TERMINATION.

1. Contract Termination. Unless earlier terminated in accordance with this Section E, this Addendum expires immediately upon the expiration or termination of the Contract.

2. Termination for Convenience. This Addendum may be terminated by either Party at any time upon ninety (90) days' prior written notice to the other Party.

3. Termination for Breach. This Addendum may be terminated by either Party upon a breach of the terms of this Addendum by the other Party, upon written notice of breach to the breaching Party, and only if such breach is not cured within thirty (30) days of the date of the written notice.

4. Effect of Termination. Upon the termination of this Addendum for any reason, each Party will have thirty (30) days to, remove all Licensed Trademarks from signage, websites, and the like bearing the other Party's name or logo (except OMNIA's pre-printed catalog of vendors which may be used until the next printing). Upon termination of this Addendum, both Parties shall cease using the other Party's mark on any new advertising or promotional materials.

CMG

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

F. MISCELLANEOUS. The terms and conditions of this Addendum shall have no effect on the terms and conditions of any other trademark licenses signed by the Parties. All other terms of the Contract remain in full force and effect, unless otherwise terminated.

OMNIA PARTNERS	**CATERPILLAR INC.**
By: _____	By: DocuSigned by: Patrick Kearns 68A87926721B4E0...
Printed Name: _____	Printed Name: Patrick Kearns
Title: _____	Title: North America Industry Manager
Date: _____	Date: September 10, 2021

Contract # 212816-01

Heavy Equipment, Parts, Accessories, Supplies and Related Services

Caterpillar, Inc.

Negotiated Contract Exceptions

City of Tucson- RFP #212816
EXCEPTIONS REQUEST
Caterpillar Inc.
September 10, 2021
Caterpillar Response to "Intent to Negotiate Request" - dated 2/28/2022
City of Tucson Response to MS Teams meeting held on 3/25/2022
City of Tucson - all inclusive response to Caterpillar Exceptions - dated July 14, 2022
Caterpillar responses - dated July 29, 2022

B. SCOPE OF WORK

B.1.GENERAL REQUIREMENTS

5. **TRAINING:** The Contractor or **Participating Dealer** shall provide, at no additional cost, training at initial purchase for each basic unit of equipment purchased. Training shall be supplied in one or both options as listed below. This training shall be adequate to the needs of the typical equipment operator and service technician in order to assure proper operation, utilization and maintenance of the equipment supplied. Any manuals necessary to perform the required training shall be furnished by the Contractor or **Participating Dealer.** The trainer shall be factory-trained and thoroughly knowledgeable in equipment operator and service technician functions. Training shall be presented in a quality suitable for videotaping.

   TRAINING OPTIONS SPECIFIC TO THE CITY OF TUCSON ONLY

   A) The City reserves the right to videotape the initial training at no additional cost to the City of Tucson, to be used by the City as a training tool for new City employees. The City will not transfer, share or post any material, other than for the City's internal use.

   B) Initial machine delivery training will be provided at no cost to the City as indicated above. Any additional training requirements will be met by the **Participating Dealer** for an additional fee.

6. **REPAIRS:** The Contractor or a **Participating Dealer** will be responsible for transport of vehicles to and from its place of business for repairs, at no additional cost to the City, until such time as the City places the vehicle in service. Transport of the vehicle will not be delayed more than one (1) working day from the date of notification, unless both the City and the Contractor or **Participating Dealer** mutually agree to change the date of transport.

7. **WARRANTIES:** Offeror shall warrant that all equipment and parts furnished in their offer are newly manufactured and free from defects in material and workmanship from the date the City places the equipment into service. Warranty shall also guarantee accepted trade standards of quality, fitness for the intended uses and conformance to written specifications. No other express or implied warranty shall eliminate the vendor's liability as stated herein.

8. **SERVICE AND MAINTENANCE:** Contractor or **Participating Dealer** will provide and maintain a factory authorized parts and service facility within a reasonable distance to the purchasing location.

   For the City, the parts and service facility must be within a 125-mile radius of the City of Tucson Price Service Center (4004 S. Park Avenue, 85714).

   If warranty service is not provided on-site, the **Participating Dealer** shall be responsible for all costs, including fuel and labor of transporting vehicle(s) between the City's facility and the **Participating Dealer** service center. The method of transportation must be mutually agreed to by the **Participating Dealer** and the City prior to transport.

   For service calls, the **Participating Dealer** must provide a response within 60 minutes.

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B.2. EQUIPMENT AND PRODUCT REQUIREMENTS

1.EQUIPMENT

A) Equipment and Product Availability: It is mutually agreed that not all equipment and products are available through this contract at all Participating Dealer locations. Participating Agencies will need to check with their Local Participating Dealer to see which equipment and products from this contract are available.

4. **PRICING:** Offerors shall provide a verifiable pricing model that may include, but not be limited to, a discount from a verifiable price index, a reduced net pricing schedule, a hybrid or other supplier specific pricing model. The pricing model shall remain firm and will include all charges that maybe incurred in fulfilling requirement(s) for the twelve (12) -month period following contract award. Where applicable, pricing shall be determined by applying Offerors discounts to the prices listed on their manufacturer's price lists, retail price sheets, catalogs or by utilizing the reduced net pricing schedule.

For the avoidance of doubt, a purchaser may request a product price page from a Local Authorized Participating Caterpillar Dealer. The purchaser may verify the accuracy of that price page, to the extent it deems necessary, by contacting Caterpillar's GCI Government Contracts group.

Special Offers/Promotions:

In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, Contractor may conduct sales promotions involving price reductions for a specified lesser period. Contractor may offer Participating Public Agencies competitive pricing which is lower than the not-to exceed price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract. Provide details of and propose additional discounts for volume orders, special manufacturer's offers, minimum order quantity, free goods program, total annual spend, etc.

B.3.SERVICE REQUIREMENTS

1.SERVICES

b. **Maintenance Services:** The ability to provide various maintenance services and options through authorized manufacturer's facilities or dealers. Maintenance services may include scheduled services based upon the manufacturer's recommended guidelines to include, but not be limited to daily scheduled services, daily fuel dispensing, major/minor machine cleaning, etc. Maintenance Services may also include mobile maintenance.

   i. **City of Tucson Landfill Equipment under Warranty or Extended Warranty and/or Maintenance Services:** If in the event, a piece of landfill equipment goes down and the City has purchased the maintenance services from a Local Authorized Participating Caterpillar Dealer and if the failure is one that is covered under a purchased manufacturer warranty or extended warranty, and is projected to be down for more than forty-eight (48) hours by the Local Authorized Participating Caterpillar Dealer, then a loaner of comparable type will be provided at no charge to the City.

   ii. **City of Tucson Loaner Landfill Equipment:** In the event, a piece of landfill equipment goes down and a piece of "loaner" equipment is available, then the City of Tucson will be responsible for the freight cost, cleaning (including the labor cost), any damage (if applicable) and fuel. If, at the time of the event, a comparable type is not available, the City of Tucson and the Local Authorized Participating Caterpillar Dealer will work together to determine the City's loaner equipment requirements, to ensure that the effect on day-day landfill operations is minimized.

NOTE: The loaner provisions apply solely to the City of Tucson unless otherwise offered/promoted/negotiated, in writing, to OMNIA Member agencies by the Local Authorized Participating

Caterpillar Dealer.

C. INSTRUCTIONS TO OFFERORS

C.1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION

Participating Dealer: Local Authorized Participating Caterpillar Dealer (LAPCD), as per Caterpillar Subcontract Agreement, attached as Subcontract Agreement for Government and Other Cooperative Purchasing Contracts between (dealer) and Caterpillar Inc.

C.10. EXCEPTIONS TO CONTRACT PROVISIONS

A response to any Request for Proposal is an offer to contract with the City based upon the contract provisions contained in the City's Request for Proposal, including but not limited to, the specifications, scope of work and any terms and conditions. Offerors who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language. The provisions of the Request for Proposal cannot be modified without the express written approval of the Director or his designee. If a proposal or offer is returned with modifications to the contract provisions that are not expressly approved in writing by the Director or designee, the contract provisions contained in the City's Request for Proposal shall prevail.

C.11. PUBLIC RECORD

All proposals submitted in response to this Request for Proposal shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification to the extent required by law as defined in the Standard Terms and Conditions and as applicable to the law of the State of Arizona.

C.12. CONFIDENTIAL INFORMATION

The City of Tucson is obligated to abide by all public information laws. If an Offeror believes that any portion of a proposal, offer, specification, protest or correspondence contains information that should be withheld, a statement advising the Contract Officer of this fact should accompany the submission and the information shall be so identified wherever it appears. The City shall review all requests for confidentiality and may provide a written determination to designate specified documents confidential or the request may be denied. Price is not confidential and will not be withheld. If the confidential request is denied, such information shall be disclosed as public information, unless the offeror submits a formal written objection.

C.22. CITY OF TUCSON BUSINESS LICENSE

It is the responsibility of the Contractor or applicable Participating Dealer to have a City of Tucson Business License throughout the life of this contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, the City may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. Application for a City Business License can be completed at http://www.tucsonaz.gov/etax. For questions contact the City's Business License Section at (520) 791-4566 or email tax-license@tucsonaz.gov.

F. SPECIAL TERMS AND CONDITIONS

F.6. PRICE ADJUSTMENT

The City will review fully documented requests for pricing model adjustment after any Contract has been in effect for twelve (12) months, as per Section B.2.4. of this Contract.

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a) Following the initial term of the contract, the Contractor may request to implement new pricing model bi-annually, every six (6) months, during the calendar year.
b) The Contractor and the City will mutually agree to a proposed pricing model. The Contractor will provide the City a minimum of thirty (30) days advance notice, from the proposed effective date.
c) Any pricing model adjustments may be considered as s factor in the contract renewal/extension process.
d) However, the Contractor must maintain the minimum discount offered for all items, throughout the term of the contract unless mutually agreed by the parties or the change is not detrimental to the City.
e) Discount structure may only be unilaterally adjusted by Contractor in the event the Contractor is making an adjustment favorable to the City.
f) The City will determine whether the requested price adjustment or an alternate option, is in the best interest of the City. Any price adjustment will be effective upon the date of the Contract extension.

F.7. MODIFICATION OF TERMS

A Participating Agency who wishes to piggyback on this Contract may present alternate terms to the applicable Participating Dealer as a condition of their intended purchase transaction. If the Participating Dealer chooses to accept the alternate terms, it shall be as a condition of the Participating Agency's purchase transaction and shall not constitute a modification of this contract.

H. STANDARD TERMS AND CONDITIONS

H.15. EXCLUSIVE POSSESSION

All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.

H.30. PAYMENT

The City's preferred method of payment is via credit card. However, certain Participating Dealers.do not accept credit cards. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary, or in case Participating Dealers do not accept credit card payment.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice. The invoice shall not be dated prior to the receipt of goods or completion of services.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

The Contractor's payment terms shall apply to all purchases and to all payment methods.

H.34. RIGHT TO AUDIT

The City and its authorized representatives shall have the right, upon reasonable written notice to Contractor, to cause an audit to be made of the Contractor's books and records which relate to its operations under this Contract. The audit shall be limited to the term of this Contract. The City shall have the right to examine and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Contract kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors and subcontractors. Such records shall include, but not be limited to, accounting records, subcontractor records, payment vouchers and

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invoices.

The Contractor shall at any time requested by City, whether during or after completion of this Contract, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by City. Such records shall be made available to City during normal business hours at the Contractor's office, place of business, an agreed to location, mailed or provided electronically.

If, as a result of such audit, the Contractor is liable to the City for the payment of any sum, Contractor shall promptly pay such sum to the City together with interest thereon at the rate of one percent (1%) per month from the date such sums should have been paid. Payment shall be made within 90 days from presentation of City's findings to Contractor.

If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, City may recoup the costs of the audit work from the Contractor. The City's rights under this provision shall survive the expiration or termination of the Contract.

H.42 TERMINATION OF CONTRACT

This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. The City, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to terminate the whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract, which failure the contractor has not commenced to remedy within thirty (30) days of receipt of notice of such failure. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as specified in any of the following:

- In the opinion of the City, the Contractor provides personnel that do not meet the requirements of the Contract;
- In the opinion of the City, the Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;
- In the opinion of the City, the Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;
- The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;
- In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the Contract;
- The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.
- Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

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G. INSURANCE REQUIREMENTS

G.1.The Contractor agrees to: Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least **thirty (30) calendar** days prior to termination, cancellation, or reduction in coverage in any policy. Contractor and the Applicable Dealer, agree to make a best effort to comply with the thirty (30) day notice. Such notice shall be sent directly to the Procurement Division.

G.8.Notice of Coverage Modifications: Any changes material to compliance with this contract in the insurance policies above shall require **thirty (30) days** written notice from the Applicable Dealer to the City of Tucson. Contractor and the Applicable Dealer, agree to make a best effort to comply with the thirty (30) day notice. Such notice shall be sent directly to the Procurement Division.

G.11. Participating Dealer: Contractor shall furnish to the City of Tucson separate certificates and endorsements for the Local Authorized Participating Caterpillar Dealer, (Empire Southwest, LLC). All coverages for the Local Authorized Participating Caterpillar Dealer shall be subject to the minimum requirements identified above.

H.20 INDEMNIFICATION

THE CITY OF TUCSON, CONTRACTOR AND PARTICIPATING DEALER EACH HEREBY WAIVE, REGARDLESS OF CAUSE, ANY CLAIM WHATSOEVER AGAINST THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMANGES (INCLUDING, WITHOUT LIMITATION, LOST OR ANTICIPATED REVENUES OR PROFITS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF GOODWILL OR BUSINESS INTERRUPTION) ARISING OUT OF A BREACH OF THIS AGREEMENT BY ANOTHER PARTY OR THE RENTAL EQUIPMENT, ON ANY THEORY OF LIABILITY EVEN IF CATERPILLAR, CUSTOMER OR PARTICIPATING DEALER IS ADVISED OF THE POSSIBILTY OF SUCH DAMAGES.

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Contract # 212816-01

Heavy Equipment, Parts, Accessories, Supplies and Related Services

Caterpillar, Inc.

Request for Clarification

CATERPILLAR®

Caterpillar Inc.
100 NE Adams St.
Peoria, IL 61629

December 1, 2021

To: Cynthia Thompson, NIGP-CPP, CPPB
Principal Contract Officer
City of Tucson Business Services Department

Subject: Response to Request for Clarification
Request for Proposal no. 212816 Heavy Equipment, Parts, Accessories, Supplies and Related Services

Dear Ms. Thompson,

Thank you for your request for clarification regarding our proposal for RFP 212816. We have engaged with the local dealer, Empire Machinery, to answer your questions as they were very specific to the Los Reales Landfill. Please find the response in the additional attachment.

As a reminder, Empire is the local dealer for the City of Tucson. The responses they have submitted may not apply to other agencies found in other local dealer territories. The answers would be specific to the needs of the local agencies and the capabilities of the local Cat Dealers.

We look forward to hearing from you as you bring your evaluations to a close.

Sincerely,

Tirena Pavelka
Caterpillar Inc.
Government Sales Account Manager
100 NE Adams St
Peoria, IL 61629
Pavelka_tirena_l@cat.com
309-675-1589

Caterpillar: Confidential Green

December 1, 2021

To: Cynthia Thompson, NIGP-CPP, CPPB
Principal Contract Officer
City of Tucson Business Services Department

Subject: Empire Southwest, LLC – Response to Request for Clarification
Request for Proposal no. 212816 Heavy Equipment, Parts, Accessories Supplies and Related Services

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Question #1: What is the rental availability for a Waste Handler Compactor and Dozer, the same size and type of model currently used at the Los Reales Landfill, within 24 – 48 hours, upon request?

EMPIRE RESPONSE

With the current availability issues that all manufacturers are facing today, Empire is not able to state with 100% confidence that we can provide a rental solution, within 24 – 48 hours, for a Waste Handler Compactor, or a Waste Handler Dozer.

Typically, Empire does not stock Landfill Compactors or Waste Handler Dozers in our standard rental fleet, but that doesn't mean we don't rent Landfill Compactors or Waste Hander Dozers to our clients.

We currently own one (1) 836 size Compactor (same size as used at Los Reales Landfill) that is available to rent, but as of today it is on rent to another client. We have no Waste Handler Dozers available in stock at this time, but are actively looking for another Waste Handler Dozer to add to our inventory.

Over the last four (4) years, Empire has owned five (5) Landfill Compactors and five (5) Waste Handler Dozers that either were, or could be available, for rent to provide relief to landfills when they were in need of a rental machine.

In the event Empire does not have a waste handling machine available in stock for the City of Tucson, Empire will use every resource possible to locate a machine including, but not limited to:

- Empire will leverage every relationship we have, with other local Governmental landfill clients, and attempt to re-rent a machine from them to help provide a rental machine to the City of Tucson. We have been successful with this approach, numerous times with other Governmental agencies.
- Empire will leverage every relationship we have with other CAT Dealers, as well as other suppliers, to search for a machine to re-rent to the City of Tucson.

Empire supports the majority of landfills in Arizona and has historically been relied upon to provide the best solutions to our Governmental clients when a waste handling machine is down for repairs, or when a rental machine is needed.

Question #2: What is the transport fee per mile, including fuel charges, to transport a Waste Handler Compactor and Dozer, to the Los Reales Landfill?

EMPIRE RESPONSE
The cost per hour calculation is based on the machine being located at Empire's facility in Eloy, Arizona.

- 836 Landfill Compactor cost per hour, including fuel, is $25.00 per mile
- D9 Waste Handler Dozer cost per mile, including fuel, is $20.00 per mile

Question #3: What are the loading and unloading fees for a Waste Handler Compactor and Dozer the same size and type of model currently used at the Los Reales Landfill?

EMPIRE RESPONSE
Empire rental rates include these charges.

Question #4: Provide a Sample Quote which includes responses to questions 1, 2 and 3 for evaluation.

EMPIRE RESPONSE
The sample quote that is provided is for a machine that Empire owns. If Empire does not have a waste handling machine in stock, and locates a machine as described in the two (2) bullet points in question 1, these rental(s) will be quoted with the best rates Empire can negotiate, and could be higher or lower than a machine Empire owns.

What is not included in Empire's sample quote is, any damage, machine fuel cost, or cleaning (labor cost) of the machine before the machine is called off rent. These will only be charged if applicable and quoted after the machine is called off, or returned.

Client	CITY OF TUCSON
Contact	
Phone #	
Location	LOS REALES LANDFILL TUCSON AZ

Rental Equipment Quote

http://www.empire-cat.com/rentalterms

12/1/2021

*All quotes are based on availability. This quote is valid for 30 days from the date on this quote.

Rental Sur-Charge		**Sales Tax %**	Tucson	8.70%

Machine #1	CAT 836K LANDFILL COMPACTOR			
Notes:				
Notes:				
REP Charge %		**Daily**	**Week**	**4/Week**
GET/Notes:	**Rates**		**$13,000.00**	**$30,000.00**
	REP Charge			
	Hwy. Plt. 3% Fee			
	Rental Surcharge			
	Sub Total		$13,000.00	$30,000.00
	Sales Tax		$1,131.00	$2,610.00
	Total Cost		**$14,131.00**	**$32,610.00**
Freight:	Delivery	Pickup	Sales Tax	Total Freight
Rates:	**$1,625.00**	**$1,625.00**	$282.75	**$3,532.75**
Notes/Fees:				
Notes/Fees:				

Machine #2	CAT D9T WASTE HANDLER			
Notes:				
Notes:				
REP Charge %		**Daily**	**Week**	**4/Week**
GET/Notes:	**Rates**		**$15,000.00**	**$33,000.00**
	REP Charge			
	Hwy. Plt. 3% Fee			
	Rental Surcharge			
	Sub Total		$15,000.00	$33,000.00
	Sales Tax		$1,305.00	$2,871.00
	Total Cost		**$16,305.00**	**$35,871.00**
Freight:	**Delivery**	**Pickup**	**Sales Tax**	**Total Freight**
Rates:	**$1,300.00**	**$1,300.00**	$226.20	**$2,826.20**
Notes/Fees:				
Notes/Fees:				

ALL FREIGHT CHARGES ARE SUBJECT TO CHANGE IF EQUIPMENT REQUIRES ESCORT

TERMS: Unless otherwise agreed in writing by a vice president of Empire Southwest, LLC ("Empire"), the rental of any equipment from Empire will be governed solely by Empire's Rental Terms and Conditions (the "Terms") which are available at www.empire-cat.com/rentalterms or such other successor website at which Empire posts its Terms from time to time. A hard copy of the Terms is available upon written request to terms.conditions@empire-cat.com. The Terms are hereby incorporated by reference into this document. Placing a Rental Order with Empire or accepting rental equipment from Empire constitutes agreement to be bound by the Terms exactly as written.

Empire Rental owns & maintains a wide variety of units from Caterpillar and other Allied Equipment Manufacturers. We also have the ability to source equipment from other dealers as needed via re-rent. All units are available for sale, lease/purchase, and short or long term rental. Empire applies up to 100% of payment on Lease Purchase items, less interest, which is based off the terms of the contract. Full lube service and fuel contracts are available on all rental units. Empire has the capacity to provide complete or partial, on site, lube & fuel service for customer owned units. Empire has a full lube service department with Caterpillar trained technicians. Full service equipment mobilization is available 24 hours a day, 7 days a week from Empire Transport.

*REP (Rental Equipment Protection) will be charged at 16% of the Contract Rate if proof of Rental Equipment Insurance is not provided at rental start. Ask your Coordinator if your account has coverage.
*Overtime charges additional to quote based off of rental rate divided by allowed hours. Overtime is anything over 8 hours per day, 40 hours per week,160 hours per four weeks.
*Tire damage is billed separately from tire wear.
*Fuel & DEF - All units leave full and must be returned full. For units returned and not full, Fuel @6.50/gal & Diesel Exhaust Fluid (DEF) @ $6.50/gal will be added by Empire at a charge per added gallon to the Client.
*Rent will be charged for all equipment until a call off number is obtained by the Client. Call your Coordinator to obtain call off numbers.
*Client is responsible for all G.E.T. (Ground Engaging Tools, i.e. teeth, cutting edges), tire wear, damages, abuse, daily lube, and fuel.
*All quotes based on availability. This quote is valid for 30 days from the date on this quote.

*Largest Caterpillar Training Facility in N. America for Required Technical Training
*Field Service provided by both Rental & Field Service Departments
*Re-Rent Options with other Departments and Caterpillar Dealers
*Be the Best Attitude, Ensuring Quality Service and Timely Responses
*Low Hour, Well Equipped, Current Model Caterpillar Equipment
*State of the Art Facility to Support the Velocity of our Services

*Current EPA Compliant Equipment
*Complete and Timely PM Services
*Best in Class Parts Department
*G.E.T. Inspection and Exchange
*Operator Trainers Available
*Rental Purchase Option

Mesa Apache Junction Deer Valley Eloy Tucson Flagstaff Yuma Kingman Prescott Thatcher Show Low Imperial, CA Buckeye

Quoted By: Dusty Watson **Phone: 520-746-8270** **Email: Dustin.Watson@empire-cat.com**

CITY OF
TUCSON

BUSINESS
SERVICES
DEPARTMENT

November 29, 2021 ***Sent via email, this day***

Patrick Kearns, North America Industry Manager
Tirena Pavelka, Government Sales Account Manager
Caterpillar Inc.
100 NE Adams St.
Peoria, IL 61629
Email: Pavalka_tirena_l@cat.com
Phone: (309) 675-1589

Subject: Request for Proposal No. 212816 Heavy Equipment, Parts, Accessories, Supplies and Related Services - **Request for Clarification**

Dear Mr. Kearns and Ms. Pavelka,

The City of Tucson has completed the initial phase of evaluation of submittals received in response to the subject solicitation. The evaluation committee requests a written response to the questions listed below, as referenced from RFP 212816.

Pursuant to Page 9 of 39, Scope of Work, Service Requirements, Services, Rental, the ability to rent heavy equipment through the manufacturer or dealer, and **pursuant to page 18 of 39, Method of Approach, Service,** provide detailed information explaining the service capabilities of your authorized dealers.

Question #1: What is the rental availability for a Waste Handler Compactor and Dozer, the same size and type of model currently used at the Los Reales Landfill, within 24 – 48 hours, upon request?

Question #2: What is the transport fee per mile, including fuel charges, to transport a Waste Handler Compactor and Dozer, to the Los Reales Landfill?

Question #3: What are the loading and unloading fees for a Waste Handler Compactor and Dozer the same size and type of model currently used at the Los Reales Landfill?

Question #4: Provide a Sample Quote which includes responses to questions 1, 2 and 3 for evaluation.

Offeror's written response to Questions 1, 2, 3 and 4 must be provided ***no later than 4:00 p.m. local Arizona time, Wednesday, December 1st, 2021.*** If you should have any questions regarding the items above, please contact me at (520) 837-4134 or Cynthia.thompson@tucsonaz.gov.

Sincerely,

Cynthia Thompson

Cynthia Thompson, NIGP-CPP, CPPB
Principal Contract Officer

File 212816

Contract # 212816-01

Heavy Equipment, Parts, Accessories, Supplies and Related Services

Caterpillar, Inc.

Offer and Acceptance

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

CITY OF TUCSON
BUSINESS SERVICES DEPARTMENT
SHARED SERVICES PROCUREMENT DIVISION
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701

CONTRACT OFFICER: CYNTHIA THOMPSON, NIGP-CPP, CPPB
PH: (520) 837-4134

OFFER AND ACCEPTANCE

OFFER

TO THE CITY OF TUCSON:
The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as if fully set forth herein. Signature includes acceptance of exceptions in attached EXCEPTIONS document.

Caterpillar Inc.
Company Name

100 NE Adams St
Address

Peoria IL 61629
City State Zip

DocuSigned by:
Patrick Kearns
68A87026721B4F0...
Signature of Person Authorized to Sign

Printed Name

Patrick Kearns, NA Industry Manager
Title

For clarification of this offer, contact:

Name: Tirena Pavelka

Title: Government Account Manager

Phone: 309-675-1589

Fax:

E-mail: Pavelka_tirena_L@cat.com

ACCEPTANCE OF OFFER

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as **Contract No. 212816**.

CITY OF TUCSON, a municipal corporation

Approved as to form:

This 3rd day of October 2022

Regina Nassen for
As Tucson City Attorney and not personally

Awarded:

This 3rd day of October 2022

Matthew Sage for
As Director of Business Services and not personally

Contract # 212816-01

Heavy Equipment, Parts, Accessories, Supplies and Related Services

Caterpillar, Inc.

Caterpillar, Inc. – response to RFP 212816

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Caterpillar Inc.
100 NE Adams St.
Peoria, IL 61629

September 16, 2021

Cynthia Thompson, NIGP-CPP, CPPB
City of Tucson Department of Procurement
Contract Officer
255 W. Alameda, 6th floor
Tucson, AZ 85701

RE: Request for Proposal Number 212816, Heavy Equipment, Parts, Accessories, Supplies and Related Services

On behalf of Caterpillar Inc, the Cat Dealer Network and Empire Southwest, LLC dba Empire Machinery, we sincerely appreciate the opportunity to participate in RFP #212816 from the City of Tucson. We believe the current contract, #161534, is a very successful contract for all parties: City of Tucson, OMNIA Partners and Member Agencies, Caterpillar and CAT Dealers.

We believe Caterpillar's offer in RFP #212816, if awarded, has three major benefits to all parties.

1) Capitalizing on the momentum of Contract #161534
Contract #161534 continues to gain momentum with the Cat dealer network. We currently have solid plans in place to continue growth through the contract and look forward to continuing the same plans through RFP #212816. Our growth goals can only be reached if RFP #212816 is awarded as a single award for heavy equipment products. As a demonstration of our commitment to growing with OMNIA, we are pleased to propose an increased administrative fee versus the fee under contract #161534 (See exceptions document attached). Additionally, Caterpillar recognizes that the City of Tucson and other participating agencies will have needs outside of the range of products offered by Caterpillar and its dealer network. Therefore, a non-competitive "multi-award" is acceptable to grow the volumes of this contract.

2) Caterpillar's product offering far exceeds any other manufacturer
Our best professional estimate is that Caterpillar offers 142 more individual machine models to the governmental market than our next closest competitor. The depth and breadth of these additional units represents three times more machines to service The City of Tucson's and member agency's needs. The result is more revenue through the contract.

3) Cat Dealers have a larger infrastructure footprint
Cat Dealers have an infrastructure -- in stores and people -- greater than all our competitors combined. Cat Dealer Sales Managers and Salespersons are discovering two major benefits of the City of Tucson/OMNIA Partners contract: 1) A nationally recognized municipality as the Lead Agency and 2) The value of a single award.

When these features are presented, procurement staff and operating departments have much higher confidence and trust in the cooperative contract bid process. U.S. Cat dealers continue to increase their presentations and visibility of the contract and thus secure adoption by new and/or existing OMNIA Partner members. Empire continues to experience an increased level of engagement with counterparts at other dealerships who request guidance and best practice suggestions.

Caterpillar: Confidential Green

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Our response includes two sources. The first is from Caterpillar Inc., prepared by the Corporate Governmental Account Team, based in Peoria, Illinois. Caterpillar's responses pertain to the scope of Caterpillar's responsibility, while remaining cognizant that each dealership and respective territory have their own business rules and local regulations. Caterpillar is not at liberty to make commitments in this response on behalf of all Cat dealers. Caterpillar's commitment is the pricing discount from their published list price on machines they manufacture. These will be available to every Caterpillar dealer in the United States when a local agency requests to purchase from this contract. The local Cat dealer must still agree to any additional terms and conditions the member agency may still require.

The second source for our response is Empire Machinery's input. Empire approached its submission as if preparing the proposal solely for the City of Tucson. Empire's business relationship with the City of Tucson is highly valued and is our primary focus. The Empire Machinery section should only be considered as a commitment of what Empire will provide the City of Tucson and other agencies in its authorized territory. If this submission provides value, it may be used in the OMNIA marketing effort to potential agencies in understanding what a Caterpillar dealership is capable of, but in no way is meant to imply or represent that any other dealers can or will provide the exact scope or elements that Empire offers the City of Tucson.

Empire also represents several products that Caterpillar does not manufacture, but were requested in the RFP. We refer to non-Caterpillar products at Empire as "Allied" products. Allied products enhance or complete the machines for applications our customers need. Additional information is included in the Empire section entitled "Allied Products".

In addition to our response, there are three attachments which will include: City of Tucson RFP #212816 Amendment acknowledgments, a compilation of documents that were requested in the RFP, and our exceptions request.

Thank you for the opportunity to participate in this solicitation for the City of Tucson and OMNIA Partners.

Sincerely,

Tirena Pavelka
Caterpillar Inc.
Government Sales Account Manager
100 NE Adams St.
Peoria, IL 61629
Pavelka_tirena_l@cat.com
309-675-1589

Caterpillar: Confidential Green

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

CITY OF TUCSON

REQUEST FOR PROPOSAL

PROPOSAL NUMBER:	**212816**
PROPOSAL SUBMISSION DEADLINE:	**SEPTEMBER 14, 2021, 2:00 P.M. LOCAL AZ TIME**
PROPOSAL SUBMITTAL LOCATION:	****ELECTRONIC SUBMITTALS REQUIRED**** **https://www.tucsonaz.gov/bso/**
MATERIAL OR SERVICE:	**HEAVY EQUIPMENT, PARTS, ACCESSORIES, SUPPLIES AND RELATED SERVICES**
PRE-PREPOSAL DATE:	**TUESDAY, AUGUST 17, 2021**
TIME:	**12:30 P.M. – 1:30 P.M. LOCAL AZ TIME**
	LOCATION: Click Here to Join Meeting **Or call in (audio only)** +1 213-293-2303,,312216198# United States, Los Angeles Phone Conference ID: 312 216 198#
CONTRACT OFFICER:	**Cynthia Thompson, NIGP-CPP, CPPB**
TELEPHONE NUMBER:	**(520) 837-4134**
	Cynthia.Thompson@tucsonaz.gov

A copy of the solicitation and any possible amendments may be downloaded from our Internet site at: http://www.tucsonprocurement.com/ by selecting the Bid Opportunities link and the associated solicitation number. The City does not mail out Notices of available solicitations via the U.S. Postal Service. Email notifications are sent to those interested offerors who are registered with us and who have selected email as their preferred delivery method. To register, or to update an existing vendor record, please visit www.tucsonprocurement.com, click on Vendors, then click on Vendor Registration to access the City's vendor registration system. You may also call the Shared Services Procurement Division of the Business Services Department at (520) 791-4217 if you have questions.

Competitive sealed bids for the specified material or service shall be received electronically by the Business Services Department at: https://www.tucsonaz.gov/bso/ until the date and time cited. **In order to allow for any issues that may be encountered, (i.e. slow internet, internet outage, uploading large documents, differing system requirements, etc.), Offerors should ensure sufficient time to upload proposal documents.** **Responses not in "Submitted" Status by the Due Date and Time stated in the solicitation WILL be rejected.**

Offerors shall submit their Proposal to the Business Services Department on or before the day and hour set for the Proposal Due Date identified above, as may be modified by amendments to this solicitation. Responses to this solicitation shall only be accepted via electronic submission through the City's online bidding system. Instructions to submit a response to this solicitation can be found at the following link: https://tucsonprocurement.com/assets/OnlineBiddingProceduresManual.pdf.

It is the sole responsibility of the Bidder to submit their Bid before the scheduled time, as reflected in the City's online bidding system. No Bid shall be accepted after the scheduled opening time.

Questions must be addressed to the Contract Officer listed above.

PUBLISH DATE: August 10, 2021

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REQUEST FOR PROPOSAL
Heavy Equipment, Parts, Accessories, Supplies and Related Services

A. INTRODUCTION

B. SCOPE OF WORK

C. INSTRUCTIONS TO OFFERORS

D. PROPOSAL EVALUATION CRITERIA

E. VENDOR RESPONSE

F. SPECIAL TERMS AND CONDITIONS

G. INSURANCE REQUIREMENTS

H. STANDARD TERMS AND CONDITIONS

ATTACHMENTS:

A – Exhibit B - OMNIA Partners Exhibits

Attachment A, Exhibit A - Response for National Cooperative Contract
Attachment A, Exhibit B - Administration Agreement (Example)
Attachment A, Exhibit F - Federal Funds Certifications
Attachment A, Exhibit G - New Jersey Business Compliance

B – City of Tucson - Certification of Living Wage Payments Form

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A. INTRODUCTION

A.1. Summary

The City of Tucson (herein referred to as the City) is requesting proposals from qualified and experienced firms to provide **HEAVY EQUIPMENT, PARTS, ACCESSORIES, SUPPLIES AND RELATED SERVICES**. The City requires a contractor who provides a diverse and extensive supply of equipment for purchase and/or rental to various locations in the Tucson metropolitan area and Participating Public Agencies, as well as representative(s) to provide product and service consultations, demonstrations, and training.

Heavy equipment will include, but not be limited to, the following equipment categories: Landfill, Construction, and Material Handling. The City has approximately 150 pieces of heavy equipment that falls under the heavy equipment category. The Contractor will have a sophisticated infrastructure including strategically located nationwide distribution centers and employ professional sales representatives to provide effective, timely service to the City of Tucson and to Participating Public Agencies.

Requirements and qualifications are defined in detail in the Scope of Services Section of this Request for Proposal (RFP).

A.2. Background

NATIONAL CONTRACT REQUIREMENTS

The City of Tucson as the Principal Procurement Agency, defined in Attachment A, has partnered with OMNIA Partners, Public Sector (“OMNIA Partners”) to make the resultant contract (also known as the “Master Agreement” in materials distributed by OMNIA Partners) from this solicitation available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit (“Public Agencies”), through OMNIA Partners’ cooperative purchasing program. The City of Tucson is acting as the contracting agency for any other Public Agency that elects to utilize the resulting Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners (a “Participating Public Agency”) and by using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of a Master Intergovernmental Cooperative Purchasing Agreement, a form of which is attached hereto on Attachment A, or as otherwise agreed to. Attachment A contains additional information about OMNIA Partners and the cooperative purchasing program.

OMNIA Partners is the largest and most experienced purchasing organization for public and private sector procurement. Through the economies of scale created by OMNIA Partners public sector subsidiaries and affiliates, National IPA and U.S. Communities, our participants now have access to more competitively solicited and publicly awarded cooperative agreements. The lead agency contracting process continues to be the foundation on which we are founded. OMNIA Partners is proud to offer more value and resources to state and local government, higher education, K-12 education, and non-profits.

OMNIA Partners provides shared services and supply chain optimization to government, education and the private sector. With corporate, pricing and sales commitments from the Supplier, OMNIA Partners provides marketing and administrative support for the Supplier that directly promotes the Supplier's

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products and services to Participating Public Agencies though multiple channels, each designed to promote specific products and services to Public Agencies on a national basis. Participating Public Agencies benefit from pricing based on aggregate spend and the convenience of a contract that has already been advertised and publicly competed. The Supplier benefits from a contract that generally allows Participating Public Agencies to directly purchase goods and services without the Supplier's need to respond to additional competitive solicitations. As such, the Supplier must be able to accommodate a nationwide demand for services and to fulfill obligations as a nationwide Supplier and respond to the OMNIA Partners documents (Attachment A).

The City anticipates spending approximately $8.5 million over the full potential Master Agreement term for Heavy Equipment, Parts, Accessories, Supplies and Related Services. While no minimum volume is guaranteed to the Supplier, the estimated annual volume of heavy equipment, parts, accessories, supplies and related services purchased under the Master Agreement through OMNIA Partners is approximately $25,000,000. This projection is based on the current annual volumes among the City of Tucson, other Participating Public Agencies anticipated to utilize the resulting Master Agreement to be made available to them through OMNIA Partners, and volume growth into other Public Agencies through a coordinated marketing approach between the Supplier and OMNIA Partners.

A.3. Contact Information

Cynthia Thompson, NIGP-CPP, CPPB
Principal Contract Officer
Email: Cynthia.Thompson@tucsonaz.gov
Phone: (520) 837-4134

Department:
Business Services

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B. SCOPE OF WORK

B.1. GENERAL REQUIREMENTS

1.QUALIFIED FIRMS: Offerors should meet the minimum qualifications:

a. Have a strong national presence in the heavy equipment industry.

b. Have a distribution model capable of delivering heavy equipment nationwide.

c. Have a demonstrated sales presence.

d. Be able to meet the minimum requirements of the cooperative purchasing program detailed herein.

e. Be able to provide the full range of products, equipment, parts, materials and services to meet the demands of the City and Participating Public Agencies.

2.PRODUCTION REPORTS: The Contractor or associated dealer must have the ability to furnish the agency or Participating Public Agency ordering equipment with MONTHLY progress reports confirming status of delivery dates as agreed upon. These reports shall include, but not be limited to, the following:

a. Copy of Contractor's order to the factory.

b. Copy of factory acknowledgment of order indicating scheduled date of production and shipment from factory.

c. Factory generated computer status reports.

d. Notification to the City or Participating Public Agency of any changes in production or shipping dates.

e. Any special information the Contractor shall have that would affect the timely delivery of the vehicles ordered in accordance with original delivery date promise.

In lieu of written reports submitted to Operations/Fleet Services, the Contractor may provide access to an Internet based on-line order tracking system. Any on-line system provided must provide the information required above. The Contractor must provide all access codes necessary to view this information.

3.DELIVERY and DELIVERY DOCUMENTATION: The City and each Participating Public Agencies will establish their own delivery schedule based upon its own requirements and the Contractor's specified time to deliver after receipt of an order. The following documents are due upon delivery of the completed vehicles to the City:

a. Invoice

b. Warranty document

c. Level 1 Inspection

d. Required manuals

e. Title and Registration per State requirements

Upon contract award, the Contractor will be required to supply a delivery ticket specifying the purchase order number of each vehicle.

Delivery to the City of Tucson: All deliveries shall be made Monday through Friday from 8:00 a.m. to 3:00 p.m. The Contractor shall be required to give the General Services Department/Fleet Services

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Division a minimum of 24-hour notification prior to delivery with the anticipated time of delivery and quantity of units to be delivered.

4. VEHICLE INSPECTION: The purchasing agency will assist the Contractor or the authorized dealer in arranging for inspection of each piece of equipment purchased. Each vehicle delivered shall be subject to a complete inspection by the General Services Department/Fleet Services Division staff prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. If delivered equipment is returned to the Contractor prior to acceptance for any reason, all corrections shall be made without any inconvenience to the City.

5. TRAINING: The Contractor shall provide, at no additional cost, training for each basic unit of equipment purchased. This training shall be adequate to the needs of the typical equipment operator and service technician in order to assure proper operation, utilization and maintenance of the equipment supplied. Any manuals necessary to perform the required training shall be furnished by the Contractor. The trainer shall be factory-trained and thoroughly knowledgeable in equipment operator and service technician functions. Training shall be presented in a quality suitable for videotaping. The City reserves the right to videotape part or all of the training provided at no additional cost to the agency.

6. REPAIRS: The Contractor will be responsible for transport of vehicles to and from his place of business for repairs, at no additional cost to the City, until such time as the City of Tucson places the vehicle in service. Transport of the vehicle will not be delayed more than one working day from date of notification.

7. WARRANTIES: Offeror shall warrant that all equipment and parts furnished in their offer are newly manufactured and free from defects in material and workmanship from the date the City places the equipment into service. Warranty shall also guarantee accepted trade standards of quality, fitness for the intended uses, and conformance to promises or specified specifications. No other express or implied warranty shall eliminate the vendor’s liability as stated herein.

Total Maintenance and Repair (TMR’s) must be agreed upon and presented to the City prior to the purchase of equipment and/or rebuilds.

8. VENDOR SERVICE AND MAINTENANCE: Contractor will provide and maintain a factory authorized parts and service facility within a reasonable distance to the purchasing location.

For the City, the parts and service facility must be within a 125-mile radius of the City of Tucson Price Service Center (4004 S. Park Avenue, 85714). If warranty service is not provided within the Tucson metro area, the Contractor shall be responsible for all costs, including fuel and labor, of transporting vehicle(s) between the City’s Price Service Center and the Contractor’s service center. The method of transportation must be mutually agreed to by the Contractor and the City prior to transport.

For service calls, the Contractor must provide a response within 60 minutes.

Additional Requirement for City of Tucson Landfill: A service technician must be on-site each morning, Monday-Friday (except holidays) to service and maintain the City of Tucson landfill equipment located at 5300 E. Los Reales Road, Tucson, AZ.

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9. VEHICLE RECALL NOTICES: In the event of any recall notice, technical service bulletin, or other important notification affecting a vehicle purchased from this contract, a notice shall be sent to the purchasing agency's representative. For the City of Tucson, all notices shall be sent to General Services, Fleet Services Division, 4004 S. Park Avenue, Building 1, Tucson, AZ 85714.

B.2. EQUIPMENT AND PRODUCT REQUIREMENTS

1. **EQUIPMENT:** A complete and comprehensive line of new and used Heavy Equipment to support various needs of agencies is requested.

   The categories include, but are not limited to, the following:

Landfill Equipment:
Landfill Dozers
Landfill Compactors
Landfill Scraper
Material Handling
Fork Lift
Crane / Wheeled
Crane / Track
Construction Equipment:
Air Compressor
Articulated Dump Truck
Asphalt Cold Planer
Asphalt Rotary Mixer
Bucket Truck
Cement Mixer
Chip Spreader
Crack Sealer
Dozers / Tracked
Dozers / Wheeled
Dump Trucks
Excavators / Tracked
Excavators / Wheeled
Ice Resurfacer
Loaders / Backhoe / Wheeled
Loaders / Tracked
Loaders / Wheeled
Motor Graders
Patcher Truck
Paver / Tracked
Paver / Wheeled
Rollers / Drum / Vibrate
Rollers / wheeled / Pneumatic
Rollers / Drum / Wheeled
Scrapers
Skid Steer Loaders
Soil Compactors
Sweeper / Scrubber
Sweeper / Street
Sweeper / walkway
Telehandlers
Trailer / Tilt
Trailer / Flatbed
Trailer / Drop Neck
Trailer / Utility
Trencher
Water Truck
Water Wagon

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2. BALANCE OF LINE/OTHER CATEGORIES: Each offeror awarded an item under this solicitation may offer their complete product and service offering/a balance of line for heavy equipment, parts, accessories, supplies and related services. Pricing for complete product offering/balance of line items will be determined by a percentage discount off the offeror's retail price list. The pricing percentage discount offered must be entered in the offeror's response. The City reserves the right to accept or reject any or all balance of line items offered. A successful offeror will not be awarded complete product offering/balance of line items that are awarded as an item to another vendor as part of this solicitation.

3. CURRENT EQUIPMENT AND PRODUCTS: All equipment and products being offered in response to this solicitation shall be in current and ongoing production; shall be formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.

4. PRICING: Offerors shall provide a verifiable pricing model that may include, but not be limited to, a discount from a verifiable price index, a reduced net pricing schedule, a hybrid or other supplier specific pricing model. The pricing model shall remain firm and will include all charges that may be incurred in fulfilling requirement(s) for the twelve-month period following contract award. Where applicable, pricing shall be determined by applying Offerors discounts to the prices listed on their manufacturer's price lists, retail price sheets, catalogs or by utilizing the reduced net pricing schedule.

Special Offers/Promotions:

In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, Contractor may conduct sales promotions involving price reductions for a specified lesser period. Contractor may offer Participating Public Agencies competitive pricing which is lower than the not-to-exceed price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract. Provide details of and propose additional discounts for volume orders, special manufacturer's offers, minimum order quantity, free goods program, total annual spend, etc.

B.3. SERVICE REQUIREMENTS

1. SERVICES: The City is seeking the inclusion of value-add services. These services may be provided by the authorized manufacturer or dealer and sample categories include, but are not limited to:

a. Repair Services: The ability to provide repair services through authorized manufacturer's facilities or dealers. Repair services may include, but not be limited to, hourly rate for repairs in shop, hourly rate for repairs in field, weld repairs, machining work, etc.

b. Maintenance Services: The ability to provide various maintenance services and options through authorized manufacturer's facilities or dealers. Maintenance services may include scheduled services based upon the manufactures recommended guidelines to include, but not be limited to, daily scheduled services, daily fuel dispensing, major/minor machine cleaning, etc. Maintenance services may also include mobile maintenance.

For landfill equipment, if the City has purchased the maintenance services from the manufacturer's dealer, the City requires loaner or rental equipment if the machine is down for more than 24 hours. If the equipment is down due to no fault of the City, the loaner shall be provided at no additional cost.

c. Warranties: The ability to provide a full range of extended warranties.

d. Lease/Financing Options: The ability to provide financing options. Identify direct or third party financing or both.

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e. Trade-In or Buyback Options: The ability to trade-in used equipment or obtain a guaranteed buy back price at the time of purchase.

f. Rental: The ability to rent heavy equipment through the manufacturer or dealer.

g. Incorporation of New Business Enterprises: The ability to incorporate certain business enterprises (as requested by the City or Participating Public Agencies) into your distribution, and sales channels.

h. Green/Sustainability Program:

1. Policies: Efforts and policies pertaining to green and sustainability.
2. Products: Impact on product offerings.
3. Distribution: Impact in distribution.
4. Certifications: The industry recognized certifications and standards obtained.

i. Training & Education: The ability to provide on-site and/or online training and educational programs/seminars as well as providing technical product knowledge and support.

j. Customer Support Services: The policies on replacements, returns, restocking charges, after hours service, after sales support, out of stock, order tracing, technical feedback, quality assurance for orders and drop shipments.

k. Other Services/Programs: Other value-add services not included in above categories.

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C. INSTRUCTIONS TO OFFERORS

C.1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION

For purposes of this solicitation and subsequent contract, the following definitions shall apply:

City: The City of Tucson, Arizona

Contract: The legal agreement executed between the City and the Contractor/Consultant. The Contract shall include this RFP document incorporated herein by reference, all terms, conditions, specifications, scope of work, Amendments, the Contractor's offer and negotiated items as accepted by the City.

Contractor/Consultant: The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City.

Contract Representative: The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor and is responsible for monitoring and overseeing the Contractor's performance under this Contract.

Business Services Director: The contracting authority for the City, authorized to sign contracts and amendments thereto on behalf of the City.

May: Indicates something that is not mandatory but permissible.

Offeror: The individual, partnership, or corporation who submits a proposal in response to a solicitation.

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements, if they constitute a substantive requirement, may, at the City's sole discretion, result in the rejection of a proposal as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the City may, at its sole option, ask the Offeror to provide the information or evaluate the proposal without the information.

C.2. PRE-PROPOSAL CONFERENCE

If scheduled, the date and time of a Pre-Proposal conference is indicated on the cover page of this document. Attendance at this conference is not mandatory. Written minutes and/or notes will not be available, therefore attendance is encouraged. If an Offeror is unable to attend the Pre-Proposal Conference questions may be submitted in writing. Offerors are encouraged to submit written questions, via electronic mail at least nine days prior to the Request for Proposal due date to the Contract Officer listed above. The purpose of this conference will be to clarify the contents of this Request for Proposal in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this Request for Proposal or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine the appropriate action necessary, if any, and may issue a written amendment to the Request for Proposal. Oral statements or instructions will not constitute an amendment to this Request for Proposal.

C.3. INQUIRIES

Any question related to the Request for Proposal shall be directed to the Contract Officer whose name appears above. An offeror shall not contact or ask questions of the department for whom the requirement is being procured. The Contract Officer may require any and all questions be submitted in writing. Offerors are encouraged to submit written questions via electronic mail at least nine days prior to the proposal due

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date. Any correspondence related to a solicitation should refer to the appropriate Request for Proposal number, page and paragraph number. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the Request for Proposal will be binding.

C.4. AMENDMENT OF REQUEST FOR PROPOSAL

The Offeror shall acknowledge receipt of a Request for Proposal Amendment by signing and returning the document by the specified due date and time.

C.5. FAMILIARIZATION OF SCOPE OF WORK

Before submitting a proposal, each offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting contract performance. The Offeror shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a proposal will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.

C.6. PREPARATION OF PROPOSAL

A. All proposals shall be on the forms provided in this Request for Proposal package. It is permissible to copy these forms as required. Facsimiles or electronic mail proposals shall not be considered.

B. At a minimum, your proposal should include the signed Offer and Acceptance form, signed copies of any solicitation amendments, completed Price Page and your response to all evaluation criteria.

C. The Offer and Acceptance page shall be signed by a person authorized to submit an offer. An authorized signature on the Offer and Acceptance page, Proposal Amendment(s), or cover letter accompanying the proposal documents shall constitute an irrevocable offer to sell the good and/or service specified herein. Offeror shall submit any additional requested documentation, signifying intent to be bound by the terms of the agreement.

D. The authorized person signing the proposal shall initial erasure, interlineations or other modifications on the proposal.

E. In case of error in the extension of prices in the proposal, unit price shall govern when applicable.

F. Periods of time, stated as a number of days, shall be in calendar days.

G. It is the responsibility of all offerors to examine the entire Request for Proposal package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing a proposal confers no right of withdrawal after due date and time.

H. The City shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.

I. Offeror must list any subcontractors to be utilized in the performance of the services specified herein. For each subcontractor, details on respective qualifications must be included.

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C.7. PAYMENT DISCOUNTS

Payment discount periods shall be computed from the date of receipt of the material/service or correct invoice, whichever is later, to the date City's payment warrant is mailed. Unless freight and other charges are itemized, any discount provided shall be taken on full amount of invoice. Payment discounts of twenty-one calendar days or more shall be deducted from the proposed price in determining the price points. However, the City shall be entitled to take advantage of any payment discount offered by a vendor provided payment is made within the discount period. The payment discount shall apply to all purchases and to all payment methods.

C.8. TAXES

The City of Tucson is exempt from federal excise tax, including the federal transportation tax.

C.9. PROPOSAL/SUBMITTAL FORMAT

A proposal should be submitted on the forms and in the format specified in the RFP. Any information that the offeror requested to held as confidential information shall be clearly marked as such. The material should be in sequence and related to the RFP. The sections of the submittal should be organized, clearly identifiable, and should include a minimum of the following sections: the completed Offer and Acceptance Form, all signed Amendments, a copy of this RFP document, and the Offeror's response to the Evaluation Criteria including the completed Price Page. Failure to include the requested information may have a negative impact on the evaluation of the offeror's proposal.

C.10. EXCEPTIONS TO CONTRACT PROVISIONS

A response to any Request for Proposal is an offer to contract with the City based upon the contract provisions contained in the City's Request for Proposal, including but not limited to, the specifications, scope of work and any terms and conditions. Offerors who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language. The provisions of the Request for Proposal cannot be modified without the express written approval of the Director or his designee. If a proposal or offer is returned with modifications to the contract provisions that are not expressly approved in writing by the Director or his designee, the contract provisions contained in the City's Request for Proposal shall prevail.

C.11. PUBLIC RECORD

All proposals submitted in response to this Request for Proposal shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification.

C.12. CONFIDENTIAL INFORMATION

The City of Tucson is obligated to abide by all public information laws. If an Offeror believes that any portion of a proposal, offer, specification, protest or correspondence contains information that should be withheld, a statement advising the Contract Officer of this fact should accompany the submission and the information shall be so identified wherever it appears. The City shall review all requests for confidentiality and may provide a written determination to designate specified documents confidential or the request may be denied. Price is not confidential and will not be withheld. If the confidential request is denied, such information shall be disclosed as public information, unless the offeror submits a formal written objection.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

C.13. CERTIFICATION

By signature on the Offer and Acceptance page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Offeror certifies:

A. The submission of the offer did not involve collusion or other anti-competitive practices.

B. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.

C. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer.

D. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to bind the Offeror to the Contract.

C.14. WHERE TO SUBMIT PROPOSALS

Competitive sealed proposals for the specified material or service shall be received electronically by the Business Services Department at https://www.tucsonaz.gov/bso/ until the date and time cited.

Offerors shall submit their Proposal to the Business Services Department on or before the day and hour set for the Proposal Due Date identified above, as may be modified by amendments to this solicitation. Responses to this solicitation shall only be accepted via electronic submission through the City's online bidding system. Instructions to submit a response to this solicitation can be found at the following link: https://tucsonprocurement.com/assets/OnlineBiddingProceduresManual.pdf.

NOTE: RESPONSES MUST BE IN "SUBMITTED" STATUS (SEE THE INSTRUCTION MANUAL THAT IS ACCESSIBLE ON THE LINK ABOVE FOR FURTHER DETAILS) IN ORDER TO BE CONSIDERED. RESPONSES THAT HAVE BEEN CREATED IN THE SYSTEM, BUT THAT ARE NOT IN "SUBMITTED" STATUS AT THE DUE DATE AND TIME WILL NOT BE CONSIDERED.

C.15. LATE PROPOSALS

Late proposals will be rejected. It is strongly advised that offerors create their responses in the City's online bidding system well in advance of the Due Date and Time in order to allow for unforeseen circumstances such as slow internet speed, internet outage, etc. Proposals that are not in "Submitted" status at the Due Date and Time will NOT be considered.

C.16. OFFER AND ACCEPTANCE PERIOD

In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for ninety (90) days after the proposal due date and time.

C.17. WITHDRAWAL OF PROPOSAL

At any time prior to the specified solicitation due date and time, an offeror may formally withdraw the proposal by a written letter or electronic mail from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.

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C.18. DISCUSSIONS

The City reserves the right to conduct discussions with offerors for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal in order to clarify an offer and assure full understanding of, and responsiveness to, solicitation requirements.

C.19. TAX OFFSET POLICY

If applicable, in evaluating price proposals, the City shall include the amount of applicable business privilege tax, except that the amount of the City of Tucson business privilege tax shall not be included in the evaluation.

C.20. CONTRACT NEGOTIATIONS

Exclusive or concurrent negotiations may be conducted with responsible offeror(s) for the purpose of altering or otherwise changing the conditions, terms and price of the proposed contract unless prohibited. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors. Exclusive or concurrent negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. In the event the City deems that negotiations are not progressing, the City may formally terminate these negotiations and may enter into subsequent concurrent or exclusive negotiations with the next most qualified firm(s).

C.21. VENDOR APPLICATION

Prior to the award of a Contract, the successful offeror shall register with the City's Business Services Department. Registration can be completed at http://www.tucsonprocurement.com/ by clicking on Vendor Services. Please note that email notifications of newly published solicitations and amendments will be provided to those vendors that select email as their preferred delivery method in their vendor record.

C.22. CITY OF TUCSON BUSINESS LICENSE

It is the responsibility of the Contractor to have a City of Tucson Business License throughout the life of this contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, the City may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. Application for a City Business License can be completed at http://www.tucsonaz.gov/etax. For questions contact the City's Business License Section at (520) 791-4566 or email at tax-license@tucsonaz.gov.

C.23. UPON NOTICE OF INTENT TO AWARD

The apparent successful offeror shall sign and file with the City, within five (5) days after Notice of Intent to Award, all documents necessary to the successful execution of the Contract.

C.24. AWARD OF CONTRACT

Notwithstanding any other provision of the Request for Proposal, the City reserves the right to:

A. waive any immaterial defect or informality; or

B. reject any or all proposals, or portions thereof; or

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C. reissue the Request for Proposal.

A response to this Request for Proposal is an offer to contract with the City based upon the terms, conditions and Scope of Work contained in the City's Request for Proposal. Proposals do not become contracts unless and until they are executed by the City's Director of Business Services and the City Attorney. A contract has its inception in the award, eliminating a formal signing of a separate contract. All of the terms and conditions of the contract are contained in the Request for Proposal, unless any of the terms and conditions are modified by a Request for Proposal amendment, a Contract Amendment, or by mutually agreed terms and conditions in the Contract documents.

C.25. PROPOSAL RESULTS

The name(s) of the successful offeror(s) will be posted on the Business Services Department’s Internet site at http://www.tucsonprocurement.com/ upon issuance of a Notice of Intent to Award or upon final contract execution.

C.26. PROTESTS

A protest shall be in writing and shall be filed with the Director of Business Services. A protest of a Request for Proposal shall be received at the Department of Business Services not less than five (5) working days before the Request for Proposal due date. A protest of a proposed award or of an award shall be filed within ten (10) days after issuance of notification of award or issuance of a notice of intent to award, as applicable. A protest shall include:

A. The name, address, and telephone number of the protestant;

B. The signature of the protestant or its representative;

C. Identification of the Request for Proposal or Contract number;

D. A detailed statement of the legal and factual grounds of protest including copies of relevant documents; and

E. The form of relief requested.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

D. PROPOSAL EVALUATION REQUIREMENTS

D.1. PROPOSAL EVALUATION CRITERIA – (listed in relative order of importance)

A. Method of Approach

B. Qualifications & Experience

C. Price Proposal

D.2. Interviews

The City reserves the right to conduct interviews with some or all of the offerors at any point during the evaluation process. However, the City may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria. The City shall not reimburse the offeror for the costs associated with the interview process.

D.3. Additional Investigations

The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any offeror submitting a proposal.

D.4. Prior Experience

Experiences with the City and entities that evaluation committee members represent and that are not specifically mentioned in the solicitation response may be taken into consideration when evaluating offers.

D.5. Multiple Awards

To provide adequate contract coverage, at the City’s sole discretion, multiple awards may be made.

D.6. Shortlist

The City reserves the right to shortlist the offerors on any of the stated criteria. However, the City may determine that shortlisting is not necessary.

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E. VENDOR RESPONSE

E.1 REQUIREMENTS SPECIFIC TO EVALUATION CRITERIA: The narrative portion and the materials presented in response to this Request for Proposal should be submitted in the same order as requested and must contain, at a minimum, the following:

A. Method of Approach

1. Provide a response to the national program.

a. Include a detailed response to **Attachment A, Exhibit A - Response for National Cooperative Contract**. Responses should highlight experience, demonstrate a strong national presence, describe how Offeror will educate its national sales force about the contract, describe how products and services will be distributed nationwide, include a plan for marketing the products and services nationwide, and describe how volume will be tracked and reported to OMNIA Partners.

Dealer Response
Empire Machinery will be providing a response to RFP #212816 on behalf of Caterpillar's Dealer network, in an effort to support the terms included herein, on a national scale. Empire will provide supplemental responses to applicable questions specific to the manner in which Empire will be specifically supporting the contract for the City of Tucson. From a national standpoint, Empire's supplemental responses should only be considered examples of the manner in which business may be conducted. The contract may be supported differently in territories other than those serviced by Empire Machinery.

b. The successful Offeror will be required to sign **Attachment A, Exhibit B, OMNIA Partners Administration Agreement, (Example) prior to Contract award**. The Agreement shall be signed no later than issuance of the City of Tucson's Notice of Intent to Award letter. Offerors should complete all reviews of the document prior to submitting a response. Offeror's response should include any proposed exceptions to the OMNIA Partners Administration Agreement.

c. Include completed **Attachment A, Exhibit F. Federal Funds Certificate and Exhibit G. New Jersey Business Compliance.**

2. Distribution Network

a. Describe how your firm proposes to distribute the equipment, accessories, parts, repair and services nationwide. Describe any parts the distribution network will have "on-hand" and those that must be ordered.

Caterpillar Response (only)

Caterpillar products are sold and supported by our authorized dealer network. These dealers are established, independent businesses that understand the needs of their local customers and communities. These dealers typically have most parts on-hand and the national average for 24-hour availability is 95%. In addition, Caterpillar maintains 10 parts distribution warehouses throughout the country to ensure that almost all parts can reach a customer within 24-48 hours.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Product support and parts availability are the hallmarks of Caterpillar's success and we take great pride in leading the industry in availability. Subsection d below expands on some of these capabilities.

b. Identify all other companies/distributors/dealers that will be involved in processing, handling or shipping the products/services to Participating Public Agencies.

Caterpillar Response (only)

Caterpillar and Cat dealers are the two entities involved in providing product/services to public agencies. Transportation between facilities may be contracted out and specific details of the transportation plan can be provided upon request

c. Provide the number, size and location of your firm's manufacturing facilities, distribution facilities, warehouses, service facilities and dealer networks as applicable. State the estimated dollar value of your inventory. Include a map showing heavy equipment distribution network coverage nationwide.

Caterpillar Response (only)

Caterpillar operates parts distribution centers in the following locations: Morton, Illinois; Arvin, California; Denver, Colorado; Miami, Florida; Atlanta, Georgia; St. Paul, Minnesota; Clayton, Ohio; York, Pennsylvania; Waco, Texas; Spokane, Washington; Melbourne, Australia; Queensland, Australia; Grimbergen, Belgium; Piracicaba, Brazil; Shanghai, China; San Luis Potosi, Mexico; Singapore, Republic of Singapore; Moscow, Russia; Johannesburg, South Africa, and Dubai, United Arab Emirates. We also own or lease other facilities that support our distribution activities.

Our principal manufacturing facilities include those used by the following segments in the following locations:

Segment	U.S. Facilities	Facilities Outside the U.S.
Construction Industries	**Arkansas:** North Little Rock **Georgia:** Athens, LaGrange **Illinois:** Aurora, Decatur, East Peoria **Kansas:** Wamego **Minnesota:** Brooklyn Park **North Carolina:** Clayton, Sanford **Texas:** Victoria, Waco	**Brazil:** Campo Largo, Piracicaba **China:** Suzhou, Wujiang, Xuzhou, Qingzhou **France:** Grenoble, Echirolles **Hungary:** Godollo **India:** Thiruvallar **Indonesia:** Jakarta **Italy:** Minerbio **Japan:** Akashi **Mexico:** Torreon **Netherlands:** Den Bosch **Poland:** Janow, Sosnowiec **Thailand:** Rayong **United Kingdom:** Desford, Stockton

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Resource Industries	**Illinois:** Aurora, Decatur, East Peoria, Joliet **South Carolina:** Sumter **Tennessee:** Dyersburg **Texas:** Denison **Wisconsin:** South Milwaukee	**China:** Langfang, Wuxi **France:** Arras **Germany:** Dortmund, Lunen **India:** Hosur, Thiruvallur **Indonesia:** Batam **Italy:** Jesi **Japan:** Sagamihara **Mexico:** Acuna, Monterrey, Reynosa **Northern Ireland:** Belfast **Russia:** Tosno **Thailand:** Rayong **United Kingdom:** Peterlee
Energy & Transportation	**Alabama:** Albertville, Montgomery **California:** San Diego **Colorado:** Denver **Georgia:** Griffin, Alpharetta **Illinois:** Island Lake, LaGrange, Mossville, Mapleton, Pontiac **Indiana:** Lafayette, Muncie **Oklahoma:** Broken Arrow, Sulphur **North Carolina:** Winston-Salem **Kentucky:** Decoursey, Mayfield **Texas:** Channelview, DeSoto, Mabank, San Antonio, Schertz, Seguin, Sherman	**Australia:** Revesby, Redbank **Brazil:** Curitiba, Hortolandia, Piracicaba, Sete Lagoas **China**: Tianjin, Wuxi **Czech Republic:** Zatec, Zebrak **Germany:** Kiel, Mannheim, Rostock **India:** Hosur, Aurangabad **Mexico:** San Luis Potosi, Tijuana **Republic of Singapore:** Singapore **Sweden:** Ockero Islands **Switzerland:** Riazzino **United Kingdom:** Larne, Monkstown, Peterborough, Sandiacre, South Queensferry, Springvale, Stafford, Wimborne

Caterpillar inventory is stated at the lower of cost or market. Cost is principally determined using the last-in, first-out (LIFO) method. The value of inventory totaled $11.4B on December 31, 2020.

d. Describe your dealer network and their role in providing products, services, etc. under this contract.

Caterpillar Response (only)

Cat machines and engines are distributed principally through a worldwide network of dealers. In the United States there are 45 dealers, two in Canada (see dealer map below) and 114 located outside North America.

Caterpillar and Cat Dealers will provide governmental customers with a reliable and viable distribution channel. They will manage the entire sales process from machine selection, quotation, PO acceptance and product delivery. In addition to sales, Cat dealers also will provide parts and service support. All Participating Dealers are financially healthy with no outstanding issues that would disrupt service within these territories. Cat dealers average more than 60 years of experience within their respective territories. Specific information about dealers is located on http://www.cat.com/en_US/support/dealer-locator.html

Caterpillar's North American dealer network currently employs over 59,000 total employees. Many dealers have salespersons dedicated to the governmental market. Approximately 70% of dealer employees are dedicated to product support. The Cat dealer network brings value to customers through unmatched service, integrated solutions, after-sales support, and fast and efficient parts fulfillment.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Image: North America Dealer Network

3. Product

a. Provide a detailed written response illustrating how the equipment, accessories, parts, supplies and related services offered will meet the requirements of this solicitation. Offerors shall identify and describe their heavy equipment categories. For each proposed category, describe in detail and provide at a minimum the following types of information:

1. Identification and description of equipment categories offered.

Caterpillar Response

Caterpillar is the world's leading manufacturer of construction and mining equipment, diesel and natural gas engines, industrial gas turbines and diesel-electric locomotives. Caterpillar also provides financing and related services through its Financial Products division.

All products sold by Caterpillar through its dealer network in the United States are included in this proposal. The product lines most relevant to this solicitation include but are not limited to:

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Articulated Trucks
Asphalt Pavers
Backhoe Loaders
Cold Planers
Compactors (including landfill)
Compact Track Loaders
Multi-Terrain Loaders
Dozers (including landfill)
Excavators
Forestry Equipment
Generators
Motor Graders
Off-Highway Trucks
Road Reclaimers
Site Prep Tractors
Skid Steer Loaders
Telehandlers
Track Loaders
Wheel Dozers
Wheel Excavators
Wheel Loaders
Wheel Tractor Scrapers (including landfill)

Dealer Response

Empire Machinery represents the full line of Caterpillar equipment, as described in Caterpillar's response. Caterpillar dealers also carry non-Cat manufactured, complementary products, that are available in this bid for purchase. These products are referred to as "Allied" products. See next section for current list of Allied products.

2. Identification and description of subcategories.

Caterpillar Response

Each of the equipment categories above consists of several models of machines that vary by size, horsepower, and productivity. A complete current listing with specifications and details is maintained at:
http://www.cat.com/en_US/products/new/equipment.html

Recycling and Waste
Caterpillar is the only manufacturer to offer a full line of machines specifically designed to handle landfill and waste applications. Specific information can be found on our website at:
http://www.cat.com/en_US/products/new/by-industry/waste.html

Construction Equipment
As the recognized global leader in construction equipment, Caterpillar has repeatedly demonstrated its expertise in helping governments and contractors worldwide continue to develop and maintain our infrastructure. We have the largest breadth of products support these applications and spend the most in research and development each year to ensure that what we sell is the best performing, most reliable, longest lived and overall best value. For more detailed information please visit:
http://www.cat.com/en_US/products/new/by-industry/construction.html

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Technology & Solutions

Information and data are quickly becoming the new normal in heavy machine operation and maintenance. Caterpillar leads the way with the variety of solutions available to customers. Whether the goal is to track hours and location or to dive deep into operation and maintenance practices, Caterpillar has a technology solution to meet that need. For more information, please visit:
http://www.cat.com/en_US/support/operations/technology.html

Paving

Road building and maintenance and core competencies of the paving division of Caterpillar. We build and support a wide-ranging product line that includes everything from compactors to pavers, to cold planers to road reclaimers. For specs and detailed product descriptions, please visit:
http://www.cat.com/en_US/products/new/by-industry/paving.html

Work Tools

In addition to machines, Caterpillar will also be offering its full line of work tools to add even more versatility to the host machine. This will provide an even great selection of solutions. Caterpillar currently holds the market leader position in both sales and models offered with more than 1800 different work tool options currently available. For more information, please visit:
http://www.cat.com/en_US/products/new/attachments.html

Other/Miscellaneous/Allied

There are other product lines that don't fall neatly into the categories above. Should the City of Tucson have a need for them, they are included as part of this contract and can be offered for sale.

Additionally, Cat dealers often carry lines of complementary products not manufactured or marketed by Caterpillar that can be sold to the City of Tucson as allied machines. Most of the products listed in this RFP can be provided either through Cat dealers as a branded Caterpillar product, or as allied equipment.

Dealer Response

All Caterpillar Dealers, including Empire Machinery, represent the full line of products that Caterpillar describes in their response.

As the table below illustrates, Caterpillar offers the largest number of individual models in the construction and governmental industry. With 241 different models, Caterpillar offers 142 more machine options than their closest competitor. No matter what the need is, big or small, Caterpillar offers more machine options/configurations to help our customers optimize each machine to a customer's specific application, in order to help achieve maximum utilization.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Number of unique machines by Manufacturer (Excludes Mining Products)	**Caterpillar**	**John Deere**	**Komatsu**	**Volvo**	**Case**	**Bobcat**
Wheel Loaders	21	16	7	16	11	2
Motor Graders	15	8	2	0	2	0
Dozers	13	10	8	0	6	0
Excavators (not including mining)	43	22	18	21	21	11
Articulated Trucks	6	4	2	6	0	0
Backhoe Loaders	10	7	0	0	5	0
Skid Steer/Compact Track Loader/MultiTerrain Loader	30	12	0	18	26	42
Skip Loaders (Industrial Class)	1	2	0	0	1	0
Landfill Compactors	3	0	0	1	0	0
Landfill Dozers	6	1	3	0	2	0
Scrap/Demo Material Handlers	7	0	4	0	0	0
Off Highway Trucks – Governmental Class	4	0	4	0	0	0
Asphalt Rollers – Governmental Class	8	0	0	11	19	0
Asphalt Pavers	8	0	0	8	0	0
Dirt Rollers and Compactors	33	0	0	4	6	0
Cold Planers	8	0	0	0	0	0
Reclaimers/Soil Stabilizers	2	0	0	0	0	0
Telehandlers/Forward Reach Fork Lifts	7	0	0	0	0	0
Wheel Dozers – Governmental Class	3	0	0	0	0	0
Wheeled Excavators	8	1	0	6	0	0
Wheel Tractor Scrapers	5	0	0	0	0	0
Breadth of Caterpillar machines covering Governmental Market	241	83	48	91	99	55

For the City of Tucson and the extended Empire Machinery dealer territory, Empire Machinery offers a line of equipment and work tools that Caterpillar does not market nor manufacture. These products are commonly referred to in the industry as “Allied Products”.

Empire Machinery, as well as the other Cat Dealers across North America, carry a wide variety of Allied products to complement the Caterpillar line as well as fill the gaps of the equipment needs of our customers in all industries.

Although these additional products and or services will be solely provided and supported by Empire Machinery for the customers within the territory Empire Machinery serves, this additional offering provides a relative model for similar products and or services that can be offered by from other Cat Dealers across the country.

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Allied Products

The Allied products that are included, but not limited to, in this RFP are:

Construction and Mining
Brand
American Compaction
Arrow Material Handling
Broce Brooms
Crafco
Diamond Mowers
Dymax
Enerpac
Epiroc
Genie
HKX
JLG
Mega
Metso
Multiquip
Paladin / JRB
Jet-Vac
Road Widener
Rockland
Summit
TY Cushion
Tink
Weiler
Werk-Brau
Woods
On-Highway
Brand
Fleming
Load King
Mac
Maintainer
Murray Trailers
Rackley
Thunder Creek
Trail King
UTB

Agriculture
Brand
Challenger
Claas
Gearmore
Grouser
Fendt
Lexion
Massey Ferguson
Massey Ferguson
Massey Ferguson
Mil-Stak Inc
Nikkel Iron Works
Reynolds
Rogator
Rome Plow
Schmeiser
Stinger Inc.
Sunflower
T.G. Schmeiser
Terragator
Valmar
Wilcox
Willmar
Woods
Power Systems
Brand
ABB
Active Power
Allmand
Asco
Atlas Copco
Avtron
Crestchic
Multiquip
Progressive Solar
Stamford Newage
Sullair
Toshiba

Technology
Brand
Caterpillar
Cerragon
CrewSight
DJI Enterprises
GCEstimator Suite
Level Best
Modelogix
ProjectSight
Prolog
Quantum
RADWIN
Rajant
RealWorks
Seco
Sensemetrics
SitePro
Spectra Precision
Trimble
VICO Office
Winest
Empire Technology Companies
Names
Allen Instruments
BuildingPoint West
SITECH
TOPS
Renewable Energy
Brand
ABB
BTC Power
Fronius
Satcon
SMA America
Sun Power

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3. Identify accessories, parts, services, etc. that are available through the manufacturer.

Caterpillar Response (only)

Caterpillar offers a full line of work tools and attachments for the products it produces. We also have the most comprehensive line of spare parts to support current and legacy products. Note that Caterpillar does not sell equipment or services directly to end users. All products and services will therefore be provided through our North American Dealer network.

4. Identify accessories, parts, services, etc. that are available through the authorized dealer.

Caterpillar Response

In addition to the new machines and power systems mentioned above, Caterpillar dealers also offer a complete line of OEM repair parts, work tools and attachments. Services such as repairs, rebuilds, maintenance, financing, extended protection plans, training, consulting, remote monitoring, and more are offered by all Cat dealers. Additional services and other lines of equipment may be available depending on local dealer capabilities.

Used equipment and rental equipment is included under this contract and sale/rental prices will be quoted locally at market-competitive prices.

Dealer Response

Empire's 28 locations in Arizona, with three of those locations positioned in close proximity to the City of Tucson locations, are unmatched by any competitor.

Empire Exclusives:

- Family owned, locally managed by Arizonans who live in Arizona
- Over 2,200 dedicated, tenured and committed employees
- 241 different Caterpillar machine models (governmental) with exhaustive configuration options for each, allowing the City of Tucson to optimize the machine for the application
- Prime and standby power generators
- On-road trucks and trailers
- Over 50 Allied products that enhance production or reduce time on the job
- Over 1,500 trained service technicians
- Over 300 field service trucks
- 190+ service bays
- Broadest warranty coverage, covering more parts than any competitor in the industry
- Warranty decisions made locally by Empire, not factory representatives

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- $85.2 million in parts inventory
- 158,000 parts line items in stock
- 92.5% parts fill rate over-the-counter anywhere in the State
- 97.1% parts fill rate within 24 hours, anywhere in the State
- 98.1% parts fill rate within 48 hours, anywhere in the State
- 99.3% parts filled within four (4) business days, anywhere in the State
- 96.04% over-the-counter parts availability in Mesa
- 89.96% over-the-counter parts availability in Tucson
- Over 2,400 prime units and 3,500 attachments in our Rental fleets
- Professional, full-time, Caterpillar Certified Operator and Technical Trainers, along with dedicated facilities
- 50+ heavy haul transport trucks
- Dedicated Consignment Department to help maximize returns on equipment disposal

Empire alone has more resources than all of our competitors combined. We firmly believe Empire is the only supplier in Arizona uniquely and exclusively qualified to provide the City of Tucson with the lowest Life Cycle Cost/Lowest Cost per Operating Hour.

Empire also offers a worldwide consignment service that has an 89% success rate, with an average days-on-market of 90 days. The majority of the remaining 11% of consignments that do not fall into the “success rate” are made up of machines that the consignor put back to work or non-typical machines such as pavers, curb machines and similar niche products that require a longer marketing time. When you consider historical methods of disposing of older and/or unused machines, this is a good option to consider.

Empire will consign **any brand of equipment** that falls into the scope of machines offered in our proposal. The consignment rate to the City of Tucson will be 9% of the actual transaction price.

For the fee, Empire will be responsible for all aspects of marketing, writing the advertising, advertising worldwide on the internet and in print, where appropriate. We will promote locally in our territory and manage all leads for the agreed upon consignment period. Empire will also be responsible for invoicing and collecting the payment from the buyer. Empire will pay seller within 48 hours of payment (typically less than 24 hours).

We have six (6) dedicated international salesmen, plus 22 in-territory salesmen that actively and aggressively sell our consignment machines. Our consignment program has been a significant portion of our business for over nine years. Disposing of equipment via Empire Consignment realizes an estimated 12%-20% higher net return over a typical disposal using an auction service.

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5. Provide descriptions, catalog(s) or website links for accessories, parts and supplies offered.

Caterpillar Response

To see Caterpillar's full line of heavy equipment, work tools, and services please visit www.cat.com

Dealer Response

As previously described, Empire carries the full line of Caterpillar products. Please see the list of website links that Empire has provided for additional accessories, parts, and supplies offered:

CONSTRUCTION & MINING	
Brand	**Manufacturer's website:**
American Compaction	http://www.acewheels.com/
Arrow Material Handling	https://www.arrowmhp.com/
Broce	https://www.brocebroom.com/
Crafco	https://crafco.com/
Diamond Mowers	https://diamondmowers.com/
Dymax	https://dymax.com/
Enerpac	https://www.enerpac.com/
Epiroc	https://www.epiroc.com/
Genie	https://www.genielift.com/
HKX	http://www.hkx.com/
JLG	https://www.jlg.com/
Mega	https://www.megacorpinc.com/
Metso	https://www.metso.com/
Multiquip	https://www.multiquip.com/
Paladin / JRB	https://www.paladinattachments.com/
Jet-Vac	http://ring-o-matic.com/
Road Widener	https://roadwidenerllc.com/
Rockland	http://www.rocklandmfg.com/
Summit	https://www.summitrubbertracks.com/
TY Cushion	http://tycushiontire.com/
Tink	http://www.tinkinc.com/
Weiler	https://www.weilerproducts.com/
Werk-Brau	https://werk-brau.com/
Woods	https://woodsequipment.com/

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

ON-HIGHWAY	
Brand	**Manufacturer's website:**
Fleming	http://www.flemingtrailers.com/
Load King	https://www.loadkingmfg.com/
Mac	https://www.mactrailer.com/
Maintainer	https://www.maintainer.com/
Murray Trailers	https://www.murraytrailer.com/
Rackley	http://rackleybiltcustomtrailers.com/topic1/index.html
Thunder Creek	https://thundercreek.com/
Trail King	https://www.trailking.com/
UTB	https://drakeequipment.com/
AGRICULTURE	
Brand	**Manufacturer's website:**
Challenger	http://www.challenger-ag.com/
Claas	https://www.claasofamerica.com/
Gearmore	https://www.gearmore.com
Grouser	https://www.grouser.com
Fendt	https://www.fendt.com/us/index
Lexion	https://www.claasofamerica.com/
Massey Ferguson	https://www.masseyferguson.us/
Massey Ferguson	https://www.masseyferguson.us/
Massey Ferguson	https://www.masseyferguson.us/
Mil-Stak Inc	https://www.mil-stak inc.com
Nikkel Iron Works	https://www.nikkel iron works.com
Reynolds	https://www.reynolds.com
Rogator	https://www.applylikeapro.com/
Rome Plow	https://www.romeplow.com/
Schmeiser	https://www.schmeiser.com
Stinger Inc.	https://www.stinger inc.com
Sunflower	https://www.sunflowermfg.com/
T.G. Schmeiser	https://www.t.g. schmeiser.com
Terragator	https://www.applylikeapro.com/
Valmar	https://salfordgroup.com/
Wilcox	https://www.wilcoxap.com/
Willmar	https://www.grainsystems.com/
Woods	https://www.woods.com

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POWER SYSTEMS	
Brand	**Manufacturer's website:**
ABB	https://electrification.us.abb.com/products/automatic-transfer-switches
Active Power	https://www.activepower.com/en-GB
Allmand	https://www.allmand.com/na/en_us/products/light-towers.html
Asco	https://www.ascopower.com/us/en/
Atlas Copco	https://www.atlascopco.com/en-us
Avtron	https://www.ascopower.com/us/en/products/load-banks.jsp
Crestchic	https://crestchic-usa.com/
Multiquip	https://www.multiquip.com/
Progressive Solar	https://www.progresssolarsolutions.com/
Stamford Newage	https://www.stamford-avk.com/
Sullair	https://america.sullair.com/en
Toshiba	https://www.toshiba.com/tic/power-electronics/uninterruptible-power-systems
TECHNOLOGY	
Brand	**Manufacturer's website:**
Caterpillar	https://www.cat.com/en_US/products/new/technology.html
Cerragon	https://www.ceragon.com
CrewSight	https://fieldtech.trimble.com/en/product/trimble-crewsight
DJI Enterprises	https://enterprise.dji.com/
GCEstimator Suite	https://gc.trimble.com/product/trimble-gcestimator
Level Best	www.levelbestgrading.com
Modelogix	https://gc.trimble.com/product/modelogix
ProjectSight	https://projectsight.trimble.com/
Prolog	https://gc.trimble.com/
Quantum	https://www.quantum-systems.com/
RADWIN	https://www.radwin.com/
Rajant	https://rajant.com/
RealWorks	https://geospatial.trimble.com/products-and-solutions/trimble-realworks
Seco	www.surveying.com
Sensemetrics	https://sensemetrics.com/
SitePro	www.surveying.com
Spectra Precision	www.spectralasers.com
Trimble	www.trimble.com
VICO Office	https://vicooffice.dk/en/
Winest	www.trimble.com

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

EMPIRE TECHNOLOGY COMPANIES	
Name	**Manufacturer's website:**
Allen Instruments	https://www.alleninstruments.com/
BuildingPoint West	https://www.buildingpointne.com/
SITECH	www.sitechsw.com
TOPS	https://www.takeoffpros.com/
RENEWABLE ENERGY	
Brand	**Manufacturer's website:**
ABB	https://new.abb.com/ev-charging
BTC Power	http://btcpower.com/
Fronius	https://www.fronius.com/en
Satcon	http://www.satcon.com/
SMA America	https://www.sma-america.com/
Sun Power	https://us.sunpower.com/commercial-solar

6. Do you offer color choices for each product listed?

Caterpillar Response (only)

Caterpillar machines are painted Caterpillar yellow, which is a copyrighted color and is proprietary. Caterpillar will meet customers' unique paint color requirements for an additional fee, which must be quoted and agreed to prior to the start of build.

b. Describe descriptions, catalog(s) or website links for accessories, parts and supplies offered, including:

1. Types of warranties available (by category or equipment).

Caterpillar Response

Caterpillar is proud to offer the most robust warranty in the industry. Our machines come with standard warranties against defects in material and workmanship. Warranty inclusions and exclusions will vary by product and details can be provided at any point in the purchase process.

Most of the new machines included under this solicitation will qualify for 12 months/unlimited hours. Some products, notably compact track loaders, mini excavators, and skid steer loaders qualify for 24 months/2000 hours.

Two examples of typical warranty statements are attached to this proposal in the ATTACHMENTS section of this RFP.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Dealer Response

Empire/Caterpillar Warranty Offerings:

Caterpillar offers a wide range of warranties that can be custom built to best match the needs of our customers. There are two (2) basic Caterpillar warranties available: Standard and Extended

- Caterpillar Standard Warranty - All new Caterpillar manufactured machines come with Caterpillar's "Premier" warranty for 12 months, with unlimited hours, at no additional cost to the buyer. (See warranty details below under "Caterpillar Extended Warranty".)
- Caterpillar Extended Warranty – Begins at expiration of Standard Warranty. Caterpillar Insurance and Caterpillar dealers provide a vast array of optional warranties that can be customized by the length of time (from 2 - 7 years) and/or by the hours (2,000 - 10,000 hours).

There are three (3) types of extended warranties available from Caterpillar:

- Powertrain Only – Covers the components that are used to either produce, transmit or control engine horsepower for propelling (moving) the machine; such as engine, transmission, final drives, axles, and brakes.
- Powertrain and Hydraulics – Covers all the items above plus hydraulic hoses, lines, pumps, valves, cylinders, hydraulic coolers, and hydraulic filter mounts.
- Premier – Includes all of the above with the addition of starters, alternators, pulleys, AC condensers, air conditioning compressors, fuel lines, fuel tanks and associated parts, water piping, radiators, mufflers, electrical indicators, gauges, instruments, wiring harness, switches, joysticks, relays, circuit breakers, frames and chassis, and weldments.

General Warranty Information

Coverage - Inclusions, Exclusions
Standard machine warranty and extended warranties between manufacturers and dealers are not equal. There is no industry standard of items "to be included or excluded" in the scope of either coverage.

Repairs and/or replacement of components excluded by competitive manufacturers can present a significant expense or savings to the overall ownership of a machine. The breadth of coverage provided through Caterpillar's coverage plans re-emphasizes the confidence Caterpillar has in its products, as well as ensuring the lowest total cost solution for our customers.

Warranted claims will be presented by the customers to the supporting Caterpillar Dealer and will be administered at the local level. Empire will then file a claim with Caterpillar to be reimbursed for all warranted services rendered to the customers.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Caterpillar machine warranties are the most comprehensive, covering more parts, more expensive parts, and excluding fewer items, in the industry. This results in lower expense exposure to the owners of Caterpillar equipment.

In comparing major manufacturers' stated warranty coverage listed in publicly available warranty documents, here is an example of parts (including their replacement labor) that are excluded by many manufacturers, but are included by Caterpillar Standard Warranty:

- Radiators
- Mufflers
- Starters
- Alternators
- AC Condenser/Compressor
- Fuel lines
- Hydraulic hoses and lines
- Gauges
- Wiring harnesses
- Frames and structures

Each of these individual items vary between different manufacturers, but they provide evidence that a buyer should consider the coverage of each to fully understand the true scope of their exposure, and calculate that exposure into the total machine price, from an operating cost perspective.

Beyond the firm boundaries of inclusions and exclusions of warranty, Caterpillar dealers utilize a "Fair Value" policy. Fair value is simply the process and procedures that rely on ethical and reasonable decisions to participate in a repair expense beyond warranty coverage. Fair value rules are not described in any written form; they take place when a Caterpillar Dealer and end user experience an event where both feel that the failed part did not meet expected life in a given application.

Once misapplication, abuse or misuse conditions are excluded, fair value reimbursement comes in a variety of forms: From full reimbursement to a shared expense, based on remaining normal life of the failed part, between Caterpillar Inc., Empire and the customers.

Additionally, Caterpillar warranties cover consequential damages. Some major and most minor brands do not. Example: A turbo fails, injects a part from the turbo into the cylinder head, and then destroys the head and piston; piston fracture penetrates the engine block. The turbo is the root cause, but Caterpillar warranty covers the entire repair of consequential damages.

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View below to see the inclusions and exclusions of each of the three types of warranties Caterpillar offers:

✓ Represents covered items in their respective category

* Represents items typically excluded by most other manufacturer's warranties, but are included under Caterpillar's warranty coverage.

Engine & Accessories	Powertrain	Powertrain + Hydraulics	Premier
Engine – Internal Components	✓	✓	✓
Valve Cover	✓	✓	✓
Oil Cooler BHL	✓	✓	✓
Radiator			✓
Exhaust/Muffler			✓
Manifolds	✓	✓	✓
Fan Motor	✓	✓	✓
Water Pump	✓	✓	✓
Fuel Injection Pumps	✓	✓	✓
Injectors	✓	✓	✓
Lift/Transfer Pump	✓	✓	✓
Senders/Solenoids/Sensors	✓	✓	✓
Thermostat	✓	✓	✓
Flywheel & Torque Converter	✓	✓	✓
Oil Pan Group	✓	✓	✓
Engine Oil Filter Mount **	✓	✓	✓
Turbocharger	✓	✓	✓
Pulleys **	✓	✓	✓
Starter			✓
Alternator			✓
AC Compressor/Condenser			✓
Electronic Control Modules	✓	✓	✓
Governor/Speed Controls & Linkages **	✓	✓	✓
Fuel Lines **	✓	✓	✓
Fuel Tank & Associated Parts			✓
Water Piping			✓
Oil Hoses/Lines			✓
Transmission/Hydrostatic/Driveline	**Powertrain**	**Powertrain + Hydraulics**	**Premier**
Transmissions	✓	✓	✓
Final Drives/Planetary	✓	✓	✓
Drive Shafts	✓	✓	✓
Transfer Case	✓	✓	✓
Wet brake assemblies	✓	✓	✓
Hydrostatic Pumps & Drive Motors **		✓	✓

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Linkage/Lines Connected to Hystat Pump	**		✓	✓
Drive (pilot/eh) Control Valves	**	✓	✓	✓
Senders/Sensors	**		✓	✓
Axles		**Powertrain**	**Powertrain + Hydraulics**	**Premier**
Axles		✓	✓	✓
Axle Seals	**	✓	✓	✓
Lug Nuts & Bolts	**	✓	✓	✓
Differentials		**Powertrain**	**Powertrain + Hydraulics**	**Premier**
Differentials		✓	✓	✓
Hydraulic Systems		**Powertrain**	**Powertrain + Hydraulics**	**Premier**
Hydraulic Pumps & Motors			✓	✓
Hydraulic Cylinders			✓	✓
Hydraulic Valves & Controls			✓	✓
Hydraulic Accumulators	**		✓	✓
Hydraulic Oil Coolers	**		✓	✓
Hoses and Lines	**		✓	✓
Hydraulic Quick Couplers	**		✓	✓
Hydraulic Oil Filter Mounts	**		✓	✓
Electrical		**Powertrain**	**Powertrain + Hydraulics**	**Premier**
Gauges/Indicators/Instruments	**			✓
Wiring harnesses	**			✓
Switches	**			✓
Frames & Linkages		**Powertrain**	**Powertrain + Hydraulics**	**Premier**
Chassis/Implement Frames	**			✓
Weldment	**			✓

Allied Product Warranty

Allied products are excluded from the above terms and conditions. All Allied products will be sold with the manufacturer's standard warranty. This warranty differs from manufacturer to manufacturer. If extended warranty is available and the City of Tucson requests extended options from an Allied manufacturer, Empire will provide the price on a case by case basis.

2. Description of your warranty claims procedures.

Caterpillar Response

Caterpillar warranty is administered by the Caterpillar Dealers, the organization that knows the customer best. They are best positioned to see that the customer receives outstanding service for their warranty repairs. With an outstanding reputation for fairness, regardless of warranty limits, with the backing from the world leading manufacturer of construction equipment, the customer has every reason to feel secure in the value of their purchase.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Warranted claims will be presented by the customer to the supporting Cat Dealer and will be administered at the local level. The supporting Cat Dealer will then file a claim with Caterpillar to be reimbursed for all warranted services rendered to the customer.

Dealer Response

Empire Service utilizes a highly structured, fact based and scientific Root Cause Failure Analysis process that is followed by Empire's Service Department. The process ensures the customer that Empire and Caterpillar fully understand the cause, and what role each affected part played in the failure, in order to help prevent it in the future.

The warranty process for Caterpillar machines is unique to the industry, allowing Empire to decide through its due diligence alone, if the failed part is covered under the scope of warranty. In the event of a warranty repair, Empire is responsible for repairing the machine. Once the repair is completed, the warranted parts and labor is charged to Caterpillar.

Any non-warranty covered items (such as oil antifreeze; fluids that cannot be reused) will be the responsibility of the owner. In the event that Caterpillar concludes a different root cause and believes it was caused by misapplication or misuse and rejects reimbursement, and Empire does not, Empire will absorb the expense.

3. Description of your policy addressing warranty issues related to:

- **i.** Major Component Failures
- **ii.** Engineering Deficiencies
- **iii.** Describe your firm's standard response time to address warranty failure issues.

Caterpillar Response

Caterpillar is proud to offer the most robust warranty in the industry.

All defects in materials and workmanship are fully covered under the warranty period. All claims will be investigated by the supporting dealer and determined whether they fall under the warranty policy or under the category of normal repair and maintenance.

If there is a major component failure significantly earlier than its predicted life, the dealer will investigate to determine the cause of failure. Should the cause be determined to be design or manufacturing related, the customer, dealer, and a Caterpillar representative will work together to find a solution that is agreeable to all parties.

There is not a nationwide response time guarantee because machines, applications, repair requirements and availability needs will vary by geography and customer. In every situation, the dealer will work to resolve warranty issues as quickly as possible and/or provide an interim working solution.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Dealer Response

As America's #1 dealer rebuild center, Empire inventories new complete components, along with remanufactured components, for replacement when a machine is down and the customer requires an emergency complete component replacement. Beyond Empire's extensive parts inventory, Caterpillar parts distribution warehouses across America and the globe also inventory an extensive selection of new components and remanufactured components.

Excluding emergency complete component replacement, Empire will bring to bear as many resources as possible to tear down and reassemble the down component, to return the machine to production as fast as humanly possible. This includes our staff working three shifts and/or weekends continuously or "around the clock" to achieve the turnaround if warranted.

Normal warranty coverage will only cover normal (non-overtime) shop labor rates, during normal service hours. Normal service hours are from 5:00 a.m. to 12:00 midnight, Monday-Friday and from 6:00 a.m. until 12:00 noon on Saturdays.

Warranty repairs may be performed in the field by Empire's highly trained field service technicians (travel charges may apply).

Overtime rate is charged for all hours worked on holidays. No other competitor that we are aware of provides this expanse of available normal service hours. When requested, Empire will work overtime with the incremental overtime fee charged to the City of Tucson. Normal warranty coverage only includes shop labor rates during normal business hours and thus could result in overtime charges to the customer. Additionally, parts that are not normally stocked may include a customer charge for additional freight or handling, depending on circumstances.

Engineering Deficiencies: Empire and our customers benefit from a long relationship with Caterpillar Engineering for new machines and product improvement testing. Because of our unique Arizona/Imperial County, California and territory, Caterpillar engineers prefer to test new machines and product improvements in Empire's territory because of the range and access to high ambient temperature, high altitude, sea level altitude, abrasive dust, hard caliche and granites soil and sand (dune) conditions. Our applications range from farming to forestry harvesting, to hard rock mining.

This multi-decade experience has provided Empire staff with a wealth of knowledge, experience, relationships and access to Caterpillar's engineering staff around the world. It has provided our customers with purpose-built machines and components tested here to perform here. This experience helps our staff identify a deficiency, quickly begin to test our possible solution, and offer it to Caterpillar; or fabricate, install and test Caterpillar's solutions.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Empire's standard response times are based on the fact that our customer purchases a new machine because unscheduled downtime creates critical disruption to their production. Most customers expect that we will handle every machine-down warranty event like an emergency. We are "built for it". Empire invests and maintains the staffing capacity to provide customers two shifts per day, plus single shift on weekends and on-call staff for holidays to respond to these events with the utmost urgency.

Beyond this, a failure on Empire's part to deliver expected or promised service is always taken into account before any request for additional charges are presented to a customer. We take pride in the fact that Empire's owner expects all employees to consider first how we may have contributed to increasing a customer's expense or downtime. We are empowered, at all levels, to make ethical and fair charge adjustments before approaching a customer about additional expense to warranty coverage.

c. Is there a dedicated support representative that the City should contact? If yes, provide their name and complete contact information.

Caterpillar Response

For all support related to this contract, the account manager at Caterpillar is:

Tirena Pavelka
Governmental Account Manager
100 NE Adams St.
Peoria, IL 61629
Office: 309-675-1589
pavelka_tirena_l@cat.com

Dealer Response

For dealer support related to this contract, please contact:

Shane Frazee
Sales Account Manager
7600 S. Nogales Hwy.
Tucson, AZ 85756
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d. Provide information which details the costs, types, and extents of available extended warranty coverage for heavy equipment.

Caterpillar Response

Additional extended protection plans are available for purchase. Three major types of protection are generally offered: Powertrain, Powertrain + Hydraulics, and Premier. In addition, Caterpillar offers a Pro extended warranty for Motor Graders only. Customization of Extended Protection Plans is possible.

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Costs for these extended plans vary by product, type of coverage, machine application and length of coverage. Because Cat Dealers are independently owned businesses with widely varying geographic territories, the actual costs associated to supporting such warranties will vary and cannot be quoted on a national scale by Caterpillar as fixed amounts. Such factors include but are not limited to the individual dealer's shop labor rates, transportation costs both for the machine as well as the technician and many others. It is recommended that warranty and extended protection plan considerations be clearly stated and agreed to prior to any transaction because of this contract taking place.

Dealer Response

With over 360 different Caterpillar products covered in this solicitation, and with over 65 different options for each of those machines with time and hour combinations, the matrix of extended warranty pricing would be too large to provide in this format.

Additionally, because of the competitive exposure, we are not at liberty to provide for public record, all of Caterpillar Insurance Extended Warranty pricing. For this proposal, we will provide requested rates on a model by model, term and hour specified basis.

e. Describe how your firm is anticipating and ensuring compliance with the Environmental Protection Agency (EPA) emission changes.

Caterpillar Response

Caterpillar fully supports the efforts of the Environmental Protection Agency and we are proud to offer the largest number of machines meeting Tier 4 final emissions requirements. All new machines are fully compliant under current emissions regulations which do vary by horsepower and intended use.

Managing a broad global product line is challenging so to ensure we are properly prepared for any additional regulations; Caterpillar has a dedicated team of experts that works very closely with EPA officials.

In 2020, Caterpillar was once again named to the prestigious Dow Jones Sustainability Index (DJSI) List, marking the 21st time we have been included in the DJSI. Caterpillar leads its global peers in the Capital Goods sector in the areas of innovation management, risk and crisis management, labor practices and human rights, as well as corporate citizenship and philanthropy.

Dealer Response

Empire's technical resource group (similar to all Caterpillar dealers) has been engaged with Caterpillar engineers throughout the development of Tier 1, Tier 2, Tier 3, Tier 4i, Tier 4 Final, and future emissions requirements since the Federal regulations were implemented. Empire's (and our customers') ongoing participation of Caterpillar "Field Follow" program of prototype machines operated by customers in our territory, provides Empire both a first look and a wealth of experience in service support before production machines are ever produced for sale or delivered to a customer. Additionally, Caterpillar offers remanufactured exchange filters and Empire stocks them.

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As of this submittal, it is becoming more apparent that exchange emission filters available from our parts department are faster, safer, more environmentally responsible and more economical for the customer than the other option of maintaining a DPF cleaning machine at our dealership stores. For redundant support, in the event of an unexpected supply disruption from Caterpillar, Empire owns and operates two (2) DPF cleaning machines at our Phoenix store.

Along with the above service capacity, Empire provides on-line information, updated regularly, for the City of Tucson managers, supervisors and operators to help them understand how the technology works. Tips and warnings are constantly updated to help our customers stay informed and reduce the risk of emissions solutions damage. Empire requires continuing education for our Sales and Product Support staff as an incremental resource that helps customers stay informed. Our operator trainer staff is always available to our customers for on-the-job operator education of the technology.

f. Submit all information that will aid the City in evaluating your proposal.

Caterpillar Response (only)

To view Caterpillar's achievements in sustainability, please view our most recent Sustainability Report at:

https://reports.caterpillar.com/sr/index.php?_ga=2.30262591.1428625582.1630336780-1389673808.1608044669

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4. Service

a. Provide a detailed written response illustrating how your firm or the authorized dealers will provide services to meet the requirements of this solicitation. Offerors shall provide the proposed services that will meet the Service Requirements section of the Scope of Work outlined in this solicitation. For each proposed category, describe and/or provide details explaining your capabilities. In your response include information such as:

1. Provide detailed information explaining your service capabilities.

Caterpillar Response (only)

Caterpillar takes great pride in our foundation of outstanding product and customer support. While the actual service and support of products sold through this contract will be conducted by the selling dealer, Caterpillar supports their efforts through many channels.

We start by designing durable, reliable, long-lived products with ease of operation and service in mind. These products are thoroughly tested to validate the design. When approved for production, a very strict protocol is put into place to ensure strict adherence to the build plan. Quality inspections occur throughout the manufacturing process and again when it arrives at the local dealership.

Prior to first shipment, Caterpillar will ensure that dealer has access to Owning & Operating Manuals, Service Manuals, Parts Books, Disassembly & Assembly instructions and that their service technicians are properly trained on maintenance and repair procedures.

Every dealer has a process in place to troubleshoot and diagnose problems. Caterpillar also maintains a field force of technical representatives to ensure customer downtime is minimized. Factory service engineers work very closely with dealers in situations where a problem cannot be easily resolved and engage all resources necessary for problem resolution.

2. Provided detailed information explaining the service capabilities of your authorized dealers.

Caterpillar Response

Caterpillar leads the industry in offering outstanding product support. Field Service trucks with resident field technicians and parts drops provide a level of service unmatched in the industry to reduce downtime and increase productivity.

All participating Dealers employ trained, experienced technicians to support Caterpillar's full range of products. Dealer Technical Communicators (TCs) provide additional support to field/shop technicians to aid in rapid product or application resolution. Dealer TCs have a direct line of communication with Caterpillar Inc. through the Dealer Solution Network to expedite problem solving.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Caterpillar's North American dealer network currently employs over 59,000 employees of which approximately 70% are dedicated to the product support business. With nearly 700 dealer branch locations and approximately 7,000 field service personnel, these highly skilled and trained Cat dealer technicians are in close proximity to provide unmatched service capabilities to meet your servicing requirements. As a commitment to servicing our customers, Cat dealers invest over $75 Million annually in technician, parts counter, and product support representative training. Over the last 96 years, our philosophy has been to provide our customers with a level of product support unequalled in our industry through a financially healthy and viable dealer network that is dedicated to the business of our customers.

Caterpillar's ability to meet 24-hour service needs is based on servicing dealer discretion at time of transaction. However, most dealers offer a 24-hour emergency service call-out option with a price based on local market rates.

Please refer to supplemental proposal, Empire Machinery Products and Services, for the City of Tucson and the extended Empire Machinery dealer territory.

Image: US Dealer Locations

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Dealer Response

Empire has 22 stores that are capable of warranty service and have trained technicians to support warranty.

For very large components, some remote branch stores may not have the heavy lifting infrastructure or highly specialized machining tools to complete every job. Those components may be shipped to the closest Empire facility that can complete the work. All such transportation will be handled by Empire internally.

Empire Locations	Telephone	Address	
Apache Junction	480-308-9100	3215 S. Winchester Rd.	85119
Blythe	760-921-9500	190 S. Intake Blvd.	92225
Buckeye *(Agriculture)*	623-925-3020	26403 MC 85	85326
Buckeye *(Rental)*	623-474-0840	25630 W. Durango St.	85326
Casa Grande *(Agriculture)*	520-374-3500	8901 W. Highway 287	85194
Eloy	520-582-2900	3501 W. Houser Rd.	85131
Flagstaff	928-526-2800	4900 E. Empire Ave.	86004
Globe	928-402-6410	190 W. Ash St.	85501
Imperial	760-355-2443	3393 Highway 86	92251
Kingman	928-757-1159	3255 Rutherford St.	86409
Mesa	480-633-4000	1725 S. Country Club Dr.	85210
Mesa *(Headquarters)*	480-633-4421	256 W. Juanita Ave.	85210
Mesa *(Training Institute)*	480-633-4363	1855 S. MacDonald	85210
Mesa *(Hydraulic Service)*	480-633-4700	1835 S. MacDonald	85210
Mesa *(Precision Machining)*	480-633-4425	41 W. Iron Ave.	85210
Mesa *(Transport)*	480-633-4600	40 W. Iron Ave.	85210
Mesa *(Used Parts)*	480-633-4598	34 W. Iron Ave.	85210
Nogales *(Used Parts)*	520-287-6630	1604 N. Industrial Park Dr., Suite D	85621
Phoenix Deer Valley	623-760-1100	21230 N. Black Canyon Hwy.	85345
Phoenix *(Power Systems)*	602-333-5600	801 N. 44th Ave.	85043
Phoenix *(Truck & Trailer)*	602-962-7961	840 N. 43rd Ave.	85009
Prescott	928-499-6001	3060 Centerpointe Dr. East	86301
Show Low	928-532-2098	1501 E. Thornton St.	85901
Thatcher	928-387-8700	2574 W. US Highway 70	85552
Tucson	520-746-8200	7600 S. Nogales Hwy	85756
Tucson *(Power Systems/Truck & Trailer)*	520-407-3100	3830 N. Highway Dr.	85705
Yuma	928-317-7800	3885 E. Gila Ridge Rd.	85365

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Image: Empire locations

3. Describe the maintenance programs offered. If a maintenance program is selected by the City, will your firm provide a loaner or rental machine if the machine is down for more than 24 hours?

Caterpillar Response

All Cat dealers can offer Customer Value Agreements (CVAs), these can be customized based on customers' individual needs. When a service or maintenance program is created, the terms of the program supported by the local Cat Dealer will outline any replacement / loaner options.

A CVA is a hassle-free ownership plan to get the most from your Cat® equipment. Genuine Cat® Parts delivered right on time and right to your door, with instructions for hassle-free maintenance. You get the security of an Equipment Protection Plan (EPP) to avoid unexpected costs for unplanned repairs. All the keys to machine health management conveniently display on your phone. And it all can roll in with your monthly machine payment. It's one easy plan to leverage Cat value — beyond the machine — to maximize your investment and lower ownership cost. More information can be found at:
https://www.cat.com/en_US/support/maintenance/customer-value-agreements/construction-cvas.html

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Dealer Response

As described in Caterpillar's response, Empire and other Cat Dealers can customize maintenance programs to fit the specific needs of our customers.

The pricing for maintenance services explained below can vary based on the model, hours of usage, and duration of agreement, and can be quoted on an individual basis.

The following are some examples of the different maintenance agreements that are available:

- **PM (Preventative Maintenance) Services**

  PM services are broken into five (5) categories and follow the manufacturer's service recommendations, or can be customized to meet customers' needs.

  - PM1 – Services the manufacturer recommends at 250 hours
  - PM2 – Services the manufacturer recommends at 500 hours
  - PM3 – Services the manufacturer recommends at 1,000 hours
  - PM4 – Services the manufacturer recommends at 2,000 hours
  - PM5 – Services the manufacturer recommends at 4,000 hours

  Empire and participating dealers can offer different options for these hour intervals including:

  - Parts only agreements
  - Parts and fluids only agreements
  - Parts, fluids, and labor agreements

  Please see generalized chart below for the services performed at each PM interval.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

	PM1 250 hours	PM2 500 hours	PM3 1000 hours	PM4 2000 hours	PM5 4000 hours
Change Engine Oil, Engine Oil Filters and take engine oil sample	x	x	x	x	x
Speed Reducer Oil Gets Changed and Sampled (On Elevator Scrapers)	x	x	x	x	x
Check all fluids levels such as Transmissions, Differentials,	x	x	x	x	x
Tandems, Hydraulic, Steering, Coolant. Change fuel filters and fuel /water separators,	x	x	x	x	x
clean fuel bowl screen (replace if neccessary)					
Change Primary Air Filters	x	x	x	x	x
Check Coolant Condition - Freeze point	x	x	x	x	x
Perform and record a visual walk around of equipment as per OEM including but not limited to Back up alarm, tires, batteries, belts, ground engaging tools (cutting edges, bucket teeth, dozer blade, Moe board, buckets, bowl (can), ripper shanks)	x	x	x	x	x
Change cab A/C filters	x	x	x	x	x
Lubricate all grease points	x	x	x	x	x
Inspect and test all visible and safety systems	x	x	x	x	x
Change all filters this includes hydraulic filters, transmission		x	x	x	x
filters, differentials filters if applicable.					
Change rear differential oil (Backhoe Loaders oly on A-D Models)		x	x	x	x
Change front wheel oils in off highway trucks.		x	x	x	x
Change the Transmission oils, clean transmission screens and magnetic			x	x	x
Change swing drives oils on excavators , change			x	x	x
differential and finals oils on backhoes.			x	x	x
Change hydraulic oils on AG tractors, telehandlers, vibratory			x	x	x
compactors only, change chain case oils on skid steer loaders.			x	x	x
Change circle drive oil on motor graders			x	x	x
Change the differential and finals oils				x	x
Change tandem oil drive oils on motor graders				x	x
Change circle drive oils on motor graders accoding to OEM				x	x
Change hydraulic system oil.					x

- **Total Maintenance and Repair (TM&R):**
  In a TM&R agreement, Empire and participating dealers will completely cover the equipment for any agreed upon repairs and preventative maintenance services for the duration of time and usage hours as specified by the agreement, based on the customer's needs.

  TM&R's can be customized by the customer including, but not limited to, the following:

  - With/without travel
  - With/without scheduled component rebuilds
  - Powertrain & Hydraulics
  - With/without certain PM services
  - With/without daily maintenance & cleanings
  - With/without daily fueling (City of Tucson only)

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Exclusions in most cases include the following:

- Tires
- Glass
- Fuel
- GET replacement
- Components that contact the ground (bucket, blade, bed, bowl, etc.)
- Misuse and abuse
- Paint
- Any repairs due to customer not following the Original Manufacturer's Manual (OMM).

- **Man on Site Agreement:**

  This type of an agreement can be offered on a stand-alone basis or in conjunction with other maintenance agreements for any customer that does not have the qualified staff/technician(s) or, is unable to add them.

  Empire and participating dealers will provide a "man on site" for any duration of usage hours and time: Day, week, month, as specified by the agreement.

  The technician will usually perform:

  - Running repairs
  - Preventative maintenance services

  Other onsite services could include:

  - Daily inspections
  - Cleanings
  - Operational checks

  The "man on site" agreement includes a qualified technician, field service truck, and the tools needed to perform basic repairs.

  Additional "man on site" Inclusions or exclusions in most cases include the following:

  - Housing (when applicable)
  - Overtime rates
  - Unique equipment tooling costs: Large cranes, cribbing, certified shops, contamination control, etc.
  - Percentage of guaranteed availability

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- **Daily Lube Agreement**

  Empire, and participating dealers can provide daily grease to any machine at any of the City of Tucson sites, for any duration of time and/or usage hours to the specified needs of our customers.

  Inclusions and exclusions in most cases include:

  - With/Without daily cleanings.
  - With/without daily inspections

  We do not provide loaner machines. Empire will provide a down machine rental discount program (see details below).

  For dealers representing any brand, contractual loaner guarantees have an incalculable financial risk. No dealer can guarantee 100% of the time that they will have a like-kind machine available and ready at any given moment.

  But this deserves more explanation:

  Our highly valued relationship with the City of Tucson demands we consider loaners in certain circumstances. However, that decision must remain solely at Empire's discretion and it will be one of several possible solutions for a down machine that creates a critical hardship.

  At a minimum, Empire will provide a subsidized rental machine that is either an exact match or based on the City of Tucson's input, adequately sized unit at a 50% discount from Empire's rental rate. The City of Tucson will be responsible for the normal rental wear items associated with a rental for the duration of time the down machine is under warranty.

  Additionally, if a down machine is causing a hardship to the City of Tucson from a habitual issue that Empire has not yet solved, the probability is high that Empire will provide a loaner at no cost to the City of Tucson, other than wear items. But again, that decision must remain solely with Empire.

  Field Service trucks with resident field technicians and parts drops provide a level of service unmatched in Empire's territory to reduce down time and increase productivity.

  Empire only employs trained, experienced technicians to support Caterpillar's full range of products. Empire Technical Communicators (TC) provide additional support to field/shop technicians to aid in rapid product or application issue resolutions. Empire TC's have a direct line of communication with Caterpillar Inc., through the Dealer Solution Network, to expedite problem solving.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Empire currently employs over 2,200 employees, of which approximately 73% are dedicated to product support. With over 22 service locations, over 190 service bays and over 300 field service trucks, these highly skilled and trained Caterpillar trained technicians are in close proximity to provide unmatched service capabilities to meet your service requirements.

As part of a commitment to servicing customers, Empire invests over $3 million annually in technician, parts counter, and product support representative training. Over the last 70 years, our philosophy has been to provide our customers with a level of product support unequalled in our industry, through a financially healthy and viable company that is dedicated to the business of our customers.

4. Describe your training programs, addressing, at a minimum, the following:

- **i.** How will equipment training be conducted?
- **ii.** Describe the training curriculum for the equipment operators.
- **iii.** Describe the training curriculum for the service technicians.
- **iv.** How will you accommodate various work shifts?
- **v.** What type of documentation is provided with the proposed training?
- **vi.** Is a “train the trainer” program available? Is this training different than the regular initial training? Can training sessions be recorded for future use by the agency?
- **vii.** Is the training provided by the manufacturer, dealer or both?

Caterpillar Response

Cat Dealers support a variety of training options. Upon delivery of the machine, operators as well as technicians will be given basic equipment orientation, operating procedures, and service maintenance information required to put the machine into service. Should an agency require additional training, such consideration can be included in the customer’s equipment quotation.

Caterpillar also offers a variety of operator training classes that provide certification to those agencies that require a higher level of operational expertise. For additional information on these and other training options, please visit: http://www.cat.com/en_US/support/operations/cat-training.html

Dealer Response

i. How will equipment training be conducted?

Empire will travel to whatever organization site the City of Tucson requests, to provide both operator and preventative maintenance training.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

ii. Describe the training curriculum for the equipment operators.

Empire offers comprehensive operator training for all Caterpillar machines by our Certified Dealer Instructors (CDI). CDI's are dedicated full time to this process. CDI's are Caterpillar Certified on various applications for individual machine groups. Empire does not depend on a service technician or machine salesman to provide this critical task. CDI's begin the ownership experience by providing customers the most thorough "in-service" training and orientation in the industry. This service is provided at delivery of ALL new Caterpillar machines.

The operator training includes complete machine walk-around inspections, discussion regarding daily maintenance/checklists and hands-on operational instruction, along with comprehensive coverage of the Operations & Maintenance Manual. Proper operator understanding is a significant advantage to help reduce the operating cost per hour of the machine life cycle.

The orientation will cover the following:

- Coverage of the Operation and Maintenance Manual, including a complete safety and service daily walk-around inspection
- Hands on demonstration of all wet and dry fluid and filter locations and compartments
- All safety decals and their meaning along with examples of incidents
- All machine controls, functions, features
- Live demonstration (where site allows) of machine reaction to control inputs
- Review common operator misuse or abuse habits and resulting damages (i.e. damaging parking brakes)

Additionally, our Operator Training Department permanently staffs a Training Manager with seven Certified Dealer Instructors traveling throughout Arizona, performing new machine delivery training, certified training and refresher courses along with analyzing production improvements for in-specific applications when requested.

Empire provides this for both public and private customers, for an additional charge, when requested.

iii. Describe the training curriculum for the service technicians.

Our service delivery training begins with Safety. Our instructor will cover all the safety decals and their explanation of why, as it's described in the Operation & Maintenance Manual. The following is an outline and agenda for a training session.

Safety: All decals and what they mean along with examples of past events.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Pretest: Caterpillar Safety Test must be passed by all attendees before continuing.

1. Equipment Familiarization
    a. Walk around inspection
    b. Daily service points/lubrication
    c. Cab and controls
    d. Fundamental techniques
2. Start Up/Shut Down
3. Machine Operation
4. Systems Overview
    a. Operator's station
    b. Engine
    c. Electrical system
    d. Power train
    e. Implement and steering hydraulic systems
    f. Auxiliary hydraulic lines
    g. Thumbs
    h. Buckets
    i. Couplers
5. Post Test
6. Review Maintenance Section of Operation and Maintenance Manual
    a. Lubricants and fluids
    b. Towing
    c. Review PM checklist and procedures
        - 250 Hour
        - 500 Hour
        - 1000 Hour
        - 2000 Hour

In addition to our Service delivery process, Empire offers a dedicated facility and dedicated full time staff in our Training Institute:

The Empire Training Institute (ETI) is one of five Caterpillar Certified Regional Dealer Learning Centers in North America, and one of just three Caterpillar Certified Applied Failure Analysis training facilities. ETI provides both technical and non-technical training programs for Empire employees, customers and other Caterpillar dealers via instructor-led and web-based training courses.

ETI is a dedicated 36,000 square-foot facility with eight fully equipped classrooms and over 10,000 square feet of shop space. Our experienced staff includes eight Caterpillar certified technical instructors, one soft skills instructor and one safety instructor.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Classes can be scheduled and conducted at the Empire Training Institute facility at Empire's Mesa campus or at customer sites. All training courses utilize "pre and post" testing procedures to measure learning and monitor growth, and students are presented with a certificate upon successful completion.

Training topics include, but are not limited to:

- Safety
- Diesel
- Electrical
- Engines
- Applied Failure Analysis I, II and III
- Hydraulics
- Machinery & Equipment
- MSHA for Experienced Miners
- Powertrain
- Preventative Maintenance
- Air Conditioning for EPA Certification

Empire recently added a wide variety of virtual training courses that are available to technicians. These courses were added after the Covid-19 outbreak in 2020, allowing technicians to receive training, regardless of travel restrictions, and/or for those who have limited or no travel budgets for in-person training at Empire's training facility.

iv. How will you accommodate various work shifts?

Empire will provide training and accommodate any shift the City of Tucson requires.

v. What type of documentation is provided with the proposed training?

Caterpillar's Delivery Service Record provides a safety and service daily check list that our CDI's follow at machine delivery orientation. Signatures on the form require a City of Tucson representative to confirm the list was reviewed and completed.

vi. Is a "train the trainer" program available?

Yes.

Is this training different than the regular initial training?

Yes, the training curriculum is focused on the trainer and how to communicate proper operating techniques and safety, and why it is important. Initial training is focused on the student.

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Can training sessions be recorded for future use by the agency?

Caterpillar does not permit recording, copying or transferring any of copyrighted material, either at our Operator Training Academy or customer sites. Empire maintains Caterpillar's proprietary information and copyright policies.

vii. Is the training provided by the manufacturer, dealer or both?

Both manufacturer and dealer can provide training.

5. Ordering and Invoices

a. Describe your order process.

Caterpillar Response

Understanding that Cat Dealers have been developing and maintaining customer relationships at the local level for more than 96 years, it is Caterpillar's intent to continue to support this proven model. It will be the local Cat Dealer that will quote, deliver, receive payment, and support the products in this proposal per the terms that have been outlined

Dealer Response

Machine invoices will be generated after receipt of a City of Tucson purchase order at Empire.

The invoice includes:

- Name of agency
- Department receiving (if supplied on purchase order)
- Contact name
- Machine Serial Number
- Machine price
- Applicable taxes
- Freight from Empire to agency
- Machine configuration (if requested)

Machine payments are due 30 days after receipt of invoice.

Terms of our invoices are available at: www.empire-cat.com/salesserviceterms

b. How do agencies work with your firm to determine appropriate equipment needs?

Caterpillar Response

Cat Dealers have sales and application specialists who can help an agency identify the best equipment option to fit the application. Once a need has been identified, it would be in the customer's best interest to consult with the local Cat Dealer to determine the best possible equipment solution. Should additional expertise be required, Caterpillar has expertise within the company that can also help ensure the most favorable outcome.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Dealer Response

Initial contact will begin with our Sales Account Manager. A dealer Account Manager has extensive knowledge and experience in machine and attachment applications can assist the City of Tucson personnel in determining the best options.

Beyond this, the Account Manager will help the City of Tucson staff build a cost/benefit analysis to help illustrate why one machine or attachment was selected over other options. If the Account Manager believes the application question needs additional expertise, he is highly proficient at navigating Empire and supplier resources and bringing their expertise to bear.

Caterpillar has several software resources to help calculate cost per hour and cost per ton of machines, such as Cat Turbo, FPC or VET, to help users select the best machines, configurations and attachments. The Account Manager will utilize these resources to help the City of Tucson analyze options.

Additionally, if the Account Manager is asked to help research the best machine for an application and he believes that our offering is not optimum, and knows a competitive product or supplier that would be, he will explain why and help coordinate contact with the supplier, if requested by the City of Tucson. We recognize that not all of our offerings are the best and most economical fit for some applications and will readily explain so when we are asked to be part of the best solution analysis.

c. Describe the equipment delivery process and your delivery commitment.

Caterpillar Response

It will be the local Cat Dealer that will quote, deliver, receive payment, and support the products in this proposal per the terms that have been outlined.

Dealer Response

Most products can be sourced from Empire's extensive inventory. Our configurations are based on the optimum feature utilization and most effective cost per hour in Empire's territory. In the past, most City of Tucson units have been custom ordered because of minor configuration differences. We feel that the City of Tucson will benefit from most of the configurations we stock. This benefit is in terms of: Time of delivery, higher potential productivity, and potentially lower operating costs.

In the event we need to order a machine, the manufacturer will provide Empire a "Ready to Ship" (RTS) date. Empire will estimate additional days based on subjective experience with that manufacturer's history of accurate RTS dates. Empire will also add expected freight time. Since there are various events beyond our control such as severe weather, strikes, or U.S. Custom holds at docks, a small percentage of our given delivery times can and do extend. Empire will alert the City of Tucson immediately if we believe a committed delivery date will extend and work out a solution if the need is urgent.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

d. What is your standard equipment delivery timeframes?

Caterpillar Response

Depending on Cat Dealer inventory, delivery can be as quick as a day, but depending on demand, orders from the factory may take as long as 180+ days to deliver. In most cases Cat Dealers have been able to commit to a less than 90-day delivery timeframe. However, timelines need to be confirmed for each purchase.

Dealer Response

If Empire's configuration is acceptable and we can supply from inventory, we can usually deliver in less than seven calendar days. If it is urgent, we will work nights and weekends to supply a unit sooner. A significant percentage of our deliveries happen in less than three working days from receipt of firm order.

The next source for machine availability is Cat's Product Distribution Centers (PDC). PDC's have their own configurations, but most are very close to the Empire configuration. If a machine from this source has acceptable configurations to the City of Tucson's request, these machines will usually ship within 7 days and arrive at Empire within 14 days.

Additionally, Empire works with nearly every Cat dealer in the United States for trading inventory. We have an excellent reputation of helping other Cat dealers secure units from our existing inventory and our "on order" inventory. In other words, we give more than we take, which helps us secure earlier delivery several times a year and unit can usually arrive within 10 days.

If a unit must be factory ordered, we have no standard delivery time frames. Caterpillar claims 65%+ of their units will be "Ready to Ship" within 12-16 weeks. Allied manufacturers have too many variables to provide relevant estimates here. If Empire is awarded this contract, they will be quoted as needed.

e. How does your firm communicate order cut off dates to your customers?

Caterpillar Response

Any questions with regards to an order will be addressed by the local supporting Cat Dealer.

Dealer Response

For machines and attachments, the Empire Account Manager, will provide the City of Tucson with RTS estimates upon request.

Parts – Hours of Operation

When parts are needed, Empire has been the trusted and tested source to provide them, regardless of the time of day. In a crisis or emergency, Empire has the infrastructure and people in place to provide the parts that others cannot.

- Parts are available 24 hours/7 days a week/365 days a year
- Standard business hours for Empire's Parts Stores are:
  Monday – Friday from 7:00 a.m. – 5:00 p.m.

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After hours/emergency parts service is available by calling a store's main number. (Store contact numbers can be found in list provided in this response, which lists dealer locations and contact information.) This service is available anytime outside standard business hours. When a call is placed, an Empire parts representative will respond, locate the parts needed, and arrange to meet at the store for pick up.

f. Identify and describe any exceptions or challenges.

Caterpillar Response

Should an urgent US military equipment order be placed at the factory it will take precedence over any other customer orders which may delay the actual delivery of any non-military orders to the end user.

Dealer Response

Historically, Empire's most common challenges in delivery of machines have been due to severe winter weather in the mid-west and U.S. Customs holds for freight shipments at U.S. shipping ports.

With regard to parts, Caterpillar/Empire has experienced challenges when suppliers to Caterpillar of a sub component part fails on hundreds of machines in a short time. A cascade of challenges begin at that point. Usually the manufacturer's parts supply is depleted and because of the unanticipated demand, the supplier cannot ramp up production of the correct part in the normal time most Caterpillar owners have come to expect.

Throughout our 70 year history, we have faced a number of these challenges. Customers want answers. Depending on the severity, it can take a few days to diagnose the root cause before we can begin to respond to repair affected machines.

Because of Arizona's unique geography, high elevations, hard material, and high ambient temperatures, many machine failures can show up in Arizona before the rest of the world experiences them. These events have taught us to maintain a hyper awareness of developing issues. Empire is usually the lead dealer to discover the issue and help Caterpillar (and other dealers) with the solution. These events help our staff stay highly vigilant in providing early identification and developing solutions for our customers.

g. Provide details of the capabilities of your E-Commerce website including ability to display contract pricing, on-line ordering, order tracking, search options, order history, technical assistance, lists, technical data and documentation, identification of alternate green products, etc.

Caterpillar Response

Parts.cat.com is a Caterpillar eCommerce site that allows any customer to purchase parts from their local Cat dealer. The site platform is customized by the local dealership, creating a unique purchasing experience best suited for their customers. Some of the features and benefits for our customers include:

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- Inclusion of new, Cat Reman, and dealer exchange options
- Easy search by equipment serial number to access parts manuals and service information for that specific serial number
- Time-saving features such as Saved Order Lists and Shopping Preferences
- Planned maintenance kits
- Real-time price and availability
- Access to Parts.cat.com order history
- Customer-specific pricing (set up by local dealer)

Dealer Response

Empire's website does not provide any machine pricing for this contract. Our website does provide pricing for used machinery and used parts.

Empire Parts store is an online service that allows you to order parts from your computer. Some of the benefits are:

- Order parts anytime 24 hours/7 days a week/365 days a year
- Ability to track your part orders
- Electronic parts book for ALL Caterpillar machines
- Frequent order lists
- Shows available exchange/remanufactured options
- Track outstanding core returns for credits due
- Purchase history

  Additional options available from www.empire-cat.com are:

- Equipment Management
  - On-Line Fluids Lab (Oil Sample Reports)
    - Track History for each component or machine
    - Custom graphing/charting trends
    - View Empire recommendations
- Vision Link-Vital Machine Operating Information (For machines equipped with Product Link, see below for Product Link details)
  - Asset Utilization
    - Hours
    - Fuel
    - Operation
  - Current Location (Google Maps)
  - Health Watch
    - Fault Codes
    - Fluid Analysis
    - Inspections (Requires Mobile App)

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- Geo Fencing
- PM Maintenance Tracking
- Production Tracking (requires additional accessories)
  - Pay Load monitoring
  - Project monitoring
  - Mass haul monitoring
- Vision Link also allows
  - Customized alerts
    - ✓Type of alert and who is notified
  - Exporting data through API feed
  - Customize groups, sites and projects

Vison Link is the software end of the information from the machine sensor transmitted by Caterpillar Product Link. Product Link devices. Product Link devices. Product Link devices are activated in VisionLink as a subscription service, or can be included in Empire service agreements (CVA Plus/Premium, TM&R plans).

Product Link is included on most qualifying Caterpillar machines. Product Link can be dealer installed, for a nominal fee, on machines that Caterpillar does not supply as standard equipment. Generally, Product Link will be included on nearly every Caterpillar machine listed in this RFP. With the exception of just a handful of smaller models, such as a 300.9 micro excavator, it will be included on most common machines the City of Tucson is likely to purchase from this contract. Product Link data reporting capability and frequency may vary, depending on machine capability and device type installed.

Technical Assistance and Documentation

Caterpillar Electronic Technician (ET) features:

- Displays parameter status
- Displays active diagnostics
- Clear and view logged diagnostics
- Performs diagnostic tests
- Print reports and diagnostic results
- Perform calibrations
- Displays current totals information, i.e. fuel consumption, operating hours, etc.
- Integration to help files

Technical Information, Service Information Systems (SIS)

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

The following items are available from SIS WEB subscription at no additional charge to the City of Tucson as part of this proposal.

- Applied Failure Analysis
- As Shipped
- Custom Service Information
- Disassembly & Assembly
- Engine News
- Engine Performance Specs
- Engine Tool Guide
- General Service Information
- Kits Information
- Microfiche1
- Operation and Maintenance Manual
- Parts Identification
- Safety
- Schematic
- Service Magazine
- Special Instruction
- Specifications
- Systems Operation
- Systems Operation - Fundamentals
- Testing and Adjusting
- Tool Guide
- Tool Operating Manual
- Torque Specifications
- Truck Engine News

Empire Parts Service and Sales Representatives (PSSR) assigned to the City of Tucson will provide training with Caterpillar technical software. Product Support Sales Representatives work closely with all departments and divisions within Empire and will assist the City of Tucson with needs related to product issues and with navigating the Caterpillar product support offerings.

h. Describe your invoicing process. Is electronic invoicing available? Is summary invoicing available? Are there other options on how an agency receives an invoice? Submit sample invoices.

Caterpillar Response

Dealers can currently provide a pro-forma invoice prior to receipt of the actual invoice. Requests for electronic invoicing should be made to the selling dealer. Not all dealers are able to offer electronic invoices.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Dealer Response

Is electronic invoicing available?

Electronic invoicing is available, if requested. Machine invoices will be generated after receipt of City of Tucson purchase order at

Empire. The invoice includes:

- Name of agency
- Department receiving (if supplied on purchase order)
- Contact name
- Machine serial number
- Machine price
- Applicable taxes
- Freight from Empire to agency
- Machine configuration (if requested)

Machine payments are due 30 days after receipt of invoice. Terms of our invoices are available at: www.empire-cat.com/salesserviceterms

Is summary invoice available?

Yes

Are there other options on how an agency receives an invoice?

Invoices will be sent by mail, electronically or can be verbally requested for pick up.

Submit sample invoices.

Samples will be included in the ATTACHMENTS section of this RFP.

i. Describe how problems – such as a customer ordering a wrong product; a customer receiving a defective or wrong product; etc. – are resolved.

Caterpillar Response

Because machines are large purchases, customers will be assigned a sales representative to help ensure the process is executed without errors. Should something unexpected arise, the local dealer will have the ability to resolve any issues locally.

Defective products are covered by manufacturer's warranty.

Dealer Response

As described in Caterpillar's response, in most cases, working with Empire's Account Manager will alleviate wrong order issues. If Empire receives a purchase order and the quantity or configuration stated is, or seems not to be what was discussed, our Account Manager will attempt to notify both Procurement and the user department if Procurement approves.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

The vast majority of the time, we solve the issue at this stage. Errors of Empire's making are the responsibility of Empire. If the purchase order, or subsequent instruction in writing, is given by key personnel from the City of Tucson and Empire fails to correctly order the product, Empire will bear the expense of correcting it. If the item is in excess of what was ordered, Empire will remove it. If the item cannot economically be removed and it does not interfere with the production, safety, operator comfort, or expose the City of Tucson to additional operational expense, Empire may elect to leave it on the machine at no charge to the City of Tucson.

j. Describe how your firm measures performance including identification, calculation, tracking and reporting of measurements.

Caterpillar Response (only)

Purchase orders received from a customer can be filled by an authorized dealer from inventory or by placing a new order from the factory. In either scenario, the customer will be advised about the timeline prior to delivery.

When sold, dealers are obligated to report the sale to Caterpillar with detailed information about the sale. This creates a record in the corporate systems so that we are aware when a sale has been made to a governmental agency using this contract.

Machine sales are only reported when the Dealer has input the transaction information into the system and the machine has been scored to the respective industry. The sales are compiled monthly and reported back to OMNIA.

k. Titles- will equipment be provided with proof of registration with the state?

Caterpillar Response (only)

Where appropriate, all titles will be provided with proof of registration with the state.

l. Will each product be delivered free of distributor advertising?

Caterpillar Response (only)

The buying agency and dealer can determine what advertising is appropriate or not. There will never be a manufacturer requirement for the machine to carry a company decal/logo or to include distributor advertising.

6. Other

a. Describe any government rebate programs that may be applicable.

Caterpillar Response (only)

No specific governmental rebate programs are currently available.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

B. Qualifications & Experience

1) Provide a brief history and description of your company. Describe your market position in the local government, educational and medical market spaces. Include your current distribution model capable of delivering products nationwide, including the number, size and location of your company's distribution facilities, warehouses, and retail network, where applicable. Describe your coverage of the United States.

Caterpillar Response (only)

For more than 90 years, Caterpillar Inc. has been making sustainable progress possible and driving positive change on every continent. Customers turn to Caterpillar to help them develop infrastructure, energy and natural resource assets. With 2020 sales and revenues of $42 billion, Caterpillar is the world's leading manufacturer of construction and mining equipment, diesel and natural gas engines, industrial gas turbines and diesel-electric locomotives.

The company principally operates through its three product segments - Construction Industries, Resource Industries and Energy & Transportation - and provides financing and related services through its Financial Products segment. The Caterpillar Dealer organization has been a key component of Caterpillar's success. Caterpillar subscribes to the philosophy we need our dealers, and our customers to be successful, for us to continue to grow profitably. It's a symbiotic relationship where all benefit when all grow together. This success is evident in the fact that many of our dealer s have been owned by the same family for multiple generations.

Caterpillar is the market leader and holds the highest North American share of the heavy equipment business. This leadership also extends to sales to governmental agencies. These figures are based on sales that have been publicly reported by our competition and does not consider market share adjustments for those not reporting.

One of the largest factors for Caterpillar's continued success is that our customers have realized that they get the best overall value when they purchase Caterpillar. When considering the total cost of ownership, it's important to include the following factors. For any specific product, the Cat dealer would be able to provide detailed information tailored to the local market.

- Operating costs (include fuel burn, a key trait for which Caterpillar is broadly considered most efficient)
- Maintenance costs
- Repair costs
- Safety design and performance
- Productivity
- Ease of operation
- Reliability
- Resale value

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

2) Describe your dealer network and their role in providing products and services under this contract.

Caterpillar Response (only)

Cat machines and engines are distributed principally through a worldwide network of dealers. 45 dealers are in the United States, 2 in Canada and 114 located outside North America.

Caterpillar and Cat Dealers will provide governmental customers with a reliable and viable distribution channel. They will manage the entire sales process from machine selection, quotation, PO acceptance, payment receipt and product delivery. In addition to sales, Cat dealers also will provide parts and service support. All Participating Dealers are financially healthy with no outstanding issues that would disrupt service within these territories. Cat dealers average more than 60 years of experience within their respective territories. Specific information about dealers is located on:
http://www.cat.com/en_US/support/dealer-locator.html

Caterpillar's North American dealer network currently employs over 59,000 total employees. Many dealers have enough opportunity in the governmental market to employ salespersons dedicated to the governmental market. Approximately 70% of dealer employees are dedicated to the product support business.

3) Provide a listing of key personnel who will be assigned to the City's contract. Include their title within your organization and the description of the type of work they may perform. Please identify an executive corporate sponsor who will be responsible for the overall management of the awarded Master Agreement.

Caterpillar Response

Nationally, the contract will be managed by:

Tirena Pavelka
Governmental Account Manager
100 NE Adams St.
Peoria, IL 61629
Office: 309-675-1589
pavelka_tirena_l@cat.com

Dealer Response

For dealer support related to this contract, please contact:

Shane Frazee
Sales Account Manager
7600 S. Nogales Hwy.
Tucson, AZ 85756
Office: 520-746-8224
Cell: 520-330-8612
Email: shane.frazee@empire-cat.com

Ty Robertson
Product Support Sales Representative
7600 S. Nogales Hwy.
Tucson, AZ 85756
Office: 520-746-8226
Cell: 520-269-1171
Email: ty.robertson@empire-cat.com

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

4) Summarize your experience in providing equipment, products and services similar to that outlined in the Scope of Work. Provide a minimum of three references for which you have provided similar products and services. References from other public agencies, particularly municipal governments, are preferred. Please include company name, address, phone, email, and contact person.

Caterpillar Response

For the last 96 years, Caterpillar's principal line of business has been the manufacture, sales and support of construction equipment. Throughout our history we have worked in close consort with our authorized dealers and that successful model has not substantially changed since its inception.

We have many satisfied customers in public agencies and refer you to Empire Machinery's response for three local agencies who are pleased with their support.

It is also important to reference the working partnership between Caterpillar, Empire Machinery, City of Tucson and OMNIA for the past five years. The performance under contract # 161534 is evidence of a strong and successful relationship. It is our desire to maintain this high level of cooperation as we move forward under this new RFP. We are deeply appreciative of the confidence placed in our machines and service and we value your business. We will do everything possible to maintain your trust as we look to forward to mutually beneficial contract going forward.

Dealer Response

References:

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

5) Please submit any additional information that you feel is applicable to your qualifications and experience.

Caterpillar Response (only)

Please review Caterpillar's Annual Report in this link:

https://reports.caterpillar.com/ar/index.php

6) Provide the qualifications of technicians that will be servicing equipment throughout the nation.

Caterpillar Response

All Cat dealers employ highly trained and experienced technicians that have completed numerous factory training programs. Each dealer can expound on their own specific requirements but overall, our technician capability is second to none.

Dealer Response

Empire Machinery's response is for Empire's territory only. All Cat Dealers employ service personnel, with all levels of experience, but will vary from dealer to dealer.

Empire employs over 1,600 trained technicians throughout Empire's territory. These technicians are highly trained, and the majority have job site experience in all industries including, but not limited to:

- Landfill
- Governmental
- Heavy Construction
- Highway / Road Construction
- Paving
- Mining
- Forestry
- Agriculture
- Power Generation
- Quarries & Aggregates
- Residential Construction
- Recycling

Additional Services Information

Empire Machinery provides the largest investment of any competitor in the following areas.

Service: Empire provides the largest number of both shop and field technicians in the State of Arizona. From the best data we can gather, we have more staff in each of the service areas than all of our competitive vendors combined.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Empire Service Capacity Statistics (statewide):

- Field Service Technicians: 400+
- Service Trucks: 300+
- In Shop Technicians: 550+
- Technical Communicators: 13
- Service Managers: 27+ (all former shop or field technicians)
- 100+ Shop Lead persons
- 40+ Welders
- Average length of time in Service for all technicians: 10.5 years
- Many technicians at Empire stores have over 25 years of experience for other technicians to draw from

Years of experience in service staff are important to the customer. One of the highest costs of Ownership and Operating (O&O) costs is downtime. The faster a vendor can dispatch and arrive at a down machine (based on truck fleet capacity), trouble shoot the problem (based on experience, access to information or additional expertise), select and confer repair options with the customer, repair the machine (based on truck tool box capacity), only then can the absolute lowest expense be achieved, returning the machine to production.

It is difficult to quantify savings from assessing truck capacity and capability when trying to compare one vendor to another. The parts and labor expense in the cost of a work order are easier to compare and tend to be what receives focus rather than the difficult task to determine downtime expense or savings. The primary mission, and Empire's extensive investment in our Parts and Service Departments, is focused on reducing downtime expenses while being as efficient as possible.

Value Added Support Services

The ability of the local dealer to provide value added support services is an important consideration in the purchase of heavy equipment. Empire provides many of these value added services to reduce the operating cost and risk of machine ownership.

The following is a summary of Empire's value added services:

- Tractor Machining – With tremendous capacity for component restoration and repair, reuse and rebuild of machine components (ISO 9001:2015 Certified)
- Empire Hydraulic Service – Operating multiple shifts and capable of full service for all hydraulic brands (ISO 9001:2015 Certified)
- Empire Transport – Heavy haul with a fleet of 50+ trucks and capable of hauling loads up to 170,000 lbs. in the event of any emergency
- Empire Training Institute – Provides both technical and non-technical training programs for EMPIRE employees, customers and other Caterpillar dealers via classroom and web-based training courses

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

- Technology Products and Services – Sitech Southwest, a wholly owned subsidiary of Jeff Whiteman (CEO of EMPIRE), offering a full range of technology solutions and technology support.
- Wear Analysis – Empire's own laboratory, processing 142,000 samples annually (ISO 9001:2015 Certified). The wear analysis allows a customer to repair a component or tractor before failure.
- In-Shop Services – With multiple shifts, over 550+ factory certified technicians and Empire's capability as the largest powertrain rebuild dealer in North America.
- Field Service Capability – 24 hours/7 days availability of over 300 field service trucks, along with Empire's most experienced technicians (10.5 years average experience)
- Empire Power Systems – Provides turnkey solutions, service and temporary power for data centers, life support systems, telecommunication and construction. Empire also offers reliable, cutting edge solar solutions to commercial customers.

7) Describe your quality control program including but not limited to: what is your quality control procedures, who performs the quality control inspection? What are the qualifications of the inspectors? What items are inspected / tested? Etc.

Caterpillar Response (only)

Quality levels are at the highest in company history. In 2013, Caterpillar implemented Lean methodology. Lean is built on a strong foundation of 6 Sigma and Caterpillar Production Systems (CPS). Lean is how Caterpillar eliminates waste and drives efficiencies. By standing up quality gates throughout the production processes, Caterpillar can stop any defects to external customers – first by catching them at the quality gates, and then by eliminating them. Lean has been deployed at more than 94 production facilities throughout the enterprise.

In the production facilities, qualified technicians perform a battery of tests to ensure that the products leaving Caterpillar plants are operating to the outlined specifications before delivery to the customer. These tests cover the electronic system, hydraulic systems, and powertrain systems on every machine we build. In addition to static testing procedures, trained operators perform a series of road tests and simulated operational maneuvers in dedicated locations at the plant prior to shipment. Should a machine exhibit any functional issues or fail a quality control benchmark at any point in the manufacturing process, the production line will either be shut down to remedy the issue or the machine will be removed completely from the production line. The unit will then be assigned a specific troubleshooting cell to perform the necessary corrections or repairs at which point it will be re-subjected to the battery of tests until such time it meets Caterpillar's quality control standards.

Upon arrival at a dealership. A detailed pre-delivery inspection will be performed. Any deviations from expected condition or operational performance will be noted, reported, and corrected before delivery. It is also recommended for the customer to inspect the machine prior to first use.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

C. Price Proposal

1) Provide a Price Proposal. Submit the Price Proposal as a separate and clearly identified document. The Price Proposal shall minimally include the following: Offerors shall submit pricing based on the Equipment, Product Requirements and Service Requirement categories identified on the Scope of Services. Pricing should be based upon a verifiable pricing structure, such as a fixed percent discount from an index or indices or established price list, etc. Where applicable, Offerors shall provide pricing for all product and services offered. Describe how pricing is determined for a base model equipment purchase and how pricing is determined for options, accessories and services. Identify the price list being used and include an electronic copy (or website link) so that net prices can be determined.

The price proposal should include pricing for equipment, accessories and options, parts, service and any additional value-add goods or services available such as financing, rental and used equipment for purchase from the vendor. Vendors must indicate if discounts are based on manufacturer price lists or dealer price lists.

In order to allow ordering flexibility for equipment that is mounted to a chassis, Offerors should provide a separate pricing structure for each the chassis and the truck, in addition to a total pricing structure for the complete piece of equipment.

Caterpillar Response

Each Caterpillar machine model will be assigned specific discount off the manufacturer's published list price for that particular machine and or piece of equipment. This discount will be extended to all additional options from the machine / option price list that are requested by the customer and become part of the final machine configuration. The published list price for the base machine and/or any additional options included in the published machine / option price list will be considered the maximum allowable price for the specific final machine configuration. The associated discount will be considered the minimum discount that the local supporting Cat Dealer will be required to honor.

Any additional items above and beyond those included in the Caterpillar Price Lists such as prep, extended warranties, delivery costs, customer service agreements, pre-delivery and installation will be priced at the supporting Cat Dealer's discretion no higher than prevailing market rates.

Financing for new and used Caterpillar products is available through a variety of financial products including Installment Sales Contracts, Finance Lease and Operating Lease contracts. Rates and terms will be determined locally.

To provide even more customer solutions, Caterpillar will be supporting a special Used Equipment program for customers that choose to purchase products using this contract. Except for Cat work tools, Caterpillar will be extending a 20% discount off the original list price of used Caterpillar equipment that is currently in the Cat Dealer's rental fleet. At their discretion, Cat Dealers will have the ability to extend this program to customers for the purchase of work tools. Please note that this used program is subject to availability.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Parts, service work and rental are also available through this contract. There is no national price list for these and as such prices will be determined locally based on volume of purchases and prevailing market rates.

All pricing discounts will be included in the "Pricing Structure" attachment in the ATTACHMENTS section of this RFP.

Dealer Response

- CONFIDENTIAL - (Request confidential treatment)

Empire Machinery and other dealers across North America who choose to participate, offer the following parts, service, rental, and accessories discounts as part of RFP# 212816.

Dealer Related Parts, Service, Rentals, and Accessories	Minimum List/Card Discount
Rental Rate Discount	[redacted]
Used Machines Purchase Discount	
GET (Ground Engaging Tools) Discount	
Base Edge and Adapters	
Filter Discount with TM&R Agreement	
Undercarriage Discount	
Power Systems Rental Rate	
Power Systems Used Purchase Discount	
Used Work Tools	

Allied product discounts will be included in the "Pricing Structure" attachments in the ATTACHMENTS section of this RFP.

2) Based on your distribution network, explain how freight is calculated.

Caterpillar Response

The freight and delivery costs vary by product and will be quoted separately. Our products are manufactured in locations around the globe and vary considerably in size and weight so costs to transport our products to the selling dealer will also vary widely. However, some models include the cost of freight in the List Price of the machine.

If the customer chooses to have the dealer deliver those machines to the purchaser's location the cost would be calculated based on the distance from the dealer's place of business. The dealer will quote actual shipping and prep costs for each machine quoted through this contract.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Dealer Response

Freight is calculated in two different manners, depending on model, for Caterpillar:

- Caterpillar Included in Price: For every Caterpillar construction model listed in this RFP, freight is included in the list price and is not a line item on the price list. Caterpillar dealers have zero control on this process. Caterpillar models handled in this manner are referenced as "FOB Dealer" in the Caterpillar price pages. For Empire, the majority of our Caterpillar orders are shipped directly to Empire's Eloy facility where we prep the machine prior to sale. The only freight cost charged would be if Empire delivers the machine(s) from Eloy to the City of Tucson yard or jobsite. This freight cost will be shown as a line item on the quote, prior to delivery. Empire does not "mark-up" or profit from freight. This is a "pass through" expense to the City of Tucson.

- Empire Quoted: On some regional type models such as larger mining machines, Empire is responsible for the freight from either the factory or the port. Empire utilizes an RFP to quote pricing in advance for each of these models. Five to seven national freight companies compete against each other using this bid system. Empire will use this pricing methodology to determine the freight on each individual model.

- Allied Products: Allied freight varies from manufacturer to manufacturer. Some provide managed freight; some quote dealers "FOB" their factory. Empire will provide a written quote from the vendor at time of quotation to recapture these freight costs. Depending on the product, delivery freight from Empire's location to the City of Tucson may apply. Same terms as described above in the first bullet, "Caterpillar Included in price", will apply.

3) The discount structure provided by the supplier is intended to remain constant throughout the term of the Contact. Discuss how often price lists are updated and provide a listing of price list changes that have taken place over the last 3 years. Discuss any known future price list changes or industry changes that will effect pricing over the next 5 years.

Caterpillar Response

Several factors will come into play when looking at possible price adjustments. Given that our machines and their components are largely made up of a variety of metals, commodity prices will have a significant impact on how pricing is adjusted moving forward. Combined with the fluctuation in fuel cost, rubber prices as well as the cost associated to the development of technologies associated to meeting emissions regulations, we expect the prices of heavy equipment to continue to rise. With this uncertainty, Caterpillar is asking that the most current published pricing be that which is used in the quotation of equipment for this contract by the supporting Cat Dealers. Failure to do so may limit Caterpillar's ability to commit to the pricing terms as outlined in this solicitation.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Typically, price changes go into effect on the first business day of the calendar year. However, Caterpillar reserves the right to adjust prices up or down as needed with an understanding that price changes may impact purchase intentions. Pricing is typically based on the date a machine ships from the factory.

When Caterpillar determines a need to make price list corrections/reductions we reserve the right to adjust discount structures as long as that discount change is not detrimental to the customer.

With more than 300 products, Caterpillar introduces new products and removes outdated products periodically throughout the year. Caterpillar will provide the City of Tucson an updated equipment list and discount structure when these changes take place.

Past and Future Price Increases
[redacted]

Dealer Response

Empire will honor our discount from Caterpillar list prices to the City of Tucson for the term of the awarded contract. However, as a dealer we have no control over when the manufacturer announces price increases or how much those increases will be. Over the last three years, the prices have changed hundreds of times.

With regards to price list changes, Caterpillar modifies the price pages often. These adjustments affect base price, configuration item price, internal vendor change, causing a reference number change, etc.

Listed below are a few examples of the number of times Caterpillar made price adjustments between 01/01/2021 and 09/01/2021.

Model	**Price List Changes**
[redacted]	

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4) State if pricing is most favorable offered to government agencies. Describe how your firm will ensure this contract will continually offer the best pricing available to Participating Public Agencies.

Caterpillar Response

Cat Dealers are independently owned and as such Caterpillar does not have the authority to dictate pricing. The discounts being supported by Caterpillar in this proposal are the best discounts Caterpillar currently offers to Cat Dealers on a national scale. It is the intent that with the "Maximum Price / Minimum Discount" model, that all Cat Dealers will have the flexibility to extend the lowest price possible to the agencies who choose to use the contract. Manufacturer's incentives may be periodically provided and may be regionally based.

Dealer Response

Above and beyond the discounts stated in the price proposal/discounts section of this RFP, Caterpillar or Allied manufacturers may offer additional discounts beyond the minimum table. These incremental discounts may be short term (seasonal) programs or multiple unit discounts for a single transaction.

Incremental or additional discounts come from cycles of increasing or decreasing demand from the marketplace. If a manufacturer cannot produce the quantities to supply the opportunity, their incremental discounts are usually zero. Conversely, if they are targeting a new product, have over produced, or feel they are losing crucial market share in a region, they may offer dealers a temporary or seasonal additional discount with the intent it will incentivize dealers to stock more, or end users to pull purchases forward.

In the event additional or incremental discounts are available, Empire will pass these discounts on to the City of Tucson when "current" pricing quotes are requested. These quotes will show the contract minimum discount along with any additional or incremental discount and their expiration dates. These incremental discounts are usually labeled as "incentives" and they can have a very short life. Empire will explain to the City of Tucson their origin, amount and termination date.

Occasionally, Empire can negotiate termination extensions when the City of Tucson wants to take advantage of an incremental discount, but requires additional time to secure funding and approval. Empire is compelled to add: "Occasionally" means we are successful at securing extensions fewer times than not.

Empire offers a guaranteed buyback program for governmental clients only

Empire offers a minimum buyback for a certain duration of time or hour range. Buybacks allow agencies to predict what their machine is guaranteed to be worth, based on the length of term they choose and the hours they will put on it. The terms are usually between three (3) and seven (7) years and are usually based on 500 to 1,000 hours of usage per year.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

This allows Agencies to easily determine the ownership cost, of what a machine costs them, over a certain period of time or by the hours they need to operate a machine. All buybacks are subject to Empire's return "terms and conditions" and require a signature of acceptance. A copy of Empire's buyback terms and conditions will be provided upon request.

5) Provide details of and propose additional discounts for volume orders, special manufacturer's offers, minimum order quantity, free goods program, total annual spend, etc.

Caterpillar Response (only)

No additional volume rebate program is included in this proposal, however customers and their local Cat Dealer may enter into agreement for additional discounts and or other value added provisions within the spirit of the "Maximum Price / Minimum Discount" model for volume purchases that are in line and conform to all the terms and conditions covered by the contract.

6) Provide information on any ordering methods – such as electronic ordering or payment via pCard or EFT – or other criteria which entitle the using agency to additional discounts.

Caterpillar Response (only)

None available at this time

7) As stated in the Instructions to Offerors, Discounts, the price(s) herein can be discounted by _____0_%, if payment is made within __N/A__ days. These payment terms shall apply to all purchases and to all payment methods.

8) Will payment be accepted via commercial credit card? ____Yes __X*__No

a. If yes, can commercial payment(s) be made online? ___Yes _____No

b. Will a third party be processing the commercial credit card payment(s)? ____Yes ___No

c. If yes, indicate the flat fee per transaction $_____ (as allowable, per Section 4.9 of the MasterCard Transaction Processing Rules).

d. If "no" to above, will consideration be given to accept the card? __X*_Yes ___No

Caterpillar Response (only)

*Commercial Credit Card acceptance (online or in person) limits are determined by the selling dealer. Not all dealers will accept payment by credit card. Limits and conditions may be imposed by the local dealer. Each independent dealer structures their business as they deem appropriate and can advise on transaction fees and processing systems.

Cat dealers, either independently or in conjunction with Cat Financial may offer lines of credit to governmental purchasers.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

9) Does your firm have a City of Tucson Business License? __X__Yes _____No

a. If yes, please provide a copy of your City of Tucson Business license.

Caterpillar Response

Caterpillar is proud to have a large presence in the City of Tucson with 600+ employees to the city. However, that office conducts no retail business and as such does not hold a business license.

The local Caterpillar dealer, Empire Machinery, does have a City of Tucson Business license.

Dealer Response

A copy of the City of Tucson Business License issued to Empire Southwest LLC (dba Empire Machinery) is included in the ATTACHMENTS section of this RFP.

E.2 Forms to Be Filled out by Vendor

Please ensure that all required information is included with your offer:

A. Living Wage Certification Form (If applicable)

B. Pricing Proposal

C. Any Solicitation Amendment(s)

D. Offer and Acceptance Form

E. OMNIA Partners - Exhibits

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

F. SPECIAL TERMS AND CONDITIONS

F.1. FEDERAL, STATE AND LOCAL TAXES, LICENSES AND PERMITS: The Supplier shall comply with all Federal, State, and local licenses and permits required for the operation of the business conducted by the Supplier as applicable to this Contract. The Supplier shall, at no expense to the City, OMINA, or other Participating Public Agencies, procure and keep in force during the entire period of the Agreement all such permits and licenses.

F.3. PAYMENTS: All payments made by the City of Tucson for goods or services will be made to the vendor named on the Offer and Acceptance form. If you do not wish payment to be made to that address, you must submit an attached sheet indicating the proper mailing address with this proposal.

F.4. RIGHT TO TERMINATE FOR CHANGE IN OWNERSHIP OR MATERIAL RESTRUCTURE OF THE CONTRACTOR: In addition to the Termination of Contract clause in the Standard Terms and Conditions section of this solicitation and resulting contract, the City reserves the right to cancel the whole or part of this contract within 60 days written notice of the completion of any material change of ownership in the Contractor's company, including its sale, merger, consolidation, or dissolution.

F.5. TERM AND RENEWAL: The term of the Contract shall commence upon award and shall remain in effect for a period of one (1) year, unless terminated, canceled, or extended as otherwise provided herein. The Contractor agrees that the City shall have the right, at its sole option, to renew the Contract for four (4) additional one-year periods or portions thereof. In the event that the City exercises such rights, all terms, conditions and provisions of the original Contract shall remain the same and apply during the renewal period with the possible exception of price and minor scope additions and/or deletions.

Any, project agreements or maintenance agreements executed against this Master Agreement during the effective term may survive beyond the expiration of the Master Agreement as established and agreed to by both parties.

F.6. PRICE ADJUSTMENT: The City will review fully documented requests for price adjustment after any Contract has been in effect for one (1) year. Any price adjustment will only be made at the time of Contract renewal and/or extension and will be a factor in the extension review process. The City will determine whether the requested price adjustment or an alternate option, is in the best interest of the City. Any price adjustment will be effective upon the effective date of the Contract extension.

F.7. MODIFICATION OF TERMS: A Participating Agency who wishes to piggyback on this Contract may present alternate terms to the Contractor as a condition of their intended purchase transaction. If the Contractor chooses to accept the alternate terms, it shall be as a condition of the Participating Agency's purchase transaction and shall not constitute a modification of this contract.

F.8. BRAND OR TRADE NAMES Any manufacturer's names, trade names, brand names or catalog numbers used in the solicitation are for the purpose of describing and/or establishing the quality, design and performance required. Any such reference is not intended to limit or restrict any bid/offer

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by any vendor but is only listed in order to advise potential bidders/offerors of the requirements of the City. Any bid/offer which proposes like quality, design or performance will be considered.

F.9. CANCELLATION OF LEASE DUE TO INSUFFICIENT FUNDING

The successful Bidder/Offeror will be required to agree to the following:

The City reasonably believes that sufficient funds can be obtained to make all payments during each of the renewal terms. The City hereby covenants that it will do all things lawfully within its power to obtain and maintain funds from which the payments may be made, including making provisions for such payments to the extent necessary in each annual fiscal year budget submitted for the purpose of obtaining funding or by obtaining separate funding by a third party.

If after formal written budget request submitted by the City, the Mayor/Council does not allocate funds necessary to continue payments for the renewal term, the City may terminate this agreement at the end of the fiscal year term. Parties acknowledge and agree that it is their intent that funding by the City shall continue throughout the term of this agreement, but the parties recognize that such funding is subject to the provisions of A.R.S. Sec. 42-301, et seq. in the event of non-allocation of funds. Lessor shall have only the right and remedy of taking possession of the equipment.

F.10. COOPERATIVE PURCHASING

Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Business Services Department or registered with OMNIA Partners are eligible to participate in any subsequent Contract. See http://www.tucsonprocurement.com/coop_partners.aspx and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See http://www.mesaaz.gov/home/showdocument?id=23638 for a listing of participating agencies. The parties agree that these lists are subject to change.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each Participating Public Agency. The Contractor may negotiate additional expenses incurred as a result of Participating Public Agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Business Services upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

F.11. CONFLICTS OF INTEREST

An Offeror responding to this RFP acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure a Contract that may be awarded pursuant to this RFP upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the City of Tucson Mayor and Council or any employee of the City has any financial interest in Offeror's firm. In addition, all communications regarding this solicitation shall be directed to

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

the Department of Business Services. Interested Offerors shall refrain from engaging in any communication (written or verbal) regarding this solicitation or the matters involving this solicitation or TCC operations with any other City staff, Mayor & Council or staff of Mayor & Council.

The City reserves the right to disqualify an Offeror from further participation in the RFP process in the event the City determines that Offeror has an actual or apparent conflict of interest with the purposes of this RFP or has violated this Conflict of Interest.

Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Offeror, or any agent or representative of Offeror, to any officer or employee of the City, including the Mayor and Council and their staff, for the purpose of securing a Contract that may be awarded pursuant to this RFP, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of a Contract that may be awarded under this RFP, the City, may, by one (1) calendar day provide written notice to Offeror, terminate the right of Offeror to proceed under this RFP; provided that the existence of the facts upon which the City made such finding shall be an issue and may be litigated in an Arizona court of competent jurisdiction.

F.12. FOB DESTINATION FREIGHT PREPAID

Prices shall be FOB Destination Freight Prepaid to the delivery location designated. Contractor shall retain title and control of all goods until they are delivered, and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The City will assist the Contractor in arranging for inspection.

F.13. LIVING WAGE REQUIREMENTS

In accordance with the Tucson Procurement Code, Chapter 28, Article XV, providing for a living wage requirement for all employees supplying specific service to the City of Tucson, this solicitation, and the resulting Contract, is subject to the referenced Article. By signing the Offer and Acceptance page, Bidder/Offeror agrees to comply with the requirements of the Article. Such requirements include, but are not limited to:

A wage of no less than $10.86 per hour (with health benefits being provided to employees); or

A wage of no less than $12.15 per hour (without health benefits being provided to employees); and If health benefits are offered, an eligible contractor shall pay no less than 50% of the eligible employee’s health benefits premium.

In accordance with Sec. 28-157 (f) of the Tucson Procurement Code, if health benefits are offered to an eligible employee under an eligible Contract, proof of the above compliance shall be provided by the successful Bidder/Offeror upon notification by the City of its intent to award a Contract.

Notwithstanding the Severability clause, under Standard Terms and Conditions, if the provisions of this clause become unenforceable for any reason, the City reserves the right to terminate this Contract without penalty or liability. In the event the City negotiates an adjustment to the terms, conditions, or price acceptable to the parties, then this Contract shall continue until expiration.

Compliance with Wage Requirement: The City's Director of Business Services shall monitor compliance, including the investigation of claimed violations, and may promulgate administrative rules and regulations to implement and enforce this Article. In the event of any violation of the provisions set forth in this Article, the responsible Contractor and any applicable subcontractors shall be liable for the unpaid wages and shall pay the eligible employee any amounts underpaid. The City's Director of

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Business Services is additionally authorized to take any one or more of the following remedies in the event of a written determination of noncompliance:

- Liquidated damages paid to the City in the amount of $50.00 for each incidence of non-compliance for each day of non-compliance and/or each day it continues;
- Suspension of further payments under the Contract until the violation has ceased;
- Suspend and/or terminate the Contract for cause; and/or
- Debar or suspend the Contractor or subcontractor from future City contracts pursuant to Tucson Procurement Code, Chapter 28, Article IX.

Protests or appeals of the Director's remedies for non-compliance shall be in accordance with Article IX.

Records for Wage Requirement: The Contractor and any applicable subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the City's Director of Business Services, and shall permit such representatives to interview employees during working hours on the job. If the Contractor and any applicable subcontractor fails to submit the required records or make them available, the Director may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to Article IX.

Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all eligible employees. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

All inquiries regarding the Living Wage program may be directed to the Contract Officer responsible for this solicitation.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

G. INSURANCE REQUIREMENTS

G.1. The Contractor agrees to:

A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation, or reduction in coverage in any policy.

B. The Commercial General Liability, Commercial Automobile Liability and umbrella policies where applicable will include the City as an additional insured with respect to liability arising out of the performance of this contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. The Contractor agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

C. Provide and maintain minimum insurance limits as applicable.

G.2. Commercial General Liability

Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability:

Each Occurrence: $1,000,000

General Aggregate: $2,000,000

Products & Completed Operations Aggregate: $2,000,000

Personal and Advertising Injury: $1,000,000

Blanket Contractual Liability: $1,000,000

G.3. Commercial Automobile Liability

Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.

Combined Single Limit: $1,000,000

G.4. Worker's Compensation (Applicable to the State of Arizona)

Per Occurrence: Statutory

Employer's Liability: $1,000,000

Disease Each Employee: $1,000,000

Disease Policy Limit: $1,000,000

G.5. Garage Liability & Garage Keepers Liability – In addition to I, II, III

Garage Liability Limit $1,000,000

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

Garage Keeper's Liability – Direct Primary Coverage

Each Auto Limit: $500,000

Each Occurrence Limit: $1,000,000

*Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

G.6. Claims Made Insurance Coverage

If any or part of the required insurance is written on a claims-made basis, any policy retroactive date must precede the date of the contract and the Contractor must maintain such coverage for a period not less than three (3) years following contract expiration, termination or cancellation.

G.7. Additional Insurance Requirements

All Policies, excluding Employment Practices Liability and Professional Liability (Errors & Omissions), shall include or be endorsed to include the following provisions:

A. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor (Including Worker's Compensation).

B. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.

C. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

G.8. Notice of Coverage Modifications

Any changes material to compliance with this contract in the insurance policies above shall require (10) days written notice from the contractor to the City of Tucson. Such notice shall be sent directly to the Procurement Division.

G.9. Acceptability of Insurers

Contractors' insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

G.10. Verification of Coverage

Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after

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completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Procurement Division.

The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

G.11. Subcontractors

Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G.12. Exceptions

In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self- Insurance.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

H. STANDARD TERMS AND CONDITIONS

H.1. ADVERTISING

Contractor shall not advertise or publish information concerning this Contract without prior written consent of the City's Business Services Director.

H.2. AFFIRMATIVE ACTION

Contractor shall abide by the provisions of the Tucson Procurement Code Chapter 28, Article XII.

H.3. AMERICANS WITH DISABILITIES ACT (ADA)

The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101, et seq.) and applicable Federal regulations under the Act.

H.4. APPLICABLE LAW

This Contract shall be governed, and the City and Contractor shall have all remedies afforded to each, by the Tucson Procurement Code and the law of the State of Arizona. State law claims shall be brought only in Pima County Superior Court.

H.5. ASSIGNMENT-DELEGATION

No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of the Contractor shall be made without prior written permission of the City's Director of Business Services. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position by written notice.

H.6. CHILD/SWEAT-FREE LABOR POLICY

The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.

H.7. CLEAN UP

The Contractor shall at all times keep the contract area, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of the City. Upon completion of the repair, the Contractor shall leave the work and premises in clean, neat, and workmanlike condition.

H.8. COMMENCEMENT OF WORK

The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives purchase order or is otherwise directed to do so, in writing, by the City.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

H.9. CONFIDENTIALITY OF RECORDS

The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.

H.10. CONTRACT AMENDMENTS

The Business Services Department has the sole authority to:

A. Amend the contract or enter into supplemental verbal or written agreements;

B. Grant time extensions or contract renewals;

C. Otherwise modify the scope or terms and provisions of the contract.

This Contract shall only be modified with the approval of the Department of Business Services. Except in the case of a documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Business Services Department through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

H.11. CONTRACT

The Contract shall be based upon the Request for Proposal issued by the City and the Offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City's Director of Business Services, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

H.12. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH

Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.

H.13. DUPLEXED/RECYCLED PAPER

In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Contractor shall ensure that, whenever practicable, all printed materials produced by the Contractor in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

H.14. EQUAL PAY

The Contractor shall comply with the applicable provisions of the Equal Pay Act of 1963 (Pub.L. 88-38, 29 U.S.C. section 206(d)); Title VII of the Civil Rights Act of 1964 (Pub.L. 88-352, 42 U.S.C. 2000e et.seq.; and, the Lily Ledbetter Fair Pay Act of 2009 (Pub.L. 111-2).

H.15. EXCLUSIVE POSSESSION

All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.

H.16. FEDERAL IMMIGRATION LAWS AND REGULATIONS

Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.

H.17. FORCE MAJEURE

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

H.18. GRATUITIES

The City may, by written notice to the Contractor, terminate this Contract if it is found that gratuities, in the form of entertainment, gifts, meals or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

H.19. HUMAN RELATIONS

Contractor shall abide by the provisions of the Tucson City Code Chapter 28, Article XII.

H.20. INDEMNIFICATION

To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The Contractors agrees to waive all rights of subrogation against the City of Tucson, it's agents, representatives, officers, directors, officials, employees and volunteers for losses arising from the work performed by the Contractor for the City of Tucson.

Contractor is responsible for compliance with the Patient Protection and Affordable Care Act (ACA), for its employees in accordance with 26 CFR §54. 4980H. Additionally, Contractor is responsible for all applicable IRS reporting requirements related to ACA. If Contractor or any of Contractor's employees is certified to the City as having received a premium tax credit or cost sharing reduction which contributes to or triggers an assessed penalty against the City, or Contractor fails to meet reporting requirements pursuant to section 6056 resulting in a penalty to City, Contractor indemnifies City from and shall pay any assessed tax penalty.

H.21. INDEPENDENT CONTRACTOR

It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such

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expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees.

H.22. INSPECTION AND ACCEPTANCE

All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the Contractor's risk and may be returned to the Contractor. If returned, all costs are the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.

H.23. INTERPRETATION-PAROL EVIDENCE

This Contract is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or consent in the course of performance under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.

H.24. ISREAL BOYCOTT DIVESTMENT

Acceptance of the contract warrants that the vendor is in compliance with A.R.S. § 35-393 and does not participate in a boycott of Israel as that term is defined within A.R.S. § 35-393.

H.25. LICENSES

Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

H.26. LIENS

All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City's request, the Contractor shall provide a formal release of all liens.

H.27. NO REPLACEMENT OF DEFECTIVE TENDER

Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.

H.28. NON-EXCLUSIVE CONTRACT

Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Tucson. The City reserves the right to obtain like goods or services from another source when necessary.

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H.29. OVERCHARGES BY ANTITRUST VIOLATIONS

The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.

H.30. PAYMENT

The City's preferred method of payment is via credit card. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice. The invoice shall not be dated prior to the receipt of goods or completion of services.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

The Contractor's payment terms shall apply to all purchases and to all payment methods.

H.31. PROTECTION OF GOVERNMENT PROPERTY

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such property, the Contractor shall replace or repair the damage at no expense to the City, as determined and approved by the City's Director of Business Services. If the Contractor fails or refuses to make such repair or replacement, the City will determine a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.

H.32. PROVISIONS REQUIRED BY LAW

Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.

H.33. RECORDS

Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. Contractor shall maintain books, records, documents, and other evidence directly pertinent to the performance of the Work under this Contract in accordance with generally accepted accounting principles and practices consistently applied and other applicable local, state or federal regulations.

Contractor shall, at all times during the term of this Contract and for a period of three years after the completion of this Contract, maintain such records, together with such supporting or underlying documents and materials.

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Contractor shall ensure City has these rights with Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to City.

H.34. RIGHT TO AUDIT

The City and its authorized representatives shall have the right, upon reasonable written notice to Contractor, to cause an audit to be made of the Contractor's books and records which relate to its operations under this Contract. The audit shall be limited to the term of this Contract. The City shall have the right to examine and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Contract kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors and subcontractors. Such records shall include, but not be limited to, accounting records, subcontractor records, payment vouchers and invoices.

The Contractor shall at any time requested by City, whether during or after completion of this Contract, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by City. Such records shall be made available to City during normal business hours at the Contractor's office, place of business, an agreed to location, mailed or provided electronically.

If, as a result of such audit, the Contractor is liable to the City for the payment of any sum, Contractor shall promptly pay such sum to the City together with interest thereon at the rate of one percent (1%) per month from the date such sums should have been paid. Payment shall be made within 90 days from presentation of City's findings to Contractor.

If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, City may recoup the costs of the audit work from the Contractor. The City's rights under this provision shall survive the expiration or termination of the Contract

H.35. RIGHT TO ASSURANCE

Whenever one party to this Contract has reason to question, in good faith, the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as the other party's intent not to perform and as a cause for possible Contract termination.

H.36. RIGHT TO INSPECT

The City may, at reasonable times, and at the City's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any Contract as awarded or to be awarded.

H.37. RIGHTS AND REMEDIES

No provision in this document or in the Contractor's proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict

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performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

H.38. SEVERABILITY

The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.

H.39. SHIPMENT UNDER RESERVATION

No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.

H.40. SUBCONTRACTS

No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Director of Business Services.. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.

H.41. SUBSEQUENT EMPLOYMENT

The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Director of Business Services is received by the parties to this Contract, unless the notice specifies a later time.

H.42. TERMINATION OF CONTRACT

This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. The City, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to terminate the whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as specified in any of the following:

- In the opinion of the City, the Contractor provides personnel that do not meet the requirements of the Contract;

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- In the opinion of the City, the Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;
- In the opinion of the City, the Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;
- The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;
- In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the Contract;
- The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

H.43. TITLE AND RISK OF LOSS

The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

H.44. WARRANTIES

Contractor warrants that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.

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ATTACHMENT A
A - Exhibit B - OMNIA Partners Exhibits

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PPA ATTACHMENT#

OMNIA® PARTNERS

Requirements for National Cooperative Contract To Be Administered by OMNIA Partners

The following documents are used in evaluating and administering national cooperative contracts and are included for Supplier's review and response.

Exhibit A – Response for National Cooperative Contract

Exhibit B – Administration Agreement, Example

Exhibit C – Master Intergovernmental Cooperative Purchasing Agreement, Example

Exhibit D – Principal Procurement Agency Certificate, Example

Exhibit E – Contract Sales Reporting Template

Exhibit F – Federal Funds Certifications

Exhibit G – New Jersey Business Compliance

Exhibit H – Advertising Compliance Requirement

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Exhibit A
Response for National Cooperative Contract

1.0 Scope of National Cooperative Contract

Capitalized terms not otherwise defined herein shall have the meanings given to them in the Master Agreement or in the Administration Agreement between Supplier and OMNIA Partners.

1.1 Requirement

The City of Tucson (hereinafter defined and referred to as "Principal Procurement Agency"), on behalf of itself and the National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector ("OMNIA Partners"), is requesting proposals for Heavy Equipment, Parts, Accessories, Supplies and Related Services. The intent of this Request for Proposal is any contract between Principal Procurement Agency and Supplier resulting from this Request for Proposal ("Master Agreement") be made available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("Public Agencies"), through OMNIA Partners' cooperative purchasing program. The Principal Procurement Agency has executed a Principal Procurement Agency Certificate with OMNIA Partners, an example of which is included as Exhibit D, and has agreed to pursue the Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners as a Participating Public Agency in OMNIA Partners' cooperative purchasing program. Registration with OMNIA Partners as a Participating Public Agency is accomplished by Public Agencies entering into a Master Intergovernmental Cooperative Purchasing Agreement, an example of which is attached as Exhibit C, and by using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of the Master Intergovernmental Purchasing Cooperative Agreement or as otherwise agreed to. The terms and pricing established in the resulting Master Agreement between the Supplier and the Principal Procurement Agency will be the same as that available to Participating Public Agencies through OMNIA Partners.

All transactions, purchase orders, invoices, payments etc., will occur directly between the Supplier and each Participating Public Agency individually, and neither OMNIA Partners, any Principal Procurement Agency nor any Participating Public Agency, including their respective agents, directors, employees or representatives, shall be liable to Supplier for any acts, liabilities, damages, etc., incurred by any other Participating Public Agency. Supplier is responsible for knowing the tax laws in each state.

This Exhibit A defines the expectations for qualifying Suppliers based on OMNIA Partners' requirements to market the resulting Master Agreement nationally to Public Agencies. Each section in this Exhibit A refers to the capabilities, requirements, obligations, and prohibitions of competing Suppliers on a national level in order to serve Participating Public Agencies through OMNIA Partners.

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These requirements are incorporated into and are considered an integral part of this RFP. OMNIA Partners reserves the right to determine whether to make the Master Agreement awarded by the Principal Procurement Agency available to Participating Public Agencies, in its sole and absolute discretion, and any party submitting a response to this RFP acknowledges that any award by the Principal Procurement Agency does not obligate OMNIA Partners to make the Master Agreement available to Participating Procurement Agencies.

1.2 Marketing, Sales and Administrative Support

During the term of the Master Agreement OMNIA Partners intends to provide marketing, sales, partnership development and administrative support for Supplier pursuant to this section that directly promotes the Supplier's products and services to Participating Public Agencies through multiple channels, each designed to promote specific products and services to Public Agencies on a national basis.

OMNIA Partners will assign the Supplier a Director of Partner Development who will serve as the main point of contact for the Supplier and will be responsible for managing the overall relationship between the Supplier and OMNIA Partners. The Director of Partner Development will work with the Supplier to develop a comprehensive strategy to promote the Master Agreement and will connect the Supplier with appropriate stakeholders within OMNIA Partners including, Sales, Marketing, Contracting, Training, and Operations & Support.

The OMNIA Partners marketing team will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through channels that may include:

A. Marketing collateral (print, electronic, email, presentations)

B. Website

C. Trade shows/conferences/meetings

D. Advertising

E. Social Media

The OMNIA Partners sales teams will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through initiatives that may include:

A. Individual sales calls

B. Joint sales calls

C. Communications/customer service

D. Training sessions for Public Agency teams

E. Training sessions for Supplier teams

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The OMNIA Partners contracting teams will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through:

A. Serving as the subject matter expert for questions regarding joint powers authority and state statutes and regulations for cooperative purchasing
B. Training sessions for Public Agency teams
C. Training sessions for Supplier teams
D. Regular business reviews to monitor program success
E. General contract administration

Suppliers are required to pay an Administrative Fee of 3% of the greater of the Contract Sales under the Master Agreement and Guaranteed Contract Sales under this Request for Proposal. Supplier will be required to execute the OMNIA Partners Administration Agreement (Exhibit B).

1.3 Estimated Volume

The dollar volume purchased under the Master Agreement is estimated to be approximately $25 million annually. While no minimum volume is guaranteed to Supplier, the estimated annual volume is projected based on the current annual volumes among the Principal Procurement Agency, other Participating Public Agencies that are anticipated to utilize the resulting Master Agreement to be made available to them through OMNIA Partners, and volume growth into other Public Agencies through a coordinated marketing approach between Supplier and OMNIA Partners.

1.4 Award Basis

The basis of any contract award resulting from this RFP made by Principal Procurement Agency will, at OMNIA Partners' option, be the basis of award on a national level through OMNIA Partners. If multiple Suppliers are awarded by Principal Procurement Agency under the Master Agreement, those same Suppliers will be required to extend the Master Agreement to Participating Public Agencies through OMNIA Partners. Utilization of the Master Agreement by Participating Public Agencies will be at the discretion of the individual Participating Public Agency. Certain terms of the Master Agreement specifically applicable to the Principal Procurement Agency (e.g. governing law) are subject to modification for each Participating Public Agency as Supplier, such Participating Public Agency and OMNIA Partners shall agree without being in conflict with the Master Agreement as a condition of the Participating Agency's purchase and not a modification of the Master Agreement applicable to all Participating Agencies. Participating Agencies may request to enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in the Master Agreement (i.e. invoice requirements, order requirements, specialized delivery, diversity requirements such as minority and woman owned businesses, historically underutilized business, governing law, etc.) ("Supplemental Agreement"). It shall be

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the responsibility of the Supplier to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the Participating Agency. It shall further be the responsibility of the Supplier to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of the Master Agreement and adjust wage rates accordingly. In instances where supplemental terms and conditions create additional risk and cost for Supplier, Supplier and Participating Public Agency may negotiate additional pricing above and beyond the stated contract not-to-exceed pricing so long as the added price is commensurate with the additional cost incurred by the Supplier. Any supplemental agreement developed as a result of the Master Agreement is exclusively between the Participating Agency and the Supplier (Contract Sales are reported to OMNIA Partners).

All signed Supplemental Agreements and purchase orders issued and accepted by the Supplier may survive expiration or termination of the Master Agreement. Participating Agencies' purchase orders may exceed the term of the Master Agreement if the purchase order is issued prior to the expiration of the Master Agreement. Supplier is responsible for reporting all sales and paying the applicable Administrative Fee for sales that use the Master Agreement as the basis for the purchase order, even though Master Agreement may have expired.

1.5 Objectives of Cooperative Program

This RFP is intended to achieve the following objectives regarding availability through OMNIA Partners' cooperative program:

A. Provide a comprehensive competitively solicited and awarded national agreement offering the Products covered by this solicitation to Participating Public Agencies;

B. Establish the Master Agreement as the Supplier's primary go to market strategy to Public Agencies nationwide;

C. Achieve cost savings for Supplier and Public Agencies through a single solicitation process that will reduce the Supplier's need to respond to multiple solicitations and Public Agencies need to conduct their own solicitation process;

D. Combine the aggregate purchasing volumes of Participating Public Agencies to achieve cost effective pricing.

2.0 REPRESENTATIONS AND COVENANTS

As a condition to Supplier entering into the Master Agreement, which would be available to all Public Agencies, Supplier must make certain representations, warranties and covenants to both the Principal Procurement Agency and OMNIA Partners designed to ensure the success of the Master Agreement for all Participating Public Agencies as well as the Supplier.

2.1 Corporate Commitment

Supplier commits that (1) the Master Agreement has received all necessary corporate authorizations and support of the Supplier's executive management, (2) the Master Agreement is Supplier's primary "go to market" strategy for Public Agencies, (3) the

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Master Agreement will be promoted to all Public Agencies, including any existing customers, and Supplier will transition existing customers, upon their request, to the Master Agreement, and (4) that the Supplier has read and agrees to the terms and conditions of the Administration Agreement with OMNIA Partners and will execute such agreement concurrent with and as a condition of its execution of the Master Agreement with the Principal Procurement Agency. Supplier will identify an executive corporate sponsor and a separate national account manager within the RFP response that will be responsible for the overall management of the Master Agreement.

2.2 Pricing Commitment

Supplier commits the not-to-exceed pricing provided under the Master Agreement pricing is its lowest available (net to buyer) to Public Agencies nationwide and further commits that if a Participating Public Agency is eligible for lower pricing through a national, state, regional or local or cooperative contract, the Supplier will match such lower pricing to that Participating Public Agency under the Master Agreement.

2.3 Sales Commitment

Supplier commits to aggressively market the Master Agreement as its go to market strategy in this defined sector and that its sales force will be trained, engaged and committed to offering the Master Agreement to Public Agencies through OMNIA Partners nationwide. Supplier commits that all Master Agreement sales will be accurately and timely reported to OMNIA Partners in accordance with the OMNIA Partners Administration Agreement. Supplier also commits its sales force will be compensated, including sales incentives, for sales to Public Agencies under the Master Agreement in a consistent or better manner compared to sales to Public Agencies if the Supplier were not awarded the Master Agreement.

3.0 SUPPLIER RESPONSE

Supplier must supply the following information for the Principal Procurement Agency to determine Supplier's qualifications to extend the resulting Master Agreement to Participating Public Agencies through OMNIA Partners.

3.1 Company

A. Brief history and description of Supplier to include experience providing similar products and services.

For more than 90 years, Caterpillar Inc. has been making sustainable progress possible and driving positive change on every continent. Customers turn to Caterpillar to help them develop infrastructure, energy and natural resource assets. With 2020 sales and revenues of $42 billion, Caterpillar is the world's leading manufacturer of construction and mining equipment, diesel and natural gas engines, industrial gas turbines and diesel-electric locomotives. The company principally operates through its three product segments - Construction Industries, Resource Industries and Energy & Transportation - and provides financing and related services

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through its Financial Products segment. The Caterpillar Dealer organization has been a key component of Caterpillar's success. Caterpillar subscribes to the philosophy we need our dealers, and our customers to be successful, for us to continue to grow profitably. It's a symbiotic relationship where all benefit when all grow together. This success is evident in the fact that many of our dealers have been owned by the same family for multiple generations.

Caterpillar is the market leader and holds the highest North American share of the heavy equipment business. This leadership also extends to sales to governmental agencies. These figures are based on sales that have been publicly reported by our competition and does not consider market share adjustments for those not reporting.

One of the largest factors for Caterpillar's continued success is that our customers have realized that they get the best overall value when they purchase Caterpillar. When considering the total cost of ownership, it's important to include the following factors. For any specific product, the Cat dealer would be able to provide detailed information tailored to the local market.

- Operating costs (include fuel burn, a key trait for which Caterpillar is broadly considered most efficient)
- Maintenance costs
- Repair costs
- Safety design and performance
- Productivity
- Ease of operation
- Reliability
- Resale value

B. Total number and location of salespersons employed by Supplier.

Cat machines and engines are distributed principally through a worldwide network of dealers. In the United States there are 45 dealers, two in Canada and 114 located outside North America.

Caterpillar has a team of 45 sales reps that support our dealer network in achieving their sales goals. In addition, each dealer has a sales team that supports the end customers.

C. Number and location of support centers (if applicable) and location of corporate office.

Cat machines and engines are distributed principally through a worldwide network of dealers. There are 45 dealers in the United States, two in Canada and 114 located outside North America.

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Caterpillar and Cat Dealers will provide governmental customers with a reliable and viable distribution channel. They will manage the entire sales process from machine selection, quotation, PO acceptance and product delivery. In addition to sales, Cat dealers also will provide parts and service support. All Participating Dealers are financially healthy with no outstanding issues that would disrupt service within these territories. Cat dealers average more than 60 years of experience within their respective territories. Specific information about dealers is located on http://www.cat.com/en_US/support/dealer-locator.html

Caterpillar's North American dealer network currently employs over 59,000 total employees. Many dealers have salespersons dedicated to the governmental market. Approximately 70% of dealer employees are dedicated to product support. The Cat dealer network brings value to customers through unmatched service, integrated solutions, after-sales support, and fast and efficient parts fulfillment.

D. Annual sales for the three previous fiscal years.

2018 - $54.7B

2019 – $53.8B

2020 – $41.7B

a. Submit FEIN and Dunn & Bradstreet report.

- Caterpillar's Employee Identification Number is 37-0602744
- Please refer to vendor's response section, Dunn & Bradstreet

E. Describe any green or environmental initiatives or policies.

To view Caterpillar's achievements in sustainability, please view our most recent Sustainability Report at:

https://reports.caterpillar.com/sr/index.php?_ga=2.30262591.1428625582.1630336780-1389673808.1608044669

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F. Describe any diversity programs or partners supplier does business with and how Participating Agencies may use diverse partners through the Master Agreement. Indicate how, if at all, pricing changes when using the diversity program. If there are any diversity programs, provide a list of diversity alliances and a copy of their certifications.

Two CAT dealers in North America are owned by women: Foley Equipment, with territory primarily in Kansas and Missouri; and Cashman Equipment based in Nevada. In addition to these two owners, there are 31 other women in our NA dealer network who hold the titles of President, Vice President or Director.

One of the more recognized initiatives within Caterpillar's Global Supply Network Division is the Caterpillar Inc. Proprietary Information Supplier Diversity Program which spurs economic growth by increasing business opportunities to minority-owned, women-owned, veteran and service-disabled veteran-owned, small, disadvantaged businesses and those certified in HUBZones, all while ensuring expectations are met with regards to quality, velocity, capacity, and cost. Currently more than 37% of our direct and indirect purchasing is conducted with suppliers in these categories.

Caterpillar is a proud member of the National Minority Supplier Development Council (NMSDC). WE also use the System for Aware Management (SAM), SBA, and NMSDC databases to locate SDB, VOSB, SDVOSB and HUBZone suppliers.

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Supplier Diversity is discussed with Global Supply Network Division leadership during the Monthly Operating Results Review meetings. This in turn forces accountability for diverse supplier inclusion by measuring drivers, such is the number of sourcing projects, which include Diverse Suppliers and the values of the projects in which they participate. The goal is to create greater transparency to determine which teams are creating inclusive environments and which are not.

G. Indicate if supplier holds any of the below certifications in any classified areas and include proof of such certification in the response:

a. Minority Women Business Enterprise

☐ Yes ☐ No

If yes, list certifying agency: _____

b. Small Business Enterprise (SBE) or Disadvantaged Business Enterprise (DBE)

☐ Yes ☐ No

If yes, list certifying agency: _____

c. Historically Underutilized Business (HUB)

☐ Yes ☐ No

If yes, list certifying agency: _____

d. Historically Underutilized Business Zone Enterprise (HUBZone)

☐ Yes ☐ No

If yes, list certifying agency: _____

e. Other recognized diversity certificate holder

☐ Yes ☐ No

If yes, list certifying agency: _____

H. List any relationships with subcontractors or affiliates intended to be used when providing services and identify if subcontractors meet minority-owned standards. If any, list which certifications subcontractors hold and certifying agency.

Caterpillar is a proud member of the National Minority Supplier Development Council (NMSDC). WE also use the System for Aware Management (SAM), SBA, and NMSDC databases to locate SDB, VOSB, SDVOSB and HUBZone suppliers.

I. Describe how supplier differentiates itself from its competitors.

BEST OVERALL VALUE / LOWEST LIFE CYCLE COST:

CAT products deliver the best value for the money. While we rarely have the lowest initial purchase price, we are happy to demonstrate to customers that our machines offer the lowest overall owning and operating costs when factors such as fuel efficiency, repair frequency, productivity, and resale value are factored in. We believe that government

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agencies are tasked to be the best stewards of taxpayer funds and our products can prove that they are the best solution. OMNIA Partners members are in the best position to allow these discussions to take place in contrast to a local bid situation where the focus is often only on initial price.

CAT SAFETY SERVICES / SAFETY FEATURES:

In addition to the tangible, measurable aspects of the life cycle cost equation, we also bring our focus on safety to every product that we manufacture. Quantifying a human life or debilitating injury is impossible, but each machine has industry-leading features that strive to minimize the possibility for accidents.

In addition to built-in safety features, we also offer a suite of aftermarket products and services that are unique in the industry.

Caterpillar Safety Services offers culture, jobsite and leadership assessments; safety and leadership training workshops; and a comprehensive continuous improvement process through consultative services. Services are facilitated by Safety Services consultants and training products can be purchased for self-implementation. Details on products and services are available at www.cat.com/safety. These products and services are available at a 15% discount from the list price.

Technology Enabled Safety Solutions are tangible products designed to assist the implementation of a safety culture. We are pleased to offer these unique products at a 5% discount off list price.

PRODUCT ATTRIBUTES:

Each product we sell offers unique operating, safety, and cost-savings advantages that are exclusive to Caterpillar. It is outside the scope of this response to itemize these differentiators. However, we provide many details on our web page at www.cat.com.

J. Describe any present or past litigation, bankruptcy or reorganization involving supplier.

Regarding present and past litigation, Caterpillar, its subsidiaries and divisions strive to conduct business using a strict Code of Conduct. When litigation does occur, we take is seriously. Any current or past litigation will not keep Caterpillar from meeting its contract obligations. Caterpillar has never filed for bankruptcy nor had material reorganizations that will impact its ability to meet contract obligations.

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K. Felony Conviction Notice: Indicate if the supplier

a. is a publicly held corporation and this reporting requirement is not applicable;

N/A Caterpillar Inc. is a publicly held corporation

b. is not owned or operated by anyone who has been convicted of a felony; or

c. is owned or operated by and individual(s) who has been convicted of a felony and provide the names and convictions.

L. Describe any debarment or suspension actions taken against supplier

3.2 Distribution, Logistics

A. Each offeror awarded an item under this solicitation may offer their complete product and service offering/a balance of line. Describe the full line of products and services offered by supplier.

Caterpillar is the world's leading manufacturer of construction and mining equipment, diesel and natural gas engines, industrial gas turbines and diesel-electric locomotives. Caterpillar also provides financing and related services through its Financial Products division.

All products sold by Caterpillar through its dealer network in the United States are included in this proposal. The product lines most relevant to this solicitation include but are not limited to:

Articulated Trucks
Asphalt Pavers
Backhoe Loaders
Cold Planers
Compactors (including landfill)
Compact Track Loaders
Multi-Terrain Loaders
Dozers (including landfill)
Excavators
Forestry Equipment
Generators
Motor Graders
Off-Highway Trucks
Road Reclaimers
Site Prep Tractors
Skid Steer Loaders
Telehandlers
Track Loaders
Wheel Dozers
Wheel Excavators
Wheel Loaders
Wheel Tractor Scrapers (including landfill)

B. Describe how supplier proposes to distribute the products/service nationwide. Include any states where products and services will not be offered under the Master Agreement, including U.S. Territories and Outlying Areas.

Caterpillar products and services are distributed principally through a worldwide organization of dealers (dealer network), which includes 45 located in the United States, and two in Canada.

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C. Describe how Participating Agencies are ensured they will receive the Master Agreement pricing; include all distribution channels such as direct ordering, retail or in-store locations, through distributors, etc. Describe how Participating Agencies verify and audit pricing to ensure its compliance with the Master Agreement.

Caterpillar has a dedicated governmental team in charge of training, communicating, and creating support programs for all the dealers in North America. This team will ensure all dealers are aware of the master agreement and its corresponding pricing. Participating agencies can reach out to the team to verify the pricing based on our price pages.

D. Identify all other companies that will be involved in processing, handling or shipping the products/service to the end user.

All North American Cat Dealers and or their subsidiaries will be involved in the processing, handling or shipping the products / services to the end user.

E. Provide the number, size and location of Supplier's distribution facilities, warehouses and retail network as applicable.

Caterpillar operates parts distribution centers in the following locations: Morton, Illinois; Arvin, California; Denver, Colorado; Miami, Florida; Atlanta, Georgia; St. Paul, Minnesota; Clayton, Ohio; York, Pennsylvania; Waco, Texas; Spokane, Washington; Melbourne, Australia; Queensland, Australia; Grimbergen, Belgium; Piracicaba, Brazil; Shanghai, China; San Luis Potosi, Mexico; Singapore, Republic of Singapore; Moscow, Russia; Johannesburg, South Africa, and Dubai, United Arab Emirates. We also own or lease other facilities that support our distribution activities.

Our principal manufacturing facilities include those used by the following segments in the following locations:

Segment	U.S. Facilities	Facilities Outside the U.S.
Construction Industries	**Arkansas:** North Little Rock **Georgia:** Athens, LaGrange **Illinois:** Aurora, Decatur, East Peoria **Kansas:** Wamego **Minnesota:** Brooklyn Park **North Carolina:** Clayton, Sanford **Texas:** Victoria, Waco	**Brazil:** Campo Largo, Piracicaba **China:** Suzhou, Wujiang, Xuzhou, Qingzhou **France:** Grenoble, Echirolles **Hungary:** Godollo **India:** Thiruvallar **Indonesia:** Jakarta **Italy:** Minerbio **Japan:** Akashi **Mexico:** Torreon **Netherlands:** Den Bosch **Poland:** Janow, Sosnowiec **Thailand:** Rayong **United Kingdom:** Desford, Stockton

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Resource Industries	**Illinois:** Aurora, Decatur, East Peoria, Joliet **South Carolina:** Sumter **Tennessee:** Dyersburg **Texas:** Denison **Wisconsin:** South Milwaukee	**China:** Langfang, Wuxi **France:** Arras **Germany:** Dortmund, Lunen **India:** Hosur, Thiruvallur **Indonesia:** Batam **Italy:** Jesi **Japan:** Sagamihara **Mexico:** Acuna, Monterrey, Reynosa **Northern Ireland:** Belfast **Russia:** Tosno **Thailand:** Rayong **United Kingdom:** Peterlee
Energy & Transportation	**Alabama:** Albertville, Montgomery **California:** San Diego **Colorado:** Denver **Georgia:** Griffin, Alpharetta **Illinois:** Island Lake, LaGrange, Mossville, Mapleton, Pontiac **Indiana:** Lafayette, Muncie **Oklahoma:** Broken Arrow, Sulphur **North Carolina:** Winston-Salem **Kentucky:** Decoursey, Mayfield **Texas:** Channelview, DeSoto, Mabank, San Antonio, Schertz, Seguin, Sherman	**Australia:** Revesby, Redbank **Brazil:** Curitiba, Hortolandia, Piracicaba, Sete Lagoas **China**: Tianjin, Wuxi **Czech Republic:** Zatec, Zebrak **Germany:** Kiel, Mannheim, Rostock **India:** Hosur, Aurangabad **Mexico:** San Luis Potosi, Tijuana **Republic of Singapore:** Singapore **Sweden:** Ockero Islands **Switzerland:** Riazzino **United Kingdom:** Lame, Monkstown, Peterborough, Sandiacre, South Queensferry, Springvale, Stafford, Wimborne

3.3 Marketing and Sales

A. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to immediately implement the Master Agreement as supplier's primary go to market strategy for Public Agencies to supplier's teams nationwide, to include, but not limited to:

i. Executive leadership endorsement and sponsorship of the award as the public sector go-to-market strategy within first 10 days

ii. Training and education of Supplier's national sales force with participation from the Supplier's executive leadership, along with the OMNIA Partners team within first 90 days

SEE ALSO EXCEPTIONS DOCUMENT
Exception to section **3.4 Marketing and Sales, section A.**
Vendor requests verbiage to read as follows:

A. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the go to market strategy for Public Agencies to your teams nationwide, to include, but not limited to:

i. Training and education of your national sales force of your company, along with the dealer team within first 90 days

Initially, a National Press Release will be issued followed by a formal announcement of the award to Caterpillar's field force and Caterpillar's Dealer network. We anticipate this first communication to take place within the first 30 days.

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Supplier commits to market the Master Agreement and that its sales force will be trained to offering the Master Agreement to Public Agencies through OMNIA nationwide. Supplier commits that all Master Agreement sales will be accurately and timely reported to OMNIA in accordance with the OMNIA Administration Agreement.

Along with these communications a training package will be developed and presented to Caterpillar's Dealer sales force. Due to the number of salesmen, multiple sessions may be required. The initial training package will have an expected delivery date of no later than 60 days after the announcement of the award. Along with the live training offering, a static training package will be added to Caterpillar's internal website for future reference.

Within this same timeframe Caterpillar will coordinate with OMNIA representatives regarding any additional communication and or training opportunities to promote the Master Agreement.

B. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to market the Master Agreement to current Participating Public Agencies, existing Public Agency customers of Supplier, as well as to prospective Public Agencies nationwide immediately upon award, to include, but not limited to:

i. Creation and distribution of a co-branded press release to trade publications

ii. Announcement, Master Agreement details and contact information published on the Supplier's website within first 90 days

iii. Design, publication and distribution of co-branded marketing materials within first 90 days

iv. Commitment to attendance and participation with OMNIA Partners at national (i.e. NIGP Annual Forum, NPI Conference, etc.), regional (i.e. Regional NIGP Chapter Meetings, Regional Cooperative Summits, etc.) and supplier-specific trade shows, conferences and meetings throughout the term of the Master Agreement

v. Commitment to attend, exhibit and participate at the NIGP Annual Forum in an area reserved by OMNIA Partners for partner suppliers. Booth space will be purchased and staffed by Supplier. In addition, Supplier commits to provide reasonable assistance to the overall promotion and marketing efforts for the NIGP Annual Forum, as directed by OMNIA Partners.

vi. Design and publication of national and regional advertising in trade publications throughout the term of the Master Agreement

vii. Ongoing marketing and promotion of the Master Agreement throughout its term (case studies, collateral pieces, presentations, promotions, etc.)

viii. Dedicated OMNIA Partners internet web-based homepage on Supplier's website with:

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- OMNIA Partners standard logo;
- Copy of original Request for Proposal;
- Copy of Master Agreement and amendments between Principal Procurement Agency and Supplier;
- Summary of Products and pricing;
- Marketing Materials
- Electronic link to OMNIA Partners' website including the online registration page;
- A dedicated toll-free number and email address for OMNIA Partners

SEE ALSO EXCEPTIONS DOCUMENT
Exception to section **3.4 Marketing and Sales, section B.**
Vendor requests verbiage to read as follows:

B. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to market the Master Agreement to current Participating Public Agencies, existing Public Agency customers of Supplier, as well as to prospective Public Agencies nationwide immediately upon award, to include, but not limited to:
   i. Creation and distribution of a co-branded press release to trade publications.
   ii. Announcement, contract details and contact information published on the company website.
   iii. Design, publication and distribution of co-branded marketing materials.
   iv. Commitment to attend, exhibit and participate at the NIGP Annual Forum in an area reserved by National IPA for partner suppliers. Booth space will be purchased and staffed by your company. In addition, you commit to provide reasonable assistance to the overall promotion and marketing efforts for the NIGP Annual Forum.
   v. Design and publication of national and regional advertising in trade publications throughout the term of the Master Agreement
   vi. Ongoing marketing and promotion of the Master Agreement throughout its term (case studies, collateral pieces, presentations, etc.)

As noted previously, a National Press Release will be made within the first 30 days of the award. It will be up to the individual Cat Dealer to determine participation in supporting the Master Agreement and ultimately up to the end user to choose the best method of purchase to meet their individual needs.

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Caterpillar will commit resources to develop both hard and electronic marketing pieces for Cat Dealers to support this effort along with the inclusion of OMNIA's branding on any future cooperative contract advertising pieces.

As a member of the Vendor Council, Caterpillar is in full support of all NIGP efforts regarding cooperative purchasing and is planning to purchase and staff a booth space for the 2021 NIGP Annual Forum.

Caterpillar will support advertising initiatives that are in the form of electronic media pieces that will be distributed through the following online trade publications and networks:

C. Describe how Supplier will transition any existing Public Agency customers' accounts to the Master Agreement available nationally through OMNIA Partners. Include a list of current cooperative contracts (regional and national) Supplier holds and describe how the Master Agreement will be positioned among the other cooperative agreements.

SEE ALSO EXCEPTIONS DOCUMENT
Exception to section **3.4 Marketing and Sales, section C.**
Vendor requests verbiage to read as follows:

C. Include a list of current cooperative contracts (regional and national) your company holds and describe how the Master Agreement will be positioned among the other cooperative agreements.

Caterpillar presently holds four cooperative contracts. Those contracts are Sourcewell Heavy Equipment Contract # 032119; Sourcewell CAT Diesel & Natural Gas Generator Sets Contract # 120617; Sourcewell Rental Contract # 062320; and NASPO Heavy Equipment Contract # OK-SW-192.

For purposes of this proposal, all heavy equipment cooperative contracts provide the same product offering and discount structure.

D. Acknowledge Supplier agrees to provide its logo(s) to OMNIA Partners and agrees to provide permission for reproduction of such logo in marketing communications and promotions. Acknowledge that use of OMNIA Partners logo will require permission for reproduction, as well.

See attachment "OMNIA Trademark License Addendum", provided in the ATTACHMENTS section of this RFP.

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E. Confirm Supplier will be proactive in direct sales of Supplier's goods and services to Public Agencies nationwide and the timely follow up to leads established by OMNIA Partners. All sales materials are to use the OMNIA Partners logo. At a minimum, the Supplier's sales initiatives should communicate:

i. Master Agreement was competitively solicited and publicly awarded by a Principal Procurement Agency

ii. Best government pricing

iii. No cost to participate

iv. Non-exclusive

Should Caterpillar be awarded the contract, Caterpillar ensures that training and marketing materials associated to the Master Agreement will clearly communicate the advantages as noted in **Section 3.4 Marketing and Sales, subsection A and B.**

F. Confirm Supplier will train its national sales force on the Master Agreement. At a minimum, sales training should include:

i. Key features of Master Agreement

ii. Working knowledge of the solicitation process

iii. Awareness of the range of Public Agencies that can utilize the Master Agreement through OMNIA Partners

iv. Knowledge of benefits of the use of cooperative contracts

Should Caterpillar be awarded the contract, Caterpillar ensures that training and marketing materials associated with the Master Agreement will be completed as noted in **Section 3.4 Marketing and Sales, subsection A and B.**

G. Provide the name, title, email and phone number for the person(s), who will be responsible for:

i. Executive Support
ii. Marketing
iii. Sales
iv. Sales Support
v. Financial Reporting
vi. Accounts Payable
vii. Contracts

Nationally, the contract will be managed by:

Tirena Pavelka
Governmental Account Manager
100 NE Adams St.
Peoria, IL 61629
Office: 309-675-1589
pavelka_tirena_l@cat.com

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H. Describe in detail how Supplier's national sales force is structured, including contact information for the highest-level executive in charge of the sales team.

Caterpillar's North American field force is divided into eight districts including Canada. Each district has marketing representatives that are responsible for working with assigned dealers within their territory. The eight districts are divided into a Western Region and an Eastern Region. Both a Western Region Manager and an Eastern Region Manager report to Patrick Kearns who serves as the Americas Industry Region Manager.

I. Explain in detail how the sales teams will work with the OMNIA Partners team to implement, grow and service the national program.

Through our governmental specialists and the contract manager, Caterpillar will develop training materials along with marketing initiatives specific to the cooperative purchasing model to ensure that dealers are equipped with the necessary tools to present the message to the customer with confidence

I. Explain in detail how Supplier will manage the overall national program throughout the term of the Master Agreement, including ongoing coordination of marketing and sales efforts, timely new Participating Public Agency account set-up, timely contract administration, etc.

The contract manager will be the single point of contact for any issues related to supporting, maintaining, and promoting the contract. It will be up to each individual dealer to identify those customers that would benefit from the program's use and will promote it accordingly

J. State the amount of Supplier's Public Agency sales for the previous fiscal year. Provide a list of Supplier's top 10 Public Agency customers, the total purchases for each for the previous fiscal year along with a key contact for each.

Caterpillar's governmental sales in 2020 were $999M from 5,200 units.

Customers who purchase Caterpillar equipment are ultimately the customers of the Cat Dealers who serve them. As such Caterpillar does not require dealers to provide the contact information for their customers unless extenuating circumstances mandate it. Caterpillar also regards all customer transaction information as confidential and reserves the right to withhold such information until such time a legal requirement would warrant it.

K. Describe Supplier's information systems capabilities and limitations regarding order management through receipt of payment, including description of multiple platforms that may be used for any of these functions.

Caterpillar has a number of systems that manage the intake of orders from dealers and then to record and manage dealer sales to public agencies. Those systems vary depending on which products and services are sold.

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L. Provide the Contract Sales (as defined in Section 10 of the OMNIA Partners Administration Agreement) that Supplier will guarantee each year under the Master Agreement for the initial three years of the Master Agreement ("Guaranteed Contract Sales").

$_____.00 in year one
$_____.00 in year two
$_____.00 in year three

To the extent Supplier guarantees minimum Contract Sales, the Administrative Fee shall be calculated based on the greater of the actual Contract Sales and the Guaranteed Contract Sales.

Caterpillar does not guarantee contract sales volume, however, raising the admin fee to 2% of transaction price (1.4% of list price), if a non-competitive award is granted, is equivalent to a 25% sales volume increase vs our goal for 2021. Caterpillar also guarantees to work directly with OMNIA's team on a regular basis to monitor contract sales volumes and take action as needed to meet jointly set goals. Caterpillar expects to set goals on an annual basis that will grow this contract.

NOTE: Caterpillar recognizes that the City of Tucson and other participating agencies may have needs outside of the range of products offered by Caterpillar and its dealer network. To that end, we recognize that a non-competitive "multi-award" is acceptable to grow the volumes of this contract.

M. Even though it is anticipated many Public Agencies will be able to utilize the Master Agreement without further formal solicitation, there may be circumstances where Public Agencies will issue their own solicitations. The following options are available when responding to a solicitation for Products covered under the Master Agreement.

i. Respond with Master Agreement pricing (Contract Sales reported to OMNIA Partners).

ii. If competitive conditions require pricing lower than the standard Master Agreement not-to-exceed pricing, Supplier may respond with lower pricing through the Master Agreement. If Supplier is awarded the contract, the sales are reported as Contract Sales to OMNIA Partners under the Master Agreement.

iii. Respond with pricing higher than Master Agreement only in the unlikely event that the Public Agency refuses to utilize Master Agreement (Contract Sales are not reported to OMNIA Partners).

iv. If alternative or multiple proposals are permitted, respond with pricing higher than Master Agreement, and include Master Agreement as the alternate or additional proposal.

Detail Supplier's strategies under these options when responding to a solicitation.

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Exhibit B
Administration Agreement, Example

ADMINISTRATION AGREEMENT

THIS ADMINISTRATION AGREEMENT (this "**Agreement**") is made this____day of _____ 20_, between National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector ("**OMNIA Partners**"), and _____ ("**Supplier**").

RECITALS

WHEREAS, the_____(the "**Principal Procurement Agency**") has entered into a Master Agreement effective_____, Agreement No_____, by and between the Principal Procurement Agency and Supplier, (as may be amended from time to time in accordance with the terms thereof, the "**Master Agreement**"), as attached hereto as Exhibit A and incorporated herein by reference as though fully set forth herein, for the purchase of _____ (the "**Product**");

WHEREAS, said Master Agreement provides that any or all public agencies, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit (collectively, "**Public Agencies**"), that register (either via registration on the OMNIA Partners website or execution of a Master Intergovernmental Cooperative Purchasing Agreement, attached hereto as Exhibit B) (each, hereinafter referred to as a "**Participating Public Agency**") may purchase Product at prices stated in the Master Agreement;

WHEREAS, Participating Public Agencies may access the Master Agreement which is offered through OMNIA Partners to Public Agencies;

WHEREAS, OMNIA Partners serves as the cooperative contract administrator of the Master Agreement on behalf of Principal Procurement Agency;

WHEREAS, Principal Procurement Agency desires OMNIA Partners to proceed with administration of the Master Agreement; and

WHEREAS, OMNIA Partners and Supplier desire to enter into this Agreement to make available the Master Agreement to Participating Public Agencies and to set forth certain terms and conditions governing the relationship between OMNIA Partners and Supplier.

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained in this Agreement, OMNIA Partners and Supplier hereby agree as follows:

DEFINITIONS

1. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings given to them in the Master Agreement.

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TERMS AND CONDITIONS

2. The Master Agreement and the terms and conditions contained therein shall apply to this Agreement except as expressly changed or modified by this Agreement. Supplier acknowledges and agrees that the covenants and agreements of Supplier set forth in the solicitation and Supplier's response thereto resulting in the Master Agreement are incorporated herein and are an integral part hereof.

3. OMNIA Partners shall be afforded all of the rights, privileges and indemnifications afforded to Principal Procurement Agency by or from Supplier under the Master Agreement, and such rights, privileges and indemnifications shall accrue and apply with equal effect to OMNIA Partners, its agents, employees, directors, and representatives under this Agreement including, but not limited to, Supplier's obligation to obtain appropriate insurance.

4. OMNIA Partners shall perform all of its duties, responsibilities and obligations as the cooperative contract administrator of the Master Agreement on behalf of Principal Procurement Agency as set forth herein, and Supplier hereby acknowledges and agrees that all duties, responsibilities and obligations will be undertaken by OMNIA Partners solely in its capacity as the cooperative contract administrator under the Master Agreement.

5. With respect to any purchases by Principal Procurement Agency or any Participating Public Agency pursuant to the Master Agreement, OMNIA Partners shall not be: (i) construed as a dealer, re-marketer, representative, partner or agent of any type of the Supplier, Principal Procurement Agency or any Participating Public Agency; (ii) obligated, liable or responsible for any order for Product made by Principal Procurement Agency or any Participating Public Agency or any employee thereof under the Master Agreement or for any payment required to be made with respect to such order for Product; and (iii) obligated, liable or responsible for any failure by Principal Procurement Agency or any Participating Public Agency to comply with procedures or requirements of applicable law or the Master Agreement or to obtain the due authorization and approval necessary to purchase under the Master Agreement. OMNIA Partners makes no representation or guaranty with respect to any minimum purchases by Principal Procurement Agency or any Participating Public Agency or any employee thereof under this Agreement or the Master Agreement.

6. OMNIA Partners shall not be responsible for Supplier's performance under the Master Agreement, and Supplier shall hold OMNIA Partners harmless from any liability that may arise from the acts or omissions of Supplier in connection with the Master Agreement.

7. Supplier acknowledges that, in connection with its access to OMNIA Partners confidential information and/or supply of data to OMNIA Partners, it has complied with and shall continue to comply with all laws, regulations and standards that may apply to Supplier, including, without limitation: (a) United States federal and state information security and privacy statutes, regulations and/or best practices, including, without limitation, the Gramm-Leach-Bliley Act, the Massachusetts Data Security Regulations (201 C.M.R. 17.00 et. seq.), the Nevada encryption statute (N.R.S. § 603A), the California data security law (Cal. Civil Code § 1798.80 et. seq.) and California Consumer Privacy Act (Cal. Civil Code § 1798.100 et. seq.); and (b) applicable industry and regulatory standards and best practices (collectively, "**Data Regulations**").

With regard to Personal Information that Supplier collects, receives, or otherwise processes under the Agreement or otherwise in connection with performance of the Agreement, Supplier agrees that it will not: (i) sell, rent, release, disclose, disseminate, make available, transfer, or otherwise

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communicate orally, in writing, or by electronic or other means, such Personal Information to another business or third party for monetary or other valuable consideration; or (ii) retain, use, or disclose such Personal Information outside of the direct business relationship between Supplier and OMNIA Partners or for any purpose other than for the specific purpose of performance of the Agreement, including retaining, using, or disclosing such Personal Information for a commercial purpose other than for performance of the Agreement. By entering into the Agreement, Supplier certifies that it understands the specific restrictions contained in this Section 7 and will comply with them. For purposes hereof, "**Personal Information**" means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, and includes the specific elements of "personal information" as defined under Data Regulations, as defined herein. Supplier will reasonably assist OMNIA Partners in timely responding to any third party "request to know" or "request to delete" (as defined pursuant to Data Regulations) and will promptly provide OMNIA Partners with information reasonably necessary for OMNIA Partners to respond to such requests. Where Supplier collects Personal Information directly from Public Agencies or others on OMNIA Partners' behalf, Supplier will maintain records and the means necessary to enable OMNIA Partners to respond to such requests to know and requests to delete.

8. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OMNIA PARTNERS EXPRESSLY DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES REGARDING OMNIA PARTNERS' PERFORMANCE AS A CONTRACT ADMINISTRATOR OF THE MASTER AGREEMENT. OMNIA PARTNERS SHALL NOT BE LIABLE IN ANY WAY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR RELIANCE DAMAGES, EVEN IF OMNIA PARTNERS IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TERM OF AGREEMENT; TERMINATION

9. This Agreement shall be in effect so long as the Master Agreement remains in effect, provided, however, that the provisions of Sections 3 – 8 and 11 – 22, hereof and the indemnifications afforded by the Supplier to OMNIA Partners in the Master Agreement, to the extent such provisions survive any expiration or termination of the Master Agreement, shall survive the expiration or termination of this Agreement.

NATIONAL PROMOTION

10. OMNIA Partners and Supplier shall publicize and promote the availability of the Master Agreement's products and services to Public Agencies and such agencies' employees. Supplier shall require each Public Agency to register its participation in the OMNIA Partners program by either registering on the OMNIA Partners website (www.omniapartners.com/publicsector) or executing a Master Intergovernmental Cooperative Purchasing Agreement prior to processing the Participating Public Agency's first sales order. Upon request, Supplier shall make available to interested Public Agencies a copy of the Master Agreement and such price lists or quotes as may be necessary for such Public Agencies to evaluate potential purchases.

11. Supplier shall provide such marketing and administrative support as set forth in the solicitation resulting in the Master Agreement, including assisting in development of marketing materials as reasonably requested by Principal Procurement Agency and OMNIA Partners. Supplier shall be responsible for obtaining permission or license of use and payment of any license fees for all content and images Supplier provides to OMNIA Partners or posts on the OMNIA Partners website.

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Supplier shall indemnify, defend and hold harmless OMNIA Partners for use of all such content and images including copyright infringement claims. Supplier and OMNIA Partners each hereby grant to the other party a limited, revocable, non-transferable, non-sublicensable right to use such party's logo (each, the "**Logo**") solely for use in marketing the Master Agreement. Each party shall provide the other party with the standard terms of use of such party's Logo, and such party shall comply with such terms in all material respects. Both parties shall obtain approval from the other party prior to use of such party's Logo. Notwithstanding the foregoing, the parties understand and agree that except as provided herein neither party shall have any right, title or interest in the other party's Logo. Upon termination of this Agreement, each party shall immediately cease use of the other party's Logo.

ADMINISTRATIVE FEE, REPORTING & PAYMENT

12. An "Administrative Fee" shall be defined and due to OMNIA Partners from Supplier in the amount of percent (%) ("**Administrative Fee Percentage**") multiplied by the total purchase amount paid to Supplier, less refunds, credits on returns, rebates and discounts, for the sale of products and/or services to Principal Procurement Agency and Participating Public Agencies pursuant to the Master Agreement (as amended from time to time and including any renewal thereof) ("**Contract Sales**"). From time to time the parties may mutually agree in writing to a lower Administrative Fee Percentage for a specifically identified Participating Public Agency's Contract Sales.

13. Supplier shall provide OMNIA Partners with an electronic accounting report monthly, in the format prescribed by OMNIA Partners, summarizing all Contract Sales for each calendar month. The Contract Sales reporting format is provided as Exhibit C ("**Contract Sales Report**"), attached hereto and incorporated herein by reference. Contract Sales Reports for each calendar month shall be provided by Supplier to OMNIA Partners by the 10th day of the following month. Failure to provide a Contract Sales Report within the time and manner specified herein shall constitute a material breach of this Agreement and if not cured within thirty (30) days of written notice to Supplier shall be deemed a cause for termination of the Master Agreement, at Principal Procurement Agency's sole discretion, and/or this Agreement, at OMNIA Partners' sole discretion.

14. Administrative Fee payments are to be paid by Supplier to OMNIA Partners at the frequency and on the due date stated in Section 13, above, for Supplier's submission of corresponding Contract Sales Reports. Administrative Fee payments are to be made via Automated Clearing House (ACH) to the OMNIA Partners designated financial institution identified in Exhibit D. Failure to provide a payment of the Administrative Fee within the time and manner specified herein shall constitute a material breach of this Agreement and if not cured within thirty (30) days of written notice to Supplier shall be deemed a cause for termination of the Master Agreement, at Principal Procurement Agency's sole discretion, and/or this Agreement, at OMNIA Partners' sole discretion. All Administrative Fees not paid when due shall bear interest at a rate equal to the lesser of one and one-half percent (1 1/2%) per month or the maximum rate permitted by law until paid in full.

15. Supplier shall maintain an accounting of all purchases made by Participating Public Agencies under the Master Agreement. OMNIA Partners, or its designee, in OMNIA Partners' sole discretion, reserves the right to compare Participating Public Agency records with Contract Sales Reports submitted by Supplier for a period of four (4) years from the date OMNIA Partners receives such report. In addition, OMNIA Partners may engage a third party to conduct an independent audit of Supplier's monthly reports. In the event of such an audit, Supplier shall provide all materials reasonably requested relating to such audit by OMNIA Partners at the location designated by OMNIA Partners. In the event an underreporting of Contract Sales and a resulting underpayment of

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Administrative Fees is revealed, OMNIA Partners will notify the Supplier in writing. Supplier will have thirty (30) days from the date of such notice to resolve the discrepancy to OMNIA Partners' reasonable satisfaction, including payment of any Administrative Fees due and owing, together with interest thereon in accordance with Section 13, and reimbursement of OMNIA Partners' costs and expenses related to such audit.

GENERAL PROVISIONS

16. This Agreement, the Master Agreement and the exhibits referenced herein supersede any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereto and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained or incorporated herein shall be valid or binding. In the event of any conflict between the provisions of this Agreement and the Master Agreement, as between OMNIA Partners and Supplier, the provisions of this Agreement shall prevail.

17. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement or to recover any Administrative Fee and accrued interest, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which it may be entitled.

18. This Agreement and OMNIA Partners' rights and obligations hereunder may be assigned at OMNIA Partners' sole discretion to an affiliate of OMNIA Partners, any purchaser of any or all or substantially all of the assets of OMNIA Partners, or the successor entity as a result of a merger, reorganization, consolidation, conversion or change of control, whether by operation of law or otherwise. Supplier may not assign its obligations hereunder without the prior written consent of OMNIA Partners.

19. All written communications given hereunder shall be delivered by first-class mail, postage prepaid, or overnight delivery on receipt to the addresses as set forth below.

A. OMNIA Partners:

OMNIA Partners
Attn: President
840 Crescent Centre Drive
Suite 600
Franklin, TN 37067

B. Supplier:

_____
_____
_____
_____

20. If any provision of this Agreement shall be deemed to be, or shall in fact be, illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever, and this Agreement will be construed by limiting or invalidating such provision to the minimum extent necessary to make such provision valid, legal and enforceable.

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21. This Agreement may not be amended, changed, modified, or altered without the prior written consent of the parties hereto, and no provision of this Agreement may be discharged or waived, except by a writing signed by the parties. A waiver of any particular provision will not be deemed a waiver of any other provision, nor will a waiver given on one occasion be deemed to apply to any other occasion.

22. This Agreement shall inure to the benefit of and shall be binding upon OMNIA Partners, the Supplier and any respective successor and assign thereto; subject, however, to the limitations contained herein.

23. This Agreement will be construed under and governed by the laws of the State of Delaware, excluding its conflicts of law provisions and any action arising out of or related to this Agreement shall be commenced solely and exclusively in the state or federal courts in Williamson County Tennessee.

24. This Agreement may be executed in counterparts, each of which is an original but all of which, together, shall constitute but one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile, or by .pdf or similar electronic transmission, will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile, or by .pdf or similar electronic transmission, will be deemed to be their original signatures for any purpose whatsoever.

25. Signature acceptance is contingent on exceptions requested. SEE EXCEPTIONS DOCUMENT ATTACHMENT.

[CATERPILLAR INC]	**NATIONAL INTERGOVERNMENTAL PURCHASING ALLIANCE COMPANY, A DELAWARE CORPORATION D/B/A OMNIA PARTNERS, PUBLIC SECTOR**
DocuSigned by: Patrick Kearns 68A87926721B4E0...	
Signature	Signature
Patrick Kearns	Sarah Vavra
Name	Name
North America Industry Manager	Sr. Vice President, Public Sector Contracting
Title	Title
September 10, 2021	
Date 9/17/2021	Date

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Exhibit C
Master Intergovernmental Cooperative Purchasing Agreement, Example

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MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT

This Master Intergovernmental Cooperative Purchasing Agreement (this "**Agreement**") is entered into by and between those certain government agencies that execute a Principal Procurement Agency Certificate ("**Principal Procurement Agencies**") with National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector and/or Communities Program Management, LLC, a California limited liability company d/b/a U.S. Communities (collectively, "**OMNIA Partners**"), in its capacity as the cooperative administrator, to be appended and made a part hereof and such other public agencies ("**Participating Public Agencies**") who register to participate in the cooperative purchasing programs administered by OMNIA Partners and its affiliates and subsidiaries (collectively, the "**OMNIA Partners Parties**") by either registering on the OMNIA Partners website (www.omniapartners.com/publicsector or any successor website), or by executing a copy of this Agreement.

RECITALS

WHEREAS, after a competitive solicitation and selection process by Principal Procurement Agencies, in compliance with their own policies, procedures, rules and regulations, a number of suppliers have entered into "**Master Agreements**" (herein so called) to provide a variety of goods, products and services ("**Products**") to the applicable Principal Procurement Agency and the Participating Public Agencies;

WHEREAS, Master Agreements are made available by Principal Procurement Agencies through the OMNIA Partners Parties and provide that Participating Public Agencies may purchase Products on the same terms, conditions and pricing as the Principal Procurement Agency, subject to any applicable federal and/or local purchasing ordinances and the laws of the State of purchase; and

WHEREAS, in addition to Master Agreements, the OMNIA Partners Parties may from time to time offer Participating Public Agencies the opportunity to acquire Products through other group purchasing agreements.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and of the mutual benefits to result, the parties hereby agree as follows:

1. Each party will facilitate the cooperative procurement of Products.

2. The Participating Public Agencies shall procure Products in accordance with and subject to the relevant federal, state and local statutes, ordinances, rules and regulations that govern Participating Public Agency's procurement practices. The Participating Public Agencies hereby acknowledge and agree that it is the intent of the parties that all provisions of this Agreement and that Principal Procurement Agencies' participation in the program described herein comply with all applicable laws, including but not limited to the requirements of 42 C.F.R. § 1001.952(j), as may be amended from time to time. The Participating Public Agencies further acknowledge and agree that they are solely responsible for their compliance with all applicable "safe harbor" regulations, including but not limited to any and all obligations to fully and accurately report discounts and incentives.

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3. The Participating Public Agency represents and warrants that the Participating Public Agency is not a hospital or other healthcare provider and is not purchasing Products on behalf of a hospital or healthcare provider; provided that the foregoing shall not prohibit Participating Public Agency from furnishing health care services so long as the furnishing of healthcare services is not in furtherance of a primary purpose of the Participating Public Agency.

4. The cooperative use of Master Agreements shall be in accordance with the terms and conditions of the Master Agreements, except as modification of those terms and conditions is otherwise required by applicable federal, state or local law, policies or procedures.

5. The Principal Procurement Agencies will make available, upon reasonable request, Master Agreement information which may assist in improving the procurement of Products by the Participating Public Agencies.

6. The Participating Public Agency agrees the OMNIA Partners Parties may provide access to group purchasing organization ("**GPO**") agreements directly or indirectly by enrolling the Participating Public Agency in another GPO's purchasing program, provided that the purchase of Products through the OMNIA Partners Parties or any other GPO shall be at the Participating Public Agency's sole discretion.

7. The Participating Public Agencies (each a "**Procuring Party**") that procure Products through any Master Agreement or GPO Product supply agreement (each a "**GPO Contract**") will make timely payments to the distributor, manufacturer or other vendor (collectively, "**Supplier**") for Products received in accordance with the terms and conditions of the Master Agreement or GPO Contract, as applicable. Payment for Products and inspections and acceptance of Products ordered by the Procuring Party shall be the exclusive obligation of such Procuring Party. Disputes between Procuring Party and any Supplier shall be resolved in accordance with the law and venue rules of the State of purchase unless otherwise agreed to by the Procuring Party and Supplier.

8. The Procuring Party shall not use this Agreement as a method for obtaining additional concessions or reduced prices for purchase of similar products or services outside of the Master Agreement. Master Agreements may be structured with not-to-exceed pricing, in which cases the Supplier may offer the Procuring Party and the Procuring Party may accept lower pricing or additional concessions for purchase of Products through a Master Agreement.

9. The Procuring Party shall be responsible for the ordering of Products under this Agreement. A non-procuring party shall not be liable in any fashion for any violation by a Procuring Party, and, to the extent permitted by applicable law, the Procuring Party shall hold non-procuring party harmless from any liability that may arise from the acts or omissions of the Procuring Party.

10. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE OMNIA PARTNERS PARTIES EXPRESSLY DISCLAIM ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES REGARDING ANY PRODUCT, MASTER AGREEMENT AND GPO CONTRACT. THE OMNIA PARTNERS PARTIES SHALL NOT BE LIABLE IN ANY WAY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR RELIANCE DAMAGES, EVEN IF THE OMNIA PARTNERS PARTIES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, THE PROCURING PARTY ACKNOWLEDGES AND AGREES THAT THE OMNIA PARTNERS PARTIES SHALL HAVE NO LIABILITY FOR ANY ACT OR OMISSION BY A SUPPLIER OR

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OTHER PARTY UNDER A MASTER AGREEMENT OR GPO CONTRACT.

11. This Agreement shall remain in effect until termination by either party giving thirty (30) days' written notice to the other party. The provisions of Paragraphs 6 - 10 hereof shall survive any such termination.

12. This Agreement shall take effect upon (i) execution of the Principal Procurement Agency Certificate, or (ii) registration on the OMNIA Partners website or the execution of this Agreement by a Participating Public Agency, as applicable.

Participating Public Agency:	**OMNIA Partners, as the cooperative administrator on behalf of Principal Procurement Agencies:** **NATIONAL INTERGOVERNMENTAL PURCHASING ALLIANCE COMPANY COMMUNITIES PROGRAM MANAGEMENT, LLC**
Authorized Signature	Signature Sarah E. Vavra
Name	Name Sr. Vice President, Public Sector Contracting
Title and Agency Name	Title
Date	Date

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Exhibit D
Principal Procurement Agency Certificate, Example

PRINCIPAL PROCUREMENT AGENCY CERTIFICATE

In its capacity as a Principal Procurement Agency (as defined below) for National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector ("**OMNIA Partners**"), [NAME OF PPA] agrees to pursue Master Agreements for Products as specified in the attached Exhibits to this Principal Procurement Agency Certificate.

I hereby acknowledge, in my capacity as_____of and on behalf of [NAME OF PPA] ("**Principal Procurement Agency**"), that I have read and hereby agree to the general terms and conditions set forth in the attached Master Intergovernmental Cooperative Purchasing Agreement regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Principal Procurement Agencies to Participating Public Agencies nationwide through OMNIA Partners.

I understand that the purchase of one or more Products under the provisions of the Master Intergovernmental Cooperative Purchasing Agreement is at the sole and complete discretion of the Participating Public Agency.

Authorized Signature, [PRINCIPAL PROCUREMENT AGENCY]

_____
Signature

_____
Name

_____
Title

_____
Date

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Exhibit E
Contract Sales Reporting Template

Contract Sales Report submitted electronically in Microsoft Excel:

OMNIA® PARTNERS			Supplier Name:		Total Sales	$0.00										
			Contract Number:		Admin Fee %											
			Reporting Period:		Total Admin Fee	$0.00							FOR OMNIA USE ONLY			
Supplier Internal ID	ID	Name	Street Address	Street Address 2	City	State	Postal Code	Transaction Date	Sales Amount	Admin Fee %	Admin Fee	Notes	Wildcard	UniqueId	Rebate Due	Rebate Name

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Exhibit F
Federal Funds Certifications

FEDERAL CERTIFICATIONS
ADDENDUM FOR AGREEMENT FUNDED BY U.S. FEDERAL GRANT

TO WHOM IT MAY CONCERN:

Participating Agencies may elect to use federal funds to purchase under the Master Agreement. This form should be completed and returned.

DEFINITIONS

Contract means a legal instrument by which a non–Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non–Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward

Contractor means an entity that receives a contract as defined in Contract.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non–Federal entity that, consistent with 31 U.S.C. 6302–6305:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non–Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity's direct benefit or use;

(b) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non–Federal entity in carrying out the activity contemplated by the Federal award.

(c) The term does not include:

(1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(2) An agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(iv) A loan guarantee; or

(v) Insurance.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non–Federal entity

Federal award has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

(a)(1) The Federal financial assistance that a non–Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability; or

(2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non–Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability.

(b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of § 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).

(d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

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Non–Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

(a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
(b) Is not organized primarily for profit; and
(c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Obligations means, when used in connection with a non–Federal entity's utilization of funds under a Federal award, orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non–Federal entity during the same or a future period.

Pass-through entity means a non–Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Recipient means a non–Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

Simplified acquisition threshold means the dollar amount below which a non–Federal entity may purchase property or services using small purchase methods. Non–Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is $250,000, but this threshold is periodically adjusted for inflation. (Also see definition of § 200.67 Micro-purchase.)

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means a non–Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

The following certifications and provisions may be required and apply when Participating Agency expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the Participating Agency and the Participating Agency's subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable.

APPENDIX II TO 2 CFR PART 200

(A) Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when a Participating Agency expends federal funds, the Participating Agency reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does offeror agree? YES DS pk Initials of Authorized Representative of offeror

Version July 27, 2021

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(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

Pursuant to Federal Rule (B) above, when a Participating Agency expends federal funds, the Participating Agency reserves the right to immediately terminate any agreement in excess of $10,000 resulting from this procurement process in the event of a breach or default of the agreement by Offeror as detailed in the terms of the contract.

Does offeror agree? YES_____Initials of Authorized Representative of offeror

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 CFR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does offeror agree to abide by the above? YES_____Initials of Authorized Representative of offeror

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non - Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when a Participating Agency expends federal funds during the term of an award for all contracts and subgrants for construction or repair, offeror will be in compliance with all applicable Davis-Bacon Act provisions.

Does offeror agree? YES_____Initials of Authorized Representative of offeror

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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Pursuant to Federal Rule (E) above, when a Participating Agency expends federal funds, offeror certifies that offeror will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by Participating Agency resulting from this procurement process.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA)

Pursuant to Federal Rule (G) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency member resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the Executive Office of the President Office of Management and Budget (OMB) guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency. If at any time during the term of an award the offeror or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency, the offeror will notify the Participating Agency.

Does offeror agree? YES PK Initials of Authorized Representative of offeror

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

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Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term and after the awarded term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding $100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does offeror agree? YES____ DS PK ____ Initials of Authorized Representative of offeror

RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS

When federal funds are expended by Participating Agency for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The offeror further certifies that offeror will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does offeror agree? YES____ DS PK ____ Initials of Authorized Representative of offeror

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When Participating Agency expends federal funds for any contract resulting from this procurement process, offeror certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

Does offeror agree? YES____ DS PK ____ Initials of Authorized Representative of offeror

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

To the extent purchases are made with Federal Highway Administration, Federal Railroad Administration, or Federal Transit Administration funds, offeror certifies that its products comply with all applicable provisions of the Buy America Act and agrees to provide such certification or applicable waiver with respect to specific products to any Participating Agency upon request. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does offeror agree? YES____ DS PK ____ Initials of Authorized Representative of offeror

CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336

Offeror agrees that the Inspector General of the Agency or any of their duly authorized representatives shall have access to any documents, papers, or other records of offeror that are pertinent to offeror's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to offeror's personnel for the purpose of interview and discussion relating to such documents.

Does offeror agree? YES____ DS PK ____ Initials of Authorized Representative of offeror

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CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS

Offeror agrees that all contracts awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

Does offeror agree? YES DS PK Initials of Authorized Representative of offeror

Offeror agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that offeror certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Offeror's Name: Caterpillar Inc

Address, City, State, and Zip Code: 100 NE Adams St, Peoria IL 61629

Phone Number: 309 675 5181 Fax Number:

Printed Name and Title of Authorized Representative: Patrick Kearns, North America Industry Manager

Email Address: Kearns_Patrick@cat.com

Signature of Authorized Representative DocuSigned by: Patrick Kearns 68A87926721B4E0... Date: September 10, 2021

Version July 27, 2021

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FEMA SPECIAL CONDITIONS

Awarded Supplier(s) may need to respond to events and losses where products and services are needed for the immediate and initial response to emergency situations such as, but not limited to, water damage, fire damage, vandalism cleanup, biohazard cleanup, sewage decontamination, deodorization, and/or wind damage during a disaster or emergency situation. By submitting a proposal, the Supplier is accepted these FEMA Special Conditions required by the Federal Emergency Management Agency (FEMA).

“Contract” in the below pages under FEMA SPECIAL CONDITIONS is also referred to and defined as the “Master Agreement”.

“Contractor” in the below pages under FEMA SPECIAL CONDITIONS is also referred to and defined as “Supplier” or “Awarded Supplier”.

Conflicts of Interest

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a FEMA award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a firm considered for award. 2 C.F.R. § 200.318(c)(1); See also Standard Form 424D, ¶ 7; Standard Form 424B, ¶ 3. i. FEMA considers a “financial interest” to be the potential for gain or loss to the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties as a result of the particular procurement. The prohibited financial interest may arise from ownership of certain financial instruments or investments such as stock, bonds, or real estate, or from a salary, indebtedness, job offer, or similar interest that might be affected by the particular procurement. ii. FEMA considers an “apparent” conflict of interest to exist where an actual conflict does not exist, but where a reasonable person with knowledge of the relevant facts would question the impartiality of the employee, officer, or agent participating in the procurement. c. Gifts. The officers, employees, and agents of the Participating Public Agency nor the Participating Public Agency (“NFE”) must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, NFE’s may set standards for situations in which the financial interest is de minimus, not substantial, or the gift is an unsolicited item of nominal value. 2 C.F.R. § 200.318(c)(1). d. Violations. The NFE’s written standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the NFE. 2 C.F.R. § 200.318(c)(1). For example, the penalty for a NFE’s employee may be dismissal, and the penalty for a contractor might be the termination of the contract.

Contractor Integrity

A contractor must have a satisfactory record of integrity and business ethics. Contractors that are debarred or suspended, as described in and subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension), must be rejected and cannot receive contract awards at any level.

Public Policy

A contractor must comply with the public policies of the Federal Government and state, local government, or tribal government. This includes, among other things, past and current compliance with the:

a. Equal opportunity and nondiscrimination laws

b. Five affirmative steps described at 2 C.F.R. § 200.321(b) for all subcontracting under contracts supported by FEMA financial assistance; and FEMA Procurement Guidance June 21, 2016 Page IV- 7

c. Applicable prevailing wage laws, regulations, and executive orders

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Affirmative Steps

For any subcontracting opportunities, Contractor must take the following Affirmative steps:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Prevailing Wage Requirements

When applicable, the awarded Contractor (s) and any and all subcontractor(s) agree to comply with all laws regarding prevailing wage rates including the Davis-Bacon Act, applicable to this solicitation and/or Participating Public Agencies. The Participating Public Agency shall notify the Contractor of the applicable pricing/prevailing wage rates and must apply any local wage rates requested. The Contractor and any subcontractor(s) shall comply with the prevailing wage rates set by the Participating Public Agency.

Federal Requirements

If products and services are issued in response to an emergency or disaster recovery the items below, located in this FEMA Special Conditions section of the Federal Funds Certifications, are activated and required when federal funding may be utilized.

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

1. REMEDIES

a. Standard. Contracts for more than the simplified acquisition threshold, currently set at $250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

2. TERMINATION FOR CAUSE AND CONVENIENCE

a. Standard. All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. EQUAL EMPLOYMENT OPPORTUNITY

When applicable:

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a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246**,** *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II(C).

b. Key Definitions.

i. Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

ii. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. Required Language. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. DAVIS-BACON ACT

a. Standard. All prime construction contracts in excess of $2,000 awarded by non- Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

b. Applicability. The Davis-Bacon Act applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program.

c. Requirements. If applicable, the non-federal entity must do thefollowing:

    i. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

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ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II(D), contracts subject to the Davis-Bacon Act, must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti- Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

iii. Include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and AssistedConstruction").

Suggested Language. The following provides a sample contract clause:

Compliance with the Davis-Bacon Act.

a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

5. COPELAND ANTI-KICKBACK ACT

a. Standard. Recipient and subrecipient contracts must include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

b. Applicability. This requirement applies to all contracts for construction or repair work above $2,000 in situations where the Davis-Bacon Act also applies. It DOES NOT apply to the FEMA Public Assistance Program.

c. Requirements. If applicable, the non-federal entity must include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). Each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all

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suspected or reported violations to FEMA. Additionally, in accordance with the regulation, each contractor and subcontractor must furnish each week a statement with respect to the wages paid each of its employees engaged in work covered by the Copeland Anti-Kickback Act and the Davis Bacon Act during the preceding weekly payroll period. The report shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work.

Sample Language. The following provides a sample contract clause:

Compliance with the Copeland "Anti-Kickback" Act.

a. Contractor. The contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. §5.12."

6. CONTRACT WORK HOURS AND SAFETY STANDARDSACT

a. Standard. Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II(E). Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

b. Applicability. This requirement applies to all FEMA contracts awarded by the non- federal entity in excess of $100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

c. Suggested Language. The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

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Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in suchworkweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of
$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The Federal agency or loan/grant recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of thissection.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of thissection and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of thissection.

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT ORAGREEMENT

a. Standard. If the FEMA award meets the definition of "funding agreement" under 37C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non- Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F).

b. Applicability. This requirement applies to "*funding agreements*," but it DOES NOT apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case

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Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

c. Funding Agreements Definition. The regulation at 37 C.F.R. § 401.2(a) defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

a. Standard. If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II(G).

b. Applicability. This requirement applies to contracts awarded by a non-federal entity of amounts in excess of $150,000 under a federal grant.

c. Suggested Language. The following provides a sample contract clause.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the Participating Public Agency and understands and agrees that the Participating Public Agency will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicablestandards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the Participating Public Agency and understands and agrees that the Participating Public Agency

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will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided byFEMA.

9. DEBARMENT AND SUSPENSION

a. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

c. Requirements.

i. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II(H); and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530.

ii. In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any non-procurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipients.

iii. Specifically, a covered transaction includes the following contracts for goods or services:

1. The contract is awarded by a recipient or subrecipient in the amount of at least $25,000.

2. The contract requires the approval of FEMA, regardlessof amount.

3. The contract is for federally-required auditservices.

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4. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of$25,000.

d. Suggested Language. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the Participating Public Agency. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Participating Public Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. BYRD ANTI-LOBBYING AMENDMENT

a. Standard. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Federal awarding agency.

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of $100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

c. Suggested Language.

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Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

d. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, Caterpillar Inc, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the

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Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

DocuSigned by:
Patrick Kearns
68A87926721B4E0...

Signature of Contractor's Authorized Official

Patrick Kearns, North America Industry Manager

Name and Title of Contractor's Authorized Official

September 10, 2021

Date

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11. PROCUREMENT OF RECOVERED MATERIALS

a. Standard. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. §200.322.

b. Applicability. This requirement applies to all contracts awarded by a non- federal entity under FEMA grant and cooperative agreement programs.

c. Requirements. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

d. Suggested Language.

i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

12. ACCESS TO RECORDS

a. Standard. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

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Access to Records. The following access to records requirements apply to this contract:

i. The Contractor agrees to provide Participating Public Agency, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

iii. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

iv. In compliance with the Disaster Recovery Act of 2018, the Participating Public Agency and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the UnitedStates.

13. CHANGES

a. Standard. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

b. Applicability. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

14. DHS SEAL, LOGO, AND FLAGS

a. Standard. Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).

b. Applicability. FEMA recommends that all non-Federal entities place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

c. "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

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15. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

a. Standard. The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.

b. Applicability. FEMA recommends that all non-Federal entities place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

c. "This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives."

16. NO OBLIGATION BY FEDERAL GOVERNMENT

a. Standard. FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

c. "The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

17. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

a. Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or

fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

c. "The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract."

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Offeror agrees to comply with all terms and conditions outlined in the FEMA Special Conditions section of this solicitation.

Offeror's Name: Caterpillar Inc

Address, City, State, and Zip Code:100 NE Adams St, Peoria IL 61629

Phone Number: 309 675 5181 Fax Number:

Printed Name and Title of Authorized Representative:
Patrick Kearns, North America Industry Manager

Email Address: Kearns_Patrick@cat.com

Signature of AuthorizedRepresentative DocuSigned by: Patrick Kearns 68A87926721B4E0...

Date: September 10, 2021

Caterpillar: Confidential Green

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Exhibit G
New Jersey Business Compliance

NEW JERSEY BUSINESS COMPLIANCE

Suppliers intending to do business in the State of New Jersey must comply with policies and procedures required under New Jersey statues. All offerors submitting proposals must complete the following forms specific to the State of New Jersey. Completed forms should be submitted with the offeror's response to the RFP. Failure to complete the New Jersey packet will impact OMNIA Partners' ability to promote the Master Agreement in the State of New Jersey.

DOC #1 Ownership Disclosure Form

DOC #2 Non-Collusion Affidavit

DOC #3 Affirmative Action Affidavit

DOC #4 Political Contribution Disclosure Form

DOC #5 Stockholder Disclosure Certification

DOC #6 Certification of Non-Involvement in Prohibited Activities in Iran

DOC #7 New Jersey Business Registration CertificateNew Jersey

suppliers are required to comply with the following New Jersey statutes when applicable:

- all anti-discrimination laws, including those contained in N.J.S.A. 10:2-1 through N.J.S.A. 10:2-14, N.J.S.A. 10:5-1, and N.J.S.A. 10:5-31 through 10:5-38;
- Prevailing Wage Act, N.J.S.A. 34:11-56.26, for all contracts within the contemplation of the Act;
- Public Works Contractor Registration Act, N.J.S.A. 34:11-56.26; and
- Bid and Performance Security, as required by the applicable municipal or state statutes.

NOTE: Caterpillar currently does not use OMNIA in the State of New Jersey. If Caterpillar is awarded RFP 212816, we will make sure that the local dealer complies with all necessary local regulations for use of the OMNIA master agreement in the State of New Jersey.

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DOC #1

STATEMENT OF OWNERSHIP DISCLOSURE

N.J.S.A. 52:25-24.2 (P.L. 1977, c.33, as amended by P.L. 2016, c.43)

This statement shall be completed, certified to, and included with all bid and proposal submissions. Failure to submit the required information is cause for automatic rejection of the bid or proposal.

Name of Organization: _____

Organization Address: _____

Part I Check the box that represents the type of business organization:

☐ Sole Proprietorship (skip Parts II and III, execute certification in Part IV)

☐ Non-Profit Corporation (skip Parts II and III, execute certification in Part IV)

☐ For-Profit Corporation (any type) ☐ Limited Liability Company (LLC)

☐ Partnership ☐ Limited Partnership ☐ Limited Liability Partnership (LLP)

☐ Other (be specific): _____

Part II

☐ The list below contains the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. (**COMPLETE THE LIST BELOW IN THIS SECTION**)

OR

☐ No one stockholder in the corporation owns 10 percent or more of its stock, of any class, or no individual partner in the partnership owns a 10 percent or greater interest therein, or no member in the limited liability company owns a 10 percent or greater interest therein, as the case may be. (**SKIP TO PART IV**)

(Please attach additional sheets if more space is needed):

Name of Individual or Business Entity	Home Address (for Individuals) or Business Address

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Part III DISCLOSURE OF 10% OR GREATER OWNERSHIP IN THE STOCKHOLDERS, PARTNERS OR LLC MEMBERS LISTED IN PART II

If a bidder has a direct or indirect parent entity which is publicly traded, and any person holds a 10 percent or greater beneficial interest in the publicly traded parent entity as of the last annual federal Security and Exchange Commission (SEC) or foreign equivalent filing, ownership disclosure can be met by providing links to the website(s) containing the last annual filing(s) with the federal Securities and Exchange Commission (or foreign equivalent) that contain the name and address of each person holding a 10% or greater beneficial interest in the publicly traded parent entity, along with the relevant page numbers of the filing(s) that contain the information on each such person. **Attach additional sheets if more space is needed**.

Website (URL) containing the last annual SEC (or foreign equivalent) filing	Page #'s

Please list the names and addresses of each stockholder, partner or member owning a 10 percent or greater interest in any corresponding corporation, partnership and/or limited liability company (LLC) listed in Part II **other than for any publicly traded parent entities referenced above**. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member exceeding the 10 percent ownership criteria established pursuant to N.J.S.A. 52:25-24.2 has been listed. **Attach additional sheets if more space is needed.**

Stockholder/Partner/Member and Corresponding Entity Listed in Part II	Home Address (for Individuals) or Business Address

Part IV Certification

I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the ***<name of contracting unit>*** is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with ***<type of contracting unit>*** to notify the ***<type of contracting unit>*** in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the, permitting the ***<type of contracting unit>*** to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print):		Title:	
Signature:		Date:	

Version July 27, 2021

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DOC #2

NON-COLLUSION AFFIDAVIT

STANDARD BID DOCUMENT REFERENCE	
	Reference: VII-H
Name of Form:	**NON-COLLUSION AFFIDAVIT**
Statutory Reference:	No specific statutory reference State Statutory Reference N.J.S.A. 52:34-15
Instructions Reference:	Statutory and Other Requirements VII-H
Description:	The Owner's use of this form is optional. It is used to ensure that the bidder has not participated in any collusion with any other bidder or Owner representative or otherwise taken any action in restraint of free and competitive bidding.

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NON-COLLUSION AFFIDAVIT

State of New Jersey
County of _____ ss:

I,_____residing in _____
(name of affiant) (name of municipality)
in the County of_____and State of_____of full age, being duly sworn according to law on my oath depose and say that:

I am_____of the firm of _____
(title or position) (name of firm)

_____ the bidder making this Proposal for the bid

entitled_____, and that I executed the said proposal with
(title of bid proposal)
full authority to do so that said bidder has not, directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project; and that all statements contained in said proposal and in this affidavit are true and correct, and made with full knowledge that the _____ _____relies upon the truth of the statements contained in said Proposal
(name of contracting unit)
and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by _____.

Subscribed and sworn to

before me this day _____
Signature

_____, 2____ _____
(Type or print name of affiant under signature)

_____
Notary public of

My Commission expires _____

(Seal)

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DOC #3

AFFIRMATIVE ACTION AFFIDAVIT
(P.L. 1975, C.127)

Company Name: _____

Street: _____

City, State, Zip Code: _____

Proposal Certification:

Indicate below company's compliance with New Jersey Affirmative Action regulations. Company's proposal will be accepted even if company is not in compliance at this time. No contract and/or purchase order may be issued, however, until all Affirmative Action requirements are met.

Required Affirmative Action Evidence:

Procurement, Professional & Service Contracts (Exhibit A)

Vendors must submit with proposal:

1. A photo copy of their Federal Letter of Affirmative Action Plan Approval

   OR

2. A photo copy of their Certificate of Employee Information Report

   OR

3. A complete Affirmative Action Employee Information Report (AA302) _____

Public Work – Over $50,000 Total Project Cost:

A. No approved Federal or New Jersey Affirmative Action Plan. We will complete Report Form AA201-A upon receipt from the

B. Approved Federal or New Jersey Plan – certificate enclosed

I further certify that the statements and information contained herein, are complete and correct to the best of my knowledge and belief.

_____ _____

Date ***Authorized Signature and Title***

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P.L. 1995, c. 127 (N.J.A.C. 17:27)
MANDATORY AFFIRMATIVE ACTION LANGUAGE

PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisement for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers trade consistent with the applicable county employment goal prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of it testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the state of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and lay-off to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

_____

Signature of Procurement Agent

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C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

Public Agency Instructions

This page provides guidance to public agencies entering into contracts with business entities that are required to file Political Contribution Disclosure forms with the agency. **It is not intended to be provided to contractors.** What follows are instructions on the use of form local units can provide to contractors that are required to disclose political contributions pursuant to N.J.S.A. 19:44A-20.26 (P.L. 2005, c. 271, s.2). Additional information on the process is available in Local Finance Notice 2006-1 (http://www.nj.gov/dca/divisions/dlgs/resources/lfns_2006 html). Please refer back to these instructions for the appropriate links, as the Local Finance Notices include links that are no longer operational.

1. The disclosure is required for all contracts in excess of $17,500 that are **not awarded** pursuant to a "fair and open" process (N.J.S.A. 19:44A-20.7).

2. Due to the potential length of some contractor submissions, the public agency should consider allowing data to be submitted in electronic form (i.e., spreadsheet, pdf file, etc.). Submissions must be kept with the contract documents or in an appropriate computer file and be available for public access. **The form is worded to accept this alternate submission.** The text should be amended if electronic submission will not be allowed.

3. The submission must be **received from the contractor and** on file at least 10 days prior to award of the contract. Resolutions of award should reflect that the disclosure has been received and is on file.

4. The contractor must disclose contributions made to candidate and party committees covering a wide range of public agencies, including all public agencies that have elected officials in the county of the public agency, state legislative positions, and various state entities. The Division of Local Government Services recommends that contractors be provided a list of the affected agencies. This will assist contractors in determining the campaign and political committees of the officials and candidates affected by the disclosure.

    a. The Division has prepared model disclosure forms for each county. They can be downloaded from the "County PCD Forms" link on the Pay-to-Play web site at http://www.nj.gov/dca/divisions/dlgs/programs/lpcl.html#12. They will be updated from time-to-time as necessary.
    b. A public agency using these forms **should edit them to properly reflect the correct legislative district**(s). As the forms are county-based, **they list all legislative districts** in each county. **Districts that do not represent the public agency should be removed from the lists.**
    c. Some contractors may find it easier to provide a single list that covers all contributions, regardless of the county. These submissions are appropriate and should be accepted.
    d. The form may be used "as-is", subject to edits as described herein.
    e. The "Contractor Instructions" sheet is intended to be provided with the form. It is recommended that the Instructions and the form be printed on the same piece of paper. The form notes that the Instructions are printed on the back of the form; where that is not the case, the text should be edited accordingly.
    f. The form is a Word document and can be edited to meet local needs, and posted for download on web sites, used as an e-mail attachment, or provided as a printed document.

5. It is recommended that the contractor also complete a "Stockholder Disclosure Certification." This will assist the local unit in its obligation to ensure that contractor did not make any prohibited contributions to the committees listed on the Business Entity Disclosure Certification in the 12 months prior to the contract (See Local Finance Notice 2006-7 for additional information on this obligation at http://www.nj.gov/dca/divisions/dlgs/resources/lfns_2006.html). A sample Certification form is part of this package and the instruction to complete it is included in the Contractor Instructions. NOTE: This section is not applicable to Boards of Education.

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C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

Contractor Instructions

Business entities (contractors) receiving contracts from a public agency that are NOT awarded pursuant to a "fair and open" process (defined at N.J.S.A. 19:44A-20.7) are subject to the provisions of P.L. 2005, c. 271, s.2 (N.J.S.A. 19:44A-20.26). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- any State, county, or municipal committee of a political party
- any legislative leadership committee*
- any continuing political committee (a k.a., political action committee)
- any candidate committee of a candidate for, or holder of, an elective office:
    - of the public entity awarding the contract
    - of that county in which that public entity is located
    - of another public entity within that county
    - or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county

The disclosure must list reportable contributions to any of the committees that exceed $300 per election cycle that were made during the 12 months prior to award of the contract. See N.J.S.A. 19:44A-8 and 19:44A-16 for more details on reportable contributions.

N.J.S.A. 19:44A-20.26 itemizes the parties from whom contributions must be disclosed when a business entity is not a natural person. This includes the following:

- individuals with an "interest" ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit
- all principals, partners, officers, or directors of the business entity or their spouses
- any subsidiaries directly or indirectly controlled by the business entity
- IRS Code Section 527 New Jersey based organizations, directly or indirectly controlled by the business entity and filing as continuing political committees, (PACs).

When the business entity is a natural person, "a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity." [N.J.S.A. 19:44A-20.26(b)] The contributor must be listed on the disclosure.

Any business entity that fails to comply with the disclosure provisions shall be subject to a fine imposed by ELEC in an amount to be determined by the Commission which may be based upon the amount that the business entity failed to report.

The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor's responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement.

The enclosed form, a content-consistent facsimile, or an electronic data file containing the required details (along with a signed cover sheet) may be used as the contractor's submission and is disclosable to the public under the Open Public Records Act.

The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law. **NOTE: This section does not apply to Board of Education contracts.**

* N.J.S.A. 19:44A-3(s): "The term "legislative leadership committee" means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly or the Minority Leader of the General Assembly pursuant to section 16 of P.L.1993, c.65 (C.19:44A-10.1) for the purpose of receiving contributions and making expenditures."

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DOC #4, continued

C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

Required Pursuant to N.J.S.A. 19:44A-20.26

This form or its permitted facsimile must be submitted to the local unit no later than 10 days prior to the award of the contract.

Part I – Vendor Information

Vendor Name:			
Address:			
City:		State:	Zip:

The undersigned being authorized to certify, hereby certifies that the submission provided herein represents compliance with the provisions of N.J.S.A. 19:44A-20.26 and as represented by the Instructions accompanying this form.

Signature _____ Printed Name _____ Title _____

Part II – Contribution Disclosure

Disclosure requirement: Pursuant to N.J.S.A. 19:44A-20.26 this disclosure must include all reportable political contributions (more than $300 per election cycle) over the 12 months prior to submission to the committees of the government entities listed on the form provided by the local unit.

☐ Check here if disclosure is provided in electronic form

Contributor Name	Recipient Name	Date	Dollar Amount
			$

☐ Check here if the information is continued on subsequent page(s)

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List of Agencies with Elected Officials Required for Political Contribution Disclosure
N.J.S.A. 19:44A-20.26

County Name:
State: Governor, and Legislative Leadership Committees
Legislative District #s:
State Senator and two members of the General Assembly per district.

County:

Freeholders	County Clerk	Sheriff
{County Executive}	Surrogate	

Municipalities (Mayor and members of governing body, regardless of title):

USERS SHOULD CREATE THEIR OWN FORM, OR DOWNLOAD FROM THE PAY TO PLAY SECTION OF THE DLGS WEBSITE A COUNTY-BASED, CUSTOMIZABLE FORM.

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DOC #5

STOCKHOLDER DISCLOSURE CERTIFICATION

Name of Business:

☐ I certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

OR

☐ I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

Check the box that represents the type of business organization:

☐ Partnership ☐ Corporation ☐ Sole Proprietorship

☐ Limited Partnership ☐ Limited Liability Corporation ☐ Limited Liability Partnership

☐ Subchapter S Corporation

Sign and notarize the form below, and, if necessary, complete the stockholder list below.

Stockholders:

Name: Home Address:	Name: Home Address:
Name: Home Address:	Name: Home Address:
Name: Home Address:	Name: Home Address:

Subscribed and sworn before me this____day of_____, 2_.

_____
(Affiant)

(Notary Public)

~~(Print name & title of affiant)~~

My Commission expires:

(Corporate Seal)

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DOC #6

Certification of Non-Involvement in Prohibited Activities in Iran

Pursuant to N.J.S.A. 52:32-58, Offerors must certify that neither the Offeror, nor any of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32 – 56(e) (3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32 – 56(f).

Offerors wishing to do business in New Jersey through this contract must fill out the Certification of Non-Involvement in Prohibited Activities in Iran here: http://www.state.nj.us/humanservices/dfd/info/standard/fdc/disclosure_investmentact.pdf.

Offerors should submit the above form completed with their proposal.

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DOC #7

NEW JERSEY BUSINESS REGISTRATION CERTIFICATE
(N.J.S.A. 52:32-44)

Offerors wishing to do business in New Jersey must submit their State Division of Revenue issued Business Registration Certificate with their proposal here. Failure to do so will disqualify the Offeror from offering products or services in New Jersey through any resulting contract.

https://www.njportal.com/DOR/BusinessRegistration/

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DOC #8

EEOAA EVIDENCE

Equal Employment Opportunity/Affirmative Action
Goods, Professional Services & General Service Projects

EEO/AA Evidence

Vendors are required to submit evidence of compliance with N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 in order to be considered a responsible vendor.

One of the following must be included with submission:

- Copy of Letter of Federal Approval
- Certificate of Employee Information Report
- Fully Executed Form AA302
- Fully Executed EEO-1 Report

See the guidelines at: http://www.state.nj.us/treasury/contract_compliance/pdf/pa.pdf for further information.

I certify that my bid package includes the required evidence per the above list and State website.

Name:_____ Title: _____

Signature:_____ Date: _____

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DOC #9

MCBRIDE-PRINCIPLES

STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY

33 WEST STATE STREET, P.O. BOX 230
TRENTON, NEW JERSEY 08625-0230

MACBRIDE PRINCIPALS FORM

BID SOLICITATION #:_____ **VENDOR/BIDDER:** _____

VENDOR'S/BIDDER'S REQUIREMENT
TO PROVIDE A CERTIFICATION IN COMPLIANCE WITH THE MACBRIDE PRINCIPALS AND NORTHERN IRELAND ACT OF 1989

Pursuant to Public Law 1995, c. 134, a responsible Vendor/Bidder selected, after public bidding, by the Director of the Division of Purchase and Property, pursuant to N.J.S.A. 52:34-12, must complete the certification below by checking one of the two options listed below and signing where indicated. If a Vendor/Bidder that would otherwise be awarded a purchase, contract or agreement does not complete the certification, then the Director may determine, in accordance with applicable law and rules, that it is in the best interest of the State to award the purchase, contract or agreement to another Vendor/Bidder that has completed the certification and has submitted a bid within five (5) percent of the most advantageous bid. If the Director finds contractors to be in violation of the principals that are the subject of this law, he/she shall take such action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of theparty.

I, the undersigned, on behalf the Vendor/Bidder, certify pursuant to N.J.S.A. 52:34-12.2 that:

CHECK THE APPROPRIATE BOX

☐ The Vendor/Bidder has no business operations in Northern Ireland; or

OR

☐ The Vendor/Bidder will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principals of nondiscrimination in employment as set forth in section 2 of P.L. 1987, c. 177 (N.J.S.A. 52:18A-89.5) and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of its compliance with those principals.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor/Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of **my** agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification to be void and unenforceable.

Signature Date

Print Name and Title

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Exhibit H
Advertising Compliance Requirement

Pursuant to certain state notice provisions, including but not limited to Oregon Revised Statutes Chapter 279A.220, the following public agencies and political subdivisions of the referenced public agencies are eligible to register with OMNIA Partners and access the Master Agreement contract award made pursuant to this solicitation, and are hereby given notice of the foregoing request for proposals for purposes of complying with the procedural requirements of said statutes:

Nationwide:

State of Alabama	State of Hawaii	Commonwealth of Massachusetts	State of New Mexico	State of South Dakota
State of Alaska	State of Idaho	State of Michigan	State of New York	State of Tennessee
State of Arizona	State of Illinois	State of Minnesota	State of North Carolina	State of Texas
State of Arkansas	State of Indiana	State of Mississippi	State of North Dakota	State of Utah
State of California	State of Iowa	State of Missouri	State of Ohio	State of Vermont
State of Colorado	State of Kansas	State of Montana	State of Oklahoma	Commonwealth of Virginia
State of Connecticut	Commonwealth of Kentucky	State of Nebraska	State of Oregon	State of Washington
State of Delaware	State of Louisiana	State of Nevada	Commonwealth of Pennsylvania	State of West Virginia
State of Florida	State of Maine	State of New Hampshire	State of Rhode Island	State of Wisconsin
State of Georgia	State of Maryland	State of New Jersey	State of South Carolina	State of Wyoming
District of Columbia				

Lists of political subdivisions and local governments in the above referenced states / districts may be found at http://www.usa.gov/Agencies/State_and_Territories.shtml and https://www.usa.gov/local-governments.

Certain Public Agencies and Political Subdivisions:

CITIES, TOWNS, VILLAGES AND BOROUGHS INCLUDING BUT NOT LIMITED TO:

BAKER CITY GOLF COURSE, OR
CITY OF ADAIR VILLAGE, OR
CITY OF ASHLAND, OR
CITY OF AUMSVILLE, OR
CITY OF AURORA, OR
CITY OF BAKER, OR
CITY OF BATON ROUGE, LA
CITY OF BEAVERTON, OR
CITY OF BEND, OR
CITY OF BOARDMAN, OR
CITY OF BONANAZA, OR
CITY OF BOSSIER CITY, LA
CITY OF BROOKINGS, OR
CITY OF BURNS, OR
CITY OF CANBY, OR
CITY OF CANYONVILLE, OR
CITY OF CLATSKANIE, OR
CITY OF COBURG, OR
CITY OF CONDON, OR
CITY OF COQUILLE, OR
CITY OF CORVALLI, OR
CITY OF CORVALLIS PARKS AND RECREATION DEPARTMENT, OR
CITY OF COTTAGE GROVE, OR
CITY OF DONALD, OR
CITY OF EUGENE, OR
CITY OF FOREST GROVE, OR
CITY OF GOLD HILL, OR
CITY OF GRANTS PASS, OR
CITY OF GRESHAM, OR
CITY OF HILLSBORO, OR
CITY OF INDEPENDENCE, OR
CITY AND COUNTY OF HONOLULU, HI
CITY OF KENNER, LA
CITY OF LA GRANDE, OR
CITY OF LAFAYETTE, LA
CITY OF LAKE CHARLES, OR
CITY OF LEBANON, OR
CITY OF MCMINNVILLE, OR
CITY OF MEDFORD, OR
CITY OF METAIRIE, LA
CITY OF MILL CITY, OR
CITY OF MILWAUKIE, OR
CITY OF MONROE, LA
CITY OF MOSIER, OR
CITY OF NEW ORLEANS, LA
CITY OF NORTH PLAINS, OR
CITY OF OREGON CITY, OR
CITY OF PILOT ROCK, OR
CITY OF PORTLAND, OR
CITY OF POWERS, OR
CITY OF PRINEVILLE, OR
CITY OF REDMOND, OR
CITY OF REEDSPORT, OR
CITY OF RIDDLE, OR
CITY OF ROGUE RIVER, OR
CITY OF ROSEBURG, OR
CITY OF SALEM, OR
CITY OF SANDY, OR
CITY OF SCAPPOOSE, OR
CITY OF SHADY COVE, OR
CITY OF SHERWOOD, OR
CITY OF SHREVEPORT, LA
CITY OF SILVERTON, OR
CITY OF SPRINGFIELD, OR
CITY OF ST. HELENS, OR

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CITY OF ST. PAUL, OR
CITY OF SULPHUR, LA
CITY OF TIGARD, OR
CITY OF TROUTDALE, OR
CITY OF TUALATIN, OR
CITY OF WALKER, LA
CITY OF WARRENTON, OR
CITY OF WEST LINN, OR
CITY OF WILSONVILLE, OR
CITY OF WINSTON, OR
CITY OF WOODBURN, OR
LEAGUE OF OREGON CITES
THE CITY OF HAPPY VALLEY OREGON
ALPINE, UT
ALTA, UT
ALTAMONT, UT
ALTON, UT
AMALGA, UT
AMERICAN FORK CITY, UT
ANNABELLA, UT
ANTIMONY, UT
APPLE VALLEY, UT
AURORA, UT
BALLARD, UT
BEAR RIVER CITY, UT
BEAVER, UT
BICKNELL, UT
BIG WATER, UT
BLANDING, UT
BLUFFDALE, UT
BOULDER, UT
CITY OF BOUNTIFUL, UT
BRIAN HEAD, UT
BRIGHAM CITY CORPORATION, UT
BRYCE CANYON CITY, UT
CANNONVILLE, UT
CASTLE DALE, UT
CASTLE VALLEY, UT
CITY OF CEDAR CITY, UT
CEDAR FORT, UT
CITY OF CEDAR HILLS, UT
CENTERFIELD, UT
CENTERVILLE CITY CORPORATION, UT
CENTRAL VALLEY, UT
CHARLESTON, UT
CIRCLEVILLE, UT
CLARKSTON, UT
CLAWSON, UT
CLEARFIELD, UT
CLEVELAND, UT
CLINTON CITY CORPORATION, UT
COALVILLE, UT
CORINNE, UT
CORNISH, UT
COTTONWOOD HEIGHTS, UT
DANIEL, UT
DELTA, UT
DEWEYVILLE, UT
DRAPER CITY, UT
DUCHESNE, UT
EAGLE MOUNTAIN, UT
EAST CARBON, UT
ELK RIDGE, UT
ELMO, UT
ELSINORE, UT
ELWOOD, UT
EMERY, UT
ENOCH, UT
ENTERPRISE, UT
EPHRAIM, UT
ESCALANTE, UT
EUREKA, UT
FAIRFIELD, UT
FAIRVIEW, UT
FARMINGTON, UT
FARR WEST, UT
FAYETTE, UT
FERRON, UT
FIELDING, UT
FILLMORE, UT
FOUNTAIN GREEN, UT
FRANCIS, UT
FRUIT HEIGHTS, UT
GARDEN CITY, UT
GARLAND, UT
GENOLA, UT
GLENDALE, UT
GLENWOOD, UT
GOSHEN, UT
GRANTSVILLE, UT
GREEN RIVER, UT
GUNNISON, UT
HANKSVILLE, UT
HARRISVILLE, UT
HATCH, UT
HEBER CITY CORPORATION, UT
HELPER, UT
HENEFER, UT
HENRIEVILLE, UT
HERRIMAN, UT
HIDEOUT, UT
HIGHLAND, UT
HILDALE, UT
HINCKLEY, UT
HOLDEN, UT
HOLLADAY, UT
HONEYVILLE, UT
HOOPER, UT
HOWELL, UT
HUNTINGTON, UT
HUNTSVILLE, UT
CITY OF HURRICANE, UT
HYDE PARK, UT
HYRUM, UT
INDEPENDENCE, UT
IVINS, UT
JOSEPH, UT
JUNCTION, UT
KAMAS, UT
KANAB, UT
KANARRAVILLE, UT
KANOSH, UT
KAYSVILLE, UT
KINGSTON, UT
KOOSHAREM, UT
LAKETOWN, UT
LA VERKIN, UT
LAYTON, UT
LEAMINGTON, UT
LEEDS, UT
LEHI CITY CORPORATION, UT
LEVAN, UT
LEWISTON, UT
LINDON, UT

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LOA, UT
LOGAN CITY, UT
LYMAN, UT
LYNNDYL, UT
MANILA, UT
MANTI, UT
MANTUA, UT
MAPLETON, UT
MARRIOTT-SLATERVILLE, UT
MARYSVALE, UT
MAYFIELD, UT
MEADOW, UT
MENDON, UT
MIDVALE CITY INC., UT
MIDWAY, UT
MILFORD, UT
MILLVILLE, UT
MINERSVILLE, UT
MOAB, UT
MONA, UT
MONROE, UT
CITY OF MONTICELLO, UT
MORGAN, UT
MORONI, UT
MOUNT PLEASANT, UT
MURRAY CITY CORPORATION, UT
MYTON, UT
NAPLES, UT
NEPHI, UT
NEW HARMONY, UT
NEWTON, UT
NIBLEY, UT
NORTH LOGAN, UT
NORTH OGDEN, UT
NORTH SALT LAKE CITY, UT
OAK CITY, UT
OAKLEY, UT
OGDEN CITY CORPORATION, UT
OPHIR, UT
ORANGEVILLE, UT
ORDERVILLE, UT
OREM, UT
PANGUITCH, UT
PARADISE, UT
PARAGONAH, UT
PARK CITY, UT
PAROWAN, UT
PAYSON, UT
PERRY, UT
PLAIN CITY, UT
PLEASANT GROVE CITY, UT
PLEASANT VIEW, UT
PLYMOUTH, UT
PORTAGE, UT
PRICE, UT
PROVIDENCE, UT
PROVO, UT
RANDOLPH, UT
REDMOND, UT
RICHFIELD, UT
RICHMOND, UT
RIVERDALE, UT
RIVER HEIGHTS, UT
RIVERTON CITY, UT
ROCKVILLE, UT
ROCKY RIDGE, UT
ROOSEVELT CITY CORPORATION, UT
ROY, UT
RUSH VALLEY, UT
CITY OF ST. GEORGE, UT
SALEM, UT
SALINA, UT
SALT LAKE CITY CORPORATION, UT
SANDY, UT
SANTA CLARA, UT
SANTAQUIN, UT
SARATOGA SPRINGS, UT
SCIPIO, UT
SCOFIELD, UT
SIGURD, UT
SMITHFIELD, UT
SNOWVILLE, UT
CITY OF SOUTH JORDAN, UT
SOUTH OGDEN, UT
CITY OF SOUTH SALT LAKE, UT
SOUTH WEBER, UT
SPANISH FORK, UT
SPRING CITY, UT
SPRINGDALE, UT
SPRINGVILLE, UT
STERLING, UT
STOCKTON, UT
SUNNYSIDE, UT
SUNSET CITY CORP, UT
SYRACUSE, UT
TABIONA, UT
CITY OF TAYLORSVILLE, UT
TOOELE CITY CORPORATION, UT
TOQUERVILLE, UT
TORREY, UT
TREMONTON CITY, UT
TRENTON, UT
TROPIC, UT
UINTAH, UT
VERNAL CITY, UT
VERNON, UT
VINEYARD, UT
VIRGIN, UT
WALES, UT
WALLSBURG, UT
WASHINGTON CITY, UT
WASHINGTON TERRACE, UT
WELLINGTON, UT
WELLSVILLE, UT
WENDOVER, UT
WEST BOUNTIFUL, UT
WEST HAVEN, UT
WEST JORDAN, UT
WEST POINT, UT
WEST VALLEY CITY, UT
WILLARD, UT
WOODLAND HILLS, UT
WOODRUFF, UT
WOODS CROSS, UT

COUNTIES AND PARISHES INCLUDING BUT NOT LIMITED TO:

ASCENSION PARISH, LA
ASCENSION PARISH, LA, CLEAR OF COURT
CADDO PARISH, LA
CALCASIEU PARISH, LA
CALCASIEU PARISH SHERIFF'S OFFICE, LA
CITY AND COUNTY OF HONOLULU, HI
CLACKAMAS COUNTY, OR

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CLACKAMAS COUNTY DEPT OF TRANSPORTATION, OR
CLATSOP COUNTY, OR
COLUMBIA COUNTY, OR
COOS COUNTY, OR
COOS COUNTY HIGHWAY DEPARTMENT, OR
COUNTY OF HAWAII, OR
CROOK COUNTY, OR
CROOK COUNTY ROAD DEPARTMENT, OR
CURRY COUNTY, OR
DESCHUTES COUNTY, OR
DOUGLAS COUNTY, OR
EAST BATON ROUGE PARISH, LA
GILLIAM COUNTY, OR
GRANT COUNTY, OR
HARNEY COUNTY, OR
HARNEY COUNTY SHERIFFS OFFICE, OR
HAWAII COUNTY, HI
HOOD RIVER COUNTY, OR
JACKSON COUNTY, OR
JEFFERSON COUNTY, OR
JEFFERSON PARISH, LA
JOSEPHINE COUNTY GOVERNMENT, OR
LAFAYETTE CONSOLIDATED GOVERNMENT, LA
LAFAYETTE PARISH, LA
LAFAYETTE PARISH CONVENTION & VISITORS COMMISSION
LAFOURCHE PARISH, LA
KAUAI COUNTY, HI
KLAMATH COUNTY, OR
LAKE COUNTY, OR
LANE COUNTY, OR
LINCOLN COUNTY, OR
LINN COUNTY, OR
LIVINGSTON PARISH, LA
MALHEUR COUNTY, OR
MAUI COUNTY, HI
MARION COUNTY, SALEM, OR
MORROW COUNTY, OR
MULTNOMAH COUNTY, OR
MULTNOMAH COUNTY BUSINESS AND COMMUNITY SERVICES, OR
MULTNOMAH COUNTY SHERIFFS OFFICE, OR
MULTNOMAH LAW LIBRARY, OR
ORLEANS PARISH, LA
PLAQUEMINES PARISH, LA
POLK COUNTY, OR
RAPIDES PARISH, LA
SAINT CHARLES PARISH, LA
SAINT CHARLES PARISH PUBLIC SCHOOLS, LA
SAINT LANDRY PARISH, LA
SAINT TAMMANY PARISH, LA
SHERMAN COUNTY, OR
TERREBONNE PARISH, LA
TILLAMOOK COUNTY, OR
TILLAMOOK COUNTY SHERIFF'S OFFICE, OR
TILLAMOOK COUNTY GENERAL HOSPITAL, OR
UMATILLA COUNTY, OR
UNION COUNTY, OR
WALLOWA COUNTY, OR
WASCO COUNTY, OR
WASHINGTON COUNTY, OR
WEST BATON ROUGE PARISH, LA
WHEELER COUNTY, OR
YAMHILL COUNTY, OR
COUNTY OF BOX ELDER, UT
COUNTY OF CACHE, UT
COUNTY OF RICH, UT
COUNTY OF WEBER, UT
COUNTY OF MORGAN, UT
COUNTY OF DAVIS, UT
COUNTY OF SUMMIT, UT
COUNTY OF DAGGETT, UT
COUNTY OF SALT LAKE, UT
COUNTY OF TOOELE, UT
COUNTY OF UTAH, UT
COUNTY OF WASATCH, UT
COUNTY OF DUCHESNE, UT
COUNTY OF UINTAH, UT
COUNTY OF CARBON, UT
COUNTY OF SANPETE, UT
COUNTY OF JUAB, UT
COUNTY OF MILLARD, UT
COUNTY OF SEVIER, UT
COUNTY OF EMERY, UT
COUNTY OF GRAND, UT
COUNTY OF BEVER, UT
COUNTY OF PIUTE, UT
COUNTY OF WAYNE, UT
COUNTY OF SAN JUAN, UT
COUNTY OF GARFIELD, UT
COUNTY OF KANE, UT
COUNTY OF IRON, UT
COUNTY OF WASHINGTON, UT

OTHER AGENCIES INCLUDING ASSOCIATIONS, BOARDS, DISTRICTS, COMMISSIONS, COUNCILS, PUBLIC CORPORATIONS, PUBLIC DEVELOPMENT AUTHORITIES, RESERVATIONS AND UTILITIES INCLUDING BUT NOT LIMITED TO:

ADAIR R.F.P.D., OR
ADEL WATER IMPROVEMENT DISTRICT, OR
ADRIAN R.F.P.D., OR
AGNESS COMMUNITY LIBRARY, OR
AGNESS-ILLAHE R.F.P.D., OR
AGRICULTURE EDUCATION SERVICE EXTENSION DISTRICT, OR
ALDER CREEK-BARLOW WATER DISTRICT NO. 29, OR
ALFALFA FIRE DISTRICT, OR
ALSEA R.F.P.D., OR
ALSEA RIVIERA WATER IMPROVEMENT DISTRICT, OR
AMITY FIRE DISTRICT, OR
ANTELOPE MEADOWS SPECIAL ROAD DISTRICT, OR
APPLE ROGUE DISTRICT IMPROVEMENT COMPANY, OR
APPLEGATE VALLEY R.F.P.D. #9, OR
ARCH CAPE DOMESTIC WATER SUPPLY DISTRICT, OR
ARCH CAPE SANITARY DISTRICT, OR
ARNOLD IRRIGATION DISTRICT, OR
ASH CREEK WATER CONTROL DISTRICT, OR
ATHENA CEMETERY MAINTENANCE DISTRICT, OR
AUMSVILLE R.F.P.D., OR
AURORA R.F.P.D., OR
AZALEA R.F.P.D., OR
BADGER IMPROVEMENT DISTRICT, OR
BAILEY-SPENCER R.F.P.D., OR
BAKER COUNTY LIBRARY DISTRICT, OR
BAKER R.F.P.D., OR
BAKER RIVERTON ROAD DISTRICT, OR
BAKER VALLEY IRRIGATION DISTRICT, OR
BAKER VALLEY S.W.C.D., OR

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BAKER VALLEY VECTOR CONTROL DISTRICT, OR
BANDON CRANBERRY WATER CONTROL DISTRICT, OR
BANDON R.F.P.D., OR
BANKS FIRE DISTRICT, OR
BANKS FIRE DISTRICT #13, OR
BAR L RANCH ROAD DISTRICT, OR
BARLOW WATER IMPROVEMENT DISTRICT, OR
BASIN AMBULANCE SERVICE DISTRICT, OR
BASIN TRANSIT SERVICE TRANSPORTATION DISTRICT, OR
BATON ROUGE WATER COMPANY
BAY AREA HEALTH DISTRICT, OR
BAYSHORE SPECIAL ROAD DISTRICT, OR
BEAR VALLEY SPECIAL ROAD DISTRICT, OR
BEAVER CREEK WATER CONTROL DISTRICT, OR
BEAVER DRAINAGE IMPROVEMENT COMPANY, INC., OR
BEAVER SLOUGH DRAINAGE DISTRICT, OR
BEAVER SPECIAL ROAD DISTRICT, OR
BEAVER WATER DISTRICT, OR
BELLE MER S.I.G.L. TRACTS SPECIAL ROAD DISTRICT, OR
BEND METRO PARK AND RECREATION DISTRICT
BENTON S.W.C.D., OR
BERNDT SUBDIVISION WATER IMPROVEMENT DISTRICT, OR
BEVERLY BEACH WATER DISTRICT, OR
BIENVILLE PARISH FIRE PROTECTION DISTRICT 6, LA
BIG BEND IRRIGATION DISTRICT, OR
BIGGS SERVICE DISTRICT, OR
BLACK BUTTE RANCH DEPARTMENT OF POLICE SERVICES, OR
BLACK BUTTE RANCH R.F.P.D., OR
BLACK MOUNTAIN WATER DISTRICT, OR
BLODGETT-SUMMIT R.F.P.D., OR
BLUE MOUNTAIN HOSPITAL DISTRICT, OR
BLUE MOUNTAIN TRANSLATOR DISTRICT, OR
BLUE RIVER PARK & RECREATION DISTRICT, OR
BLUE RIVER WATER DISTRICT, OR
BLY R.F.P.D., OR
BLY VECTOR CONTROL DISTRICT, OR
BLY WATER AND SANITARY DISTRICT, OR
BOARDMAN CEMETERY MAINTENANCE DISTRICT, OR
BOARDMAN PARK AND RECREATION DISTRICT
BOARDMAN R.F.P.D., OR
BONANZA BIG SPRINGS PARK & RECREATION DISTRICT, OR
BONANZA MEMORIAL PARK CEMETERY DISTRICT, OR
BONANZA R.F.P.D., OR
BONANZA-LANGELL VALLEY VECTOR CONTROL DISTRICT, OR
BORING WATER DISTRICT #24, OR
BOULDER CREEK RETREAT SPECIAL ROAD DISTRICT, OR
BRIDGE R.F.P.D., OR
BROOKS COMMUNITY SERVICE DISTRICT, OR
BROWNSVILLE R.F.P.D., OR
BUELL-RED PRAIRIE WATER DISTRICT, OR
BUNKER HILL R.F.P.D. #1, OR
BUNKER HILL SANITARY DISTRICT, OR
BURLINGTON WATER DISTRICT, OR
BURNT RIVER IRRIGATION DISTRICT, OR
BURNT RIVER S.W.C.D., OR
CALAPOOIA R.F.P.D., OR
CAMAS VALLEY R.F.P.D., OR
CAMELLIA PARK SANITARY DISTRICT, OR
CAMMANN ROAD DISTRICT, OR
CAMP SHERMAN ROAD DISTRICT, OR
CANBY AREA TRANSIT, OR
CANBY R.F.P.D. #62, OR
CANBY UTILITY BOARD, OR
CANNON BEACH R.F.P.D., OR
CANYONVILLE SOUTH UMPQUA FIRE DISTRICT, OR
CAPE FERRELO R.F.P.D., OR
CAPE FOULWEATHER SANITARY DISTRICT, OR
CARLSON PRIMROSE SPECIAL ROAD DISTRICT, OR
CARMEL BEACH WATER DISTRICT, OR
CASCADE VIEW ESTATES TRACT 2, OR
CEDAR CREST SPECIAL ROAD DISTRICT, OR
CEDAR TRAILS SPECIAL ROAD DISTRICT, OR
CEDAR VALLEY - NORTH BANK R.F.P.D., OR
CENTRAL CASCADES FIRE AND EMS, OR
CENTRAL CITY ECONOMIC OPPORTUNITY CORP, LA
CENTRAL LINCOLN P.U.D., OR
CENTRAL OREGON COAST FIRE & RESCUE DISTRICT, OR
CENTRAL OREGON INTERGOVERNMENTAL COUNCIL
CENTRAL OREGON IRRIGATION DISTRICT, OR
CHAPARRAL WATER CONTROL DISTRICT, OR
CHARLESTON FIRE DISTRICT, OR
CHARLESTON SANITARY DISTRICT, OR
CHARLOTTE ANN WATER DISTRICT, OR
CHEHALEM PARK & RECREATION DISTRICT, OR
CHEHALEM PARK AND RECREATION DISTRICT
CHEMULT R.F.P.D., OR
CHENOWITH WATER P.U.D., OR
CHERRIOTS, OR
CHETCO COMMUNITY PUBLIC LIBRARY DISTRICT, OR
CHILOQUIN VECTOR CONTROL DISTRICT, OR
CHILOQUIN-AGENCY LAKE R.F.P.D., OR
CHINOOK DRIVE SPECIAL ROAD DISTRICT, OR
CHR DISTRICT IMPROVEMENT COMPANY, OR
CHRISTMAS VALLEY DOMESTIC WATER DISTRICT, OR
CHRISTMAS VALLEY PARK & RECREATION DISTRICT, OR
CHRISTMAS VALLEY R.F.P.D., OR
CITY OF BOGALUSA SCHOOL BOARD, LA
CLACKAMAS COUNTY FIRE DISTRICT #1, OR
CLACKAMAS COUNTY SERVICE DISTRICT #1, OR
CLACKAMAS COUNTY VECTOR CONTROL DISTRICT, OR
CLACKAMAS RIVER WATER
CLACKAMAS RIVER WATER, OR
CLACKAMAS S.W.C.D., OR
CLATSKANIE DRAINAGE IMPROVEMENT COMPANY, OR
CLATSKANIE LIBRARY DISTRICT, OR
CLATSKANIE P.U.D., OR
CLATSKANIE PARK & RECREATION DISTRICT, OR
CLATSKANIE PEOPLE'S UTILITY DISTRICT
CLATSKANIE R.F.P.D., OR
CLATSOP CARE CENTER HEALTH DISTRICT, OR
CLATSOP COUNTY S.W.C.D., OR
CLATSOP DRAINAGE IMPROVEMENT COMPANY #15, INC., OR
CLEAN WATER SERVICES
CLEAN WATER SERVICES, OR

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CLOVERDALE R.F.P.D., OR
CLOVERDALE SANITARY DISTRICT, OR
CLOVERDALE WATER DISTRICT, OR
COALEDO DRAINAGE DISTRICT, OR
COBURG FIRE DISTRICT, OR
COLESTIN RURAL FIRE DISTRICT, OR
COLTON R.F.P.D., OR
COLTON WATER DISTRICT #11, OR
COLUMBIA 911 COMMUNICATIONS DISTRICT, OR
COLUMBIA COUNTY 4-H & EXTENSION SERVICE DISTRICT, OR
COLUMBIA DRAINAGE VECTOR CONTROL, OR
COLUMBIA IMPROVEMENT DISTRICT, OR
COLUMBIA R.F.P.D., OR
COLUMBIA RIVER FIRE & RESCUE, OR
COLUMBIA RIVER PUD, OR
COLUMBIA S.W.C.D., OR
COLUMBIA S.W.C.D., OR
CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
COOS COUNTY AIRPORT DISTRICT, OR
COOS COUNTY AIRPORT DISTRICT, OR
COOS COUNTY AREA TRANSIT SERVICE DISTRICT, OR
COOS COUNTY AREA TRANSIT SERVICE DISTRICT, OR
COOS FOREST PROTECTIVE ASSOCIATION
COOS S.W.C.D., OR
COQUILLE R.F.P.D., OR
COQUILLE VALLEY HOSPITAL DISTRICT, OR
CORBETT WATER DISTRICT, OR
CORNELIUS R.F.P.D., OR
CORP RANCH ROAD WATER IMPROVEMENT, OR
CORVALLIS R.F.P.D., OR
COUNTRY CLUB ESTATES SPECIAL WATER DISTRICT, OR
COUNTRY CLUB WATER DISTRICT, OR
COUNTRY ESTATES ROAD DISTRICT, OR
COVE CEMETERY MAINTENANCE DISTRICT, OR
COVE ORCHARD SEWER SERVICE DISTRICT, OR
COVE R.F.P.D., OR
CRESCENT R.F.P.D., OR
CRESCENT SANITARY DISTRICT, OR
CRESCENT WATER SUPPLY AND IMPROVEMENT DISTRICT, OR
CROOK COUNTY AGRICULTURE EXTENSION SERVICE DISTRICT, OR
CROOK COUNTY CEMETERY DISTRICT, OR
CROOK COUNTY FIRE AND RESCUE, OR
CROOK COUNTY PARKS & RECREATION DISTRICT, OR
CROOK COUNTY S.W.C.D., OR
CROOK COUNTY VECTOR CONTROL DISTRICT, OR
CROOKED RIVER RANCH R.F.P.D., OR
CROOKED RIVER RANCH SPECIAL ROAD DISTRICT, OR
CRYSTAL SPRINGS WATER DISTRICT, OR
CURRY COUNTY 4-H & EXTENSION SERVICE DISTRICT, OR
CURRY COUNTY PUBLIC TRANSIT SERVICE DISTRICT, OR
CURRY COUNTY S.W.C.D., OR
CURRY HEALTH DISTRICT, OR
CURRY PUBLIC LIBRARY DISTRICT, OR
DALLAS CEMETERY DISTRICT #4, OR
DARLEY DRIVE SPECIAL ROAD DISTRICT, OR
DAVID CROCKETT STEAM FIRE COMPANY #1, LA
DAYS CREEK R.F.P.D., OR
DAYTON FIRE DISTRICT, OR
DEAN MINARD WATER DISTRICT, OR
DEE IRRIGATION DISTRICT, OR
DEER ISLAND DRAINAGE IMPROVEMENT COMPANY, OR
DELL BROGAN CEMETERY MAINTENANCE DISTRICT, OR
DEPOE BAY R.F.P.D., OR
DESCHUTES COUNTY 911 SERVICE DISTRICT, OR
DESCHUTES COUNTY R.F.P.D. #2, OR
DESCHUTES PUBLIC LIBRARY DISTRICT, OR
DESCHUTES S.W.C.D., OR
DESCHUTES VALLEY WATER DISTRICT, OR
DEVILS LAKE WATER IMPROVEMENT DISTRICT, OR
DEXTER R.F.P.D., OR
DEXTER SANITARY DISTRICT, OR
DORA-SITKUM R.F.P.D., OR
DOUGLAS COUNTY FIRE DISTRICT #2, OR
DOUGLAS S.W.C.D., OR
DRAKES CROSSING R.F.P.D., OR
DRRH SPECIAL ROAD DISTRICT #6, OR
DRY GULCH DITCH DISTRICT IMPROVEMENT COMPANY, OR
DUFUR RECREATION DISTRICT, OR
DUMBECK LANE DOMESTIC WATER SUPPLY, OR
DUNDEE R.F.P.D., OR
DURKEE COMMUNITY BUILDING PRESERVATION DISTRICT, OR
EAGLE POINT IRRIGATION DISTRICT, OR
EAGLE VALLEY CEMETERY MAINTENANCE DISTRICT, OR
EAGLE VALLEY R.F.P.D., OR
EAGLE VALLEY S.W.C.D., OR
EAST FORK IRRIGATION DISTRICT, OR
EAST MULTNOMAH S.W.C.D., OR
EAST SALEM SERVICE DISTRICT, OR
EAST UMATILLA CHEMICAL CONTROL DISTRICT, OR
EAST UMATILLA COUNTY AMBULANCE AREA HEALTH DISTRICT, OR
EAST UMATILLA COUNTY R.F.P.D., OR
EAST VALLEY WATER DISTRICT, OR
ELGIN COMMUNITY PARKS & RECREATION DISTRICT, OR
ELGIN HEALTH DISTRICT, OR
ELGIN R.F.P.D., OR
ELKTON ESTATES PHASE II SPECIAL ROAD DISTRICT, OR
ELKTON R.F.P.D., OR
EMERALD P.U.D., OR
ENTERPRISE IRRIGATION DISTRICT, OR
ESTACADA CEMETERY MAINTENANCE DISTRICT, OR
ESTACADA R.F.P.D. #69, OR
EUGENE R.F.P.D. # 1, OR
EUGENE WATER AND ELECTRIC BOARD
EVANS VALLEY FIRE DISTRICT #6, OR
FAIR OAKS R.F.P.D., OR
FAIRVIEW R.F.P.D., OR
FAIRVIEW WATER DISTRICT, OR
FALCON HEIGHTS WATER AND SEWER, OR
FALCON-COVE BEACH WATER DISTRICT, OR
FALL RIVER ESTATES SPECIAL ROAD DISTRICT, OR
FARGO INTERCHANGE SERVICE DISTRICT, OR
FARMERS IRRIGATION DISTRICT, OR
FAT ELK DRAINAGE DISTRICT, OR

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FERN RIDGE PUBLIC LIBRARY DISTRICT, OR
FERN VALLEY ESTATES IMPROVEMENT DISTRICT, OR
FOR FAR ROAD DISTRICT, OR
FOREST GROVE R.F.P.D., OR
FOREST VIEW SPECIAL ROAD DISTRICT, OR
FORT ROCK-SILVER LAKE S.W.C.D., OR
FOUR RIVERS VECTOR CONTROL DISTRICT, OR
FOX CEMETERY MAINTENANCE DISTRICT, OR
GARDINER R.F.P.D., OR
GARDINER SANITARY DISTRICT, OR
GARIBALDI R.F.P.D., OR
GASTON R.F.P.D., OR
GATES R.F.P.D., OR
GEARHART R.F.P.D., OR
GILLIAM S.W.C.D., OR
GLENDALE AMBULANCE DISTRICT, OR
GLENDALE R.F.P.D., OR
GLENEDEN BEACH SPECIAL ROAD DISTRICT, OR
GLENEDEN SANITARY DISTRICT, OR
GLENWOOD WATER DISTRICT, OR
GLIDE - IDLEYLD SANITARY DISTRICT, OR
GLIDE R.F.P.D., OR
GOLD BEACH - WEDDERBURN R.F.P.D., OR
GOLD HILL IRRIGATION DISTRICT, OR
GOLDFINCH ROAD DISTRICT, OR
GOSHEN R.F.P.D., OR
GOVERNMENT CAMP ROAD DISTRICT, OR
GOVERNMENT CAMP SANITARY DISTRICT, OR
GRAND PRAIRIE WATER CONTROL DISTRICT, OR
GRAND RONDE SANITARY DISTRICT, OR
GRANT COUNTY TRANSPORTATION DISTRICT, OR
GRANT S.W.C.D., OR
GRANTS PASS IRRIGATION DISTRICT, OR
GREATER BOWEN VALLEY R.F.P.D., OR
GREATER ST. HELENS PARK & RECREATION DISTRICT, OR
GREATER TOLEDO POOL RECREATION DISTRICT, OR
GREEN KNOLLS SPECIAL ROAD DISTRICT, OR
GREEN SANITARY DISTRICT, OR
GREENACRES R.F.P.D., OR
GREENBERRY IRRIGATION DISTRICT, OR
GREENSPRINGS RURAL FIRE DISTRICT, OR
HAHLEN ROAD SPECIAL DISTRICT, OR
HAINES CEMETERY MAINTENANCE DISTRICT, OR
HAINES FIRE PROTECTION DISTRICT, OR
HALSEY-SHEDD R.F.P.D., OR
HAMLET R.F.P.D., OR
HARBOR R.F.P.D., OR
HARBOR SANITARY DISTRICT, OR
HARBOR WATER P.U.D., OR
HARNEY COUNTY HEALTH DISTRICT, OR
HARNEY S.W.C.D., OR
HARPER SOUTH SIDE IRRIGATION DISTRICT, OR
HARRISBURG FIRE AND RESCUE, OR
HAUSER R.F.P.D., OR
HAZELDELL RURAL FIRE DISTRICT, OR
HEBO JOINT WATER-SANITARY AUTHORITY, OR
HECETA WATER P.U.D., OR
HELIX CEMETERY MAINTENANCE DISTRICT #4, OR
HELIX PARK & RECREATION DISTRICT, OR
HELIX R.F.P.D. #7-411, OR
HEPPNER CEMETERY MAINTENANCE DISTRICT, OR
HEPPNER R.F.P.D., OR
HEPPNER WATER CONTROL DISTRICT, OR
HEREFORD COMMUNITY HALL RECREATION DISTRICT, OR
HERMISTON CEMETERY DISTRICT, OR
HERMISTON IRRIGATION DISTRICT, OR
HIDDEN VALLEY MOBILE ESTATES IMPROVEMENT DISTRICT, OR
HIGH DESERT PARK & RECREATION DISTRICT, OR
HIGHLAND SUBDIVISION WATER DISTRICT, OR
HONOLULU INTERNATIONAL AIRPORT
HOOD RIVER COUNTY LIBRARY DISTRICT, OR
HOOD RIVER COUNTY TRANSPORTATION DISTRICT, OR
HOOD RIVER S.W.C.D., OR
HOOD RIVER VALLEY PARKS & RECREATION DISTRICT, OR
HOODLAND FIRE DISTRICT #74
HOODLAND FIRE DISTRICT #74, OR
HORSEFLY IRRIGATION DISTRICT, OR
HOSKINS-KINGS VALLEY R.F.P.D., OR
HOUSING AUTHORITY OF PORTLAND
HUBBARD R.F.P.D., OR
HUDSON BAY DISTRICT IMPROVEMENT COMPANY, OR
I N (KAY) YOUNG DITCH DISTRICT IMPROVEMENT COMPANY, OR
ICE FOUNTAIN WATER DISTRICT, OR
IDAHO POINT SPECIAL ROAD DISTRICT, OR
IDANHA-DETROIT RURAL FIRE PROTECTION DISTRICT, OR
ILLINOIS VALLEY FIRE DISTRICT
ILLINOIS VALLEY R.F.P.D., OR
ILLINOIS VALLEY S.W.C.D., OR
IMBLER R.F.P.D., OR
INTERLACHEN WATER P.U.D., OR
IONE LIBRARY DISTRICT, OR
IONE R.F.P.D. #6-604, OR
IRONSIDE CEMETERY MAINTENANCE DISTRICT, OR
IRONSIDE RURAL ROAD DISTRICT #5, OR
IRRIGON PARK & RECREATION DISTRICT, OR
IRRIGON R.F.P.D., OR
ISLAND CITY AREA SANITATION DISTRICT, OR
ISLAND CITY CEMETERY MAINTENANCE DISTRICT, OR
JACK PINE VILLAGE SPECIAL ROAD DISTRICT, OR
JACKSON COUNTY FIRE DISTRICT #3, OR
JACKSON COUNTY FIRE DISTRICT #4, OR
JACKSON COUNTY FIRE DISTRICT #5, OR
JACKSON COUNTY LIBRARY DISTRICT, OR
JACKSON COUNTY VECTOR CONTROL DISTRICT, OR
JACKSON S.W.C.D., OR
JASPER KNOLLS WATER DISTRICT, OR
JEFFERSON COUNTY EMERGENCY MEDICAL SERVICE DISTRICT, OR
JEFFERSON COUNTY FIRE DISTRICT #1, OR
JEFFERSON COUNTY LIBRARY DISTRICT, OR
JEFFERSON COUNTY S.W.C.D., OR
JEFFERSON PARK & RECREATION DISTRICT, OR
JEFFERSON R.F.P.D., OR
JOB'S DRAINAGE DISTRICT, OR
JOHN DAY WATER DISTRICT, OR
JOHN DAY-CANYON CITY PARKS & RECREATION DISTRICT, OR
JOHN DAY-FERNHILL R.F.P.D. #5-108, OR
JORDAN VALLEY CEMETERY DISTRICT, OR
JORDAN VALLEY IRRIGATION DISTRICT, OR
JOSEPHINE COMMUNITY LIBRARY DISTRICT, OR

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JOSEPHINE COUNTY 4-H & EXTENSION SERVICE DISTRICT, OR
JOSEPHINE COUNTY 911 AGENCY, OR
JUNCTION CITY R.F.P.D., OR
JUNCTION CITY WATER CONTROL DISTRICT, OR
JUNIPER BUTTE ROAD DISTRICT, OR
JUNIPER CANYON WATER CONTROL DISTRICT, OR
JUNIPER FLAT DISTRICT IMPROVEMENT COMPANY, OR
JUNIPER FLAT R.F.P.D., OR
JUNO NONPROFIT WATER IMPROVEMENT DISTRICT, OR
KEATING R.F.P.D., OR
KEATING S.W.C.D., OR
KEIZER R.F.P.D., OR
KELLOGG RURAL FIRE DISTRICT, OR
KENO IRRIGATION DISTRICT, OR
KENO PINES ROAD DISTRICT, OR
KENO R.F.P.D., OR
KENT WATER DISTRICT, OR
KERBY WATER DISTRICT, OR
K-GB-LB WATER DISTRICT, OR
KILCHIS WATER DISTRICT, OR
KLAMATH 9-1-1 COMMUNICATIONS DISTRICT, OR
KLAMATH BASIN IMPROVEMENT DISTRICT, OR
KLAMATH COUNTY DRAINAGE SERVICE DISTRICT, OR
KLAMATH COUNTY EXTENSION SERVICE DISTRICT, OR
KLAMATH COUNTY FIRE DISTRICT #1, OR
KLAMATH COUNTY FIRE DISTRICT #3, OR
KLAMATH COUNTY FIRE DISTRICT #4, OR
KLAMATH COUNTY FIRE DISTRICT #5, OR
KLAMATH COUNTY LIBRARY SERVICE DISTRICT, OR
KLAMATH COUNTY PREDATORY ANIMAL CONTROL DISTRICT, OR
KLAMATH DRAINAGE DISTRICT, OR
KLAMATH FALLS FOREST ESTATES SPECIAL ROAD DISTRICT UNIT #2, OR
KLAMATH INTEROPERABILITY RADIO GROUP, OR
KLAMATH IRRIGATION DISTRICT, OR
KLAMATH RIVER ACRES SPECIAL ROAD DISTRICT, OR
KLAMATH S.W.C.D., OR
KLAMATH VECTOR CONTROL DISTRICT, OR
KNAPPA-SVENSEN-BURNSIDE R.F.P.D., OR
LA GRANDE CEMETERY MAINTENANCE DISTRICT, OR
LA GRANDE R.F.P.D., OR
LA PINE PARK & RECREATION DISTRICT, OR
LA PINE R.F.P.D., OR
LABISH VILLAGE SEWAGE & DRAINAGE, OR
LACOMB IRRIGATION DISTRICT, OR
LAFAYETTE AIRPORT COMMISSION, LA
LAFOURCHE PARISH HEALTH UNIT – DHH-OPH REGION 3
LAIDLAW WATER DISTRICT, OR
LAKE CHINOOK FIRE & RESCUE, OR
LAKE COUNTY 4-H & EXTENSION SERVICE DISTRICT, OR
LAKE COUNTY LIBRARY DISTRICT, OR
LAKE CREEK R.F.P.D. - JACKSON, OR
LAKE CREEK R.F.P.D. - LANE COUNTY, OR
LAKE DISTRICT HOSPITAL, OR
LAKE GROVE R.F.P.D. NO. 57, OR
LAKE GROVE WATER DISTRICT, OR
LAKE LABISH WATER CONTROL DISTRICT, OR
LAKE POINT SPECIAL ROAD DISTRICT, OR
LAKESIDE R.F.P.D. #4, OR
LAKESIDE WATER DISTRICT, OR
LAKEVIEW R.F.P.D., OR
LAKEVIEW S.W.C.D., OR
LAMONTAI IMPROVEMENT DISTRICT, OR
LANE FIRE AUTHORITY, OR
LANE LIBRARY DISTRICT, OR
LANE TRANSIT DISTRICT, OR
LANGELL VALLEY IRRIGATION DISTRICT, OR
LANGLOIS PUBLIC LIBRARY, OR
LANGLOIS R.F.P.D., OR
LANGLOIS WATER DISTRICT, OR
LAZY RIVER SPECIAL ROAD DISTRICT, OR
LEBANON AQUATIC DISTRICT, OR
LEBANON R.F.P.D., OR
LEWIS & CLARK R.F.P.D., OR
LINCOLN COUNTY LIBRARY DISTRICT, OR
LINCOLN S.W.C.D., OR
LINN COUNTY EMERGENCY TELEPHONE AGENCY, OR
LINN S.W.C.D., OR
LITTLE MUDDY CREEK WATER CONTROL, OR
LITTLE NESTUCCA DRAINAGE DISTRICT, OR
LITTLE SWITZERLAND SPECIAL ROAD DISTRICT, OR
LONE PINE IRRIGATION DISTRICT, OR
LONG PRAIRIE WATER DISTRICT, OR
LOOKINGGLASS OLALLA WATER CONTROL DISTRICT, OR
LOOKINGGLASS RURAL FIRE DISTRICT, OR
LORANE R.F.P.D., OR
LOST & BOULDER DITCH IMPROVEMENT DISTRICT, OR
LOST CREEK PARK SPECIAL ROAD DISTRICT, OR
LOUISIANA PUBLIC SERVICE COMMISSION, LA
LOUISIANA WATER WORKS
LOWELL R.F.P.D., OR
LOWER MCKAY CREEK R.F.P.D., OR
LOWER MCKAY CREEK WATER CONTROL DISTRICT, OR
LOWER POWDER RIVER IRRIGATION DISTRICT, OR
LOWER SILETZ WATER DISTRICT, OR
LOWER UMPQUA HOSPITAL DISTRICT, OR
LOWER UMPQUA PARK & RECREATION DISTRICT, OR
LOWER VALLEY WATER IMPROVEMENT DISTRICT, OR
LUCE LONG DITCH DISTRICT IMPROVEMENT CO., OR
LUSTED WATER DISTRICT, OR
LYONS R.F.P.D., OR
LYONS-MEHAMA WATER DISTRICT, OR
MADRAS AQUATIC CENTER DISTRICT, OR
MAKAI SPECIAL ROAD DISTRICT, OR
MALHEUR COUNTY S.W.C.D., OR
MALHEUR COUNTY VECTOR CONTROL DISTRICT, OR
MALHEUR DISTRICT IMPROVEMENT COMPANY, OR
MALHEUR DRAINAGE DISTRICT, OR
MALHEUR MEMORIAL HEALTH DISTRICT, OR
MALIN COMMUNITY CEMETERY MAINTENANCE DISTRICT, OR
MALIN COMMUNITY PARK & RECREATION DISTRICT, OR
MALIN IRRIGATION DISTRICT, OR
MALIN R.F.P.D., OR

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MAPLETON FIRE DEPARTMENT, OR
MAPLETON WATER DISTRICT, OR
MARCOLA WATER DISTRICT, OR
MARION COUNTY EXTENSION & 4H SERVICE DISTRICT, OR
MARION COUNTY FIRE DISTRICT #1, OR
MARION JACK IMPROVEMENT DISTRICT, OR
MARION S.W.C.D., OR
MARY'S RIVER ESTATES ROAD DISTRICT, OR
MCDONALD FOREST ESTATES SPECIAL ROAD DISTRICT, OR
MCKAY ACRES IMPROVEMENT DISTRICT, OR
MCKAY DAM R.F.P.D. # 7-410, OR
MCKENZIE FIRE & RESCUE, OR
MCKENZIE PALISADES WATER SUPPLY CORPORATION, OR
MCMINNVILLE R.F.P.D., OR
MCNULTY WATER P.U.D., OR
MEADOWS DRAINAGE DISTRICT, OR
MEDFORD IRRIGATION DISTRICT, OR
MEDFORD R.F.P.D. #2, OR
MEDFORD WATER COMMISSION
MEDICAL SPRINGS R.F.P.D., OR
MELHEUR COUNTY JAIL, OR
MERLIN COMMUNITY PARK DISTRICT, OR
MERRILL CEMETERY MAINTENANCE DISTRICT, OR
MERRILL PARK DISTRICT, OR
MERRILL R.F.P.D., OR
METRO REGIONAL GOVERNMENT
METRO REGIONAL PARKS
METROPOLITAN EXPOSITION RECREATION COMMISSION
METROPOLITAN SERVICE DISTRICT (METRO)
MID COUNTY CEMETERY MAINTENANCE DISTRICT, OR
MID-COLUMBIA FIRE AND RESCUE, OR
MIDDLE FORK IRRIGATION DISTRICT, OR
MIDLAND COMMUNITY PARK, OR
MIDLAND DRAINAGE IMPROVEMENT DISTRICT, OR
MILES CROSSING SANITARY SEWER DISTRICT, OR
MILL CITY R.F.P.D. #2-303, OR
MILL FOUR DRAINAGE DISTRICT, OR
MILLICOMA RIVER PARK & RECREATION DISTRICT, OR
MILLINGTON R.F.P.D. #5, OR
MILO VOLUNTEER FIRE DEPARTMENT, OR
MILTON-FREEWATER AMBULANCE SERVICE AREA HEALTH DISTRICT, OR
MILTON-FREEWATER WATER CONTROL DISTRICT, OR
MIROCO SPECIAL ROAD DISTRICT, OR
MIST-BIRKENFELD R.F.P.D., OR
MODOC POINT IRRIGATION DISTRICT, OR
MODOC POINT SANITARY DISTRICT, OR
MOHAWK VALLEY R.F.P.D., OR
MOLALLA AQUATIC DISTRICT, OR
MOLALLA R.F.P.D. #73, OR
MONITOR R.F.P.D., OR
MONROE R.F.P.D., OR
MONUMENT CEMETERY MAINTENANCE DISTRICT, OR
MONUMENT S.W.C.D., OR
MOOREA DRIVE SPECIAL ROAD DISTRICT, OR
MORO R.F.P.D., OR
MORROW COUNTY HEALTH DISTRICT, OR
MORROW COUNTY UNIFIED RECREATION DISTRICT, OR
MORROW S.W.C.D., OR
MOSIER FIRE DISTRICT, OR
MOUNTAIN DRIVE SPECIAL ROAD DISTRICT, OR
MT. ANGEL R.F.P.D., OR
MT. HOOD IRRIGATION DISTRICT, OR
MT. LAKI CEMETERY DISTRICT, OR
MT. VERNON R.F.P.D., OR
MULINO WATER DISTRICT #1, OR
MULTNOMAH COUNTY DRAINAGE DISTRICT #1, OR
MULTNOMAH COUNTY R.F.P.D. #10, OR
MULTNOMAH COUNTY R.F.P.D. #14, OR
MULTNOMAH EDUCATION SERVICE DISTRICT
MYRTLE CREEK R.F.P.D., OR
NEAH-KAH-NIE WATER DISTRICT, OR
NEDONNA R.F.P.D., OR
NEHALEM BAY FIRE AND RESCUE, OR
NEHALEM BAY HEALTH DISTRICT, OR
NEHALEM BAY WASTEWATER AGENCY, OR
NESIKA BEACH-OPHIR WATER DISTRICT, OR
NESKOWIN REGIONAL SANITARY AUTHORITY, OR
NESKOWIN REGIONAL WATER DISTRICT, OR
NESTUCCA R.F.P.D., OR
NETARTS WATER DISTRICT, OR
NETARTS-OCEANSIDE R.F.P.D., OR
NETARTS-OCEANSIDE SANITARY DISTRICT, OR
NEW BRIDGE WATER SUPPLY DISTRICT, OR
NEW CARLTON FIRE DISTRICT, OR
NEW ORLEANS REDEVELOPMENT AUTHORITY, LA
NEW PINE CREEK R.F.P.D., OR
NEWBERG R.F.P.D., OR
NEWBERRY ESTATES SPECIAL ROAD DISTRICT, OR
NEWPORT R.F.P.D., OR
NEWT YOUNG DITCH DISTRICT IMPROVEMENT COMPANY, OR
NORTH ALBANY R.F.P.D., OR
NORTH BAY R.F.P.D. #9, OR
NORTH CLACKAMAS PARKS & RECREATION DISTRICT, OR
NORTH COUNTY RECREATION DISTRICT, OR
NORTH DOUGLAS COUNTY FIRE & EMS, OR
NORTH DOUGLAS PARK & RECREATION DISTRICT, OR
NORTH GILLIAM COUNTY HEALTH DISTRICT, OR
NORTH GILLIAM COUNTY R.F.P.D., OR
NORTH LAKE HEALTH DISTRICT, OR
NORTH LEBANON WATER CONTROL DISTRICT, OR
NORTH LINCOLN FIRE & RESCUE DISTRICT #1, OR
NORTH LINCOLN HEALTH DISTRICT, OR
NORTH MORROW VECTOR CONTROL DISTRICT, OR
NORTH SHERMAN COUNTY R.F.P.D, OR
NORTH UNIT IRRIGATION DISTRICT, OR
NORTHEAST OREGON HOUSING AUTHORITY, OR
NORTHEAST WHEELER COUNTY HEALTH DISTRICT, OR
NORTHERN WASCO COUNTY P.U.D., OR
NORTHERN WASCO COUNTY PARK & RECREATION DISTRICT, OR
NYE DITCH USERS DISTRICT IMPROVEMENT, OR
NYSSA ROAD ASSESSMENT DISTRICT #2, OR
NYSSA RURAL FIRE DISTRICT, OR
NYSSA-ARCADIA DRAINAGE DISTRICT, OR
OAK LODGE WATER SERVICES, OR
OAKLAND R.F.P.D., OR
OAKVILLE COMMUNITY CENTER, OR
OCEANSIDE WATER DISTRICT, OR
OCHOCO IRRIGATION DISTRICT, OR

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OCHOCO WEST WATER AND SANITARY AUTHORITY, OR
ODELL SANITARY DISTRICT, OR
OLD OWYHEE DITCH IMPROVEMENT DISTRICT, OR
OLNEY-WALLUSKI FIRE & RESCUE DISTRICT, OR
ONTARIO LIBRARY DISTRICT, OR
ONTARIO R.F.P.D., OR
OPHIR R.F.P.D., OR
OREGON COAST COMMUNITY ACTION
OREGON HOUSING AND COMMUNITY SERVICES
OREGON INTERNATIONAL PORT OF COOS BAY, OR
OREGON LEGISLATIVE ADMINISTRATION
OREGON OUTBACK R.F.P.D., OR
OREGON POINT, OR
OREGON TRAIL LIBRARY DISTRICT, OR
OTTER ROCK WATER DISTRICT, OR
OWW UNIT #2 SANITARY DISTRICT, OR
OWYHEE CEMETERY MAINTENANCE DISTRICT, OR
OWYHEE IRRIGATION DISTRICT, OR
PACIFIC CITY JOINT WATER-SANITARY AUTHORITY, OR
PACIFIC COMMUNITIES HEALTH DISTRICT, OR
PACIFIC RIVIERA #3 SPECIAL ROAD DISTRICT, OR
PALATINE HILL WATER DISTRICT, OR
PALMER CREEK WATER DISTRICT IMPROVEMENT COMPANY, OR
PANORAMIC ACCESS SPECIAL ROAD DISTRICT, OR
PANTHER CREEK ROAD DISTRICT, OR
PANTHER CREEK WATER DISTRICT, OR
PARKDALE R.F.P.D., OR
PARKDALE SANITARY DISTRICT, OR
PENINSULA DRAINAGE DISTRICT #1, OR
PENINSULA DRAINAGE DISTRICT #2, OR
PHILOMATH FIRE AND RESCUE, OR
PILOT ROCK CEMETERY MAINTENANCE DISTRICT #5, OR
PILOT ROCK PARK & RECREATION DISTRICT, OR
PILOT ROCK R.F.P.D., OR
PINE EAGLE HEALTH DISTRICT, OR
PINE FLAT DISTRICT IMPROVEMENT COMPANY, OR
PINE GROVE IRRIGATION DISTRICT, OR
PINE GROVE WATER DISTRICT-KLAMATH FALLS, OR
PINE GROVE WATER DISTRICT-MAUPIN, OR
PINE VALLEY CEMETERY DISTRICT, OR
PINE VALLEY R.F.P.D., OR
PINEWOOD COUNTRY ESTATES SPECIAL ROAD DISTRICT, OR
PIONEER DISTRICT IMPROVEMENT COMPANY, OR
PISTOL RIVER CEMETERY MAINTENANCE DISTRICT, OR
PISTOL RIVER FIRE DISTRICT, OR
PLEASANT HILL R.F.P.D., OR
PLEASANT HOME WATER DISTRICT, OR
POCAHONTAS MINING AND IRRIGATION DISTRICT, OR
POE VALLEY IMPROVEMENT DISTRICT, OR
POE VALLEY PARK & RECREATION DISTRICT, OR
POE VALLEY VECTOR CONTROL DISTRICT, OR
POLK COUNTY FIRE DISTRICT #1, OR
POLK S.W.C.D., OR
POMPADOUR WATER IMPROVEMENT DISTRICT, OR
PONDEROSA PINES EAST SPECIAL ROAD DISTRICT, OR
PORT OF ALSEA, OR
PORT OF ARLINGTON, OR
PORT OF ASTORIA, OR
PORT OF BANDON, OR
PORT OF BRANDON, OR
PORT OF BROOKINGS HARBOR, OR
PORT OF CASCADE LOCKS, OR
PORT OF COQUILLE RIVER, OR
PORT OF GARIBALDI, OR
PORT OF GOLD BEACH, OR
PORT OF HOOD RIVER, OR
PORT OF MORGAN CITY, LA
PORT OF MORROW, OR
PORT OF NEHALEM, OR
PORT OF NEWPORT, OR
PORT OF PORT ORFORD, OR
PORT OF PORTLAND, OR
PORT OF SIUSLAW, OR
PORT OF ST. HELENS, OR
PORT OF THE DALLES, OR
PORT OF TILLAMOOK BAY, OR
PORT OF TOLEDO, OR
PORT OF UMATILLA, OR
PORT OF UMPQUA, OR
PORT ORFORD CEMETERY MAINTENANCE DISTRICT, OR
PORT ORFORD PUBLIC LIBRARY DISTRICT, OR
PORT ORFORD R.F.P.D., OR
PORTLAND DEVELOPMENT COMMISSION, OR
PORTLAND FIRE AND RESCUE
PORTLAND HOUSING CENTER, OR
POWDER R.F.P.D., OR
POWDER RIVER R.F.P.D., OR
POWDER VALLEY WATER CONTROL DISTRICT, OR
POWERS HEALTH DISTRICT, OR
PRAIRIE CEMETERY MAINTENANCE DISTRICT, OR
PRINEVILLE LAKE ACRES SPECIAL ROAD DISTRICT #1, OR
PROSPECT R.F.P.D., OR
QUAIL VALLEY PARK IMPROVEMENT DISTRICT, OR
QUEENER IRRIGATION IMPROVEMENT DISTRICT, OR
RAINBOW WATER DISTRICT, OR
RAINIER CEMETERY DISTRICT, OR
RAINIER DRAINAGE IMPROVEMENT COMPANY, OR
RALEIGH WATER DISTRICT, OR
REDMOND AREA PARK & RECREATION DISTRICT, OR
REDMOND FIRE AND RESCUE, OR
RIDDLE FIRE PROTECTION DISTRICT, OR
RIDGEWOOD DISTRICT IMPROVEMENT COMPANY, OR
RIDGEWOOD ROAD DISTRICT, OR
RIETH SANITARY DISTRICT, OR
RIETH WATER DISTRICT, OR
RIMROCK WEST IMPROVEMENT DISTRICT, OR
RINK CREEK WATER DISTRICT, OR
RIVER BEND ESTATES SPECIAL ROAD DISTRICT, OR
RIVER FOREST ACRES SPECIAL ROAD DISTRICT, OR
RIVER MEADOWS IMPROVEMENT DISTRICT, OR
RIVER PINES ESTATES SPECIAL ROAD DISTRICT, OR
RIVER ROAD PARK & RECREATION DISTRICT, OR
RIVER ROAD WATER DISTRICT, OR
RIVERBEND RIVERBANK WATER IMPROVEMENT DISTRICT, OR
RIVERDALE R.F.P.D. 11-JT, OR
RIVERGROVE WATER DISTRICT, OR
RIVERSIDE MISSION WATER CONTROL DISTRICT, OR
RIVERSIDE R.F.P.D. #7-406, OR

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RIVERSIDE WATER DISTRICT, OR
ROBERTS CREEK WATER DISTRICT, OR
ROCK CREEK DISTRICT IMPROVEMENT, OR
ROCK CREEK WATER DISTRICT, OR
ROCKWOOD WATER P.U.D., OR
ROCKY POINT FIRE & EMS, OR
ROGUE RIVER R.F.P.D., OR
ROGUE RIVER VALLEY IRRIGATION DISTRICT, OR
ROGUE VALLEY SEWER SERVICES, OR
ROGUE VALLEY SEWER, OR
ROGUE VALLEY TRANSPORTATION DISTRICT, OR
ROSEBURG URBAN SANITARY AUTHORITY, OR
ROSEWOOD ESTATES ROAD DISTRICT, OR
ROW RIVER VALLEY WATER DISTRICT, OR
RURAL ROAD ASSESSMENT DISTRICT #3, OR
RURAL ROAD ASSESSMENT DISTRICT #4, OR
SAINT LANDRY PARISH TOURIST COMMISSION
SAINT MARY PARISH REC DISTRICT 2
SAINT MARY PARISH REC DISTRICT 3
SAINT TAMMANY FIRE DISTRICT 4, LA
SALEM AREA MASS TRANSIT DISTRICT, OR
SALEM MASS TRANSIT DISTRICT
SALEM SUBURBAN R.F.P.D., OR
SALISHAN SANITARY DISTRICT, OR
SALMON RIVER PARK SPECIAL ROAD DISTRICT, OR
SALMON RIVER PARK WATER IMPROVEMENT DISTRICT, OR
SALMONBERRY TRAIL INTERGOVERNMENTAL AGENCY, OR
SANDPIPER VILLAGE SPECIAL ROAD DISTRICT, OR
SANDY DRAINAGE IMPROVEMENT COMPANY, OR
SANDY R.F.P.D. #72, OR
SANTA CLARA R.F.P.D., OR
SANTA CLARA WATER DISTRICT, OR
SANTIAM WATER CONTROL DISTRICT, OR
SAUVIE ISLAND DRAINAGE IMPROVEMENT COMPANY, OR
SAUVIE ISLAND VOLUNTEER FIRE DISTRICT #30J, OR
SCAPPOOSE DRAINAGE IMPROVEMENT COMPANY, OR
SCAPPOOSE PUBLIC LIBRARY DISTRICT, OR
SCAPPOOSE R.F.P.D., OR
SCIO R.F.P.D., OR
SCOTTSBURG R.F.P.D., OR
SEAL ROCK R.F.P.D., OR
SEAL ROCK WATER DISTRICT, OR
SEWERAGE AND WATER BOARD OF NEW ORLEANS, LA
SHANGRI-LA WATER DISTRICT, OR
SHASTA VIEW IRRIGATION DISTRICT, OR
SHELLEY ROAD CREST ACRES WATER DISTRICT, OR
SHERIDAN FIRE DISTRICT, OR
SHERMAN COUNTY HEALTH DISTRICT, OR
SHERMAN COUNTY S.W.C.D., OR
SHORELINE SANITARY DISTRICT, OR
SILETZ KEYS SANITARY DISTRICT, OR
SILETZ R.F.P.D., OR
SILVER FALLS LIBRARY DISTRICT, OR
SILVER LAKE IRRIGATION DISTRICT, OR
SILVER LAKE R.F.P.D., OR
SILVER SANDS SPECIAL ROAD DISTRICT, OR
SILVERTON R.F.P.D. NO. 2, OR
SISTERS PARKS & RECREATION DISTRICT, OR
SISTERS-CAMP SHERMAN R.F.P.D., OR
SIUSLAW PUBLIC LIBRARY DISTRICT, OR
SIUSLAW S.W.C.D., OR
SIUSLAW VALLEY FIRE AND RESCUE, OR
SIXES R.F.P.D., OR
SKIPANON WATER CONTROL DISTRICT, OR
SKYLINE VIEW DISTRICT IMPROVEMENT COMPANY, OR
SLEEPY HOLLOW WATER DISTRICT, OR
SMITH DITCH DISTRICT IMPROVEMENT COMPANY, OR
SOUTH CLACKAMAS TRANSPORTATION DISTRICT, OR
SOUTH COUNTY HEALTH DISTRICT, OR
SOUTH FORK WATER BOARD, OR
SOUTH GILLIAM COUNTY CEMETERY DISTRICT, OR
SOUTH GILLIAM COUNTY HEALTH DISTRICT, OR
SOUTH GILLIAM COUNTY R.F.P.D. VI-301, OR
SOUTH LAFOURCHE LEVEE DISTRICT, LA
SOUTH LANE COUNTY FIRE & RESCUE, OR
SOUTH SANTIAM RIVER WATER CONTROL DISTRICT, OR
SOUTH SHERMAN FIRE DISTRICT, OR
SOUTH SUBURBAN SANITARY DISTRICT, OR
SOUTH WASCO PARK & RECREATION DISTRICT, OR
SOUTHERN COOS HEALTH DISTRICT, OR
SOUTHERN CURRY CEMETERY MAINTENANCE DISTRICT, OR
SOUTHVIEW IMPROVEMENT DISTRICT, OR
SOUTHWEST LINCOLN COUNTY WATER DISTRICT, OR
SOUTHWESTERN POLK COUNTY R.F.P.D., OR
SOUTHWOOD PARK WATER DISTRICT, OR
SPECIAL ROAD DISTRICT #1, OR
SPECIAL ROAD DISTRICT #8, OR
SPRING RIVER SPECIAL ROAD DISTRICT, OR
SPRINGFIELD UTILITY BOARD, OR
ST. PAUL R.F.P.D., OR
STANFIELD CEMETERY DISTRICT #6, OR
STANFIELD IRRIGATION DISTRICT, OR
STARR CREEK ROAD DISTRICT, OR
STARWOOD SANITARY DISTRICT, OR
STAYTON FIRE DISTRICT, OR
SUBLIMITY FIRE DISTRICT, OR
SUBURBAN EAST SALEM WATER DISTRICT, OR
SUBURBAN LIGHTING DISTRICT, OR
SUCCOR CREEK DISTRICT IMPROVEMENT COMPANY, OR
SUMMER LAKE IRRIGATION DISTRICT, OR
SUMMERVILLE CEMETERY MAINTENANCE DISTRICT, OR
SUMNER R.F.P.D., OR
SUN MOUNTAIN SPECIAL ROAD DISTRICT, OR
SUNDOWN SANITATION DISTRICT, OR
SUNFOREST ESTATES SPECIAL ROAD DISTRICT, OR
SUNNYSIDE IRRIGATION DISTRICT, OR
SUNRISE WATER AUTHORITY, OR
SUNRIVER SERVICE DISTRICT, OR
SUNSET EMPIRE PARK & RECREATION DISTRICT, OR
SUNSET EMPIRE TRANSPORTATION DISTRICT, OR
SURFLAND ROAD DISTRICT, OR
SUTHERLIN VALLEY RECREATION DISTRICT, OR
SUTHERLIN WATER CONTROL DISTRICT, OR
SWALLEY IRRIGATION DISTRICT, OR
SWEET HOME CEMETERY MAINTENANCE DISTRICT, OR
SWEET HOME FIRE & AMBULANCE DISTRICT, OR
SWISSHOME-DEADWOOD R.F.P.D., OR

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TABLE ROCK DISTRICT IMPROVEMENT COMPANY, OR
TALENT IRRIGATION DISTRICT, OR
TANGENT R.F.P.D., OR
TENMILE R.F.P.D., OR
TERREBONNE DOMESTIC WATER DISTRICT, OR
THE DALLES IRRIGATION DISTRICT, OR
THOMAS CREEK-WESTSIDE R.F.P.D., OR
THREE RIVERS RANCH ROAD DISTRICT, OR
THREE SISTERS IRRIGATION DISTRICT, OR
TIGARD TUALATIN AQUATIC DISTRICT, OR
TIGARD WATER DISTRICT, OR
TILLAMOOK BAY FLOOD IMPROVEMENT DISTRICT, OR
TILLAMOOK COUNTY EMERGENCY COMMUNICATIONS DISTRICT, OR
TILLAMOOK COUNTY S.W.C.D., OR
TILLAMOOK COUNTY TRANSPORTATION DISTRICT, OR
TILLAMOOK FIRE DISTRICT, OR
TILLAMOOK P.U.D., OR
TILLER R.F.P.D., OR
TOBIN DITCH DISTRICT IMPROVEMENT COMPANY, OR
TOLEDO R.F.P.D., OR
TONE WATER DISTRICT, OR
TOOLEY WATER DISTRICT, OR
TRASK DRAINAGE DISTRICT, OR
TRI CITY R.F.P.D. #4, OR
TRI-CITY WATER & SANITARY AUTHORITY, OR
TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
TRIMET, OR
TUALATIN HILLS PARK & RECREATION DISTRICT
TUALATIN HILLS PARK & RECREATION DISTRICT, OR
TUALATIN S.W.C.D., OR
TUALATIN VALLEY FIRE & RESCUE
TUALATIN VALLEY FIRE & RESCUE, OR
TUALATIN VALLEY IRRIGATION DISTRICT, OR
TUALATIN VALLEY WATER DISTRICT
TUALATIN VALLEY WATER DISTRICT, OR
TUMALO IRRIGATION DISTRICT, OR
TURNER FIRE DISTRICT, OR
TWIN ROCKS SANITARY DISTRICT, OR
TWO RIVERS NORTH SPECIAL ROAD DISTRICT, OR
TWO RIVERS S.W.C.D., OR
TWO RIVERS SPECIAL ROAD DISTRICT, OR
TYGH VALLEY R.F.P.D., OR
TYGH VALLEY WATER DISTRICT, OR
UMATILLA COUNTY FIRE DISTRICT #1, OR
UMATILLA COUNTY S.W.C.D., OR
UMATILLA COUNTY SPECIAL LIBRARY DISTRICT, OR
UMATILLA HOSPITAL DISTRICT, OR
UMATILLA R.F.P.D. #7-405, OR
UMATILLA-MORROW RADIO AND DATA DISTRICT, OR
UMPQUA S.W.C.D., OR
UNION CEMETERY MAINTENANCE DISTRICT, OR
UNION COUNTY SOLID WASTE DISPOSAL DISTRICT, OR
UNION COUNTY VECTOR CONTROL DISTRICT, OR
UNION GAP SANITARY DISTRICT, OR
UNION GAP WATER DISTRICT, OR
UNION HEALTH DISTRICT, OR
UNION R.F.P.D., OR
UNION S.W.C.D., OR
UNITY COMMUNITY PARK & RECREATION DISTRICT, OR
UPPER CLEVELAND RAPIDS ROAD DISTRICT, OR
UPPER MCKENZIE R.F.P.D., OR
UPPER WILLAMETTE S.W.C.D., OR
VALE OREGON IRRIGATION DISTRICT, OR
VALE RURAL FIRE PROTECTION DISTRICT, OR
VALLEY ACRES SPECIAL ROAD DISTRICT, OR
VALLEY VIEW CEMETERY MAINTENANCE DISTRICT, OR
VALLEY VIEW WATER DISTRICT, OR
VANDEVERT ACRES SPECIAL ROAD DISTRICT, OR
VERNONIA R.F.P.D., OR
VINEYARD MOUNTAIN PARK & RECREATION DISTRICT, OR
VINEYARD MOUNTAIN SPECIAL ROAD DISTRICT, OR
WALLA WALLA RIVER IRRIGATION DISTRICT, OR
WALLOWA COUNTY HEALTH CARE DISTRICT, OR
WALLOWA LAKE COUNTY SERVICE DISTRICT, OR
WALLOWA LAKE IRRIGATION DISTRICT, OR
WALLOWA LAKE R.F.P.D., OR
WALLOWA S.W.C.D., OR
WALLOWA VALLEY IMPROVEMENT DISTRICT #1, OR
WAMIC R.F.P.D., OR
WAMIC WATER & SANITARY AUTHORITY, OR
WARMSPRINGS IRRIGATION DISTRICT, OR
WASCO COUNTY S.W.C.D., OR
WATER ENVIRONMENT SERVICES, OR
WATER WONDERLAND IMPROVEMENT DISTRICT, OR
WATERBURY & ALLEN DITCH IMPROVEMENT DISTRICT, OR
WATSECO-BARVIEW WATER DISTRICT, OR
WAUNA WATER DISTRICT, OR
WEDDERBURN SANITARY DISTRICT, OR
WEST EAGLE VALLEY WATER CONTROL DISTRICT, OR
WEST EXTENSION IRRIGATION DISTRICT, OR
WEST LABISH DRAINAGE & WATER CONTROL IMPROVEMENT DISTRICT, OR
WEST MULTNOMAH S.W.C.D., OR
WEST SIDE R.F.P.D., OR
WEST SLOPE WATER DISTRICT, OR
WEST UMATILLA MOSQUITO CONTROL DISTRICT, OR
WEST VALLEY FIRE DISTRICT, OR
WESTERN HEIGHTS SPECIAL ROAD DISTRICT, OR
WESTERN LANE AMBULANCE DISTRICT, OR
WESTLAND IRRIGATION DISTRICT, OR
WESTON ATHENA MEMORIAL HALL PARK & RECREATION DISTRICT, OR
WESTON CEMETERY DISTRICT #2, OR
WESTPORT FIRE AND RESCUE, OR
WESTRIDGE WATER SUPPLY CORPORATION, OR
WESTWOOD HILLS ROAD DISTRICT, OR
WESTWOOD VILLAGE ROAD DISTRICT, OR
WHEELER S.W.C.D., OR
WHITE RIVER HEALTH DISTRICT, OR
WIARD MEMORIAL PARK DISTRICT, OR
WICKIUP WATER DISTRICT, OR
WILLAKENZIE R.F.P.D., OR
WILLAMALANE PARK & RECREATION DISTRICT, OR
WILLAMALANE PARK AND RECREATION DISTRICT
WILLAMETTE HUMANE SOCIETY

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WILLAMETTE RIVER WATER COALITION, OR
WILLIAMS R.F.P.D., OR
WILLOW CREEK PARK DISTRICT, OR
WILLOW DALE WATER DISTRICT, OR
WILSON RIVER WATER DISTRICT, OR
WINCHESTER BAY R.F.P.D., OR
WINCHESTER BAY SANITARY DISTRICT, OR
WINCHUCK R.F.P.D., OR
WINSTON-DILLARD R.F.P.D., OR
WINSTON-DILLARD WATER DISTRICT, OR
WOLF CREEK R.F.P.D., OR
WOOD RIVER DISTRICT IMPROVEMENT COMPANY, OR
WOODBURN R.F.P.D. NO. 6, OR
WOODLAND PARK SPECIAL ROAD DISTRICT, OR
WOODS ROAD DISTRICT, OR
WRIGHT CREEK ROAD WATER IMPROVEMENT DISTRICT, OR
WY'EAST FIRE DISTRICT, OR
YACHATS R.F.P.D., OR
YAMHILL COUNTY TRANSIT AREA, OR
YAMHILL FIRE PROTECTION DISTRICT, OR
YAMHILL SWCD, OR
YONCALLA PARK & RECREATION DISTRICT, OR
YOUNGS RIVER-LEWIS & CLARK WATER DISTRICT, OR
ZUMWALT R.F.P.D., OR

K-12 INCLUDING BUT NOT LIMITED TO:

ACADIA PARISH SCHOOL BOARD
BEAVERTON SCHOOL DISTRICT
BEND-LA PINE SCHOOL DISTRICT
BOGALUSA HIGH SCHOOL, LA
BOSSIER PARISH SCHOOL BOARD
BROOKING HARBOR SCHOOL DISTRICT
CADDO PARISH SCHOOL DISTRICT
CALCASIEU PARISH SCHOOL DISTRICT
CANBY SCHOOL DISTRICT
CANYONVILLE CHRISTIAN ACADEMY
CASCADE SCHOOL DISTRICT
CASCADES ACADEMY OF CENTRAL OREGON
CENTENNIAL SCHOOL DISTRICT
CENTRAL CATHOLIC HIGH SCHOOL
CENTRAL POINT SCHOOL DISTRICT NO.6
CENTRAL SCHOOL DISTRICT 13J
COOS BAY SCHOOL DISTRICT NO.9
CORVALLIS SCHOOL DISTRICT 509J
COUNTY OF YAMHILL SCHOOL DISTRICT 29
CULVER SCHOOL DISTRICT
DALLAS SCHOOL DISTRICT NO.2
DAVID DOUGLAS SCHOOL DISTRICT
DAYTON SCHOOL DISTRICT NO.8
DE LA SALLE N CATHOLIC HS
DESCHUTES COUNTY SCHOOL DISTRICT NO.6
DOUGLAS EDUCATIONAL DISTRICT SERVICE
DUFUR SCHOOL DISTRICT NO.29
EAST BATON ROUGE PARISH SCHOOL DISTRICT
ESTACADA SCHOOL DISTRICT NO.10B
FOREST GROVE SCHOOL DISTRICT
GEORGE MIDDLE SCHOOL
GLADSTONE SCHOOL DISTRICT
GRANTS PASS SCHOOL DISTRICT 7
GREATER ALBANY PUBLIC SCHOOL DISTRICT
GRESHAM BARLOW JOINT SCHOOL DISTRICT
HEAD START OF LANE COUNTY
HIGH DESERT EDUCATION SERVICE DISTRICT
HILLSBORO SCHOOL DISTRICT
HOOD RIVER COUNTY SCHOOL DISTRICT
JACKSON CO SCHOOL DIST NO.9
JEFFERSON COUNTY SCHOOL DISTRICT 509-J
JEFFERSON PARISH SCHOOL DISTRICT
JEFFERSON SCHOOL DISTRICT
JUNCTION CITY SCHOOLS, OR
KLAMATH COUNTY SCHOOL DISTRICT
KLAMATH FALLS CITY SCHOOLS
LAFAYETTE PARISH SCHOOL DISTRICT
LAKE OSWEGO SCHOOL DISTRICT 7J
LANE COUNTY SCHOOL DISTRICT 4J
LINCOLN COUNTY SCHOOL DISTRICT
LINN CO. SCHOOL DIST. 95C
LIVINGSTON PARISH SCHOOL DISTRICT
LOST RIVER JR/SR HIGH SCHOOL
LOWELL SCHOOL DISTRICT NO.71
SALEM-KEIZER PUBLIC SCHOOLS 24J
MARION COUNTY SCHOOL DISTRICT 103
MARIST HIGH SCHOOL, OR
MCMINNVILLE SCHOOL DISTRICT NOAO
MEDFORD SCHOOL DISTRICT 549C
MITCH CHARTER SCHOOL
MONROE SCHOOL DISTRICT NO.1J
MORROW COUNTY SCHOOL DIST, OR
MULTNOMAH EDUCATION SERVICE DISTRICT
MULTISENSORY LEARNING ACADEMY
MYRTLE PINT SCHOOL DISTRICT 41
NEAH-KAH-NIE DISTRICT NO.56
NEWBERG PUBLIC SCHOOLS
NESTUCCA VALLEY SCHOOL DISTRICT NO.101
NOBEL LEARNING COMMUNITIES
NORTH BEND SCHOOL DISTRICT 13
NORTH CLACKAMAS SCHOOL DISTRICT
NORTH DOUGLAS SCHOOL DISTRICT
NORTH WASCO CITY SCHOOL DISTRICT 21
NORTHWEST REGIONAL EDUCATION SERVICE DISTRICT
ONTARIO MIDDLE SCHOOL
OREGON TRAIL SCHOOL DISTRICT NOA6
ORLEANS PARISH SCHOOL DISTRICT
PHOENIX-TALENT SCHOOL DISTRICT NOA
PLEASANT HILL SCHOOL DISTRICT
PORTLAND JEWISH ACADEMY
PORTLAND PUBLIC SCHOOLS
RAPIDES PARISH SCHOOL DISTRICT
REDMOND SCHOOL DISTRICT
REYNOLDS SCHOOL DISTRICT
ROGUE RIVER SCHOOL DISTRICT
ROSEBURG PUBLIC SCHOOLS
SCAPPOOSE SCHOOL DISTRICT 1J
SAINT TAMMANY PARISH SCHOOL BOARD, LA
SEASIDE SCHOOL DISTRICT 10
SHERWOOD SCHOOL DISTRICT 88J
SILVER FALLS SCHOOL DISTRICT 4J
SOUTH LANE SCHOOL DISTRICT 45J3
SOUTHERN OREGON EDUCATION SERVICE DISTRICT
SPRINGFIELD PUBLIC SCHOOLS
SUTHERLIN SCHOOL DISTRICT
SWEET HOME SCHOOL DISTRICT NO.55
TERREBONNE PARISH SCHOOL DISTRICT
THE CATLIN GABEL SCHOOL
TIGARD-TUALATIN SCHOOL DISTRICT
UMATILLA MORROW ESD
WEST LINN WILSONVILLE SCHOOL DISTRICT
WILLAMETTE EDUCATION SERVICE DISTRICT
WOODBURN SCHOOL DISTRICT

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YONCALLA SCHOOL DISTRICT
ACADEMY FOR MATH ENGINEERING & SCIENCE (AMES), UT
ALIANZA ACADEMY, UT
ALPINE DISTRICT, UT
AMERICAN LEADERSHIP ACADEMY, UT
AMERICAN PREPARATORY ACADEMY, UT
BAER CANYON HIGH SCHOOL FOR SPORTS & MEDICAL SCIENCES, UT
BEAR RIVER CHARTER SCHOOL, UT
BEAVER SCHOOL DISTRICT, UT
BEEHIVE SCIENCE & TECHNOLOGY ACADEMY (BSTA) , UT
BOX ELDER SCHOOL DISTRICT, UT
CBA CENTER, UT
CACHE SCHOOL DISTRICT, UT
CANYON RIM ACADEMY, UT
CANYONS DISTRICT, UT
CARBON SCHOOL DISTRICT, UT
CHANNING HALL, UT
CHARTER SCHOOL LEWIS ACADEMY, UT
CITY ACADEMY, UT
DAGGETT SCHOOL DISTRICT, UT
DAVINCI ACADEMY, UT
DAVIS DISTRICT, UT
DUAL IMMERSION ACADEMY, UT
DUCHESNE SCHOOL DISTRICT, UT
EARLY LIGHT ACADEMY AT DAYBREAK, UT
EAST HOLLYWOOD HIGH, UT
EDITH BOWEN LABORATORY SCHOOL, UT
EMERSON ALCOTT ACADEMY, UT
EMERY SCHOOL DISTRICT, UT
ENTHEOS ACADEMY, UT
EXCELSIOR ACADEMY, UT
FAST FORWARD HIGH, UT
FREEDOM ACADEMY, UT
GARFIELD SCHOOL DISTRICT, UT
GATEWAY PREPARATORY ACADEMY, UT
GEORGE WASHINGTON ACADEMY, UT
GOOD FOUNDATION ACADEMY, UT
GRAND SCHOOL DISTRICT, UT
GRANITE DISTRICT, UT
GUADALUPE SCHOOL, UT
HAWTHORN ACADEMY, UT
INTECH COLLEGIATE HIGH SCHOOL, UT
IRON SCHOOL DISTRICT, UT
ITINERIS EARLY COLLEGE HIGH, UT
JOHN HANCOCK CHARTER SCHOOL, UT
JORDAN DISTRICT, UT
JUAB SCHOOL DISTRICT, UT
KANE SCHOOL DISTRICT, UT
KARL G MAESER PREPARATORY ACADEMY, UT
LAKEVIEW ACADEMY, UT
LEGACY PREPARATORY ACADEMY, UT
LIBERTY ACADEMY, UT
LINCOLN ACADEMY, UT
LOGAN SCHOOL DISTRICT, UT
MARIA MONTESSORI ACADEMY, UT
MERIT COLLEGE PREPARATORY ACADEMY, UT
MILLARD SCHOOL DISTRICT, UT
MOAB CHARTER SCHOOL, UT
MONTICELLO ACADEMY, UT
MORGAN SCHOOL DISTRICT, UT
MOUNTAINVILLE ACADEMY, UT
MURRAY SCHOOL DISTRICT, UT
NAVIGATOR POINTE ACADEMY, UT
NEBO SCHOOL DISTRICT, UT
NO UT ACAD FOR MATH ENGINEERING & SCIENCE (NUAMES), UT
NOAH WEBSTER ACADEMY, UT
NORTH DAVIS PREPARATORY ACADEMY, UT
NORTH SANPETE SCHOOL DISTRICT, UT
NORTH STAR ACADEMY, UT
NORTH SUMMIT SCHOOL DISTRICT, UT
ODYSSEY CHARTER SCHOOL, UT
OGDEN PREPARATORY ACADEMY, UT
OGDEN SCHOOL DISTRICT, UT
OPEN CLASSROOM, UT
OPEN HIGH SCHOOL OF UTAH, UT
OQUIRRH MOUNTAIN CHARTER SCHOOL, UT
PARADIGM HIGH SCHOOL, UT
PARK CITY SCHOOL DISTRICT, UT
PINNACLE CANYON ACADEMY, UT
PIUTE SCHOOL DISTRICT, UT
PROVIDENCE HALL, UT
PROVO SCHOOL DISTRICT, UT
QUAIL RUN PRIMARY SCHOOL, UT
QUEST ACADEMY, UT
RANCHES ACADEMY, UT
REAGAN ACADEMY, UT
RENAISSANCE ACADEMY, UT
RICH SCHOOL DISTRICT, UT
ROCKWELL CHARTER HIGH SCHOOL, UT
SALT LAKE ARTS ACADEMY, UT
SALT LAKE CENTER FOR SCIENCE EDUCATION, UT
SALT LAKE SCHOOL DISTRICT, UT
SALT LAKE SCHOOL FOR THE PERFORMING ARTS, UT
SAN JUAN SCHOOL DISTRICT, UT
SEVIER SCHOOL DISTRICT, UT
SOLDIER HOLLOW CHARTER SCHOOL, UT
SOUTH SANPETE SCHOOL DISTRICT, UT
SOUTH SUMMIT SCHOOL DISTRICT, UT
SPECTRUM ACADEMY, UT
SUCCESS ACADEMY, UT
SUCCESS SCHOOL, UT
SUMMIT ACADEMY, UT
SUMMIT ACADEMY HIGH SCHOOL, UT
SYRACUSE ARTS ACADEMY, UT
THOMAS EDISON - NORTH, UT
TIMPANOGOS ACADEMY, UT
TINTIC SCHOOL DISTRICT, UT
TOOELE SCHOOL DISTRICT, UT
TUACAHN HIGH SCHOOL FOR THE PERFORMING ARTS, UT
UINTAH RIVER HIGH, UT
UINTAH SCHOOL DISTRICT, UT
UTAH CONNECTIONS ACADEMY, UT
UTAH COUNTY ACADEMY OF SCIENCE, UT
UTAH ELECTRONIC HIGH SCHOOL, UT
UTAH SCHOOLS FOR DEAF & BLIND, UT
UTAH STATE OFFICE OF EDUCATION, UT
UTAH VIRTUAL ACADEMY, UT
VENTURE ACADEMY, UT
VISTA AT ENTRADA SCHOOL OF PERFORMING ARTS AND TECHNOLOGY, UT
WALDEN SCHOOL OF LIBERAL ARTS, UT
WASATCH PEAK ACADEMY, UT
WASATCH SCHOOL DISTRICT, UT
WASHINGTON SCHOOL DISTRICT, UT
WAYNE SCHOOL DISTRICT, UT
WEBER SCHOOL DISTRICT, UT
WEILENMANN SCHOOL OF DISCOVERY, UT

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HIGHER EDUCATION

ARGOSY UNIVERSITY
BATON ROUGE COMMUNITY COLLEGE, LA
BIRTHINGWAY COLLEGE OF MIDWIFERY
BLUE MOUNTAIN COMMUNITY COLLEGE
BRIGHAM YOUNG UNIVERSITY - HAWAII
CENTRAL OREGON COMMUNITY COLLEGE
CENTENARY COLLEGE OF LOUISIANA
CHEMEKETA COMMUNITY COLLEGE
CLACKAMAS COMMUNITY COLLEGE
COLLEGE OF THE MARSHALL ISLANDS
COLUMBIA GORGE COMMUNITY COLLEGE
CONCORDIA UNIVERSITY
GEORGE FOX UNIVERSITY
KLAMATH COMMUNITY COLLEGE DISTRICT
LANE COMMUNITY COLLEGE
LEWIS AND CLARK COLLEGE
LINFIELD COLLEGE
LINN-BENTON COMMUNITY COLLEGE
LOUISIANA COLLEGE, LA
LOUISIANA STATE UNIVERSITY
LOUISIANA STATE UNIVERSITY HEALTH SERVICES
MARYLHURST UNIVERSITY
MT. HOOD COMMUNITY COLLEGE
MULTNOMAH BIBLE COLLEGE
NATIONAL COLLEGE OF NATURAL MEDICINE
NORTHWEST CHRISTIAN COLLEGE
OREGON HEALTH AND SCIENCE UNIVERSITY
OREGON INSTITUTE OF TECHNOLOGY
OREGON STATE UNIVERSITY
OREGON UNIVERSITY SYSTEM
PACIFIC UNIVERSITY
PIONEER PACIFIC COLLEGE
PORTLAND COMMUNITY COLLEGE
PORTLAND STATE UNIVERSITY
REED COLLEGE
RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII
ROGUE COMMUNITY COLLEGE
SOUTHEASTERN LOUISIANA UNIVERSITY
SOUTHERN OREGON UNIVERSITY (OREGON UNIVERSITY SYSTEM)
SOUTHWESTERN OREGON COMMUNITY COLLEGE
TULANE UNIVERSITY
TILLAMOOK BAY COMMUNITY COLLEGE
UMPQUA COMMUNITY COLLEGE
UNIVERSITY OF HAWAII BOARD OF REGENTS
UNIVERSITY OF HAWAII-HONOLULU COMMUNITY COLLEGE
UNIVERSITY OF OREGON-GRADUATE SCHOOL
UNIVERSITY OF PORTLAND
UNIVERSITY OF NEW ORLEANS
WESTERN OREGON UNIVERSITY
WESTERN STATES CHIROPRACTIC COLLEGE
WILLAMETTE UNIVERSITY
XAVIER UNIVERSITY
UTAH SYSTEM OF HIGHER EDUCATION, UT
UNIVERSITY OF UTAH, UT
UTAH STATE UNIVERSITY, UT
WEBER STATE UNIVERSITY, UT
SOUTHERN UTAH UNIVERSITY, UT
SNOW COLLEGE, UT
DIXIE STATE COLLEGE, UT
COLLEGE OF EASTERN UTAH, UT
UTAH VALLEY UNIVERSITY, UT
SALT LAKE COMMUNITY COLLEGE, UT
UTAH COLLEGE OF APPLIED TECHNOLOGY, UT

STATE AGENCIES

ADMIN. SERVICES OFFICE
BOARD OF MEDICAL EXAMINERS
HAWAII CHILD SUPPORT ENFORCEMENT AGENCY
HAWAII DEPARTMENT OF TRANSPORTATION
HAWAII HEALTH SYSTEMS CORPORATION
OFFICE OF MEDICAL ASSISTANCE PROGRAMS
OFFICE OF THE STATE TREASURER
OREGON BOARD OF ARCHITECTS
OREGON CHILD DEVELOPMENT COALITION
OREGON DEPARTMENT OF EDUCATION
OREGON DEPARTMENT OF FORESTRY
OREGON DEPT OF TRANSPORTATION
OREGON DEPT. OF EDUCATION
OREGON LOTTERY
OREGON OFFICE OF ENERGY
OREGON STATE BOARD OF NURSING
OREGON STATE DEPT OF CORRECTIONS
OREGON STATE POLICE
OREGON TOURISM COMMISSION
OREGON TRAVEL INFORMATION COUNCIL
SANTIAM CANYON COMMUNICATION CENTER
SEIU LOCAL 503, OPEU
SOH- JUDICIARY CONTRACTS AND PURCH
STATE DEPARTMENT OF DEFENSE, STATE OF HAWAII
STATE OF HAWAII
STATE OF HAWAII, DEPT. OF EDUCATION
STATE OF LOUISIANA
STATE OF LOUISIANA DEPT. OF EDUCATION
STATE OF LOUISIANA, 26TH JUDICIAL DISTRICT ATTORNEY
STATE OF UTAH

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SUBCONTRACT AGREEMENT FOR

GOVERNMENT AND OTHER COOPERATIVE PURCHASING CONTRACT(S)

BETWEEN [DEALER] AND CATERPILLAR INC.

This agreement ("**Agreement**") is entered into as of _____, 2020, between _____ [DEALER]_____, a _____ corporation with its principal place of business located at _____ ("**Dealer**") and Caterpillar Inc., a Delaware corporation with its principal place of business located at 520 Lake Cook Road, Suite 100, Deerfield, Illinois 60015 ("**Caterpillar**"). Caterpillar and Dealer are sometimes referred to individually as "**Party**" and collectively as "**Parties**."

WHEREAS, Caterpillar (or its affiliates as applicable), and Dealer are, among other agreements, Parties to a certain Sales and Service Agreement and Distribution Agreement for Engines, Parts and Service ("**Dealer Agreements**"), which are the primary agreements governing their relationship, , and this Agreement is not intended to replace or modify such agreements; and

WHEREAS, Caterpillar may from time to time enter into government and other cooperative purchasing contracts (individually referred to as a "**Purchasing Contract**" and collectively as the "**Purchasing Contracts**") with certain governmental or purchasing cooperative entities (the "**Governmental or Cooperative Agency**") , pursuant to which Caterpillar agrees to certain terms and conditions for the provision of Cat Products and Services (as defined below) to the members of or participants in the Governmental or Cooperative Agency (the "**Customers**") ; such Purchasing Contracts are concluded for the benefit of Cat dealers in that Cat dealers are invited to participate in them;

WHEREAS, Cat dealers are invited to independently decide to provide Cat Products and Services to the Customers of the Governmental or Cooperative Agency pursuant to the terms and conditions of the Purchasing Contract as a subcontractor or as otherwise designated in such Purchasing Contract, by entering into a Schedule (as defined below) to this Agreement ; and

WHEREAS, the Parties desire to establish the terms and conditions pursuant to which Dealer may become a subcontractor of Caterpillar or otherwise provide Cat Products and Services under a Purchasing Contract as described herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants set forth below, the Parties hereby agree as follows:

1. PURCHASING CONTRACTS AND SCOPE OF THIS AGREEMENT

(a) The Parties acknowledge and agree that Dealer is an independent business from Caterpillar and as such has the right to choose whether or not to accept the terms and conditions contained in any Purchasing Contract. In the event that Caterpillar enters into a Purchasing Contract and the Parties agree that Dealer should be a subcontractor or otherwise provide Cat Products and Services pursuant to such Purchasing Contract, the Parties shall enter into a schedule to this Agreement substantially in the form attached hereto as Exhibit A (each a "**Schedule**") and the Dealer shall become a subcontractor of Caterpillar or otherwise provide Cat

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Document No.: 7738660

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Products and Services under such Purchasing Contract, subject to and in accordance with the terms and conditions of this Agreement.

(b) Caterpillar is or may be obligated to provide to Customers certain products and services as further defined in a Schedule (the "**Cat Products and Services**") pursuant to Purchasing Contracts and have certain duties, rights, and obligations in connection with such Purchasing Contracts.

(c) This Agreement governs the relationship between Caterpillar and Dealer in the performance of the Purchasing Contracts. To the extent this Agreement does not specifically provide otherwise, the relevant terms of the Dealer Agreements apply to the relationship between Caterpillar and Dealer. In the event of a conflict between this Agreement and the Dealer Agreement, this Agreement shall control only to the extent such terms are expressly required by the Purchasing Contract, or applicable Law (as defined below).

(c) All the terms, conditions, covenants and representations contained herein and in the Purchasing Contracts, except as modified by this Agreement, are hereby incorporated by reference and deemed to be a part of this Agreement as if fully set forth at length herein. As between Caterpillar and the Dealer the terms and conditions of this Agreement shall supersede any conflicting terms and conditions set forth in the Purchasing Contract.

2. DEALER RESPONSIBILITIES

Upon execution of a Schedule for a Purchasing Contract:

(a) Dealer voluntarily agrees to be bound by the applicable terms of the Purchasing Contract between Caterpillar and the Governmental or Cooperative Agency as if Dealer were a party to such Cooperative Agreement in place of Caterpillar, except as otherwise provided herein or in any applicable Schedule.

(b) Dealer acknowledges they have read the Purchasing Contract and agrees to voluntarily create contractual relationships between Customers under such Purchasing Contract and Dealer.

(c) The Purchasing Contract is for use by Customers as allowed by the Governmental or Cooperative Agency. Dealer shall sell to such Customers entitled to purchase Caterpillar Products and Services under the Purchasing Contract pursuant to the terms and conditions provided therein.

(d) Dealer shall execute the obligations that are typically within the Dealer's business pursuant to its Dealer Agreements with Caterpillar, including, without limitation, the sale and service of Cat Products and Services, or as otherwise directed by Caterpillar.

(e) As and to the extent permitted by and subject to the Purchasing Contract, Dealer shall have the right to establish its own prices for Cat Products and Services and other terms and conditions of sale. Any additional terms agreed to by Dealer and any Customer shall be solely between such parties.

(f) Upon request of Caterpillar, Dealer shall provide in a timely manner, any and all information reasonably requested by Caterpillar related to Dealer's provision of Cat Products and Services pursuant to the Purchasing Contract.

3. CATERPILLAR RESPONSIBILITIES

Upon execution of a Schedule for a Purchasing Contract:

(a) Caterpillar shall, at all times, retain sole responsibility for administration of any and all renewals, modifications, price list changes and changes to the terms and conditions of the Purchasing Contract.

(b) Caterpillar shall make available to the Dealer adequate information, data, assistance, instructions, and internal resources (collectively, the "**Information**") reasonably necessary or desirable for the Dealer to provide Cat Products and Services pursuant to the Purchasing Contract and this Agreement.

(c) Caterpillar shall assist, if necessary, to facilitate the Customers of the Purchasing Contract to timely make available to the Dealer adequate information, data, assistance, instructions, and internal resources reasonably necessary or desirable for the Dealer to provide Cat Products and Services pursuant to the Purchasing Contract and this Agreement.

4. MINIMUM CONTRACT VALUE

Unless otherwise expressly stated in a Schedule, no commitment of any kind is made by Caterpillar to Dealer concerning the quantity or value of Cat Products and Services to be sold by Dealer pursuant to the Purchasing Contract nor does Caterpillar make any representation or warranty or commitment with respect to usage of the Purchasing Contract by Customers.

5. PRICING

Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Purchasing Contracts will also be required to be offered by the Dealer to Customers under the Purchasing Contract.

6. INDEMNIFICATION

(a) Dealer hereby unconditionally and irrevocably agrees and undertakes, without objection, to hold Caterpillar, and its affiliates, and their directors, officers, employees and agents, representatives, successors and assigns (the "**Indemnified Parties**"), harmless and indemnified at all times against (a) all demands, claims, actions, proceedings (including, but not limited to, arbitration) arising from or related to the Purchasing Contract which may be threatened or made or brought against the Indemnified Parties and (b) all losses, damages, costs, charges and expenses, which the Indemnified Parties may suffer or incur or be put to by reason of or in consequence of or in connection with this Agreement or the Purchasing Contract, including, but not limited to, legal costs, expenses and lawyers' fees incurred by the Indemnified Parties in connection with any demand, claim, action or proceeding involving one or more of the

Indemnified Parties; provided that such demands, claims, damages, and losses are attributable to the performance or non-performance of Dealer's obligations under or related to this Agreement or the Purchasing Contract or otherwise related to Cat Products and Services sold by Dealer.

(b) Dealer further undertakes to do, perform and execute or cause to be done, performed and executed, any act, deed matter or thing which Caterpillar may require the Dealer to do for the purpose of holding harmless or indemnifying the Indemnified Parties.

(c) Dealer's indemnity of the Indemnified Parties shall not be considered discharged or extinguished by an intermediate payment or satisfaction of any part of a claim, loss or damage owed by Dealer to the Indemnified Parties by virtue of the indemnity obligation, but shall continue and shall extend to cover any and all claims, losses and damages until all the obligations of Dealer have been discharged.

7. LIMITATIONS ON LIABILITY

EXCEPT AS RESULTING FROM DEALER'S BREACH OF CONTRACTUAL, STATUTORY, REGULATORY, OR PERFORMANCE OBLIGATIONS OWED TO ANY GOVERNMENTAL OR COOPERATIVE AGENCY, CUSTOMERS OR OTHER THIRD PARTIES, IN NO EVENT SHALL A PARTY BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, RELIANCE, OR SIMILAR DAMAGES, LOSSES OR EXPENSES (INCLUDING LOST PROFITS, LOSS OF ACTUAL OR ANTICPATED BUSINESS, SAVINGS, COMPETITIVE ADVANTAGE, OR GOODWILL, OR THE INTERRUPTION OF THE OTHER PARTY'S BUSINESS) UNDER OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE.

8. TERM

(a) The term of this Agreement ("**Term**") shall begin as of the date of execution of this Agreement and shall continue until two (2) years following the date after which Caterpillar has not had any Purchasing Contract in effect unless terminated sooner in accordance with the provision of this Agreement. Notwithstanding the foregoing, Dealer represents that prior to the Term it has complied with any obligations resulting from Dealer's performance under any Purchasing Contract, whether resulting from obligations under the Dealer Agreements, statute, regulation, performance, or otherwise and agrees to indemnify Caterpillar for such obligations in accordance with Article 7.

(b) Caterpillar may terminate this Agreement if (i) Caterpillar shall find any representation or warranty of Dealer to be incorrect or misleading or (ii) Dealer shall materially breach any material warranty, covenant or obligation contained in this Agreement, and Dealer shall fail to cure such breach, if capable of cure, within thirty (30) days from the date written notice specifying the nature of the breach is received by Dealer from Caterpillar.

(c) Dealer may terminate this Agreement if (i) Dealer shall find any representation or warranty of Caterpillar to be incorrect or misleading or (ii) Caterpillar may materially breach any material warranty, covenant or obligation contained in this Agreement, and Caterpillar, as the case may

be, shall fail to cure such breach, if capable of cure, within thirty (30) days from the date written notice specifying the nature of such breach in received by Caterpillar from Dealer, provided, however, that Caterpillar has completed or terminated Caterpillar's obligations with respect to Dealer under the Purchasing Contracts.

9. INDEPENDENT CONTRACTORS.

It is the intention of the Parties that the relationship existing between them shall be that of independent contractor and that nothing contained in this Agreement, the Purchasing Contracts or done pursuant to this Agreement or the Purchasing Contract shall constitute Dealer as the agent of Caterpillar for any purpose whatsoever.

10. FORCE MAJEURE

Either Party shall be excused for any failure or delay in the performance of any of its obligations under this Agreement if such failure or delay is due to a strike, lockout, work stoppage, labor dispute, material shortage, utility outage, fire, flood, earthquake, hurricane, severe weather, act of God, accident, trade sanction, embargo, act of war, acts of terrorism, conditions caused by national emergency, an pandemic or any other act of cause beyond the reasonable control or without the fault of such party, whether similar to or different from the causes above enumerated (a "**Force Majeure Event**") for as long as such circumstances prevail. The Parties shall remain liable for those obligations under this Agreement that are not affected by the Force Majeure Event.

11. ENTIRE AGREEMENT; NO WAIVER

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior representations, agreements and other understandings, oral or written, between Dealer and Caterpillar with respect to the subject matter hereof. There are no representations, agreements or understandings, express or implied, relating to the subject matter hereof which are not fully expressed in this Agreement. Each Party agrees to use good faith efforts to agree on those matters set forth in this Agreement that are to be mutually agreed by the Parties; provided, however, that no failure to agree on any such matter shall invalidate this Agreement or entitle either Party to terminate it. No departure from the terms of this Agreement shall obligate either Party to permit any subsequent departure. No waiver or failure to exercise any option, right or privilege under this Agreement by either Party on any occasion shall be construed to be a waiver of the same on any other occasion or of any other option, right or privilege.

12. COMPLIANCE WITH LAWS

Dealer represents and warrants that it has read, understands, and has been in compliance, and agrees that it shall comply with all applicable laws, rules, regulations, directives, ordinances, orders, or statutes (collectively, the "Laws"), including, but not limited to government procurement statutes and regulations. Further, Dealer represents and warrants and agrees that it has not acted, shall not act, and shall not cause, directly or indirectly, any other party to act, in any manner that would cause Caterpillar to violate the Laws. By entering into any transaction

with a Customer pursuant to a Purchasing Contract, , Dealer is representing to Caterpillar that, at the time of entering into such transaction, it is compliant with this Article 12.

13. SURVIVAL

The provisions set forth in this Agreement, and any other provision that by its terms survive termination, shall survive the termination of this Agreement to the extent required for their full observance and performance.

14. CHANGE ORDERS AND AMENDMENTS

All mutually agreed changes to this Agreement shall be implemented through a written amendment to this Agreement which, when signed by both Parties, shall be deemed a part of this Agreement. No amendment to this Agreement shall be valid unless in writing and signed by both Parties.

15. NOTICES

When written notice is required by this Agreement, it shall be sent by certified mail, by courier, or by such method as will permit the sender to verify delivery, to the addresses set forth below:

For Caterpillar:	For Dealer:
Caterpillar Inc.	_____
520 Lake Cook Road, Suite 100 Deerfield, Illinois 60015	_____
Attn: Deputy General Counsel – Commercial	Attn: _____

SAMPLE COPY FOR REVIEW ONLY. NOT FOR SIGNATURE.

Notice shall be deemed received when actually delivered to the recipient as demonstrated by postal records, courier records or other method verifying the date of delivery. The addresses set forth above can be changed only by written notice.

16. INTERPRETATION

In the interpretation of this Agreement, insofar as possible, the intention of the Parties as expressed in this Agreement shall prevail over any presumption or construction implied or imposed by Law. The word "including" means including without limitation. The headings contained in this Agreement are for convenience only and are not to be considered in interpreting this Agreement. The Parties agree that the terms of this Agreement shall not be construed in favor of or against a Party by reason of the extent to which such Party participated in its preparation.

17. GOVERNING LAW; SEVERABILITY

This Agreement shall be governed by the laws of the State of Illinois, United States of America (regardless of the laws that might be applicable under its principles of conflict of laws). If any provision of this Agreement, or the application thereof, is determined by a court of competent

jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect, and such other provisions shall be interpreted so as best to reasonably effect the intent of the Parties. The Parties further agree to replace any such invalid or unenforceable provision with a valid and enforceable provision designed to achieve, to the extent possible under applicable law, the business purpose and intent of such invalid or unenforceable provision.

18. COUNTERPARTS

This Agreement may be signed in one or more counterparts, each to be effective as an original. Once signed by the Parties, any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

[DEALER NAME]		**CATERPILLAR INC.**
By: _____	***SAMPLE COPY FOR REVIEW ONLY. NOT FOR SIGNATURE.***	By: _____
Name: _____		Name: Chris Gustafson_____
Title: _____		Title: Glb. Accounts & Allied Prod. Mgr.
Date: _____		Date: _____

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Exhibit A
to
Subcontract Agreement for Government and Other Cooperative Purchasing Contract(s)

SAMPLE ONLY, DO NOT COMPLETE BLANKS

SCHEDULE NO. _____

to

SUBCONTRACT AGREEMENT FOR
GOVERNMENT AND OTHER COOPERATIVE PURCHASING CONTRACT(S)
BETWEEN [DEALER] AND CATERPILLAR INC.

This Schedule No. __ is effective as of _____, _____ ("**Schedule**"), to the Subcontract Agreement for Government and Other Cooperative Purchasing Contract(s), including any amendments and/or addendums thereto, by and between _____ ("**Dealer**") and Caterpillar Inc. ("**Caterpillar**") which was entered into as of _____, _____ ("**Subcontract Agreement**").

1. **Purchasing Contract**:

Caterpillar as entered into the Purchasing Contract attached hereto as **Annex A**, as summarized below.

Name of Purchasing Contract: _____

Purchasing Contract Identifier: _____

Governmental or Cooperative Agency: _____

Cat Products and Services: _____

2. **Agreement**:

Dealer shall be bound by the terms of the Purchasing Contract and obligated to perform as provided in the Subcontract Agreement as if Dealer were directly party to the Purchasing Contract in place of Caterpillar, as necessary for full performance under the Purchase Agreement, except as otherwise set forth in the Subcontract and this Schedule.

3. **Reporting and Fees**:

Dealer acknowledges that it is solely responsible for and obligated to pay any applicable fee for all Cat Products and Services or other products and services it provides as set forth in the Purchasing

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Contract. All reporting and fee payment obligations imposed on Dealer under the Purchasing Contract shall be made to Caterpillar directly in such manner and at such time as requested by Caterpillar, but in no event later than fifteen (15) business days before such report or payment is due to the Governmental or Cooperative Agency.

4. **Other Required Terms**:

[…..]

5. **Subcontract Agreement for Government and Other Cooperative Purchasing Contract(s)**:

This Schedule is issued pursuant to the Subcontract Agreement. All of the terms and conditions of said Subcontract Agreement, including any amendments thereto, are incorporated herein and made a part hereof as if such terms and conditions were set forth in this Schedule.

[Signature to follow on the next page]

AGREED AND ACCEPTED:

[DEALER]		**CATERPILLAR INC.**	
By:	SAMPLE – DO NOT SIGN	**By:**	SAMPLE – DO NOT SIGN
Name:		**Name:**	
Title:		**Title:**	
Date:		**Date:**	

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Annex A
to
Schedule No.____
to
Subcontract Agreement for Government and Other Cooperative Purchasing Contract(s)

PURCHASING CONTRACT

[See attached]

Caterpillar: Confidential Yellow

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

RFP 212816

Heavy Equipment, Parts, Accessories, Supplies and Related Services

ATTACHMENT B – City of Tucson

Certification of Living Wage Payments Form

(This form must be completed by the Contractor and each applicable subcontractor.)

Contract Number: RFP212816

Contractor or Sub Name: The Contractor, Caterpillar Inc does not pay local dealer personnel who work on this contract. If awarded, it will be Empire Machinery's responsibility to provide this information.

(Please Check Only One of the Following Two Options)

N/A I do hereby agree to pay all eligible employees working on the above-referenced contract a minimum of $10.86 per hour and provide health benefits. I also agree to pay at least 50% of the eligible employees' health benefits premium. Our firm's health insurance provider(s) are listed below:

Name of Health Insurance Company: _____

Address: _____

Telephone: _____

Fax Number: _____

Plan or Program Number: _____

Monthly premium paid by employer:_____Monthly premium paid by employee _____

Name of Health Insurance Company: _____

Address: _____

Telephone: _____

Fax Number: _____

Plan or Program Number: _____

Monthly premium paid by employer:_____Monthly premium paid by employee _____

N/A I do hereby agree to pay all eligible employees working on the above-referenced contract a minimum of $12.15 per hour. I **do not** offer health benefits to eligible employees working on this contract and/or I **do not** pay at least 50% of the eligible employees' health benefits premium.

Caterpillar Inc

(Contractor /Sub-Contractor Name)

September 10, 2021

(Date)

by DocuSigned by: Patrick Kearns 68A87926721[illegible]

(Signature)

Patrick Kearns, NA Industry Manager

(Title)

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT

REQUEST FOR PROPOSAL NO. **212816**

HEAVY EQUIPMENT, PARTS, ACCESSORIES, SUPPLIES AND RELATED SERVICES

AMENDMENT NO. **ONE (1)**

DATE ISSUED: **August 27, 2021**

The referenced document has been modified as per the attached Amendment No. **1**.

Please sign this Amendment where designated and return the executed copy with your PROPOSAL. This amendment is hereby made part of the referenced solicitation as though fully set forth therein. Any questions regarding this amendment should be addressed to Cynthia Thompson NIGP-CPP, CPPB, Principal Contract Officer at (520) 837-4134 or Cynthia.thompson@tucsonaz.gov

BUSINESS SERVICES DEPARTMENT
SHARED SERVICES - PROCUREMENT
CITY HALL • 255 W. ALAMEDA • P.O. BOX 27210 • TUCSON, AZ 85726-7210
(520) 791-4217 • FAX (520) 791-4735 • TTY (520) 791-2639
www.tucsonprocurement.com

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

REQUEST FOR PROPOSAL AMENDMENT

CITY OF TUCSON BUSINESS SERVICES DEPARTMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
Phone: (520) 837-4134
ISSUE DATE: AUGUST 27, 2021

RFP NO.: 212816
RFP AMENDMENT NO.: 1

DUE DATE: SEPTEMBER 14, 2021
CONTRACT OFFICER: CYNTHIA THOMPSON, NIGP-CPP, CPPB

HEAVY EQUIPMENT, PARTS, ACCESSORIES, SUPPLIES AND RELATED SERVICES

A SIGNED COPY OF THIS AMENDMENT MUST BE SUBMITTED WITH YOUR PROPOSAL.
THIS RFP IS AMENDED AS FOLLOWS:

ITEM NO. ONE (1): DUE DATE

The Due Date shall remain the same and is due on, ***TUESDAY, SEPTEMBER 14, 2021, at 2:00 P.M.,*** LOCAL AZ TIME.

ITEM NO. TWO (2): DEADLINE FOR SUBMITTING QUESTIONS

Pursuant to Instructions to Offerors, paragraph 3. Inquiries, the deadline to submit written questions shall be no later than ***SEPTEMBER 3RD, 2021, 4:00 p.m.*** Local Arizona Time. Questions received after this date may not be answered prior to RFP due date. Questions shall be submitted via email to Cynthia.Thompson@tucsonaz.gov

ITEM NO. THREE (3): PRE-PROPOSAL QUESTIONS AND ANSWERS

QUESTION: What pieces of equipment are being used at the City of Tucson Landfill?
ANSWER: The following is a list of current equipment used at the City of Tucson Landfill Operations, located at 5300 E. Los Reales Road, Tucson, AZ.

Quantity - 2, Caterpillar 836H Compactors
Quantity - 1, Caterpillar 836K Compactor
Quantity - 1, 980K Caterpillar loader
Quantity - 1, 980M Caterpillar loader
Quantity - 1, 914G Caterpillar loader
Quantity - 1, D6R Caterpillar dozer
Quantity - 1, D8T Caterpillar dozer
Quantity - 2, D9T Caterpillar dozers
Quantity - 1, 730EJ Caterpillar haul truck
Quantity - 1, 745C Caterpillar haul truck
Quantity - 1, 735WT Caterpillar water truck
Quantity - 1, 140M Caterpillar grader
Quantity - 1, 627G Caterpillar scraper
Quantity - 1, 613CW Caterpillar water wagon
Quantity - 1, 621GW Caterpillar water wagon
Quantity - 1, 375H Sullair air compressor
Quantity - 3, Magnum light towers

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

REQUEST FOR PROPOSAL AMENDMENT

CITY OF TUCSON BUSINESS SERVICES DEPARTMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
Phone: (520) 837-4134
ISSUE DATE: AUGUST 27, 2021

DUE DATE: SEPTEMBER 14, 2021
CONTRACT OFFICER: CYNTHIA THOMPSON, NIGP-CPP, CPPB

QUESTION: "Could equipment such as Refuse Handling units: ASL, Front and Rear Loaders be considered Heavy Equipment?"
ANSWER: Refuse handling equipment as mentioned in the question would not be considered 'Heavy Equipment" for the purposes of this RFP. It could be included in the "Allied" products, but it would not qualify as an evaluated product.

QUESTION: Please provide clarification on the ability of the Offeror to be State specific in OMINIA participation. As an example, could an Interested Offeror select only the States they currently consider their regional areas?
ANSWER: Pursuant to Attachment A – Exhibit B- OMINIA Partners Exhibit A-Response for National Cooperative Contract, 3.2 Distribution, Logistics, Offerors are encouraged to respond with their total service areas.

QUESTION: How does the City intend to make contract award?
ANSWER: To provide adequate contract coverage, and at the City's sole discretion, multiple awards may be made. If multiple awards are made, it will be up to each individual using department to determine which awarded Contractor they will use to meet their operational needs.

QUESTION: Please clarify, what is the City's estimated spend over the full potential Master Agreement term (5 years) for Heavy Equipment, Parts, Accessories, Supplies and Related Services?
ANSWER: The City anticipates spending approximately $11.8 million over the full potential Master Agreement term (5 years) for Heavy Equipment, Parts, Accessories, Supplies and Related Services.

END OF AMENDMENT

ALL OTHER PROVISIONS OF THE REQUEST FOR PROPOSAL SHALL REMAIN IN THEIR ENTIRETY.
VENDOR HEREBY ACKNOWLEDGES RECEIPT AND UNDERSTANDING OF THE ABOVE AMENDMENT.

DocuSigned by:
Patrick Kearns
08A87926721B4E0...
Signature

09/10/21
Date

Patrick Kearns, North America Industry Manager
Print Name and Title

Caterpillar Inc.
Company Name

100 NE Adams St.
Address

Peoria IL 61629
City State Zip

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT

REQUEST FOR PROPOSAL NO. **212816**

HEAVY EQUIPMENT, PARTS, ACCESSORIES, SUPPLIES AND RELATED SERVICES

AMENDMENT NO. **TWO (2)**

DATE ISSUED: **September 10, 2021**

The referenced document has been modified as per the attached Amendment No. **2**.

Please sign this Amendment where designated and return the executed copy with your PROPOSAL. This amendment is hereby made part of the referenced solicitation as though fully set forth therein. Any questions regarding this amendment should be addressed to Cynthia Thompson NIGP-CPP, CPPB, Principal Contract Officer at (520) 837-4134 or Cynthia.thompson@tucsonaz.gov

BUSINESS SERVICES DEPARTMENT
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DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

REQUEST FOR PROPOSAL AMENDMENT

CITY OF TUCSON BUSINESS SERVICES DEPARTMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
Phone: (520) 837-4134
ISSUE DATE: SEPTEMBER 10, 2021

RFP NO.: 212816
RFP AMENDMENT NO.: 2

DUE DATE: SEPTEMBER 21, 2021
CONTRACT OFFICER: CYNTHIA THOMPSON, NIGP-CPP, CPPB

HEAVY EQUIPMENT, PARTS, ACCESSORIES, SUPPLIES AND RELATED SERVICES

A SIGNED COPY OF THIS AMENDMENT MUST BE SUBMITTED WITH YOUR PROPOSAL.
THIS RFP IS AMENDED AS FOLLOWS:

ITEM NO. ONE (1): DUE DATE

The Due Date is hereby ***changed*** and is due on, ***TUESDAY, SEPTEMBER 21, 2021, at 2:00 P.M.,*** LOCAL AZ TIME.

END OF AMENDMENT

ALL OTHER PROVISIONS OF THE REQUEST FOR PROPOSAL SHALL REMAIN IN THEIR ENTIRETY.
VENDOR HEREBY ACKNOWLEDGES RECEIPT AND UNDERSTANDING OF THE ABOVE AMENDMENT.

DocuSigned by:
Patrick Kearns
68A8792672 1B4E0...
Signature

09/10/21
Date

Patrick Kearns, North America Industry Manager
Print Name and Title

Caterpillar Inc.
Company Name

100 NE Adams St.
Address

Peoria IL 61629
City State Zip

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT

REQUEST FOR PROPOSAL NO. **212816**

HEAVY EQUIPMENT, PARTS, ACCESSORIES, SUPPLIES AND RELATED SERVICES

AMENDMENT NO. **THREE (3)**

DATE ISSUED: **September 15, 2021**

The referenced document has been modified as per the attached Amendment No. **3.**

Please sign this Amendment where designated and return the executed copy with your PROPOSAL. This amendment is hereby made part of the referenced solicitation as though fully set forth therein. Any questions regarding this amendment should be addressed to Cynthia Thompson NIGP-CPP, CPPB, Principal Contract Officer at (520) 837-4134 or Cynthia.thompson@tucsonaz.gov

DocuSign Envelope ID: A0CE4C4B-3355-403A-AFA3-96D0E4260D23

REQUEST FOR PROPOSAL AMENDMENT

CITY OF TUCSON BUSINESS SERVICES DEPARTMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
Phone: (520) 837-4134
ISSUE DATE: SEPTEMBER 15, 2021

DUE DATE: SEPTEMBER 24, 2021
CONTRACT OFFICER: CYNTHIA THOMPSON, NIGP-CPP, CPPB

HEAVY EQUIPMENT, PARTS, ACCESSORIES, SUPPLIES AND RELATED SERVICES

A SIGNED COPY OF THIS AMENDMENT MUST BE SUBMITTED WITH YOUR PROPOSAL.
THIS RFP IS AMENDED AS FOLLOWS:

ITEM NO. ONE (1): DUE DATE

The Due Date is hereby ***changed*** and is due on, ***FRIDAY, SEPTEMBER 24, 2021, at 2:00 P.M.,*** LOCAL AZ TIME.

END OF AMENDMENT

ALL OTHER PROVISIONS OF THE REQUEST FOR PROPOSAL SHALL REMAIN IN THEIR ENTIRETY.
VENDOR HEREBY ACKNOWLEDGES RECEIPT AND UNDERSTANDING OF THE ABOVE AMENDMENT.

DocuSigned by:
Patrick Kearns
68A87926721B4E0...
Signature

09/16/2021
Date

Caterpillar Inc.
Company Name

Patrick Kearns, North America Industry Manager
Print Name and Title

100 NE Adams St.
Address

Peoria IL 61629
City State Zip

Contract 212816-01

Heavy Equipment, Parts, Accessories, Supplies and Related Services

Caterpillar, Inc.

Caterpillar, Inc. Insurance Documents

CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
09/27/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Aon Risk Services Central, Inc.
Chicago IL Office
200 East Randolph
Chicago IL 60601 USA

CONTACT NAME:
PHONE (A/C. No. Ext): (866) 283-7122 **FAX (A/C. No.):** (800) 363-0105
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	Old Republic Insurance Company	24147
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
Caterpillar Inc.
100 NE Adams Street
Peoria IL 61629 USA

COVERAGES **CERTIFICATE NUMBER:** 570095599830 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF NSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTA N, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLIC ES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PA D CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			MWZY31381322	07/01/2022	07/01/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$1,000,000 $1,000,000 $2,000,000 $2,000,000
A	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY			MWTB 313812 22	07/01/2022	07/01/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$1,000,000
	UMBRELLA LIAB OCCUR **EXCESS LIAB** CLAIMS-MADE DED RETENTION						EACH OCCURRENCE AGGREGATE	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Contractual Liability is included in the General Liability policy. RE: Contract is for RFP 212816 Heavy Equipment, Parts, Accessories, Supplies and Related Services. City of Tucson is included as Additional Insured in accordance with the policy provisions of the General Liability and Automobile Liability policies. General Liability and Automobile Liability policies evidenced herein are Primary and Non-Contributory to other insurance available to Additional Insured, but only in accordance with the policy's provisions. A Waiver of Subrogation is granted in favor of City of Tucson in accordance with the policy provisions of the General Liability and Automobile Liability policies.

CERTIFICATE HOLDER

City of Tucson
Attn: OMNIA Partners
City of Tucson RFP 212816
City Hall, 255 W. Alameda
8th Floor East
Tucson AZ 85701 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Central, Inc.

Holder Identifier :

Certificate No : 570095599830

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

Name Of Person(s) Or Organization(s):
Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

© Insurance Services Office, Inc., 2018

POLICY NUMBER:

COMMERCIAL AUTO
CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Caterpillar Inc.

Endorsement Effective Date: 07/01/22

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

Any person or organization whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

© Insurance Services Office, Inc., 2011

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 09/28/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 540 W. MADISON CHICAGO, IL 60661 CN101198626-CLS-WC-22-23	**CONTACT NAME:** Marsh | U.S. Operations **PHONE (A/C, No, Ext):** 866-966-4664 **FAX (A/C, No):** 212-948-0770 **E-MAIL ADDRESS:** Chicago.CertRequest@marsh.com
INSURED Caterpillar, Inc. 100 NE Adamst St Peoria, IL 61629	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** Liberty Insurance Corporation / 42404 **INSURER B :** **INSURER C :** **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** CHI-010143453-01 **REVISION NUMBER:** 12

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:						EACH OCCURRENCE	$
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
							PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	☐ **UMBRELLA LIAB** ☐ OCCUR ☐ **EXCESS LIAB** ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY**			WA7-64D-004320-012	07/01/2022	07/01/2023	X PER STATUTE ☐ OTH-ER	
A	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBEREXCLUDED? **(Mandatory in NH)** Y / N: N	N / A		See Attached WC7-641-444315-062 MN, WI	07/01/2022	07/01/2023	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Equipment being used on public agency job sites

Waiver of subrogation is applicable where required by written contract and subject to policy terms and conditions.

CERTIFICATE HOLDER

City of Tucson
Attn: City of Tucson / OMNIA Partners
City of Tucson RFP 212816
City Hall, 255 W Alameda, 8th floor east
Tucson, AZ 85701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Marsh USA Inc.

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AGENCY CUSTOMER ID: CN101198626

LOC #: Chicago

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
MARSH USA INC.	Caterpillar, Inc. 100 NE Adamst St Peoria, IL 61629
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

STATES CONTINUED (WA7-64D-004320-012):

AL, AR, AZ, CA, CO, CT, DC, FL, GA, IA, ID, IL, IN, KS, KY, LA, MA, MD, ME, MI, MO, MS, MT, NC, NE, NH, NM, NV, NY, OK, OR, PA, RI, SC, SD,TX, UT, VA, VT, WV

Includes Other states Coverage (except Monopolistic States) and U.S. Longshore & Harbor Workers.

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The ACORD name and logo are registered marks of ACORD

EMPISOU-01 MMORIN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/28/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER ARNETT INSURANCE SERVICES, LLC 3850 E BASELINE RD #106 MESA, AZ 85206	CONTACT NAME PHONE (A/C, No, Ext) (480) 830-7400 FAX (A/C, No) (480) 830-7404 E-MAIL ADDRESS mmorin@arnettins.com
	INSURER(S) AFFORDING COVERAGE / NAIC #
	INSURER A Liberty Mutual Fire Insurance Company
INSURED Empire Southwest, LLC 1725 S Country Club Dr Mesa, AZ 85210	INSURER B Liberty Mutual Insurance Corporation INSURER C Liberty Insurance Corporation 42404 INSURER D INSURER E INSURER F

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE L MIT APPL ES PER: X POLICY X PRO-JECT LOC OTHER:	X	X	TB2661066618082	7/1/2022	7/1/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG DESIGNATED LOC	$ 2,000,000 $ 300,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $ 3,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY	X	X	AI2661066618062	7/1/2022	7/1/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N If yes, describe under DESCR PTION OF OPERATIONS below	N / A	X	WA566D066618092	7/1/2022	7/1/2023	X PER STATUTE OTH-ER E.L. EACH ACC DENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 2,000,000 $ 2,000,000 $ 2,000,000
C	Garagekeepers			AV7661066618062	7/1/2022	7/1/2023	Limit	2,000,000
C	Garage Liability			AV7661066618062	7/1/2022	7/1/2023	Limit	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: RFP 212816 Heavy Equipment, Parts, Accessories, Supplies and Related Services

Certificate Holder is included as Additional Insured with regard to the General Liability and Automobile Liability per written contract or agreement. This insurance is Primary and Non-contributory. Waiver of Subrogation applies in favor of the Additional Insured. 30-Day Notice of Cancellation applies. 10-Day Notice of Cancellation for Non-payment of Premium applies.

CERTIFICATE HOLDER

City of Tucson
Dept of Procurement
255 W Alameda, 6th FL Lobby
Tucson, AZ 85701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
Any person or organization whom you have agreed to include as an additional insured under a written contract, provided such contract was executed prior to the date of loss.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

Name Of Person(s) Or Organization(s):
Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

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EARLIER NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Number of Days' Notice 30

(If no entry appears above, information required to complete this Schedule will be shown in the Declarations as applicable to this endorsement.)

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in paragraph **2.** of either the CANCELLATION Common Policy Condition or as amended by an applicable state cancellation endorsement, is increased to the number of days shown in the Schedule above.

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DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:	Empire Southwest, LLC
Endorsement Effective Date:	

SCHEDULE

Name Of Person(s) Or Organization(s): Any person or organization whom you have agreed in writing to add as an additional insured, but only to coverage and minimum limits of insurance required by the written agreement, and in no event to exceed either the scope of coverage or the limits of insurance provided in this policy.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and

2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

B. The following is added to the **Other Insurance** Condition in the Auto Dealers Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and

2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Empire Southwest, LLC

Endorsement Effective Date: 07/01/2022

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

Any person or organization for whom you perform work under a written contract if the contract requires you to obtain this agreement from us, but only if the contract is executed prior to the injury or damage occurring

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

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Policy Number: AI2661066618062
Issued by

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT – NOTICE OF CANCELLATION, NON-RENEWAL OR MATERIAL CHANGE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

We will not cancel or non-renew this policy or make a material change to the insurance afforded by this policy until written notice of cancellation, non-renewal or material change has been mailed or delivered to those listed in the schedule below at least;

A. 10 days before the effective date of cancellation, if we cancel for non-payment of premium; or

B. 30 days before the effective date of the cancellation, non-renewal or material change if we cancel, non-renew or make a material change to the insurance afforded by this policy for any other reason.

Regardless of what is indicated above, the advance notice of cancellation will not be less than that provided in state law.

Schedule

Name: **Address:**

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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Where required by contract or written agreement prior to loss and allowed by law.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective Policy No. WA566D066618092 Endorsement No.
Insured Premium

Insurance Company Countersigned by_____

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CITY OF TUCSON

September 22, 2022 ***Sent via email, this day***

Tirena Pavelka, Government Sales Account Manager
Caterpillar Inc.
100 NE Adams St.
Peoria, IL 61629
Email: Pavelka_tirena_l@cat.com

Subject: RFP 212816 Heavy Equipment, Parts, Accessories, Supplies and Related Services
Intent to Award Notice

Dear Ms. Pavelka,

It is the City's intent to accept your proposal for the above referenced solicitation and the City's intent is to make a single contract award to your company, Caterpillar, Inc.

It shall be your responsibility to forward to this department, within ten (10) days of the date of this letter, ***by Monday, October 3rd, no later than 4:00 p.m. AZ Local Time***, the items noted on **Attachment A: Insurance Requirements.**

Regarding the Insurance Requirements and as agreed to in the Negotiation Confirmation Notice, along with Caterpillar, Inc. providing the required insurance documents, Caterpillar's Local Authorized Dealer, Empire Southwest is also required to provide the required Insurance Documents.

The Notice of Intent to Award is not a contract and does not establish any contractual relationship. The Insurance Requirement provision, as listed in the Attachment is one condition precedent to contract execution. The contract is not deemed to be executed until it is signed by the City's Director of Business Services and approved as to form by the City Attorney.

If you should have any questions regarding the items above, please contact me at (520) 837-4134 or Cynthia.Thompson@tucsonaz.gov

Sincerely,

Cynthia Thompson

Cynthia Thompson, NIGP-CPP, CPPB
Principal Contract Officer

Cc: Christina Dorantes, OMNIA Partners
Attachment A: Insurance Requirements

Attachment A - RFP 212816 – Insurance Requirements

G. INSURANCE REQUIREMENTS

G.1.The Contractor agrees to:

A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least **thirty (30) calendar** days prior to termination, cancellation, or reduction in coverage in any policy. Contractor and the Applicable Dealer, agree to make a best effort to comply with the thirty (30) day notice. Such notice shall be sent directly to the Procurement Division.

B. The Commercial General Liability, Commercial Automobile Liability, and umbrella policies where applicable will include the City as an additional insured with respect to liability arising out of the performance of this contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. The Contractor agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

A. Provide and maintain minimum insurance limits as applicable.

G.2. Commercial General Liability

Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability:

Each Occurrence: $1,000,000

General Aggregate: $2,000,000

Products & Completed Operations Aggregate: $2,000,000

Personal and Advertising Injury: $1,000,000

Blanket Contractual Liability: $1,000,000

G.3. Commercial Automobile Liability

Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.

Combined Single Limit: $1,000,000

G.4. Worker's Compensation (Applicable to the State of Arizona)

Per Occurrence: Statutory

Employer's Liability: $1,000,000

Disease Each Employee: $1,000,000

Disease Policy Limit: $1,000,000

G.5. Garage Liability & Garage Keepers Liability – In addition to I, II, III

Garage Liability Limit $1,000,000

Garage Keeper’s Liability – Direct Primary Coverage

Each Auto Limit: $500,000

Each Occurrence Limit: $1,000,000

*Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

G.6. Claims Made Insurance Coverage

If any or part of the required insurance is written on a claims-made basis, any policy retroactive date must precede the date of the contract and the Contractor must maintain such coverage for a period not less than three (3) years following contract expiration, termination or cancellation.

G.7. Additional Insurance Requirements

All Policies, excluding Employment Practices Liability and Professional Liability (Errors & Omissions), shall include or be endorsed to include the following provisions:

A. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor (Including Worker's Compensation).

B. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.

C. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

G.8. Notice of Coverage Modifications: Any changes material to compliance with this contract in the insurance policies above shall require **thirty (30) days** written notice from the Applicable Dealer to the City of Tucson. Contractor and the Applicable Dealer, agree to make a best effort to comply with the thirty (30) day notice. Such notice shall be sent directly to the Procurement Division.

G.9. Acceptability of Insurers

Contractors' insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

G.10. Verification of Coverage

Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Procurement Division.

The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

G.11. Subcontractors

Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G.12. Exceptions

In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self- Insurance.

CAT
14M

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Lori Pappas, Marketing and Media Relations Mgr.

Co-Submitter: Lori Pappas

Co-Submitter: Trace Ward

Date: 10/31/2024

Meeting Date: 11/05/2024

TITLE:

Consideration and Approval of Contract: Renewal of a Contract for Digital Ad Serving for a one-year term in the amount of $160,000.00, with authority for the City Manager to approve the final one-year term in an additional amount of $160,000 (total of $320,000).

STAFF RECOMMENDED ACTION:

1. Approve renewal of contract with Datafy with authority for the City Manager to approve the final one-year term in an additional amount of $160,000 (total of $320,000) through September 14, 2026, and
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

This is a recurring budget item for a digital ad server vendor in the amount of $160,000 which is the same dollar amount administered in previous years.

The digital ad server is a critical portion of Discover Flagstaff's overall strategy in driving quality visitation to our destination supporting citywide stakeholders and partners -- accommodations, restaurants, breweries, attractions, and additional businesses reliant on the tourism economy.

This vendor relationship is needed because of the technology and speed of their real-time bidding platforms that leverage the budget to serve an advertisement to the right person at the right time. Here's an example: Discover Flagstaff could be bidding to serve an ad to a customer in Dallas that has expressed interest in visiting a national park, at this split second, Durango (and many destinations competing for national park business) are bidding to reach the same person at the same time. It's the digital ad server's algorithms, real-time bidding desk, that immediately identifies a person in a buying funnel -- the someone who is shopping for experiences at a national park -- and then serves the advertisement. These transactions occur in nanoseconds.

Further, the digital ad server's technology provides additional benefits: 1) Using the dashboard's attribution data dashboard, we can identify opportunities as to who is visiting and when, as well as what they are doing in-market, which allows us to laser-focus on even more relevant content and audiences. 2) Create unique audiences including lookalike audiences (if a person is attending an arts or cultural festival in Telluride or Albuquerque, the person is identified with Datafy's technology permitting Datafy the ability to serve an ad to inspire a Flagstaff festival visit) and so on. The ad server can identify key audiences -- one example is travelers preferring visits during off/shoulder seasons. These laser-focused abilities allow us to deliver various messages to a very interested audience which provides less budget waste.

This platform also enables us to serve ads supporting Stay and Play Responsibly, Be Fire Aware, Winter Recreation safety, Regenerative and Responsible Visitation, bond measures, and Leave No Trace, as well as supporting other sections including Pulliam Airport, Human Resources, Wildland Fire Department, and Public

Affairs. One way Discover Flagstaff's digital ad server's strengths and successes can be measured is when viewing tourism metrics, such as hotel occupancy and average daily rate. These numbers demonstrate the current strategy is driving above-average results when compared to the state.

In FY'24, the digital ad server pushed out nearly 400 Discover Flagstaff digital ads supporting our stakeholders, partners, and resident sentiment, with strong click-thru results many of which were more than double the industry standard. These ads were served to audiences with a propensity to travel, to people highly targeted, qualified and engaged.

The original contract obtained in September 2021 endured a formal RFP process which included an evaluation committee. The contract allows for up to four one-year term renewals, or through September 14, 2026.

Financial Impact:
Project Name: Digital ad server
Cost: $160,000 has been in the budget in previous years and will remain for FY 2024-25 which was recommended by the Tourism Commission and approved by the Budget team and adopted in the final City budget. Any City Manager approval of a final one year renewal term could not occur unless funding is allocated in the FY-2025-26 City budget.
Account Number Budgeted: 053.07.214.0851.4.4271.
FY Budgeted Amount: $160,000 FY 2024-25, $160,000 FY 2025-26
Grant Funded: No
Funding Source: BBB

Policy Impact:
Connection to PBB Key Community Priorities/Objectives & Regional Plan includes:
High-performance governance, Robust and resilient economy, Livable community, Environmental stewardship

Has There Been Previous Council Decision on this: Yes - Discover Flagstaff has been utilizing digital ad placement services since the beginning of digital ads -- more than 20-years.

Previous Council Decision or Community Discussion:
The original contract obtained in September 2021 endured a formal RFP process which included an evaluation committee, and received city council approval. The contract allows for up to four one-year term renewals, or through September 14, 2026.

Options and Alternatives to Recommended Action:
1. Approve the agreement renewal with Datafy
2. Do not approve the agreement with Datafy

Key Considerations:
Datafy received the highest evaluation score from the panel.

Expanded Financial Considerations:
The overall cost of our digital ad server program is $160,000 which has been budgeted.

Community Benefits and Considerations:
A strong consideration is that Datafy is well-versed in working with destination marketing organizations which have included clients such as Experience Scottsdale, Visit Sedona, and mountain towns such as Ogden, Tacoma and more. Datafy also has over 500 data partners with amazing resources. We feel that our destination will continue to receive great results with this partnership.

Community Involvement:
In 2021, during the time of original procurement, Terry Madeksza, executive director of the Downtown

Business Alliance, gave invaluable input as she sought input from her downtown partners throughout the process. She was also familiar with our current digital ad server and saw how we could take the next step with the same budget and be more strategic with Datafy.

Background and History:
In the Executive Summary section, we shared the history of using a digital ad server vendor. On June 14, 2021, the Purchasing Section posted a Request for Proposals (RFP) solicitation for a Digital Ad Server on the PlanetBids website, and advertised the RFP in the Arizona Daily Sun on June 20 and June 27, 2021. There were six (6) proposals received on July 1, 2021. A five (5) member Selection Committee consisting of four (4) City staff and one (1) outside consultant, evaluated the proposals. Based upon the numerical scoring, the Selection Committee determined Datafy to be top scoring firm. All scores are below in order of rank: Datafy (previously Datafy, LLC) = 454, Sojern = 433, Adara = 430, Media News Group = 368, Inuvo = 361, AZ Daily Sun = 356. The vendor that has been selected to render the digital ad service is Datafy.

Datafy was selected because they are data-rich and have the ability to utilize historical geo-geography location data. This is important because they can generate a custom audience of known past visitors. Our mission is to not only welcome new visitors but to serve advertisements to prior visitors to encourage a repeat visit. Datafy's reporting metrics can even tell us if a person we served an advertisement is actually observed in-market. As we get more familiar with all the options afforded, we will continue to share the metrics with our stakeholders, Commission and Council.

Connection to PBB Priorities and Objectives:
High-performance governance -- the team leans-in and works with our partners and community members daily, much of what is accomplished by this platform supports partner and community needs, in addition to Discover Flagstaff campaigns, the platform has supported additional sections and divisions including fire, airport, human resources and public affairs.
Robust and resilient economy - the platform enables us to inspire responsible visitation while leveraging technology to target people to get the highest and best use of our budget, the platform assists us in driving demand, support and patronage for community businesses.

Livable community - Visitation drives BBB taxes which provides residents with a quality of life through programming provided by other city divisions and sections, in addition to Discover Flagstaff, that receive BBB funds for their budget.

Environmental stewardship - the platform enables us to serve ads with content to support this vertical.

Connection to Regional Plan:
NA

Connection to Carbon Neutrality Plan:
Digital ad serving assists in amplifying nuances of the carbon neutrality plan which includes regenerative and responsible tourism, as well as Stay and Play Responsibly, Be Fire Aware, Winter Recreation safety, and Leave No Trace.

Connection to 10-Year Housing Plan:
NA

Connection to Division Specific Plan:
Supporting the Economic Vitality Division's mission statement of: Provides quality services to residents and visitors that preserve and enhance Flagstaff's economic prosperity and overall quality of life.

Some of the work and marketing communication we have supported includes: Stay and Play Responsibly, award-winning Be Fire Aware, Winter Recreation and the snow play map, plus multiple campaigns to

educate, inspire and motivate responsible visitation which include national parks and monuments (outdoors are the #1 reason people visit), dining and nightlife, performing and visual arts, cultural awareness and festivals, and there's so much more.

Attachments: Datafy Contract 3rd Renewal

THIRD AMENDMENT/RENEWAL

DIGITAL AD SERVER
Contract No. 2021-119/TER2022-012-AG2

This Third Amendment/Renewal of the Digital Ad Server Contract (Contract No. 2021-119/TER-2022-012-AG2 dated September 14, 2021 (the "Contract") is made and entered into this ____ day of _____, 2024, by and between the City of Flagstaff, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and Datafy, LLC, a Utah limited liability company, as successor in interest to See Source, LLC a Utah limited liability company ("Contractor").

WHEREAS, the parties desire to renew the Contract for an additional one-year term;

NOW, THEREFOR, the parties agree as follows:

The Contract is hereby amended as follows (deleted text is shown as strikethrough and new text is in underlined capitalized text):

Paragraphs 1, 6 and 7 are amended as follows.

1. Scope of Work, Exhibit A, is amended by adding the attached Media Order for the renewal term of September 14, 2024 through September 13, 2025.

6. Contract Term: The Contract term is for a period of one (1) year unless terminated pursuant to the Standard Terms and Conditions. This Contract shall be effective as of the date signed by both parties. THE CONTRACT IS HEREBY RENEWED THROUGH SEPTEMBER 13, 2025.

7. Renewal: This Contract may be renewed for up to Four (4) 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. THE CITY COUNCIL HEREBY AUTHORIZES THE CITY MANAGER TO RENEW THE CONTRACT FOR A FOURTH AND FINAL TERM COMMENCING SEPTEMBER 14, 2025 THROUGH SEPEMBER 13, 2026 SO LONG AS FUNDING FOR THE SERVICES IS INCLUDED IN THE FY2025-2026 CITY BUDGET, WITHOUT FURTHER CITY COUNCIL APPROVAL.

All other provisions of the Contract shall remain unchanged in full force and effect.

IN WITNESS WHEREOF, the Partied have caused this Third Amendment to be executed by their authorized representatives.

City of Flagstaff

By:_____
Becky Daggett, Mayor

Dated:_____

Attest by:

_____
City Clerk

Approved as to form:

_____
City Attorney

Attachment: Media Order

Datafy, LLC

By:_____

Title:_____

Dated:_____

Last Updated August 12, 2024

DATAFY

DATAFY ORDERFORM
5974 S Fashion PointDr. STE
200 South Ogden, UT
84403
801-252-6588
9/5/24

Advertiser Information:	**Billing Information (if different from advertiser):**
City of Flagstaff 211 W. Aspen Avenue Flagstaff, AZ 86001 P: 928-213-2916 C: 928-699-5054 Contact: Lori Pappas Marketing and Media Relations Manager LPappas@flagstaffaz.gov	Same as advertiser.

Service: Datafy MAID Advertising Campaign, along with additional services and customizations described in attached Exhibit A, hereto the "Services".

Payment Terms: Payment is due net 30 from invoice date in fixed monthly payments of $13,333.33. A 1.5% late fee will be applied to all past due payments.

Campaign: Flagstaff Annual Campaign 2024-2025	**Campaign Dates**: September 15, 2024-September 14, 2025

Service Fees:

Service Item	Details	Total
Programmatic Media Buy & Management	Programmatic media buy through in-house DSP and media management, based on target audience requirements of the customer, to maximize the ROI/ROAS of the Customer while utilizing the MAIDs derived from Premium Insights Report. Digital creative elements and CPM* TBD	$94,600.00
Geo-location MAIDs	Geo-location Mobile Advertiser IDs (MAIDs) for repeat visitors and MAID-driven look-a-like audiences. Audience requirements TBD.	Included
Non-Programmatic Advertising	Social Channels and Google PPC	$45,000.00
Management Fees for Non-Programmatic	Social and Google PPC Management	$8,400.00
Social Audience MAIDs	MAID Fees for Social Audiences	$3,000.00
Campaign Dashboard & Reporting	Advertising Campaign dashboard based on key performance indicators, TBD. Includes attribution report at campaign completion.	Complimentary
Total Contracted		$160,000.00

*CPM Pricing is based on current RTB rates experienced recently by Company for Display Mobile advertisement and the estimated costs for Company to provide services described herein.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Ann Taylor, Engineering Senior Project Manager

Date: 10/31/2024

Meeting Date: 11/05/2024

TITLE:

Consideration and Approval of Contract: Approve the Construction Contract with Summit Construction Company, LLC for the Spruce Wash Water & Sewer Replacement at North First Street.

STAFF RECOMMENDED ACTION:

1. Approve the construction contract with Summit Construction Company, LLC ("Contractor") in the amount of $613,650.00 and a contract time duration of 290 calendar days;
2. Approve a contract allowance of $46,023.75, which is 7.5% of the Contractor's Bid;
3. Approve Change Order Authority to the City Manager in the amount of $61,365.00 (10% of the contract amount, less allowances); and
4. Authorize the City Manager to execute the necessary documents.

Executive Summary:

The Construction Contract award of $613,650.00 to the Contractor is proposed to complete the project that consists of replacing the existing sewer main, and replacement & realignment of the existing water main (the "Project"). The existing undersized 14" & 21" sewer lines will be removed and replaced with 24" DIP line. The new 222 LF of sewer main will be installed at a lower elevation to comply with the City of Flagstaff's and ADEQ Engineering Standards. In addition, the removal of 2 manholes and replacement of the upstream manhole with a new drop manhole are also included in the Project. The existing water main system consists of a 12" CIP water line that does not meet the depth requirement of the City of Flagstaff and ADEQ Engineering Standards. The replacement will consist of a 12" DIP water main buried at a minimum depth of 4 ft.

Financial Impact:

The Project is funded by $249,750 from the FY2024-25 First Avenue Trex Waterline Replacement (account # 202-08-370-3440-0), and $495,606 from the FY2024-25 First Avenue Rte. 66 Sewer Replacement (account # 203-08-375-3440-0).

The cost of these infrastructure replacements is **$613,650.00**. Included in these costs are the removal and replacement of the sewer and water mains with new DIP lines, removal and replacement of 1 manhole with new drop manhole, removal & disposal of 2 manholes, removal of existing gate valves and existing Tee in the water line, installation of gate valves & Tees in the new water main, installation of a fire hydrant, erosion control installation gabion mattresses, sewer bypass pump & monitoring and concrete sidewalk removal & replacement.

Policy Impact:

An award of this Construction Contract supports Water Services Strategic Plan Objective 5: Accelerate Infrastructure Maintenance and Replacement.

Previous Council Decision or Community Discussion:

- The City Council approved the City of Flagstaff's on-call consultant contract, through which a consultant services contract for the design of the Project was executed with Shepherd Wesnitzer, Inc.
- The Project's FY2024-25 budget was approved in the FY2024-25 Capital Improvements 5-Year Plan.

Options and Alternatives to Recommended Action:

1. Approve the Construction Contract award as recommended. Approval will allow work on the Project to move forward in the early parts of 2025; or
2. Reject all bids. This action would delay the Project. If rejection occurs, possible options include:
   a. Re-solicit the Project at a later date; or
   b. Suspend or cancel the Project.

Background and History:

Spruce Wash has received ample amounts of storm flows in recent years and large amounts of sediment have been conveyed throughout the channel. The section of Spruce Wash has seen extensive scouring of the earthen materials that ordinarily have covered the City's water and wastewater infrastructure. These scouring events have eroded the channels and exposed the water and wastewater infrastructure, subjecting it to potential damage with each rain flow event.

This Project will replace the aging and exposed infrastructure through the length of this section of the Spruce Wash. It will replace existing manholes and remove old, redundant manholes with the new alignment of the wastewater line. The new water and wastewater lines will be upsized accordingly and buried deeper to prevent future scouring from exposing the new lines. These new water and wastewater lines will be upgraded to stronger material, ductile iron, to withstand the extreme conditions that this infrastructure is subjected. New infrastructure and the addition of new valves will provide staff with new operational flexibility with regards to periodic servicing of the immediately surrounding water distribution system. These upgrades are a much-needed improvements to the two systems that are routed through this section of the Spruce Wash.

The Purchasing Section posted an Invitation for Bids (IFB) solicitation for construction on August 23, 2024, on the PlanetBids website. There were 4 bids received on the opening date of October 7. 2024 (bid summaries are identified in the Expanded Financial Considerations section below). After reviewing all bids received, Staff determined that **Summit Construction Company, LLC.** is the lowest responsive and responsible bidder.

Key Considerations:

The City's overall water and wastewater system will benefit from the installation and upgrade of the new water and sewer mains. Increased reliability and minimized service interruptions from failures are the benefits of the upgraded water and sewer mains.

Expanded Financial Considerations:

Below is a summary of the bids received:

Summit Construction Company, LLC	$613,650.00
Engineer's Estimate	*$704,060.00*
Mountain High Excavation	$784,493.00
Jud Co, LLC	$1,075,670.00
Pronghorn Services, LLC	$1,660,187.77

Included in the contract amount will be an allowance of $46,023.75. The contract allowance will be used for unforeseen items of work. The project manager, section head and division head will have the authority to approve the use of the allowance in accordance with Flagstaff Procurement Code Manual.

Change Order Authority establishes a dollar amount (10% of the contract amount, less allowance) and provides the City Manager, on behalf of the Council, authority to amend the contract amount in response to

unforeseen costs that are more than the contracted amount and in excess of the contract allowance.

Community Benefits and Considerations:

The Community benefits of this project include more reliable water and sewer service from the new infrastructure.

Connection to PBB Priorities and Objectives:

Safe & Healthy Community - Ensure the built environment is safe through the use of consistent standards, rules and regulations, and land use practices.

Sustainable, Innovative Infrastructure: Deliver outstanding services to residents through a healthy, well maintained infrastructure system.

Connection to Regional Plan:

Policy WR 2.2. Maintain and develop facilities to provide reliable, safe, and cost-effective water, wastewater, and reclaimed water services.

Connection to Carbon Neutrality Plan:

Water Security (WS-1) Improve water infrastructure and expand water reuse.

Connection to 10-Year Housing Plan:

N/A

Connection to Division Specific Plan:

N/A

Attachments:

Contract 2025-18 with Exhibits
Justification Form
Context Map
Vicinity Map

City of Flagstaff, Arizona
and
Summit Construction Company, LLC
Contract No. 2025-18

This Construction Contract ("Contract") is made and entered into this ____ day of _____, 2023, by and between the City of Flagstaff, a political subdivision of the state of Arizona ("Owner"), and Summit Construction Company, LLC, an Arizona limited liability company ("Contractor"). Owner and Contractor may be referred to each individually as a "Party" and collectively as the "Parties."

RECITALS

A. Owner desires to obtain construction services ("Services"); and

B. Contractor has available and offers to provide personnel and materials necessary to accomplish the work and complete the Project as described in the Scope of Work within the required time in accordance with the calendar days included in this Contract.

NOW, THEREFORE, the Owner and Contractor agree as follows:

1. Scope of Work. Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services, and facilities for the **Spruce Wash Water and Sewer Utility Replacement at North First Street** ("Project"). The Project scope is specific to the attached Special Provisions ("Exhibit A") and the Bid Schedule ("Exhibit C"). Contractor shall construct the Project for the Owner in a good, workmanlike and substantial manner and to the satisfaction of the Owner through its engineers and under the direction and supervision of the City Engineer or his properly authorized agents ("Engineer"), including but not limited to project managers and project engineers. Contractor's work shall be strictly pursuant to and in conformity with the Contract.

1.1 A Pre-Construction Conference will be held with the successful Contractor after the Notice of Award is issued. The date and time of the Conference will be agreed upon between Contractor and the Engineer at a location identified by the Owner. The purpose of the Conference is to outline specific construction items and procedures that the Owner feels require special attention on the part of Contractor. Contractor may also present any variations in procedures to improve the workability of the Project, reduce the cost, or reduce inconvenience to the public. Contractor shall submit a written proposal at this Conference outlining intended plans for pavement replacement, maintaining continuous access to residences and businesses along the construction site, and traffic control.

2. Contract; Ownership of Work. Contractor shall furnish and deliver all of the materials and perform all of the work in accordance with this Contract; Construction Plans ("Plans"); Special Provisions; the City of Flagstaff Engineering Design and Construction Standards and Specifications; the latest version of the Maricopa Association of Governments ("MAG") Specifications for Public Works Construction and City Revisions of MAG Standard Specifications for Public Works Construction ("Exhibit B"); and any Arizona Department of Transportation ("ADOT") Standards that may be referenced on the Plans or in the specifications, incorporated in this Contract by reference, plans, and associated documents. All provisions of the Invitation for

Construction Bids, Performance Bond, Payment Bond, Certificates of Insurance, Addenda, Change Orders, and Field Orders, if any, are hereby incorporated into this Contract. All materials, work, specifications, and plans shall be the property of the Owner.

The following exhibits are incorporated by reference and are expressly made a part of this Contract:

2.1	Special Provisions	Exhibit A
2.2	Revisions of MAG Standard Specifications for Public Works Construction ("Flagstaff Addendum to MAG")	Exhibit B
2.3	Bid Schedule	Exhibit C

3. Payments. In consideration of the faithful performance of the work described in this Contract, the Owner shall pay an amount not to exceed Total Contract Amount of **SIX HUNDRED THIRTEEN THOUSAND SIX HUNDRED FIFTY DOLLARS AND ZERO CENTS ($613,650.00)** to Contractor for work and materials provided in accordance with the submitted Bid Schedule attached as Exhibit C, which amount includes all federal, state, and local taxes, as applicable. This amount shall be payable through monthly progress payments, subject to the following conditions:

3.1 Contractor shall promptly submit to the Owner all proper invoices necessary for the determination of the prices of labor and materials;

3.2 The City Engineer shall have the right to finally determine the amount due to Contractor;

3.3 As authorized by A.R.S. § 34-221, progress payments shall be made in the amount of ninety percent (90%) of the value of labor and materials incorporated in the work, based on the sum of the Contract prices of labor and material, and of materials stored at the worksite, on the basis of substantiating paid invoices, as estimated by the Owner, less the aggregate of all previous payments, until the work performed under this Contract is fifty percent (50%) complete. When and after such work is fifty (50%) complete, the ten percent (10%) of value previously retained may be reduced to five percent (5%) of value completed if Contractor is making satisfactory progress as determined by the Owner, and providing that there is no specific cause or claim requiring a greater amount to be retained. If at any time the Owner determines that satisfactory progress is not being made, the ten percent (10%) retention shall be reinstated for all subsequent progress payments made under this Contract;

3.4 Contractor agrees that title to materials incorporated in the work, and stored at the site, shall vest with the Owner upon receipt of the corresponding progress payment;

3.5 The remainder of the Contract price, after deducting all such monthly payments and any retention, shall be paid within sixty (60) days after final acceptance of completed work by the Owner. The release of retention or alternate surety shall be made following the Owner's receipt and acceptance of: Contractor's Affidavit Regarding Settlement of Claims, Affidavit of Payment, Consent of Surety for Final Payment, and Unconditional Full and Final lien waivers from all

subcontractors and suppliers who have filed an Arizona Preliminary Twenty Day Lien Notice in accordance with A.R.S. §§ 33-992.01 and 33-992.02.

4. Time of Completion. Contractor agrees to complete all work as described in this Contract within **two hundred ninety (290) calendar days** from the date of the Owner's Notice to Proceed, free of all liens, claims, and demands of any kind for materials, equipment, supplies, services, labor, taxes, and damages to property or persons, in the manner and under the conditions specified within the time or times specified in this Contract.

5. Performance of Work. All work covered by this Contract shall be done in accordance with the latest and best accepted practices of the trades involved. The Contractor shall use only skilled craftsmen experienced in their respective trades to prepare the materials and to perform the work.

6. Acceptance of Work; Non-Waiver. No failure of the Owner during the progress of the work to discover or reject materials or work not in accordance with this Contract shall be deemed an acceptance of, or a waiver of, defects in work or materials. No payment shall be construed to be an acceptance of work or materials which are not strictly in accordance with the Contract.

7. Delay of Work. Any delay in the performance of this Contract due to strikes, lockouts, fires, or other unavoidable casualties beyond the control of Contractor and not caused by any wrongful act or negligence of Contractor shall entitle Contractor to an extension of time equal to the delay so caused. Contractor shall notify the Owner in writing specifying such cause within twenty-four (24) hours after its occurrence. In the event such delay is caused by strikes, lockouts, or inability to obtain workmen for any other cause, the Owner shall have the right but shall not be obligated to complete the work on the same basis as is provided for in this Contract.

8. Failure to Complete Project in Timely Manner. If Contractor fails or refuses to execute this Contract within the time specified within this Contract, or such additional time as may be allowed, the proceeds of Contractor's performance guaranty shall become subject to deposit into the Treasury of the municipality as monies available to compensate the Owner for damages as provided by A.R.S. § 34-201 for the delay in the performance of work under this Contract, and the necessity of accepting a higher or less desirable bid from such failure or refusal to perform this Contract as required. If Contractor has submitted a certified check or cashier's check as a performance guaranty, the check shall be returned after the completion of this Contract.

9. Labor Demonstration. It is understood that the work covered by this Contract is for the Owner's business purposes and that any unfavorable publicity or demonstrations in connection with the work will have a negative effect upon the Owner. If Contractor's actions in performance of the Contract result in any public demonstration on behalf of the laborers or organized labor in the vicinity of the Owner's premises, whether such demonstration is in the form of picketing, posting of placards or signs, violence, threats of violence, or in any other form, which in the Owner's judgment might convey to the public the impression that the Owner or the Contractor or any subcontractor is unfair to laborers or to organized labor, the Owner shall have the right to terminate this Contract immediately, unless the Contractor shall have caused such demonstration to be discontinued within two (2) days after request of the Owner to do so. In the event any such demonstration is attended by violence, the Owner may fix lesser time within which a discontinuance shall be accomplished. In the event of Contract termination, Contractor agrees to remove from the Premises within twenty-

four (24) hours of termination all machinery, tools, and equipment belonging to it or to its subcontractors. All obligations or liabilities of the Owner to Contractor shall be discharged by such termination, except the obligation to pay to Contractor a portion of the Contract price representing the value based upon the Contract prices of labor and materials incorporated in the work as established by the Owner, less the aggregate of all previous payments, but subject to all of the conditions pertaining to payments generally.

10. Material Storage. During the progress of the work, the Contractor shall arrange for office facilities and for the orderly storage of materials and equipment. Contractor shall erect any temporary structures required for the work at his or her own expense. Contractor shall at all times keep the premises reasonably free from debris and in a condition which will not increase fire hazards. Upon completion of the work, Contractor shall remove all temporary buildings and facilities and all equipment, surplus materials, and supplies belonging to Contractor. Contractor shall leave the Premises in good order, clean, and ready to use by the Owner. The establishment of any temporary construction yard, material storage area, or staging area to be located within City of Flagstaff limits and outside the public right-of-way or Project limits generally requires a Temporary Use Permit. (See Exhibit B, Section 107.2.1.).

11. Maintenance During Winter Suspension of Work.

11.1 A "Winter Shutdown" is the period of time typically including December through March during which no work will be performed by any person or entity (including but not limited to Contractor) on the Project and Contractor shall shutdown, properly insulate, and shelter the Project in a safe and workmanlike manner pursuant to local, state, and federal laws. Although December through March is typically the time frame, the Owner reserves the right to initiate and terminate a Winter Shutdown at the Owner's sole discretion in the event of adverse weather conditions. A Winter Shutdown may be declared by the Owner despite delays, *for any reason,* on the Project. The Owner retains the right to declare a Winter Shutdown. If work has been suspended due to winter weather, Contractor shall be responsible for maintenance and protection of the improvements and of partially completed portions of the work until final acceptance of the Project. Winter Shutdown shall be by field order, change order, or original contract. If repairs and/or maintenance are needed during the Winter Shutdown, Contractor is required to perform the repairs and/or maintenance within twenty-four (24) hours of notification from the Owner. If the needed repairs and/or maintenance are not addressed within the time frame, the Owner will accomplish the work and deduct the cost from monies due or that become due to Contractor.

11.2 The Owner shall provide snow removal operations on active traffic lanes only during the Winter Shutdown. All other snow removal and maintenance operations shall be the responsibility of Contractor during the Winter Shutdown. All costs associated with snow removal and proper disposal shall be considered incidental to the work including repair of temporary surface improvements due to normal wear and snow removal operations during the Winter Shutdown.

12. Assignment. Contractor shall not assign this Contract, in whole or in part, without the prior written consent of the Owner, and no delegation of any duty of Contractor shall be made without prior written consent of the Owner. The Owner shall not unreasonably withhold consent to such assignment. Contractor agrees that any assignment agreement between Contractor and the assignee shall include and subject to the assignee all obligations, terms, and conditions of this

Contract and that Contractor shall also remain liable under all obligations, terms, and conditions of this Contract.

13. Notices. Any notices or demands required to be given, pursuant to the terms of this Contract, may be given to the other Party in writing, delivered in person, sent by facsimile transmission, emailed, deposited in the United States mail, postage prepaid, or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph. However, notices of termination, notices of default, and any notice regarding warranties shall be sent via registered or certified mail, return receipt requested, at the address set forth below ***and*** to legal counsel for the Party to whom the notice is being given.

If to Owner:
Emily Markel
Purchasing Manager
City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001
EMarkel@flagstaffaz.gov

If to Contractor:
Michael Herlihy
Manager
Summit Construction Company, LLC
5004 S. Opal Rd.
Flagstaff, AZ 86005
michael@summiticc.biz

With a Copy to:
Ann Taylor
Project Manager Senior
City of Flagstaff, Engineering
211 W. Aspen Ave.
Flagstaff, AZ 86001
Ann.Taylor@flagstaffaz.gov

14. Contract Violations. In the event that any of the provisions of this Contract are violated by Contractor or by any of Contractor's subcontractors, the Owner may serve written notice upon Contractor and the Surety of its intention to terminate such Contract ("Notice to Terminate"). The Contract shall terminate within five (5) days of the date Contractor receives the Notice to Terminate, unless the violation ceases and Contractor makes arrangements for correction satisfactory to the Owner. In the event of any such termination, the Owner shall immediately serve notice of the termination upon the Surety by registered mail, return receipt requested. The Surety shall have the right to take over and perform the Contract. If the Surety does not commence performance within ten (10) days from the date of receipt of the Owner's notice of termination, the Owner may complete the work at the expense of Contractor, and Contractor and his or her Surety shall be liable to the Owner for any excess cost incurred by the Owner to complete the work. If the Owner completes the work, the Owner may take possession of and utilize such materials, appliances, and plants as may be on the worksite site and necessary for completion of the work.

15. Termination for Convenience. The Owner may terminate this Contract at any time for any reason by giving at least **thirty (30) days** written notice to Contractor. If termination occurs under this Section, Contractor shall be paid fair market value for work completed by Contractor as of the date of termination. The Parties agree that fair market value shall be determined based on

Contractor's Specifications (Scope & Cost Estimation), less any work not yet completed by Contractor as of the date the written notice of termination is given to Contractor.

16. Contractor's Liability and Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, save, and hold harmless the City of Flagstaff and its officers, officials, agents, and employees ("Indemnitee") from and against liabilities, damages, losses, and costs, including reasonable attorneys' fees, but only to the extent caused by the recklessness or intentional wrongful conduct of Contractor, subcontractor, or design professional, or other persons employed or used by Contractor, subcontractor, or design professional in the performance of the Contract. The amount and type of insurance coverage requirements set forth in this Contract (Exhibit B, Section 103.6) will in no way be construed as limiting the scope of the indemnity in this paragraph.

17. Non-Appropriation. In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Owner to meet the Owner's obligations under this Contract, the Owner will notify Contractor in writing of such occurrence, and this Contract will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Contract are exhausted. No payments shall be made or due to the other Party under this Contract beyond these amounts appropriated and budgeted by the Owner to fund the Owner's obligations under this Contract.

18. Amendment of Contract. This Contract may not be modified or altered except through a formal written amendment or a written change order, approved by the Owner's Change Order Committee, signed by duly authorized representatives of the parties, which directs Owner or Contractor, to make alterations to the original Contract.

19. Subcontracts. Contractor shall not enter into any subcontract, or issue any purchase order for the completed work, or any substantial part of the work, unless in each instance, prior written approval shall have been given by the Owner. Contractor shall be fully responsible to the Owner for acts and omissions of Contractor's subcontractors and all persons either directly or indirectly employed by them.

20. Cancellation for Conflict of Interest. This Contract is subject to the cancellation provisions of A.R.S. § 38-511.

21. Compliance with All Laws. Contractor shall comply with all applicable laws, statutes, ordinances, regulations, and governmental requirements in the performance of this Contract.

22. Contractor's Warranty. Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A, Verification of Employment Eligibility. Contractor shall not employ aliens in accordance with A.R.S. § 34-301, Employment of Aliens on Public Works Prohibited. Contractor acknowledges that pursuant to A.R.S. § 41-4401, Government Procurement; E-Verify Requirement; Definitions, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract, and that the Owner retains the legal right to inspect the papers of any employee who works on the Contract to ensure compliance with this warranty.

23. Jurisdiction and Venue. This Contract shall be administered and interpreted under the laws of the State of Arizona. Contractor hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

24. Attorneys' Fees. If suit or action is initiated in connection with any controversy arising out of this Contract, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

25. Time is of the Essence. Contractor acknowledges that the completion of the Contract by the dates specified is critical to the Owner, time being of the essence of this Contract.

26. No Third-Party Beneficiaries. The Parties acknowledge and agree that the terms, provisions, conditions, and obligations of this Contract are for the sole benefit of, and may be enforceable solely by, the Parties to this Contract, and none of the terms, provisions, conditions, and obligations of this Contract are for the benefit of, or may be enforced by, any person or entity not a party to this Contract.

27. Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Contract.

28. Severability. If any part of this Contract is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the Parties intend that the remaining provisions of this Contract shall remain in full force and effect unless the stricken provision leaves the remaining Contract unenforceable.

29. Records. The Owner and its employees, agents, and authorized representatives shall have the right at all reasonable times and during all business hours to inspect and examine Contractor's records related to this Contract. Contractor shall retain all records related to this Contract for a period consistent with the City of Flagstaff's records retention policy. This record retention requirement shall remain in effect following termination of the Contract.

30. Force Majeure.

30.1 There may be events that occur during the term of this Contract that are beyond the control of both the Owner 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 this Contract.

30.2 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 Owner shall not pay additional costs incurred by Contractor as a result of such Events.

30.3 The Parties shall act in good faith to extend the Contract completion date without any penalty to Contractor and 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.

31. 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 ($100,000.00), 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.

32. Modification to Contract. This 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.

33. 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 Contractor becomes aware during the term of the Contract that Contractor is not in compliance with the written certification, Contractor shall notify the Owner within five (5) business days after becoming aware of the noncompliance. If Contractor does not provide the Owner with a written certification that Contractor has remedied the noncompliance within 180 days after notifying the Owner 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.

34. 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.

(REMAINDER OF PAGE INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the Owner and Contractor, by their duly authorized representatives, have executed this Contract as of the date written above.

(Please sign in blue ink. Submit original signatures – photocopies not accepted)

Owner, City of Flagstaff	**Contractor, Summit Construction Company, LLC**
Greg Clifton, City Manager	Signature
Attest:	Printed Name
City Clerk	Title
Approved as to form:	
City Attorney	

Last Updated March 26, 2024

CITY OF FLAGSTAFF, ARIZONA
PAYMENT BOND

PROJECT NAME: Spruce Wash Water and Sewer Utility Replacement at North First Street
PROJECT NUMBER: WW-3440 **BID NUMBER:** 2025-18

STATUTORY PAYMENT BOND PURSUANT TO TITLE 34
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the "Principal"), as Principal, and, _____ _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto the City of Flagstaff, Arizona (hereinafter called the "Obligee"), in the amount of _____ Dollars ($_____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated this _____ day of_____, 20___, to the City of Flagstaff, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, the condition of this obligation is such, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the Contract, this obligation is void. Otherwise, it remains in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions, and limitations of said Title and Chapter, to the same extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____ 20___.

_____	_____
Principal (Seal)	Surety (Seal)
By: _____	By: _____
_____	_____
Agency of Record	Agency Address

Last Updated March 26, 2024

CITY OF FLAGSTAFF, ARIZONA
PERFORMANCE BOND

PROJECT NAME: Spruce Wash Water and Sewer Utility Replacement at North First Street
PROJECT NUMBER: WW-3440 **BID NUMBER:** 2025-18

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____
(hereinafter called the "Principal"), as Principal, and, _____
_____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto the City of Flagstaff, Arizona (hereinafter called the "Obligee"), in the amount of _____ _____ Dollars ($_____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated this ____day of _____, 20__ in the City of Flagstaff, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, the condition of this obligation is such, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions, and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise, it remains in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined

in accordance with the provisions of said Title and Chapter, to the extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____20__.

_____	_____
Principal (Seal)	Surety (Seal)
By: _____	By: _____
_____	_____
Agency of Record	Agency Address

Last Updated March 26, 2024

SPECIAL PROVISIONS FOR THE SPRUCE WASH WATER AND SEWER CONSTRUCITON

PREPARED BY SHEPHARD - WESNITZER, INC.
SWI PROJECT NUMBER 22008
SEPTEMBER 21, 2023

INDEX TO SECTIONS OF THE SPECIAL PROVISIONS:

PART 000 – INTRODUCTION 2
PART 100 – GENERAL CONDITIONS 3
PART 200 – EARTHWORK 10
PART 300 – STREETS AND RELATED WORK 11
PART 400 – RIGHT OF WAY TRAFFIC CONTROL 14
PART 500 – TRAFFIC SIGNAL MODIFICATION .....**Error! Bookmark not defined.**
PART 600 – WATER, SEWER, STORM DRAIN AND IRRIGATION 15

PART 000 – INTRODUCTION

The Contractor is responsible for obtaining, at his/her own expense, a copy of each of the most recent specifications and details listed below:

City of Flagstaff Revisions to MAG Uniform Standard Specifications and Standard Details
City of Flagstaff General Provisions
City of Flagstaff Engineering Design Standards and Specifications
MAG Specifications and General Provisions

MAG UNIFORM STANDARD SPECIFICATIONS FOR PUBLIC WORKS AND CONSTRUCTION AND C.O.F. GENERAL PROVISIONS ARE HEREBY AMENDED TO INCLUDE THE FOLLOWING:

PART 100 – GENERAL CONDITIONS

SECTION 102 – BIDDING REQUIREMENTS AND CONDITIONS

102.4 EXAMINATION OF PLANS, SPECIAL PROVISIONS AND SITE WORK:
(Revise to include the following)

It is mutually agreed that the submission of a proposal shall be considered prima facie evidence that the bidder has made such examination and is familiar with the character, quality and quantity of the work to be performed and material to be furnished.

102.6 SUBCONTRACTORS LIST:
(Revise MAG to include the following)

The Contractor shall submit a subcontractor list to the City with the proposal pamphlet. It shall include the list of anticipated subcontractors and the dollar amount and percentage of contract work that each subcontractor will perform.

SECTION 104 – SCOPE OF WORK

104.1.1 GENERAL:
(Revise MAG to include the following)

The Spruce Wash Water and Sewer replacement project is located southwest of the intersection of Route 66 and 1st Street. Utility improvements include the replacement of an existing sewer line to a 24" sewer line, and the replacement of an existing water line to a 12" waterline. A sewer bypass may be required to complete the work. Surface improvements include but are not limited to the following: replacement of concrete FUTS.

Pre-Construction Video

The Contractor shall record and provide the City with a pre-construction video (in readable format) of the full construction area prior to mobilization, paying special attention to the private property boundaries, private improvements, and adequately documenting the existing conditions within the project corridor. This video will serve as a record of pre-existing conditions and it is in the best interest of the Contractor to record a thorough document for the record.

104.1.2 MAINTENANCE OF TRAFFIC:
(Revise MAG to include the following)

Prior to the Notice to Proceed, the Contractor is responsible for preparing, submitting and obtaining approval of a detailed traffic control plan, including all traffic control for street , Flagstaff Urban Trail System (FUTS) and sidewalk closures, work phasing, detours, etc., by the City of Flagstaff Traffic Department. A Right of Way Permit will not be issued until the Traffic Control Plan is approved By the City of Flagstaff.

Detailed traffic control plans shall include provisions for access to all adjacent private properties within the project area. The Contractor may temporarily limit access to properties through advance written notice and coordination with the City's Project Representative and the property owners. Should it be necessary to close access to a private property, driveway, or alley entrance the closure must be for as short a time as possible and be restored at the end of the work shift. If primary access cannot be restored, the Contractor shall provide an alternative, which will be coordinated with the resident(s) and preapproved by the City's Project Manager prior to any restrictions being implemented.

The Contractor shall be required to provide at least one (1) week advance written notice of all FUTS, sidewalk, street closures and traffic restrictions to all affected residents, property owners, business owners, including those properties on a detour route and to the City. The notice shall be submitted to the City for review and shall include the projected date, and duration of the closure and alternate detour routes. Each notice shall include the Contractor's name, contact person and local 24-hour telephone number as well as the City Project Manager's name and telephone number.

Existing pedestrian and bicycle facilities shall be continued through or around the construction zone. The work will require temporary closure(s) of the existing sidewalk on the south side of Route 66 and the FUTS trail near the railroad. Closures of both the sidewalk and FUTS trails shall be limited, and alternative routes for pedestrians and bicycles on the sidewalk on the north side of Route 66 will likely be required if both are closed at the same time. Contractor shall coordinate alternative routes with City staff prior to temporary closures. Transit stops and pedestrian access thereto shall be maintained. The Contractor is responsible for securing the construction site and maintaining a safe passage for pedestrian and bicycle traffic.

Special Access Requirements:

Traffic Control and Safety:

At the time of the Pre-construction Conference, the Contractor shall designate an employee who is well qualified and experienced in construction traffic control and safety, to be available on the project site during all periods of construction to coordinate and maintain safe barricading whenever construction restricts traffic, vehicular or pedestrian. The Contractor shall designate and provide the contact information of one person who shall be available during non-construction hours in case any traffic control and/or safety items that need to be handled in an urgent manner. This representative must be within 20 minutes' response time from the project area and must be able to operate equipment.

Emergency Access:

Street, FUTS or sidewalk closure information shall be coordinated by the Contractor and submitted to the Traffic Engineering Group, the City's Project Manager, and upon approval will forward the information to all First Responders. All notices shall be submitted at least one (1) week in advance of the closures. First Responders contact is Lisa Bartlett Lisa.Bartlett@nahealth.com.

104.2 ALTERATION OF THE WORK:

104.2.3 Due to Extra Work
(Revise to include the following)

At the pre-construction meeting, the Contractor will submit for review and approval of equipment and personnel rates that will be used to determine compensation for all extra work performed. These rates will be used when determining the cost of extra work if bid unit line-item prices are not practical. Profit, taxes and markup for all extra work will be in accordance with the appropriate MAG sections if bid unit line-item prices are not used.

SECTION 105 – CONTROL OF WORK

105.5 COOPERATION OF CONTRACTOR
(Revise MAG to include the following)

The Contractor's Project Manager and Project Superintendent shall attend weekly construction progress meetings. The Contractor shall be prepared to discuss construction schedule, construction activities planned for the upcoming three (3) weeks (submit proposed three (3) week schedule), problems, issues, any information required by the City's Project Representative, construction staking, business/residence/citizen complaints, safety, traffic control and pedestrian access requirements, weather delays experienced during the previous week, disposal of materials, access/construction coordination with businesses/residences, inspection/testing, overtime worked during the previous week, payments, water/sewer service disruption, submittals, field orders/field changes and any other business as necessary. The Contractor may need to prepare meeting

agendas and meeting minutes if required by the City's Project Representative. If required, minutes shall be distributed within four (4) working days after the meeting.

Public Involvement

At the time of the Pre-construction Conference, the Contractor shall designate an employee that is fully responsible for coordination with the public, including but not limited to; the property owners, renters, leasers, public media, the City of Flagstaff Public Information Officer and Mayor/Council. This person shall be qualified and experienced in public coordination and shall be available during all periods of construction to coordinate any issues.

105.6 COOPERATION WITH UTILITIES
(Revise MAG to include the following)

Existing utilities have been shown on the plans to the greatest extent possible, but there is no guarantee that all utility conflicts have been identified. The Contractor shall notify all Franchise Utility Companies of the Contractor's intent to begin work. In particular, the Contractor shall make use of the Blue Stake service by calling 1-800-STAKE-IT at least 2 working days before beginning work. The Contractor shall exercise all care to avoid damaging utilities whether shown on the plans, staked in the field, or not.

105.8 CONSTRUCTION STAKES, LINES AND GRADES
(Revise MAG to include the following)

Unless noted otherwise in the contract documents, the Contractor shall layout the work from the lines, grades and dimensions shown on the drawings. The Contractor shall be responsible for all such work for the duration of the project. The Contractor shall provide all construction staking necessary for the project based upon control points shown on the plans or provided by the Engineer. The Contractor shall provide appropriate identification and verification of furnished control points prior to commencing survey. The Contractor shall immediately notify the City in writing of any dimension or grade errors, before proceeding with the work.

105.12 MAINTENANCE DURING CONSTRUCTION
(Revise to include the following)

The Contractor is required to protect work during inclement weather. Construction drains shall be provided as needed to enable water to drain from the construction area rapidly and without damaging work in progress or adjacent properties. To further promote good drainage of the site, drainage channels, culverts, and structures, shall be constructed from downstream to upstream in such a way that, during construction, they do not impede the flow of water from the construction area. The Contractor shall utilize pumps to remove ponding water immediately during all stages of construction during both working and non-working hours.

SECTION 107 – LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC

107.2 PERMITS
(Revise MAG to include the following)

The City of Flagstaff Capital Improvements Program will prepare Temporary Entry Permits and Temporary Construction Easements for the work to be done on private property as needed. A copy of these permits will be provided to the Contractor and shall be kept on site during construction.

The Contractor shall be required to obtain City, ADEQ, ADOT and other required permits. An ADOT encroachment permit will be required for the sewer bypass within ADOT right-of-way in the sidewalk on the south side of Route 66.

Erosion Protection and Site Restoration

The size of the project is greater than one (1) acre. The Contractors is required to submit a Notice of Intent and Notice of Termination to the Arizona Department of Environmental Quality. The Contractor shall use best management practices (BMP) in controlling stormwater runoff. An erosion control plan has been included in the construction documents for the Contractor's use. The Contractor shall develop a Stormwater Pollution Prevention Plan (SWPPP) and maintain a SWPPP inspection and maintenance binder that is to be kept on site during construction.

A revegetation plan shall be implemented and proved successful prior to the project closeout. Per ADEQ permanent stabilization requirements, 70% regrowth shall be documented. Per City of Flagstaff Engineering Standards Section 13-17-002-0004 and 13-17-002-0005.6, soil conditioners and watering shall be required to promote the permanent stabilization and revegetation of the disturbed area.

Measurement and Payment

Measurement shall include all items required to comply with the requirements of the AZPDES permit program and City of Flagstaff requirements. The cost for obtaining and complying with the AZPDES permit, inspection documentation, erosion control devices and all work associated with stormwater protection shall be included in the pay item for SWPPP.

107.5.1 ASBESTOS MATERIALS
(Revise MAG to include the following)

The Contractor is cautioned that there could be existing asbestos-concrete (AC) waterline piping within the project limits.

The Contractor is responsible for all work associated with these activities to complete the project as shown on the construction documents.

The Contractor shall strictly follow City of Flagstaff requirements regarding the handling, removal and disposal of asbestos containing materials, see CITY OF FLAGSTAFF AMENDMENTS to MAG STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION Section 107.5.4 HANDLING, REMOVAL AND DISPOSAL OF SURPLUS MATERIAL AND ASBESTOS CONTAINING MATERIALS (ACM).

All work relating to the removal and disposal of materials as described above shall be incidental to the project and no separate payment shall be made for this work.

107.6 PUBLIC CONVENIENCE AND SAFETY
REMOVAL OF PARKED VEHICLES
(Revise to MAG include the following)

The Contractor shall give written notice, describing the proposed work and parking restrictions, to each adjacent business or residence. Written notice (with specific dates of anticipated construction work) shall be provided at least one (1) week in advance of the work. In the event that the work requires removal of parked vehicles, they will be removed to the nearest convenient side street at the Contractor's expense. No separate payment will be made for this work.

107.9 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE
(Revise to include the following)

Prior to construction commencing, the Contractor shall prepare a video recording of the project area that adequately shows each private property within the project corridor to document existing conditions. A copy of this video shall be provided to the City in a viewable format.

The Contractor shall take special care to control construction-related dust and noise and to keep the project site cleaned up to the greatest extent possible. The Contractor is responsible to coordinate alternate measures for any impacted operations as mentioned which are acceptable to the parties involved.

Survey monuments and property corners shall be protected and not disturbed unless specifically called out on the plans for replacement. All costs associated with protecting or re-establishing disturbed survey monuments and property corners shall be borne solely by the Contractor.

The existing historic railroad trestle shall be protected in place. No construction traffic is allowed over the trestle and care should be taken with work proposed around the area.

The Contractor is responsible for removing existing improvements and salvaging items for relocation after the public improvements are finished. This may necessitate close coordination with property owners. The Contractor is responsible for replacing materials in like kind. All cost shall be included in the bid as incidental to the work.

107.11 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES

(Revise MAG to include the following)

The Contractor is responsible for providing written notification to each affected resident at least 48 hours prior to any disruption to water or sewer service in the construction area. The notice must include the exact time of the disruption of service and the expected duration of the loss of service. The Contractor shall schedule shut offs as to minimize disruption to the public.

The Contractor shall protect existing water, sewer, and gas service lines where the proposed work crosses individual service lines.

Not all service lines are shown on the plans and it is the Contractor's responsibility to determine their location in the field at the beginning of the project. The Contractor shall coordinate all necessary utility relocations directly with the appropriate utility franchise and provide sufficient time for response prior to construction of the improvements.

Protection or repair of existing service lines not in conflict with the work is also considered incidental. In the event that there is a physical conflict between an existing service line and the proposed work, the Contractor shall immediately notify the Engineer of the Conflict. The Owner will make a determination as to how the conflict will be resolved. Any extra work required as a result of an unforeseen service conflict will be ordered and paid for in accordance with General Provision Section 104.2.3.

Locations of underground utilities shown on the plans are to be regarded as approximate only. Cable, telephone, and power utilities are generally underground.

If determined necessary, the Contractor shall coordinate utility relocations with the appropriate utility franchise and provide sufficient time for response prior to construction of proposed improvements (6 weeks minimum).

Utility company contacts are listed below:

Arizona Public Service	Chad Brooks	(928) 773-6440
Lumen	Manuel Hernandez	(928) 779-4935
Optimum	Sanford Yazzie	(928) 266-0672
Unisource	Martin Conboy	(928) 525-8143
City of Flagstaff Sewer	Joe Almendarez	(928) 853-4876
City of Flagstaff Water	Patrick O'Connor	(928) 213-2444

The Contractor is responsible for locating and coordinating all utility conflicts/relocations in a timely manner as to not delay construction work. Coordination shall include, but not be limited to, direct contact and coordination with all public and private utilities, potholing, survey staking of new improvements, coordination between separate utilities, coordination between sub-Contractors and utilities.

107.12 FURNISHING RIGHT OF WAY
(Revise MAG to include the following)

The Contractor shall insure that all employees of the Contractor, subcontractors, agents, or invitees are clearly informed regarding the proximity of private property boundaries that UNDER NO CIRCUMSTANCES shall any worker cross that boundary into private property, exceptions described below.

Temporary Entry Permits and Temporary Access Easements will be obtained from the property owners adjacent to Beulah Boulevard, Yale Street, University Avenue, and University Drive in order to allow for grading, sidewalk and driveway connections, and utility connections.

SECTION 108 – COMMENCEMENT, PROSECUTION AND PROGRESS

108.4 CONTRACTOR'S CONSTRUCTION SCHEDULE
(Revise MAG to include the following)

There are several contingency items included in the contract bid schedule. Time to perform these established work items at their indicated quantities shall be included in the Contractor's original work schedule. The contract duration has been established to include time to perform the contingency work and the Contractor shall be prepared with appropriate labor and equipment to perform the work in the time allotted. Additional contract time may be requested if these contingency quantities over run the original quantities.

SECTION 109 – MEASUREMENTS AND PAYMENTS

109.4 COMPENSATION FOR ALTERATION OF WORK
(Revise MAG to include the following)

Allowance and Contingency items will only be paid if explicitly authorized in writing by the City's Project Manager. There is no guarantee for Allowance or Contingency items to be paid in full regardless of the Contractor's bid including a total amount and the quantity is an estimate for the items that may or may not be encountered.

PART 200 – EARTHWORK

SECTION 205 – ROADWAY EXCAVATION

205.5 SLOPES
(Revise MAG to include the following)

Grading limits and slope construction need to be smooth transitions without rocks, drop offs, or other obstructions. Tolerance on slope matchup is 0.1 FT.

205.7 MEASUREMENT
(Revise MAG to include the following)

Earthwork is incidental to the roadway construction. No additional payment will be made for roadway excavation.

The Contractor is responsible for estimating and accounting for earthwork, import/haul off. It is recommended that the Contractor review the report on geotechnical investigation and sampling results.

SECTION 211 – FILL CONSTRUCTION

211.3 COMPACTING
(Revise the last sentence of the fifth paragraph to read)

Each layer shall be compacted to a uniform density of not less than 95 percent, or as directed by the Engineer.

PART 300 – STREETS AND RELATED WORK

SECTION 301 – SUBGRADE PREPARATION

301.2 PREPARATION OF SUBGRADE
(Revise MAG to include the following)

The subgrade shall be scarified and loosened to a depth of 9 inches, moisture conditioned to optimum (±2 percent) and compacted to at least 95 percent of the maximum dry density as determined by ASTM D-698. The subgrade should be proof rolled with a heavy rubber tired vehicle such as a loaded water truck to locate unstable areas per MAG 301.

301.4 SUBGRADE TOLERANCES:
(Revise to read)

Subgrade upon which pavement, sidewalk, curb and gutter, driveways, or other structures are to be directly placed shall not vary more than ¼ inch from the specified grade and cross-section. Subgrade upon which sub-base or base material is to be placed shall not vary more than ¼ inch from the specified grade and cross-section. Variations within the above specified tolerances shall be compensating so that the average grade and cross-section specified are met.

301.8 PAYMENT
(Revise to read)

No separate payment shall be made for base material or subgrade preparation. All costs associated with this work are to be included in the amount bid for the items of work to which it is incidental or appurtenant.

SECTION 310 – PLACEMENT AND CONSTRUCTION OF AGGREGATE BASE COURSE

310.1 DESCRIPTION
(Add to the end of this section)

Cinders are not suitable base material and shall be removed from the roadway base. Removal of cinders is incidental to construction.

The Contractor may use crushed/milled asphalt concrete for roadway base course material if it complies with City of Flagstaff, ADOT, and MAG 702 specifications. The Contractor is required to provide testing data to the City and/or ADOT on each batch of processed material and as requested by the City and/or ADOT to assure consistent quality.

310.2 PLACING
(Revise the fourth paragraph to read)

All curb and gutter, sidewalk, driveways and sidewalk ramps shall be constructed on a minimum 3 inches of aggregate base course (ABC).

310.5 PAYMENT
(Revise to include the following)

No separate payment will be made for base material. The cost thereof shall be included in the appropriate bid item for which an aggregate base is required.

SECTION 340 – CONCRETE CURB, GUTTER, SIDEWALK, SIDEWALK RAMPS, DRIVEWAY, AND ALLEY ENTRANCE

340.1 DESCRIPTION
(Revise MAG to read)

The various types of concrete curb, gutter, sidewalk, sidewalk ramps, driveways, and alley entrances shall be constructed to the dimensions indicated on the plans and MAG Standard Details with all applicable modifications as per the City of Flagstaff Standard Details as referenced on the plans.

All curb and gutter, sidewalk, driveways, and sidewalk ramps shall be constructed on a minimum of three (3) inches of aggregate base course (ABC). The ABC shall be compacted to 95% relative density.

Valley gutters shall be constructed on a minimum of eight (8) inches of ABC compacted to 95% relative density.

Unless otherwise noted for removal and replacement, the Contractor shall protect all curb and gutter that is to remain in place. Removals outside the plan limits not approved by the Owner shall be replaced at the Contractor’s expense.

340.2.1 DETECTABLE WARNINGS
(Revise MAG to include the following)

All detectable warning devices used on the project shall be cast iron uncoated, in accordance with City of Flagstaff Engineering Detail 10-10-043. City approved manufacturers are East Jordan Iron Works and Neenah Foundry Co. The Contractor shall submit shop drawings for approval prior to installation from East Jordan Iron Works, Neenah Foundry, Co, or approved equal.

340.3.7 FORM REMOVAL AND FINISHING:
(New Section)

In accordance with Section 107.10, the Contractor is responsible for protecting the finish surface of concrete by keeping footprints, names, etc., from becoming part of the finished product. This may require special scheduling of materials, delivery and/or manpower. All defaced concrete will be replaced by the Contractor at no extra cost to the City. Patching is not acceptable.

340.5 MEASUREMENT:
(Revise to include the following)

Measurement of sidewalk ramps includes the ramp, wings and curb along the back of the ramp, if required.

Measurement for work under this Section shall be in accordance with Section 340 of the MAG Standard Specifications. Measurement for all Curb & Gutter types, sidewalks, driveways, and driveway matchups includes all work necessary for a complete installation, including ABC material.

340.6 PAYMENT:
(Revise to include the following)

No direct payment will be made for the aggregate base course. All costs associated with this work are to be included in the amount bid for the items of work to which it is incidental or appurtenant.

The cost of detectable warnings is included in the cost of the construction of the new sidewalk ramp.

SECTION 345 – ADJUSTING FRAMES, COVERS, VALVE BOXES, AND WATER METER BOXES

345.1 DESCRIPTION
(Modify to add)

The Contractor is cautioned that only straight, centered (relative to adjustment pavement or concrete) valve boxes that conform to City Detail 9-03-060 will be acceptable. The Engineer will provide the Contractor with necessary directions for the appropriate adjustment or replacement

of each valve box and cover.

At all water valve locations where, existing valves are to remain in service, the entire valve box and cover shall be excavated, removed, and replaced with a new complete valve box and cover as well as the adjustment to grade. The water valve box and covers that require removal and replacement shall be excavated and installed prior to paving or overlay. Final adjustments shall be made after completion of final surfacing.

SECTION 350 – REMOVAL OF EXISTING IMPROVEMENTS

350.4 PAYMENT
(Revise to include the following)

The cost of saw cutting the necessary items for removal is to be included in the related work items shown on the Bid Schedule.

PART 400 – RIGHT OF WAY TRAFFIC CONTROL

SECTION 401 – TRAFFIC CONTROL

401.1 DESCRIPTION:
(Revise City of Flagstaff General Provisions to include the following)

All traffic control plans shall be prepared and approved by ADOT for work within the ADOT Right of Way. Contractor to obtain copy of ADOT permit conditions from ADOT. A traffic control plan shall be prepared and approved by the City of Flagstaff for work within the City of Flagstaff Right of Way.

At all times, the Contractor shall conduct the construction activities to safeguard pedestrians and vehicular access in the vicinity of the project. All holes or trenches left open overnight shall be surrounded by Type II barricades and Type A flashing warning lights, connected by warning tape or rope, as directed by the Engineer. The Contractor shall provide plywood coverings, traffic panels, or some other protection over holes to satisfy the Engineer. There will be no direct measurement or additional payment for providing covering or the warning tape, Type II barricades or rope, the costs being considered as included in the original cost of the contract.

For all streets, Contractor shall at a minimum allow for local traffic into and through the project site when practical. Flagmen shall be placed at either end of the project as necessary.

SECTION 405 – SURVEY MONUMENTS

405.3 CONSTRUCTION
(Revise to read)

Existing survey monuments shall be referenced, and if necessary reestablished by a surveyor registered in the State of Arizona.

The surveyor shall provide reference marks and dimensions to the survey monuments. A minimum of two “permanent” reference marks shall be established for each right-of-way control monument. The angle formed by the control point and the two reference points shall be approximately 90 degrees. Examples of permanent reference marks include an “x” chiseled into curb, PK nail in concrete and a nail in a power pole. Any existing suitable reference marks may be used.

Alternatively, the surveyor may determine and record the location of existing survey monuments using global positioning satellite (GPS) equipment and procedures of appropriate survey-grade accuracy.

No new survey monument locations shall be incorporated into this project without prior approval from the City Engineer or representative.

New survey monuments shall be reinstalled 1/4" minimum below new pavement grade at the accurate location. An elevation shall be established on survey monuments that replace survey monuments with a City established elevation. This work shall be done in accordance with good surveying practices and shall be in accordance with City Detail 11-01-010. The surveyor shall prepare and record a Results of Survey map showing the monuments found and set. This map shall include the City's unique identifying number for each point. The Result of Survey shall be reviewed and accepted by the City prior to recordation.

Any survey monuments with boxes and covers shall be adjusted to grade by the Contractor without disturbing the survey monument.

PART 600 – WATER and SEWER

SECTION 601 – TRENCH EXCAVATION, BACKFILLING AND COMPACTION

601.2.3 TRENCH GRADE
(Revise the first paragraph to read)

Alignment and elevation stakes shall be furnished by the Contractor at set intervals and agreed-upon offsets including grade breaks, valve locations, and service locations. On water mains, cut stakes will be furnished only when deemed necessary by the Engineer. In all cases where elevation stakes are furnished, the Contractor shall also furnish the Engineer with cut sheets.

(Revise first sentence of second paragraph to read)

For all pipe or conduit, the Contractor shall excavate for and provide an initial granular bedding of at least 6 inches thick; per the applicable details (9-01-030 through 9-01-033) shown on the plans.

SECTION 610 – WATER LINE CONSTRUCTION

610.4 CONSTRUCTION METHODS

(Revise to include the following)

It is the intent of part of this project to remove existing water mains where shown on the plans and to install new water mains and to provide a minimum cover of 36 inches over the top of the pipe as measured from the top of pavement subgrade. The Contractor shall maintain full water service to the residences and business currently serviced within the aforementioned project limits. After removing the existing water main, the Contractor shall excavate the trench to the lines and grades shown on the plans, including space for new bedding to the depth shown on City of Flagstaff Details Nos. 9-10-030 through 9-10-033, as appropriate. The Contractor is cautioned that the existing water mains and water service connections cross other underground utilities in the project area and that it is the responsibility of the Contractor to protect those utilities in place in conformance with the requirements of Section 107.11 of the MAG Standard Specifications as amended by these Special Provisions.

A temporary shutdown of the existing waterline to be removed may occur for this project since there are no direct services off this line.

610.4.3 BLOCKING AND RESTRAINTS

(Revise the fifth paragraph to read)

Unless noted otherwise on the plans, all thrust restraint shall be accomplished through the use of a joint restraint system approved by the City of Flagstaff.

610.11 CONNECTIONS TO EXISTING MAINS

(Revise MAG to include the following)

Contractor shall verify location and depth of existing waterlines and notify the City's representative of any conflict with any proposed improvements.

SECTION 615 – SANITARY SEWER LINE CONSTRUCTION

615.1 DESCRIPTION

(Modify to add)

Contractor shall maintain full sewer service to the adjacent community, with the exception of minimal shutdown as required to install replacement sewer line and new connections. Contractor shall ensure that full sewer service is restored to all customers at the close of business each day.

615.5.1 SEWAGE BYPASS

(Revise to include new subsection)

It is the intent of part of this project to remove existing sewer main where shown on the plans and install a new sewer main to provide a minimum cover of 48 inches over the top of the pipe as measured from the top of the subgrade (bottom of the pavement structural section). The

Contractor shall maintain full sewer service to the residences and/or businesses currently serviced off the existing sewer main.

If needed for the construction of the new sewer main, the Contractor may choose to maintain sewer service during the construction period by means of a sewage bypass system. The temporary sewer system shall be installed and tested prior to the removal of existing sewer main. The Contractor shall design and provide all labor, materials, and equipment to install and operate a sewage bypass system that bypasses sewage flows around each sewer rehabilitation work area. Each bypass system shall extend the entire length of the section of pipeline rehabilitation and shall remain in operation until the sewer rehabilitation work is complete and accepted by the Engineer. All bypass flows shall be discharged into a downstream sanitary sewer manhole. Bypass flows shall not be directed to ground surface receiving waters, storm drains, or wherever groundwater contamination is possible. The bypass system shall maintain flow to prevent wastewater backup into customer fixtures or discharge to the environment.

The design of the bypass system is the responsibility of the Contractor and shall be prepared and submitted to the Engineer for review and approval. The Contractor shall have each bypass system in place and tested before bypassing any sewage. The Contractor shall notify the Engineer 48 hours prior to shutting down or bypassing the pipeline to be rehabilitated.

Redundancy in the pumping equipment shall be provided by installing at least two pumps at each upstream manhole that requires the bypass to the downstream manhole. The secondary pump would be available for an emergency situation. It is anticipated there are three upstream manholes that require the bypass pumping equipment for a total of six pumps to provide that redundancy in the system. Electric flow monitoring equipment shall be provided on the upstream sewer lines to prevent wastewater backup into customer's fixtures or discharge to the environment.

Equipment shall be equipped with a specially designed, acoustically silenced enclosure intended for use in any application where pumping is required, and engine and other noise must be kept to a minimum. The sound levels shall be within the limits specified in the City of Flagstaff codes or 69dBA at 30 feet. The bypass pumping system shall be of adequate capacity and size to handle the required flows with redundancy to bypass if the largest temporary pump is out of service.

The Contractor shall consider the existing conditions and ground features when designing and installing the above-ground discharge pipe system. Access to driveways shall be maintained.

615.5.1.2 MATERIALS
(Revise to include the following)

Bypass piping shall be polyethylene pipe with Standard PE Code Designation PE3408 as defined in AWWA C906, have a minimum Cell Classification of PE 33443C as defined in ASTM D3350, designed using Hydrostatic Design Basis of 1,600 psi as specified in ASTM D2837.

615.5.1.3 SYSTEM MONITORING
(Revise to include the following)

The wastewater levels in the upstream and downstream manholes shall be continuously monitored for the first 24-hours of operation by an on-site representative of the Contractor. After the first 24-hours of monitoring, the Engineer may allow the Contractor to perform monitoring only during daytime hours so long as the site is secured. The representative shall be Contractor staff and/or a subcontractor that has been directly responsible for the bypass pumping of sewage flows during completion of a similar pipeline rehabilitation project. The qualifications of the staff or subcontractor shall be submitted to the Engineer for approval 10 business days prior to any bypass pumping work.

The Engineer may also allow for the bypass pumping system to be removed at the end of construction each day and or week, provided the new sewer main in the sewer rehabilitation work area has been connected to the existing sewer main and sewage flow has been confirmed.

615.5.1.4 SYSTEM MAINTENANCE
(Revise to include the following)

The Contractor shall provide qualified personnel on-site 24 hours per day to maintain the bypass system, or just during the day if the bypass pumping system is removed and the new sewer main has been connected to the existing sewer main. The Contractor shall maintain sufficient on-site equipment and materials to ensure continuous and successful operation of the bypass system. This includes a sufficient number of valves, tees, elbows, connections, tools, sewer plugs, piping, fuel, and other parts or system hardware to ensure immediate repair or modification of any part of the system as necessary.

All equipment shall be placed on a new plastic tarp, adequately sized and bermed to protect against fuel, oil, and hydraulic fluid spills. The Contractor is responsible to notify the Engineer for immediate and proper cleanup should any spill occur, regardless of amount. The Contractor shall repair, without cost to the Owner, any damage that may result from its negligence, inadequate or improper mechanical or electrical failures.

615.16 MEASUREMENT AND PAYMENT
(Revise to include the following)

All work to locate or determine active or abandoned sewer services is incidental to the contract and shall be included in the cost of the appropriate bid item.

Bypass pumping required to install the sewer system as shown on the plans while keeping the mains in service is considered incidental to the sewer items on the bid form with no additional compensation.

CITY OF FLAGSTAFF
AMENDMENTS
to
MAG STANDARD SPECIFICATIONS
FOR PUBLIC WORKS CONSTRUCTION
(General Provisions)

Amended February 2022

The
MAG UNIFORM STANDARD SPECIFICATIONS
for
PUBLIC WORKS CONSTRUCTION
is hereby amended to include the following:

PART 100 - GENERAL CONDITIONS

SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS

102.1 ELIGIBILITY AND PREFERENCE:
(revise to include the following)

If requested by the City, a Bidder shall furnish satisfactory evidence of the Bidder's competency to perform the proposed work. Such evidence of competency, unless otherwise specified, shall consist of statements covering the Bidder's experience on similar work, a list of equipment that would be available for the work and a list of key personnel that would be available.

In addition, if requested, a Bidder shall furnish the City of Flagstaff with satisfactory evidence of the Bidder's financial responsibility. Such evidence of financial responsibility, unless otherwise specified, shall consist of a confidential statement or report of the Bidder's financial resources and liabilities as of the last calendar year or the contractor's last fiscal year. Such statements or reports shall be certified by a public accountant. At the time of submitting such financial statements or reports, the Bidder shall further certify whether the Bidder's financial responsibility is approximately the same as stated or reported by the public accountant. If the Bidder's financial responsibility has changed, the Bidder shall qualify the public accountant's statement or report to reflect the Bidder's true financial condition at the time such qualified statement or report is submitted to the City of Flagstaff.

The Bidder shall submit such "evidence of competency" and "evidence of financial responsibility" to the City of Flagstaff no later than five (5) working days after receipt of a written request by the City of Flagstaff.

Each bidder, contractor and subcontractor shall possess and maintain the appropriate contractor's license for the work included in this contract. The appropriate license shall be as required by the Arizona State Registrar of Contractors and as required by Arizona Revised Statutes Chapter 10, Title 32.

102.2 CONTENTS OF PROPOSAL PAMPHLET:
(revise to include the following)

The Plans, Specifications and other Documents designated in the Contract Documents shall be considered a part of the Contract whether attached or not.
The City of Flagstaff reserves the right to refuse to issue a proposal form or accept a proposal form from a prospective Bidder if they are in default for any of the following reasons:

(A) Failure to comply with any prequalification regulations of the City of Flagstaff, if such regulations are cited or otherwise included in the Proposal as a requirement for bidding;

(B) Failure to pay or satisfactorily settle all bills due for labor and materials on former contracts in force (with the City of Flagstaff) at the time the City of Flagstaff issues the Proposal to a prospective Bidder;

(C) Contractor, as a company owner, has defaulted under previous contract(s) with the City of Flagstaff in the prior five calendar years;

(D) Record of unsatisfactory work on previous contract(s) with the City of Flagstaff in the prior five calendar years.

102.2 CONTENTS OF PROPOSAL PAMPHLET:
(third paragraph, revise last sentence to read as follows)

The work embraced herein shall be done in accordance with the requirements of:

City of Flagstaff Amendments to MAG Standard Specifications for Public Works Construction (General Provisions).

City of Flagstaff (City) Engineering Standards (Current Version and adopted revisions).

Maricopa Association of Governments (MAG), *Uniform Standard Specifications for Public Works Construction*, Current Version (MAG Specifications).

MAG *Standard Details for Public Works Construction,* Current Version and adopted revisions (MAG Details).

Arizona Department of Transportation (ADOT) Standard Specifications for Road and Bridge Construction, Current Version and adopted revisions.

In the case of conflict, the following order of precedence shall govern:

1. Special Provisions
2. Construction Plans and Addenda
3. General Provisions and MAG Revisions
4. City of Flagstaff Standards and Specifications
5. MAG Standards and Specifications
6. ADOT Standards and Specifications
7. FHWA Manual of Uniform Traffic Control Devices

102.4 EXAMINATION OF PLANS, SPECIAL PROVISIONS AND SITE OF WORK:
(revise to include the following)

Before submitting a bid, each bidder shall examine the site and obtain information that pertains to the physical conditions of the site that may affect the cost, progress or performance of the work. Any restrictions or difficulties relating to the completion of the work shall be considered in accordance with the terms and conditions of the contract documents.

102.7 IRREGULAR PROPOSALS:
(revise to include the following)

The City of Flagstaff reserves the right to reject any irregular Proposal and the right to waive technicalities for acceptance of Proposals, if such waiver is in the best interest of the City of Flagstaff and conforms to local laws and ordinances pertaining to the letting of construction contracts.
Proposals shall be considered irregular for the following additional reasons:

(A) If the Proposal contains unit prices that are obviously unbalanced.

(B) If the Proposal is not accompanied by the proposal guaranty specified by the City.

102.12 DISQUALIFICATION OF BIDDERS:
(revise to include the following)

A Bidder shall also be considered disqualified if the Bidder is considered in default for any reason specified in Subsection 102.2 as amended by this MAG Amendment.

102.13 SUCCESSFUL BIDDERS:
(revise paragraph to read as follows)

The City of Flagstaff shall provide six (6) sets of plans and Contract Documents at no cost. A direct expense fee shall be charged for any additional copies.

SECTION 103 - AWARD AND EXECUTION OF CONTRACT

103.6 CONTRACTOR'S INSURANCE:

103.6.1 GENERAL:

(revise subsection to read as follows)

The Contractor and its Subcontractors, at Contractor's and Subcontractors' own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of A-, 7, or approved by the City. The insurance company shall be licensed in the State of Arizona. Policies and forms shall be satisfactory to the City.

All insurance required herein shall be maintained in full force and effect until all work and/or services required to be performed, under the terms of the Contract, are satisfactorily completed and formally accepted. At the sole discretion of the City, failure to do so may constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance as respects the City. Any insurance or self-insurance maintained by the City shall not contribute to it.

Contractor shall not fail to comply with the claim reporting provisions of the insurance policies or cause a breach of any insurance policy warranty that would affect coverage afforded under insurance policies to protect the City.

The insurance policies (except Worker's Compensation) shall contain a waiver of transfer of rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage, which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. The Contractor shall be solely responsible for the deductible and/or self-insured retentions, and the City, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

The City reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Contractor's obligations under this Contract.

Except for Worker's Compensation, the insurance policies, required by this Contract shall name the City, its agents, representatives, officers, directors, officials and employees as additional insureds.

Required Coverage

A. COMMERCIAL GENERAL LIABILITY

The Contractor shall maintain Commercial General Liability insurance with a limit of not less than $1,000,000 for each occurrence with a $2,000,000 Products/Completed Operations Aggregate and a $2,000,000 General Aggregate Limit. The Policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage. Coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacements thereof. The coverage shall not exclude X, C, U.

Such policy shall contain a severability of interest provision and shall not contain a sunset provision or commutation clause, nor any provision, which would serve to limit third party action over claims. The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc. Additional Insured, Form B, CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

B. OWNERS AND CONTRACTOR'S PROTECTIVE LIABILITY

The Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Work or Contractor's operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than $1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

C. AUTOMOBILE LIABILITY

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 each occurrence with respect to the Contractor's any auto, all owned autos, scheduled autos, hired autos, non-owned autos assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off-loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and $5,000,000 per accident limits for bodily injury and property damage shall apply.

D. WORKER'S COMPENSATION

The Contractor shall carry Worker's Compensation insurance to cover obligations imposed by federal and state statues having jurisdiction of Consultant's employees engaged in the performance of the work or services; and Employer's Liability insurance of not less than $100,000 for each accident, $100,000 disease for each employee, and $500,000 disease policy limit.

In case any work is subcontracted, the Contractor will require the Subcontractor to provide Worker's Compensation and Employer's Liability to at least the same extent as required of the Contractor.

E. BUILDER'S RISK (PROPERTY) INSURANCE (AS REQUIRED)

When the project includes construction of a new building, an addition to an existing building, modifications to an existing building, or as otherwise may be required by the contracting agency, the Contractor shall purchase and maintain, on a replacement cost basis, Builder's Risk insurance in the amount of the initial Contract Amount as well as subsequent modifications thereto for the entire work at the site. At a minimum, the policy limits of such insurance shall be equal in face amount to the full Contract Amount. Such Builder's Risk insurance shall be maintained until final payment has been made or until no person or entity other than the City has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of the City, the Contractor, and all Subcontractors and Sub-Subcontractors in the work during the life of the Contract and course of construction, and shall continue until the work is completed and accepted by the City. For new construction projects, the Contractor agrees to assume full responsibility for loss or damage to the work being performed and to the buildings under construction. For renovation construction projects, the Contractor agrees to assume responsibility for loss or damage to the work being performed at least up to the full Contract Amount, unless otherwise required by the Contract Documents or amendments thereto.

Builder's Risk insurance shall be on an all-risk policy form and shall cover false work and temporary buildings. Builder's Risk insurance shall insure against risk of direct physical loss or damage from external causes including debris removal, demolition occasioned by enforcement of any applicable legal requirements and shall cover reasonable compensation for Architect's service and expenses required as a result of such insured loss and other "soft costs" as required by the Contract.

Builder's Risk insurance must provide coverage from the time any covered property becomes Contractor's control and/or responsibility, and continue without interruption during construction

or renovation or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered premises or any part thereof is occupied. Builder's Risk insurance shall be primary and not contributory.
If the Contract requires testing of equipment or other similar operations, at the option of the City, the Contractor will be responsible for providing property insurance for these exposures under a Boiler Machinery insurance policy.

Required coverage may be modified by an amendment to the Contract Documents.

CERTIFICATES OF INSURANCE

Prior to commencing work or services under this Contract, Contractor shall furnish the City with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policies required by this contract are written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.
If a policy does expire during the life of the Contract, a renewal certificate must be sent to the City fifteen (15) days prior to the expiration date.

All Certificates of Insurance shall be identified with bid/project number and project name. A $25.00 administrative fee will be assessed for all certificates received without the appropriate bid serial number and title.

CANCELLATION AND EXPIRATION NOTICE

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days written notice to the City.

SECTION 104 - SCOPE OF WORK

104.1.3 WATER SUPPLY:
(revise to include the following)

Potable water may not be used for major construction activity, such as dust control, soil compaction, or street cleaning. Reclaimed water is available at the Wildcat Hill Wastewater Treatment plant on East Highway 66 and at the south end of Babbitt Drive at the Rio De Flag Water Reclamation Plant. Additional reclaimed water bulk loading sites are located in other areas of the city. The contractor

should obtain current locations from the Water Services Department. **Current rates for the reclaimed water shall apply**. The Contractor is responsible for the cost of construction water and it is considered incidental to the cost of the contract.

Prior to loading, hauling and applying reclaimed water, the Contractor shall be required to obtain the necessary no fee permit at the Wildcat Hill Wastewater Treatment Plant or from the Rio De Flag plant and shall be responsible for complying with all permit and ADEQ requirements regarding the use of reclaimed water.

104.1.4 SPECIAL ACCESS REQUIREMENTS:
(revise to include the following)

The Contractor shall maintain access to all side streets, access roads, driveways, alleys, parking lots and to adjacent properties during their hours of operation. The Contractor shall coordinate with residents and ensure access to all driveways be provided during all non-working hours. Where a property has more than one driveway, no more than one access will be restricted or closed at one time. Should it be necessary to close access to private property, driveways or alley entrances, the closure must be for as short a time as possible and be restored at the end of the work shift. If primary business access cannot be restored, the Contractor shall provide an alternate access, which will be coordinated with the business and pre-approved by the Owner prior to any restrictions being implemented.

104.1.5 SANITATION PICKUP:
When construction activity interferes with pickup, the contractor shall provide for sanitation and recycling vehicle access to the affected properties or relocate the containers where access is acceptable.

104.1.6 EMERGENCY ACCESS:
Street closure information shall be submitted to the City's Project Representative who will forward the information to the Fire Department and Police Department. All notices shall be submitted at least 72 hours in advance of the closures.

104.1.7 POSTAL SERVICE ACCESS:
The contractor shall be responsible for maintaining access for Postal Service within the project area at all times.

104.1.8 SCHOOL BUS ACCESS:
The contractor shall be responsible for maintaining access for bus access within the project area.

104.2 ALTERATION OF THE WORK:

104.2.3 DUE TO EXTRA WORK:
(revise to include the following)

When Allowance and/or Contingency items are provided for in the contract, the funds are encumbered for use at the discretion of the Project Manager. The funds are to cover unanticipated costs to complete items of work not included in the Contract Documents or may be applied to any work deemed necessary by the Owner. Work would include, but not limited to, unanticipated conditions, scope changes, addressing errors or omissions, and/or construction changes that are warranted for project completion consistent with the purpose of the work.

The amount of the allowance item is determined by the City and is not subject to individual bid pricing. The allowance is not part of the bidding process and per the City of Flagstaff Procurement Manual, will be added to the contract amount, if approved by the City Council.

The allowance item provides an estimated funding to cover unforeseen changes that may be encountered and corresponding extra work needed to complete the contract. Any work which is to be paid out of this allowance shall be authorized in writing and approved by Field Order prior to proceeding with the work. Extra work shall be paid for in the following order of precedence:
1.) by extension of unit bid prices, 2.) by negotiated price or 3.) by a time and materials basis in accordance with MAG Section 109.5.

It shall be understood that the amount for this item in the proposal is an estimate only and no guarantee is given that the full amount or any portion thereof will be utilized. It shall not be utilized without first obtaining an approved Field Order signed by the Contractor and the Project Manager.

105.2.1 RECORD DRAWING PREPARATION AND COORDINATION
(revise to include new subsection as follows)

Record drawing preparation shall be the obligation of the Contractor whose purpose is to accurately record and depict the as-built conditions. During the construction phase and prior to backfilling or covering of improvements, the Contractor shall have the work surveyed and recorded for record drawing preparation.

The Contractor shall maintain a redline working copy of the project plans which shall include changes made in construction of the project. The redline copy of the plans shall be updated weekly.

105.2.2 RECORD DRAWING (As-Built Plans)
(revise to include new subsection as follows)

The Contractor shall retain an Arizona licensed civil engineer to record as-built information per Arizona Revised Statute § 32-152. Water and sewer record drawing certification shall comply with ADEQ R18-5-508 (drinking water) and ADEQ R18-9-E301 (sewage collection) requirements for as-built drawings. Unless otherwise noted, the City will complete and submit the Engineer's Certificate of Completion to ADEQ.

Prior to the City's final approval and acceptance of public improvements (sanitary sewer, water, storm sewer, streets) record drawings (as-built plans) must be submitted to the City for review and acceptance per Engineering Standard Specifications.

A redline submittal shall be a .pdf and/or two sets of blue or black line paper sets, copied from the originally approved plan set. Redline submittal will be reviewed by the City and returned with applicable comments. Comments are to be addressed and resubmitted for the City's final approval. A reference checklist is available from the Office of the City Engineer.

Upon City and ADEQ (when applicable) review and approval of the submittal, an electronic .pdf of the plans shall be submitted to the City as a permanent record. All record drawing plan sets shall contain a statement by a licensed professional engineer, currently registered to practice in Arizona, certifying that the drawings are per the as-built condition. The record set requires the seal and signature of the registrant per Arizona Revised Statutes § 32-152. All survey data given by the record drawings shall be performed by a land surveyor who is currently registered in the State of Arizona. Plans must show seal and signature of registrant.

Payment shall be lump sum for all work required to develop the necessary documents, including but not limited to coordination, field inspection, survey, drafting, printing and engineer's seal. The fee shall include as-built information for all record changes within the project area.

SECTION 105 - CONTROL OF WORK

105.8 CONSTRUCTION STAKES, LINES AND GRADES:
(revise entire subsection to read as follows)

The Contractor shall be responsible for all required construction staking, including preconstruction staking for relocation of existing utilities. All construction staking is to be done under the direct supervision of a Registered Land Surveyor or Civil Engineer. All costs associated with this work are

to be included in the amount bid for the items of work to which it is incidental or appurtenant. No separate payment will be made for construction staking.

105.10 INSPECTION OF THE WORK
(revise to include the following)

The Contractor is responsible for Quality Control of the work. The City will perform Quality Assurance; frequency of testing will be determined by the City. The Contractor shall be responsible for coordinating and scheduling all inspections of the work and shall confirm that the required inspections and material testing are completed and accepted prior to proceeding with additional work. The Contractor is required to perform the work to a confidence level that the City's Quality Assurance will validate that the work meets specification(s).

105.11 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK:
(revise to include the following)

Any work and/or materials condemned by the Project Manager as inferior or not in compliance with the Contract, Specifications and Plans shall be immediately removed by the Contractor. Materials and/or work so condemned shall be removed and promptly replaced and executed in accordance with the Contract, Specifications and Plans without any expense to the Owner. The Contractor shall bear the expense of making good on all work of other contractors destroyed or damaged by such removal and replacement.

105.12 MAINTENANCE DURING CONSTRUCTION:
(revise to include the following)

The Contractor is responsible to provide adequate drainage for the construction area at all times. Damage to any portion of the work caused by the Contractor's failure to provide adequate drainage of the construction area shall be repaired at the Contractor's expense. A contract time extension will not be granted for any additional time required to make such repairs.

The Contractor shall control open excavations and stockpiling in a manner to prevent water from running into excavations. Obstructions of surface drainage shall be avoided and means shall be provided whereby storm water and wastewater can flow uninterrupted in existing or established pipes, flow courses, other surface drains, temporary drains or channels.

Material for backfill or for protection of excavations within public roads or easements shall be placed and shaped to cause the least possible interference to public travel. In no event shall any flows be allowed to enter private property.

The City shall provide snow removal operations on active traffic lanes, outside of Contractor traffic control, only. All other snow removal and maintenance operations shall be the responsibility of the

Contractor, including snow removal on adjacent, open and active streets that are only accessible by travel through project-related street closures, even when outside of project limits. All costs associated with snow removal and proper disposal shall be considered incidental to the work including the repair of temporary and permanent surface improvements due to damage by any snow removal operations. Snow removed from public roads or easements shall be placed and shaped to cause the least possible interference to public travel, parcel access, drainage, and parking. In no event shall snow be stored on private property.

105.16 MAINTENANCE DURING WINTER SUSPENSION OF WORK
(revise to include new subsection as follows)

The City retains the right to declare a winter shutdown, *for any reason*, on the Project including but not limited to adverse weather conditions. A winter shutdown period is typically December through March during which no work will be performed on the Project.

The Contractor shall shutdown, properly insulate and shelter the Project in a safe and workmanlike manner pursuant to local, state and federal laws.

If work has been suspended due to winter weather, the Contractor shall be responsible for maintenance and protection of the improvements and of partially completed portions of the work until final acceptance of the project. Winter suspension shall be by field order, change order or original contract. If repairs and/or maintenance are needed during the suspension, the Contractor is required to perform the repairs and/or maintenance within twenty-four (24) hours of notification from the City. If the needed repairs and/or maintenance are not addressed within the timeframe, the City will accomplish the work and deduct the cost from monies due or become due to the Contractor.

The City shall provide snow removal operations on active traffic lanes, outside of Contractor traffic control, only. All other snow removal and maintenance operations shall be the responsibility of the Contractor, including snow removal on adjacent, open and active streets that are only accessible by travel through project-related street closures, even when outside of project limits. All cost associated with snow removal and proper disposal shall be considered incidental to the work including the repair of temporary and permanent surface improvements due to damage from normal wear by any snow removal operations during the Winter Shutdown. Snow removed from public roads or easements shall be placed and shaped to cause the least possible interference to public travel, parcel access, drainage, and parking. In no event shall snow be stored on private property.

SECTION 107 - LEGAL REGULATIONS AND RESPONSIBILITY TO THE PUBLIC

107.1 LAWS TO BE OBSERVED:
(revise to include the following)

(G) TAX EXEMPTION: Certain material, machinery and equipment to be installed in this project is exempt from sales tax or use tax as allowed in Arizona Revised Statutes Section 42-5061, 42-5009 and Section 42-5159 and by the Administrative Rules and Regulations of the Arizona Department of Revenue; ACC R15-5-608, R15-5-120 and R15-5-2314.

The City wishes to rely upon the expertise of the contractor in the purchase of items that qualify for the tax exemption. With respect to purchase of the qualifying items, the Contractor is authorized to act as an agent for the City. This agency agreement is strictly limited to the purchase of the qualifying items to be used in the construction of the project and will not otherwise affect or alter the respective rights, responsibilities and remedies of the parties as specified under this contract. The contractor shall furnish the City a list of suppliers and the material, machinery and equipment to be furnished by each. The City will then issue the materials and equipment exemption certificate to each supplier pursuant to A.R.S. §42-5009 (A) (2). The contractor's applicable unit bid prices for items qualifying for this tax exemption should not include sales or use tax. The materials, machinery and equipment that are a part of this project and to which the exemption applies are listed below:

1. Pipes, valves and appurtenances four (4) inches in diameter or larger used to transport potable water,
2. Any additional material, machinery or equipment identified in the Special Provisions.

107.2.1 TEMPORARY USE PERMITS:
(revise to include new subsection as follows)

A Temporary Use Permit (and Above Ground Fuel Storage Permit if applicable) is required prior to the establishment of any temporary construction yard, material storage area or staging area located within City limits and outside the public right-of-way or project limits. The Contractor is responsible for obtaining the necessary Temporary Use Permit from the agency with jurisdictional authority.

The time required to process the Temporary Use Permit is approximately twelve (12) calendar days. The Contractor shall submit the necessary permit application no later than ten (10) calendar days following the Notice of Award. Any delays experienced by the Contractor in acquiring the Temporary Use Permit shall not necessarily be grounds for delaying the project Notice to Proceed.

107.2.2 DISPOSAL OF WASTE AND SURPLUS MATERIAL:
(revise to include the following)

All disposal costs, regardless of disposal site, shall be included in the bid unit price for the related item of work and no direct payment will be made for disposal of waste or surplus materials. This right of disposal does not apply to any substance or items that are regarded as toxic and/or hazardous by the City, the State of Arizona or the United States Government.

Alternate disposal sites may be proposed by the Contractor but are subject to all applicable local ordinances and codes. In addition to the property owner's written authorization, all disposal sites within the city limits are subject to review and approval by the Temporary Use Permit process. The disposal of material at alternate disposal sites will not be allowed without written authorization of the owner, approval of the appropriate jurisdictional authority, and the issuance of all necessary permits.

107.2.3 ABOVE GROUND FUEL STORAGE PERMIT:
(revise to include new subsection as follows)

If required, Above Ground Fuel Storage Permits may be obtained from the City of Flagstaff Fire Department, located at 211 West Aspen Avenue, Flagstaff, AZ. The Contractor is responsible for obtaining the permit.

107.5 SAFETY, HEALTH, AND SANITATION PROVISIONS:

107.5.4 HANDLING, REMOVAL AND DISPOSAL OF SURPLUS MATERIAL AND ASBESTOS CONTAINING MATERIALS (ACM)
(revise to include new subsection as follows)

The Contractor is responsible for handling, removal and disposal of all soil material generated by the project as described in the General Provisions.

The City requires compliance with Environmental Protection Agency (EPA), Arizona Department of Environmental Quality (ADEQ) and Occupational Safety and Health Administration (OSHA) asbestos regulations for all City projects.

Utility pipes constructed of materials other than metal or polyvinyl chloride (PVC) require testing prior to any disturbance of the pipes to determine if regulated levels of asbestos are present in the pipe material. Suspect pipe materials requiring testing typically include vitrified clay and cement pipe (transite). Asbestos testing is not required for metal pipes.

City Public Works/Sustainability & Environmental Management staff are available to collect samples and submit the samples for analyses. The City of Flagstaff will provide testing free of charge. If the pipe does not contain regulated levels of asbestos, the contractor may disturb and remove the piping. If utility piping contains regulated levels of asbestos, an asbestos abatement contractor must perform any disturbance/removal of the pipe materials. This is required to ensure workers are not exposed to any asbestos fibers.

Work may require the proper handling, removal and disposal of regulated asbestos piping and materials generated by cutting or breaking the pipe to remove it from the ground. If asbestos containing materials (ACM) removal is necessary on the project, the City of Flagstaff requirements for handling, removal and disposal are as follows:

- If an infrastructure or building material that is not either wood, glass or metal is encountered during the project and has not yet been either assumed or positively identified to be ACM then the material(s) must be sampled in accordance with regulations generated by the EPA Asbestos Hazard and Emergency Response Act (AHERA) 40 CFR 763 as well as OSHA 29 CFR 1910.1101, by a certified AHERA Building Inspector and sent to a National Voluntary Laboratory Accreditation Program (NVLAP) certified laboratory for analysis.

- Once materials of concern are assumed or properly identified to be ACM then material removal is required according to OSHA 29 CFR 1910-1926.1101 by a certified asbestos abatement worker, and NOT a general contractor (GC). However, if the GC holds the appropriate asbestos certifications (AHERA Asbestos Operations and Maintenance), which the City would need to verify is current, then the GC could perform the asbestos abatement.

The City requires the General Contractor arrange for abatement of assumed and/or identified ACM by a certified asbestos abatement contractor and to arrange area and/or clearance air monitoring by a third party certified asbestos consultant. If applicable to the project, copies of abatement activities and air monitoring shall be provided to City of Flagstaff Environmental Management staff.

In the event of large disturbances to ACM, compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) 40 CFR 61, Subpart M shall be followed. Notification would be required the Arizona Department of Environmental Quality 10 working days in advance of the start of a large project. This notification is not typically required for utility pipe work, but could be required for a very large project involving numerous saw cuts of utility pipes. http://www.azdeq.gov/environ/air/asbestos/

If ACM removal is necessary on the project, the City of Flagstaff requirements for ACM disposal at the City's Cinder Lake Landfill are as follows:

Only non-friable asbestos waste is accepted for disposal at Cinder Lake Landfill. PRIOR to disposal of non-friable ACM, obtain the necessary forms, which are:

- Non-Friable Asbestos Waste Acceptance Application and accompanying instructions
- Non-Friable Asbestos Waste Shipment Record (WSR)

The Asbestos Waste Acceptance Application is available at the City of Flagstaff's website or by contacting the City of Flagstaff Environmental Management staff. A Waste Shipment Record is required to accompany each load of non-friable asbestos waste taken to the Cinder Lake Landfill.

Assure the non-friable ACM is properly handled and wrapped. Non-friable ACM must be thoroughly wetted using amended water PRIOR to being wrapped in 6-millimeter poly and be tightly sealed with duct tape. If the material is heavy (such as transite pipe), has sharp edges, or may easily puncture the poly wrap, a double layer of poly will be necessary. The Cinder Lake Landfill scale house attendant will inspect the load to ensure it is properly wrapped. Containers holding non-friable ACM shall be carefully unloaded and placed in a designated location. Dumping using a hydraulically lifted bed of a truck is not permitted (dump truck), as the poly wrap may be torn open.

If using a large bin for disposal, attach a copy of the Waste Shipment Record to the disposal bin. If not using a City of Flagstaff disposal bin, make sure the delivery driver takes a copy of the SIGNED Non-Friable Asbestos Waste Acceptance Application and the Waste Shipment Record to the Cinder Lakes Landfill with the waste delivery.

If using a City of Flagstaff disposal bin call City Environmental Services at (928) 774-0668 to schedule a pick-up for the disposal bin. Please be sure to provide the driver with the SIGNED Non-Friable Asbestos Waste Acceptance Application and the Waste Shipment Record and be sure to clarify if you would like the disposal bin emptied and removed, or emptied and returned to the work site. When disposal is completed, the Landfill Manager will sign the Waste Shipment Record and landfill staff will provide or mail a copy of the Waste Shipment Record.

Cutting of utility pipes generates Regulated Asbestos Containing Material (RACM). RACM requires disposal at the Joseph City Landfill or at other landfills located in southern Arizona.

All work relating to the removal and disposal of unknown and unanticipated hazardous materials as described above shall be paid per MAG 109.4.3.

107.8 107 USE OF EXPLOSIVES:
(first paragraph, revise second sentence to read as follows)

The Contractor shall submit a blasting plan for approval and obtain a Blasting Permit from the City of Flagstaff Fire Department, located at 211 W. Aspen Avenue, Flagstaff, Arizona.

(revise to include the following)

The Contractor shall submit a copy of the approved blasting plan to the Project Manager. The plan shall include as a minimum; safety layout, drilling pattern, size and depth of bore, weight and type of charge, delay sequence, contractor's anticipated peak particle velocity at the right-of-way line or nearest structure, and the proposed seismograph locations.

A record of each blast shall be kept and all records including seismograph reports shall be available for inspection. Each record shall provide as a minimum; location, date and time of blast, name of person in charge, number of holes burdened, spacing, diameter and depth of holes, boring logs to determine top of rock, type and total amount of explosives used, direction and distance to nearest building, type of detonators and delay periods used, and exact locations of seismographs.

When blasting operations are to be conducted within 200 feet of a water line, sewer line or other underground utility, the Contractor shall take additional precautionary measures. The Contractor shall also coordinate with Franchise Utilities prior to blasting operations. The Contractor shall notify the owner of the facility a minimum of two weeks in advance that such blasting operations are intended. At their discretion, the Owner may perform pre-blast, post-blast pressure tests or other inspection of the facility. If any damage occurs because of blasting operations, the Contractor shall be responsible for the restoration of the facility to pre-blast conditions.

107.9 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE:
(revise to include the following)

The Contractor is responsible for replacing and/or restoring the site, landscaping and owner's improvements associated with the project to the pre-existing condition using in-kind materials. All cost shall be included in the bid as incidental to the work, unless otherwise specified in the bid schedule or plans.

Within easements, the Contractor is responsible for removing existing improvements and salvaging items (not identified for removal) for relocation after the public improvements are completed. Close coordination between the Contractor and property owners and/or residents is required.

107.11 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES:
(revise to include the following)

All power poles, pedestals, guy wires and underground facilities shall be removed and/or relocated by the respective owners of the facilities. The contractor is responsible for the notification and coordination with the utility companies to ensure that this work is accomplished in a manner

consistent with the construction schedule. Payment for Franchise Utility coordination and location is incidental to the cost of the work.

The Contractor shall perform utility potholes and identify potential conflicts prior to trenching. The utility pothole information and identification of potential conflicts shall be provided to the Project Manager at least two weeks prior to performing trenching or pipeline construction.

SECTION 108 - COMMENCEMENT, PROSECUTION AND PROGRESS

108.1 NOTICE TO PROCEED:

(revise to include the following)

Time is of the essence in submitting the initial and revised construction schedule and traffic control plan. Each is a requirement that precedes the Contractor's right and the City's obligation to proceed with the agreement.

The Notice to Proceed shall be issued for a start date no later than twenty-seven (27) calendar days following receipt of the Notice of Award. The Contractor shall be required to submit a construction schedule and traffic control plan in accordance with the Contract Documents and the following:

The Contractor shall within seven (7) calendar days of receiving the Notice of Award, submit a construction schedule and traffic control plan to the Project Manager. The Project Manager shall promptly review the construction schedule and traffic control plan and either approve them, or provide a written list of the items that will require revision. The Contractor shall submit the revised construction schedule and traffic control plan within five (5) calendar days of receiving the Project Manager's list of required revisions. The corrected construction schedule and traffic control plan submittal shall address all comments from the Project Manager's list of required revisions.

108.3 CORRESPONDENCE TO THE CONTRACTOR:

(revise to include the following)

In addition to written communication to the Project Manager, the Contractor shall provide and maintain a contact located within ten miles of the job site at all times throughout the duration of the Contract. The designated contact shall be accessible by telephone at all times to respond to agency requirements and emergencies. The local location and phone number(s) shall be provided to the Project Manager prior to issuance of the Notice to Proceed. Any changes of the location or phone number(s) shall be reported immediately to the Project Manager.

If a response is needed, the Contractor is required to respond and perform the repairs and/or maintenance within two (2) hours of notification from the City. If the needed repairs and/or

maintenance are not addressed within the timeframe, the City will accomplish the work and deduct the cost from monies due or become due to the Contractor.

108.4 CONTRACTOR'S CONSTRUCTION SCHEDULE:
(revise to include the following)

The Contractor's schedule shall include, as a minimum, the following:

- Identification of project tasks with assigned dates and durations, which reflect anticipated sequencing of construction activities on scheduled working days;
- All anticipated subcontractors that will be used during the course of the work;
- The anticipated number of crews to expedite the progress and ensure prompt completion of the work;

  Definition of a crew;
  - personnel *(e.g. operator, laborer)*
  - equipment *(e.g. Cat 325 Excavator, 950 Loader)*
  - workdays anticipated or scheduled per week (*e.g. Monday through Friday)*
  - work hours anticipated or scheduled per day *(e.g. 7:00 am to 3:30 pm)*
- Anticipated adverse weather days for weather dependent activities, weekends and holidays.
- Specific long lead times for delivery of equipment and materials;
- Critical path project schedules may be required as provided for by the Special Provisions or Project Addenda.

108.5 LIMITATION OF OPERATIONS:
(third paragraph, revise to read as follows)

Except in emergencies endangering life or property, written permission shall be obtained from the City prior to performing any work on weekends, legal holidays or after regular work hours (hereinafter defined as 7:00 a.m. to 5:00 p.m. - Monday through Friday). Work on Saturdays will be permitted with prior approval by the City's Engineering Inspection Supervisor. 72 hours advance notice will be required. Work on Sundays and legal City Holidays will not be permitted except in emergencies or as approved by the owner. Inspection and testing will not be provided on Sundays or City legal holidays without prior approval from the Project Manager (72-hour advance notice) and full compensation by the Contractor for any necessary personnel, equipment and services.

Overtime compensation for City personnel shall be as follows:

Construction Supervisor @ $ 43.00/hour
Inspector II @ $ 35.00/hour
Inspector I @ $30.00/hour
Lab Tech I @ $ 25.00/hour

Vehicle @ $1.80/hour

108.7 DETERMINATION AND EXTENSION OF CONTRACT TIME:
(revise to include the following)

The contract time, including final clean-up of the project site and storage areas, may be extended because of weather conditions that cannot be reasonably anticipated. The number of actual days that the scheduled work is impacted by adverse weather shall be recorded weekly during the construction period.

The Contractor will be entitled to a contract time extension if the actual adverse weather days experienced during the work exceed the anticipated adverse weather days shown. The following is the monthly schedule of adverse weather days that shall be anticipated by the Contractor in scheduling the work:

TABLE 108.7 MONTHLY CALENDAR DAYS for ANTICIPATED ADVERSE WEATHER

MONTH	*JANUARY*	*FEBRUARY*	*MARCH*	*APRIL*	*MAY*	*JUNE*
Monthly Calendar Days for Anticipated Adverse Weather	7 Days	7 Days	8 Days	6 Days	4 Days	3 Days
Average Monthly Precipitation	1.98”	1.96”	2.05”	1.34”	0.68”	0.51”
MONTH	*JULY*	*AUGUST*	*SEPTEMBER*	*OCTOBER*	*NOVEMEBER*	*DECEMBER*
Monthly Calendar Days for Anticipated Adverse Weather	12 Days	11 Days	7 Days	5 Days	5 Days	6 Days
Average Monthly Precipitation	2.78”	2.68”	1.82”	1.52”	1.49”	1.90”

The above schedule of anticipated adverse weather days establishes the base line for the project's monthly weather impacts based on historical records, as recorded by the National Weather Service at Pulliam Airport, for precipitation in excess of 0.01 of an inch per calendar day.
The number of actual days that scheduled work is impacted by adverse weather as defined above shall be recorded weekly during the contract period. It is the Contractor's responsibility to request in writing any adverse weather delays experienced during the prior week no later than the normally scheduled weekly project meeting. Any adverse weather day requests that are not received, as stated above, shall neither be considered nor approved. Once the number of approved actual adverse weather days exceeds the number of anticipated adverse weather days in the schedule above, the Contractor is entitled to a contract time extension.

Actual adverse weather days must also prevent work for fifty (50) percent or more of the Contractor's work day and delay scheduled work critical to the timely completion of the project. The

City will convert any delays meeting the above requirements to calendar days and extend the contract period as necessary. No additional compensation will be allowed for direct and indirect overhead expenses associated with any such contract time extensions. The Contractor's schedule must include the above anticipated adverse weather delays for all weather dependent activities and shall show all weekends and holidays.

108.8 GUARANTEE AND WARRANTY PROVISIONS:
(revise to include the following)

If requested by the City, the Contractor shall return to the project site eleven months after acceptance of the project and visually inspect, in the presence of the Owner's Representative, all accessible construction items and appurtenances. All defective materials and/or workmanship shall be satisfactorily repaired or replaced at the sole expense of the Contractor.

All costs for the 11-month inspection and repair shall be borne by the Contractor and in figuring his or her bid, the Contractor shall include an appropriate amount for such inspection and possible required repair, and no additional payment will be allowed.

108.10 FORFEITURE AND DEFAULT OF CONTRACT:
(revise to include new section)

Due to Failure to Prosecute the Work

If the Contractor fails to prosecute the work in accordance with the contract, including requirements of the progress schedule, the City may correct these deficiencies after three days after providing written notice to the Contractor. The cost of these remedies shall be charged against the Contractor. A change order may be issued to make the necessary changes in the contract and to make an appropriate reduction in the contract price. Such a change order shall not require the signature or approval of the Contractor. The remedy shall not prejudice the City's use of any other remedy, which the City may be entitled to use.

108.12 AUTHORIZED SIGNATURES:
(revise to include new section)

The Contractor shall provide a notarized list of all authorized signatures for project related documents. Only those individuals listed by the Contractor on the project Authorized Signature form shall be authorized to sign the contract, contract change orders, time extensions, bonds, securities, pay requests, certifications or other documents that affect the execution of the Contract.

108.13 SUBSTANTIAL COMPLETION:
(revise to include new section)

The project is substantially complete within the contract time and liquidated damages will no longer be assessed when the following have occurred:

(A) All contract items of work have been substantially completed and pedestrian and vehicular traffic can move unimpeded through the project;

(B) The only work left for completion is incidental, causes no disruption to pedestrian and vehicular traffic, and does not affect the safety and convenience of the public;

The decision whether the project is substantially complete is within the sole discretion of the Project Manager. At that time, a *Substantial Completion* letter will be issued by the City to the Contractor.

The remaining incidental work shall be completed within 15 calendar days from the issuance of the *Substantial Completion* letter. Failure to prosecute the remaining work within this time-period will result in the resumption of time charges and the application of liquidated damages from the date scheduled for final acceptance and start of warranty.

The start of the project warranty period will be established in the *Notice of Final Acceptance* and does not begin with substantial completion.

The Contractor is responsible for correction and repair of any project deficiencies until the end of the warranty period established in the *Notice of Final Acceptance* at which time the City will accept the improvements for operation and maintenance.

108.14 SUSPENSION and TERMINATION:
(revise to include new section)

CITY'S RIGHT TO STOP WORK

The City may, at its discretion and without cause, order the Contractor in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive days.

The Contractor may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by the City.

TERMINATION FOR CONVENIENCE

Upon receipt of written notice to the Contractor, the City may, at its discretion and without cause, elect to terminate this Agreement. In such event, the City shall pay the Contractor only the direct value of its completed Work and materials supplied as of the date of termination. The Contractor shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead.

If the City suspends the Work for one hundred eighty-one (181) consecutive days or more, such suspension shall be deemed a termination for convenience.

Upon such termination, the Contractor shall proceed with the following obligations.

1. Stop Work as specified in the notice.
2. Place no further subcontracts or orders.
3. Terminate all subcontracts to the extent they relate to the work terminated. The Contractor shall ensure that all subcontracts contain this same termination for convenience provision.
4. At the City's sole discretion and if requested in writing by the City, assign to the City all right, title and interest of the Contractor under the subcontracts subject to termination.
5. Take any action that may be necessary for the protection and preservation of the property related to this Agreement that is in the possession of the Contractor and in which the City has or may acquire an interest.
6. The Contractor shall submit complete termination inventory schedules no later than one hundred twenty (120) days from the date of the notice of termination.

The City shall pay the Contractor the following:

1. The direct value of its completed Work and materials supplied as of the date of termination.
2. The reasonable and direct, actual costs and expenses attributable to such termination. Reasonable costs and expenses shall not include, among other things, anticipated profit, anticipated overhead, or costs arising from the Contractor's failure to perform as required under this Agreement.
3. The Contractor shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead. If it is determined that the Contractor would have sustained a loss on the entire Work had they been completed, the Contractor shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.

The Contractor shall maintain all records and documents for three (3) years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 7.7.

THE CITY'S RIGHT TO PERFORM AND TERMINATE FOR CAUSE

If the City provides the Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions and the Contractor fails to comply in a time frame specified, the City may have work accomplished by other sources at Contractor's sole expense.

If the Contractor persistently fails to

1. provide a sufficient number of skilled workers,
2. supply the materials required by the Contract Documents,
3. comply with applicable Legal Requirements,
4. timely pay, without cause, sub-consultants and/or subcontractors,
5. prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as such times may be adjusted, or
6. perform material obligations under the Contract Documents, then the City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth below.

Upon the occurrence of an event set forth above, the City may provide written notice to the Contractor that it intends to terminate this Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of the Contractor's receipt of such notice.

If the Contractor fails to cure, or reasonably commence to cure, such problem, then the City may give a second written notice to the Contractor of its intent to terminate within an additional seven (7) day period.

If the Contractor, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then the City may declare this Agreement terminated for default by providing written notice to the Contractor of such declaration.

Upon declaring this Agreement terminated and for the purpose of completing the Work, the City may enter upon the premises and take possession of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work. The Contractor hereby transfers, assigns and conveys all items, which have been purchased or provided for the performance of the Work to the City for such purpose and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

In the event of such termination, the Contractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the Contractor shall be entitled to be paid only for Work performed and accepted by the City prior to its default.

If the City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then the Contractor shall be obligated to pay the difference to the City. Such costs and expenses shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by the City in connection with the re-procurement and defense of claims arising from the Contractor's default.

If the City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of 108.14

SECTION 109 - MEASUREMENTS AND PAYMENTS

109.1 MEASUREMENT OF QUANTITIES:
(revise to include the following)

It is the responsibility of the Contractor to conform to the Contract Documents, including plans, typical sections and specifications including but not be limited to dimensions, materials, application rates and densities. The Contractor shall take all actions necessary to ensure that the work conforms to the contract documents. The Contractor shall cooperate fully with the Project Manager or Project Manager's representative to correct any known nonconformity to the contract documents.

109.1 MEASUREMENT OF QUANTITIES:
(delete the second paragraph)

Unless otherwise specified, longitudinal and surface (plane) measurements will be made in a horizontal plane.

PART 200 - EARTHWORK

SECTION 201 - CLEARING AND GRUBBING

201.3 CONSTRUCTION METHODS:
(revise to include the following)

The Contractor shall make every effort possible to avoid damaging existing trees. In the event that any trees suffer limb damage, the Contractor shall cut branches to the nearest branch crotch or to the branch collar at the trunk.

No separate payment will be made for trimming trees. The cost shall be considered incidental to the work.

SECTION 205 – ROADWAY EXCAVATION

205.1 DESCRIPTION
(revise to include the following)

The bid schedule unit cost for excavation, backfill and embankment work shall include the cost of rock excavation, handling rock or disposing of rock and no separate measurement or payment shall be made. Rock shall be defined as any highly cemented or hard material that may require additional efforts for removal, handling or disposal.

205.2 UNSUITABLE MATERIAL:
(third paragraph, revise to read as follows)

Should unsuitable material be encountered at subgrade elevation in cut areas or at existing grade in fill areas, the unsuitable material shall be removed and replaced with suitable fill material in accordance with MAG Section 210 and MAG Section 211.

Determination of unsuitable material and the limits and depths of required removal and replacement shall be at the sole discretion of the Project Manager. In no case shall any unsuitable material be removed without prior written consent of the Project Manager.

Measurement and payment for removal and replacement of unsuitable material will be by the cubic yard as shown in the proposal. Payment shall be compensation in full for the work complete and in-place including any borrow, permits, pit royalties, all excavation, hauling, placing, compacting, conditioning, watering and proper disposal, together with all appurtenant costs.

205.3 MEASUREMENT
(revise to include the following)
Earthwork is incidental to the roadway construction and no additional payment will be made for roadway excavation. The Contractor shall be responsible for estimating and accounting for earthwork import and haul off. It is recommended that the Contractor review the report on geotechnical investigation and sampling results.

PART 300 -- STREETS AND RELATED WORK

SECTION 301 - SUB-GRADE PREPARATION

301.1 DESCRIPTION:

(revise to include the following)

The untreated base or prepared subgrade shall be test rolled in the presence of the Project Manager prior to the placement of asphalt paving materials. The equipment used to perform the test roll shall be approved by the Project Manager. The Contractor shall be responsible for scheduling this test roll with the Inspector during regularly scheduled work. All costs associated with the test roll shall be considered incidental to and included in the cost of sub-grade preparation.

SECTION 336 - PAVEMENT MATCHING AND SURFACING REPLACEMENT

336.1 DESCRIPTION:

(first paragraph, revise to include the following)

The exact points of pavement matching shall be determined in the field by the Project Manager.

336.2 MATERIALS AND CONSTRUCTION METHODS:

336.2.1 PAVEMENT WIDENING OR EXTENSIONS:

(first paragraph, revise second sentence to read as follows)

The minimum depth of cut shall be four (4) inches or Depth/4, whichever is greater.

PART 400 -- RIGHT-OF-WAY AND TRAFFIC CONTROL

SECTION 401 - TRAFFIC CONTROL

401.5 GENERAL TRAFFIC REGULATIONS:

(revise to include the following)

Within seven (7) calendar days following receipt of the Notice of Award and in accordance with Section 108.1 of these General Provisions, the Contractor shall submit to the Project Manager a traffic control plan that shows the control of traffic in accordance with Part VI of the FHWA Manual on Uniform Traffic Control Devices for all phases of the work. The plan should include nights, weekends, shut down periods and an approximate schedule of street closures and detours.

The Traffic Control Plan is to detail the Contractor's proposal for routing traffic and pedestrians around the areas of construction. The Plan shall be coordinated with the proposed construction schedule and show how the locations of the various traffic and pedestrian control devices will

change as construction progresses. The Plan shall allow for complete detours around the work areas.

Private and commercial driveways shall not be closed for any period exceeding eight hours during any twenty-four-hour period. The affected resident and the City shall be notified 48 hours in advance of any closure. Convenient access to driveways, houses and buildings along the line of work shall be maintained and temporary crossings or alternate access shall be provided and maintained in good condition, except during that period mentioned above. **Business access shall be maintained at all times by at least one driveway.**

(eleventh paragraph, revise to read as follows)

The Contractor will reinstall all permanent traffic control devices as required by the approved construction plans and specifications.

(twelfth paragraph, delete the last sentence)

Delete - The Traffic Engineering Department will reinstall all traffic signs.

401.7 PAYMENT:
(revise paragraph to read as follows)

Payment for all work and materials required to prepare a traffic control plan and provide traffic control during construction shall be made at the lump sum price shown on the Bid Schedule. Full compensation for any required traffic control devices, flaggers, uniformed off-duty law enforcement officers, pilot cars and drivers shall be included in the lump sum contract price and no additional payment shall be allowed. Progress payments shall be made based on the Contractor's estimate for percent complete as approved by the Owner.

SECTION 425 TOPSOIL

425.2 MATERIALS:
(revise to read as follows)

Overburden topsoil shall be salvaged and reused when possible. All topsoil, whether overburden or imported, shall be free of roots, heavy clay, clods, noxious weed seeds, coarse sand, large rocks, sticks, brush, litter and other deleterious material and meet the requirements of MAG Section 795. The Project Manager's approval of the proposed topsoil shall be obtained before delivery to the project.

425.4 MEASUREMENT:
(revise paragraph to read as follows)

Topsoil shall be measured lump sum, complete and in place unless indicated otherwise by the bid schedule.

425.5 PAYMENT:
(revise to read as follows)

Topsoil will be paid for in accordance with the contracted price for furnishing and placing topsoil, as described and specified. Progress payment shall be made based on the Contractor's estimate for percent complete as approved by the Owner.

SECTION 430 – LANDSCAPING AND PLANTING
(revise to include section as follows)

430.3 LAWN AREAS

430.3.1 Preparation of In Place Soil
(delete the second paragraph and revise to read as follows)

After clearing, grubbing and initial cultivation has been completed, a slow release chemical fertilizer shall be mechanically spread over the turfgrass area at an average rate of 1 pound of actual nitrogen per 1000 square feet. After spreading, the fertilizer shall be cultivated into the top four inches of soil using suitable equipment. The resulting soil shall be in a friable condition suitable for planting. (Actual nitrogen is determined by using the nitrogen ratio number x weight of the bag/100).

430.3.2 Seeding
(delete the first and second paragraph revise to read as follows)

The rate of seeding shall be three pounds of seed per 1000 square feet using the following seed mixture;

Poa pratensis	Kentucky Bluegrass (mix of three varieties)	70%
Lolium perenne	Perennial Rye Grass	10%
Festuca rubra	Creeping Red Fescue	20%

Alternative species may be acceptable but are subject to prior approval from the City Project Manager or duly authorized representative.

SECTION 431 – EROSION CONTROL

(revise to include new section as follows)

431.1 DESCRIPTION

Erosion control applies to improvements within the city and as part of the erosion control section of a Storm Water Pollution Prevention Plan (SWPPP). Materials, means and methods for erosion control and stabilization, Best Management Practices (BMPs), Erosion Control Plans (ECPs) and SWPPPs are described in the City of Flagstaff Stormwater Design Manual.

The Contractor shall stabilize all disturbed areas within the project site and as shown on the plans. Work shall be performed according to the provisions of this Section and shall include but not be limited to the furnishing, hauling, placement and application of erosion control materials.

The Contractor is responsible for complying with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit program. This generally includes submittal of a Notice of Intent to the Arizona Department of Environmental Quality (ADEQ) and Notice of Termination to ADEQ for the project. Preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP) for the site is required per ADEQ and City of Flagstaff standards.

The cost for complying with the NPDES permit and the SWPPP, including the erosion control devices, shall be included in the NPDES & SWPPP Requirements portion of the Contractor's bid. It is recommended that contractors see the ADEQ Smart NOI (Notice of Intent) program website (http://az.gov/webapp/noi/main.do) for information and processes.

Progress payment shall be made based on the Contractor's estimate for percent complete as approved by the Owner.

432.1 NATIVE SEEDING

All areas to be seeded that are accessible to machinery shall be tilled to a minimum depth of four (4) inches. Areas inaccessible to machinery shall be hand tilled and prepared to a minimum depth of two (2) inches. Cut slopes of 2:1 or steeper do not require tilling. Cultivation on sloping terrain shall run perpendicular to the direction to the slope. If weeds or herbaceous plant material interferes with proper seedbed preparation, the contractor shall remove them from the seedbed.

Contractor shall remove and dispose of all debris and other objectionable material that may interfere with seeding operations.

The area to be seeded shall be relatively smooth and all surface irregularities (e.g. rills, tire marks) shall be filled and firmed to conform to the desired cross sections. The seedbed shall be rolled both before and after the seeding operation with a minimum of one pass of a cultipacker or drag harrow.

Seed shall be sown when conditions will promote germination and growth. Normal non-irrigated permanent native seed application dates are between April 1 and June 15, between August 15 and September 20 and after the first frost (recurring overnight temperature of 28 degrees F) until snowfall. Seeding work shall be performed only after planting and other work affecting ground surface is complete.

To assist in establishment of the permanent seed mix, a nurse crop shall be used for this work. Preapproved nurse crop seed shall be one of the following, incorporated with the specified permanent seed mix;

Annual ryegrass	*(Lolium multiflorum)*	30 lbs/acre
Oats	(*Avena sativa)*	60 lbs/acre
Regreen©	(*Triticum aestivum x Elytrigia elongata)*	30 lbs/acre

Alternative species may be acceptable but are subject to prior approval from the City Project Manager or duly authorized representative.

When cut or fill slopes are greater than six (6) feet in height and steeper than 3H:1V, the seeded area shall be covered with American Excelsior Company straw/coconut blanket or an approved equal. Installation shall be per the manufacturer's written directions.

440.10. (D) SEQUENCING
(add the following section)

The irrigation system shall be installed, inspected, approved and operable prior to the installation of plant materials, landscape fabric and ground plane treatments (*decomposed granite, landscape rock, mulch, etc.)*

PART 600 - WATER AND SEWER

SECTION 601 - TRENCH EXCAVATION, BACKFILLING AND COMPACTION

601.2 EXCAVATION:

601.2.1 GENERAL:
(revise to include the following)

All excavation, including trench excavation, shall be performed in any substance and material encountered. The cost is considered incidental to and is to be included in the price for the bid item to be constructed or installed. No special payment shall be made for trench excavation other than rock excavation as specified under Trench Rock Excavation.

Trench Rock Excavation

Trench rock is defined as consolidated igneous, metamorphic and/or sedimentary material in the original bed and/or in well-defined ledges that cannot be removed by a mechanical method and therefore requires pneumatic hammering, drilling or blasting for removal. Example of mechanical methods include hand tools, trenching machine, backhoe, ≥195 horsepower hydraulic excavator with ripping teeth or equivalent.

Boulders and pieces of rock having a volume of more than 27 cubic feet (1 cubic yard) shall be considered rock.

For projects where trench rock excavation is anticipated, the estimated contingent quantity is shown in the proposal under the applicable bid item. The contingency quantity is an estimate only and no guaranty is given that any portion will be utilized. Trench rock excavation will be paid for separately at the unit price bid per cubic yard for Trench Rock Excavation.

Measurement of Trench Rock Excavation shall be per cubic yard in place. This volume of rock will be measured by the City representative, using the maximum trench width allowed in accordance with MAG Table 601-1, the lineal footage of actual rock excavation required and the actual depth of rock as determined by inspection of the trench after rock excavation and before backfilling.

SECTION 611 – WATER, SEWER AND STORM DRAIN TESTING

611.2 DISINFECTING WATER MAINS:

611.2.13 Fire Flow Testing:

(revise to include the following new section)

All water lines that have new fire hydrants shall require a fire flow test per CoF Engineering Standard 13-09-006-0006.1.

Fire flow testing shall be performed by a certified tester. Results shall be sealed by an Arizona Professional Engineer.

The City Water Services Section requires a 72-hour notice via e-mail to schedule hydrant operation and testing observation. A digital copy of the test results shall be submitted to the City Project Manager.

SECTION 631 WATER TAPS AND METER SERVICE CONNECTIONS

(revise to add the following)

631.3 INSTALLATION:

New water service lines shall be installed to replace the existing water service lines. Construction includes replacement of all water services to COF Engineering Standards, including the service saddle at the main, corporation stop, pipe and curb stop to the meter and adjust the customers' service to the new outlet meter coupling elevation. The lines shall be extended to the new polymer meter box location and a new meter box shall be installed and shall connect to the existing meter. If the existing meter is not at the City's standard depth; the contractor shall adjust the elevation of the meter. In cases where the meter box moves, the contractor shall salvage the existing meter and shift it to the proposed location. At each of these locations the contractor is required to connect the existing water services on the private side of the meter. The Contractor shall coordinate with each homeowner where private construction is required to verify the water line rerouting and to restore landscaping to its original condition.

The City will provide the contractor with Temporary Rights of Entry for the water service connection, replacement/adjustment of water meter boxes and associated work. If the contractor needs to go outside the Temporary Right of Entry limits they will have to provide the City with written permission from the property owner prior to conducting the work.

A residential plumber's license will be required for all work that is done on the private service side of the meter.

City of Flagstaff utility tapping fees are the responsibility of the contractor. The contractor shall perform all work and coordinate payment directly with the City Water Services Department. All costs for utility tap work and fees shall be included in the line item for installation of the new service, including but not limited to all labor and materials for complete installation. Repair associated within any abandoned or new tap shall be included in the contract bid item.

SECTION 710 - ASPHALT CONCRETE

710.1 GENERAL:
(revise to include the following)

The asphaltic concrete designation shall be 3/4 inch, except as required by the project plans or Special Provisions.

End of Document

Summit Construction

5004 S. Opal Rd.
Flagstaff, AZ 86005

Michael@SummitCC.biz

September 30, 2024

RE: City of Flagstaff – Spruce Wash Water & Sewer Utility Replacement

We are pleased to offer the attached bid for the Spruce Wash Water & Sewer Utility Replacement project. Thank you for the opportunity to bid on this project, we look forward to learning the results of the bid process, and hope to work with the city on this project.

Sincerely,

Michael Herlihy, PE
Member-Manager of Summit Construction Company, LLC

Spruce Wash Water and Sewer
COF Project #: 20-00126

BID SCHEDULE

9/18/2024

Item No.	Description	Qty.	Unit	Unit Price		Total
				In Words	In Figures	
DEMOLITION						
1	SAWCUT, REMOVE AND DISPOSE OF EXISTING CONCRETE PAVEMENT TO THE NEAREST JOINT.	50	SF	Eleven Dollars and No Cents	$11.00	$550.00
2	REMOVE AND DISPOSE OF EXISTING 60" SANITARY SEWER DROP MANHOLE.	1	EA	Five Thousand Four Hundred Dollars and No Cents	$5,400.00	$5,400.00
3	REMOVE AND DISPOSE OF EXISTING 60" SANITARY SEWER MANHOLE.	2	EA	Five Thousand Four Hundred Dollars and No Cents	$5,400.00	$10,800.00
4	REMOVE AND DISPOSE OF EXISTING 14" DIP SEWER LINE PER ADEQ REQUIREMENTS	172	LF	Nineteen Dollars and No Cents	$19.00	$3,268.00
5	REMOVE AND DISPOSE OF EXISTING 21" VCP SEWER LINE PER ADEQ REQUIREMENTS.	19	LF	Sixty Eight Dollars and No Cents	$68.00	$1,292.00
6	REMOVE AND DISPOSE OF EXISTING 24" DIP SEWER LINE PER ADEQ REQUIREMENTS.	31	LF	Sixty Eight Dollars and No Cents	$68.00	$2,108.00
7	REMOVE AND DISPOSE OF EXISTING 12" CIP WATER LINE PER ADEQ REQUIREMENTS.	242	LF	Twenty Seven Dollars and No Cents	$27.00	$6,534.00
8	REMOVE AND DISPOSE OF EXISTING GATE VALVE.	5	EA	Five Hundred Forty Dollars and No Cents	$540.00	$2,700.00
9	REMOVE AND DISPOSE OF EXISTING 90° BEND.	1	EA	Five Hundred Fifty Dollars and No Cents	$550.00	$550.00
10	REMOVE AND DISPOSE OF EXISTING TEE.	1	EA	Five Hundred Fifty Dollars and No Cents	$550.00	$550.00
GENERAL IMPROVEMENTS						
11	CONSTRUCT 10' WIDE CONCRETE FUTS TRAIL.	50	SF	Fifty Seven Dollars and No Cents	$57.00	$2,850.00
12	INSTALL GABION MATTRESS FROM OUTLET OF EXISTING ARCH CULVERT TO EXISTING RAILROAD TRESTLE.	235	SY	Two Hundred Thirty Four Dollars and No Cents	$234.00	$54,990.00
WATER IMPROVEMENTS						
13	INSTALL 12" WATER LINE AND ALL APPURTENANCES.	210	LF	One Hundred Eighty One Dollars and No Cents	$181.00	$38,010.00
14	INSTALL (12") 45° BEND WITH JOINT RESTRAINT.	2	N.P.I.	No Dollars and No Cents	$0.00	$0.00
15	INSTALL 12" GATE VALVE (CLASS 250), INCLUDING VALVE BOX AND COVER.	3	EA	Seven Thousand Seventy Five Dollars and No Cents	$7,075.00	$21,225.00

BID SCHEDULE

16	CONSTRUCT 12” DIP CLASS 350 RESTRAINED WATER MAIN VERTICAL REALIGNMENT COMPLETE AND IN PLACE .	1	EA	**Eleven Thousand Fifty Dollars and No Cents**	**$11,050.00**	**$11,050.00**
17	INSTALL FIRE HYDRANT ASSEMBLY PER C.O.F. STD. DTL. 13-03-011.	1	EA	**Twelve Thousand Five Hundred Seventy Five Dollars and No Cents**	**$12,575.00**	**$12,575.00**
SEWER IMPROVEMENTS						
18	INSTALL 24" SEWER LINE (CLASS 250 DIP LINED WITH PROTECTO 401 CERAMIC EPOXY).	222	LF	**Four Hundred Fifty Nine Dollars and No Cents**	**$459.00**	**$101,898.00**
19	CONNECT 24" SEWER LINE TO EXISTING MANHOLE. CORE DRILL MANHOLE AND INSTALL KOR-N-SEAL PIPE TO MANHOLE OR APPROVED EQUAL. MANHOLE SHALL BE EPOXY COATED WITH RAVEN 405.	1	EA	**Twenty One Thousand Two Hundred Fifty Dollars and No Cents**	**$21,250.00**	**$21,250.00**
20	CONSTRUCT 72" DIA. DROP SEWER MANHOLE WITH 30" FRAME AND COVER MANHOLE SHALL BE EPOXY COATED WITH RAVEN 405.	1	EA	**Forty Five Thousand Five Hundred Dollars and No Cents**	**$45,500.00**	**$45,500.00**
MISCELLANEOUS						
71	MOBILIZATION/DEMOBILIZATION & ADMINISTRATIVE	1	L.S.	**Forty Five Thousand Two Hundred Dollars and No Cents**	**$45,200.00**	**$45,200.00**
72	SWPPP & RESEED	1	L.S.	**Twelve Thousand One Hundred Fifty Dollars and No Cents**	**$12,150.00**	**$12,150.00**
73	TRAFFIC CONTROL	1	L.S.	**Eleven Thousand Three Hundred Dollars and No Cents**	**$11,300.00**	**$11,300.00**
74	AS-BUILT RECORD DRAWINGS	1	L.S.	**Eleven Thousand Two Hundred Dollars and No Cents**	**$11,200.00**	**$11,200.00**
75	SEWER BYPASS PUMP & ELECTRICAL MONITORING	1	L.S.	**One Hundred Ninety Thousand Seven Hundred Dollars and No Cents**	**$190,700.00**	**$190,700.00**

BID SCHEDULE

SUBTOTAL: Six Hundred Thirteen Thousand Six Hundred Fifty Dollars and No Cents — $613,650.00

IN WORDS — IN FIGURES

TOTAL AMOUNT BID: Six Hundred Thirteen Thousand Six Hundred Fifty Dollars and No Cents — $613,650.00

IN WORDS — IN FIGURES

CITY OF FLAGSTAFF

CONTRACT SUPPLEMENTARY JUSTIFICATION

☒ **CONTRACT ALLOWANCE**

☒ **ADMINISTRATIVE CHANGE ORDER**

PROJECT NO.	WA3440	**PROJECT NAME**	Spruce Wash Water & Sewer
FILE NO.	03-24009	**PROJECT MANAGER**	Ann Taylor
CONTRACTOR / CONSULTANT	Summit Construction Company, LLC		

PROJECT DESCRIPTON

The Project generally consists of replacing the existing sewer system, and realignment of the existing water system near Route 66 and North First Street. The existing 14" & 21" sewer lines will be removed and replaced with 24" DIP line. The new 222 LF of sewer main will be installed at a lower elevation to comply with the City of Flagstaff's and ADEQ Engineering Standards. In addition, the removal of 2 manholes and replacement of the upstream manhole with a new drop manhole will also be included in the project. The existing water main system consists of a 12" CIP water line that does not meet the depth requirement of the City of Flagstaff and ADEQ Engineering Standards. The replacement will consist of a 12" DIP water main buried at a minimum depth of 4 ft.

JUSTIFICATION FOR USE & AMOUNT

Contract Allowance Amount	$46,023.75 (7.5% of Lowest Bid)	**Administrative Change Order Amount**	$61,365.00 (10% of Lowest Bid)

Justification

Request is to provide an allowance to accommodate unanticipated and/or unforeseen issues and for quantity adjustments. Plan quantities are considered accurate but final quantities are measured during construction. The contractor must be compensated for actual quantities of work (MAG 102.3). Quantities often change because of unknown and/or necessary field changes. Without an allowance, project work may need to be suspended until an agenda item can be brought before Council for consideration and approval. An allowance will provide needed flexibility in delivery of improvements, minimizing negative impacts to the community during construction. Any additional quantities needed do become an asset of the City and any unused fund allocation is returned to the program fund.

COST / BUDGET / FUNDING SOURCE ANALYSIS

Contract Allowance Amount	$ 46,023.75 (7.5% of Lowest Bid)	**Administrative Change Order Amount**	$61,365.00 (10% of Lowest Bid)

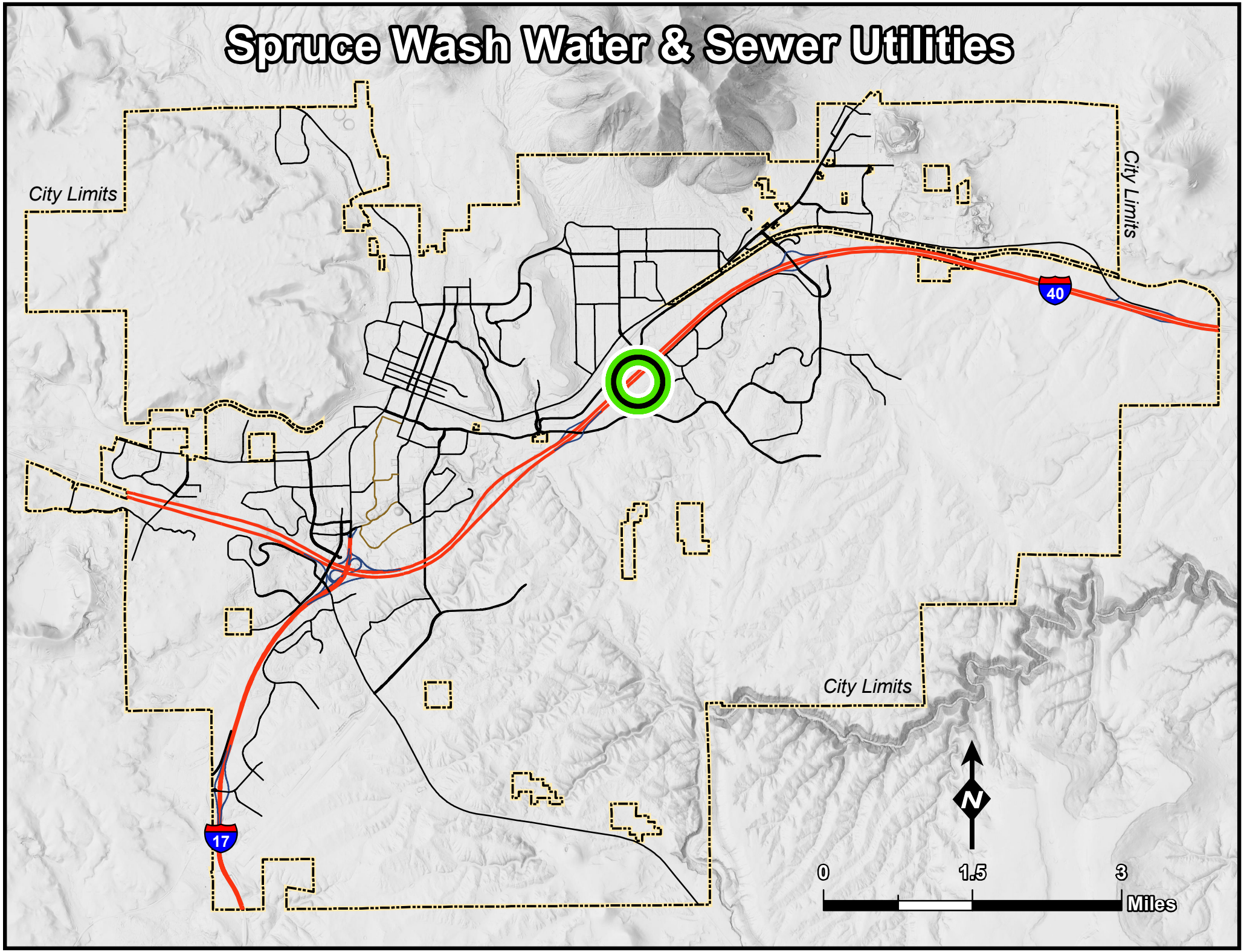
Justification

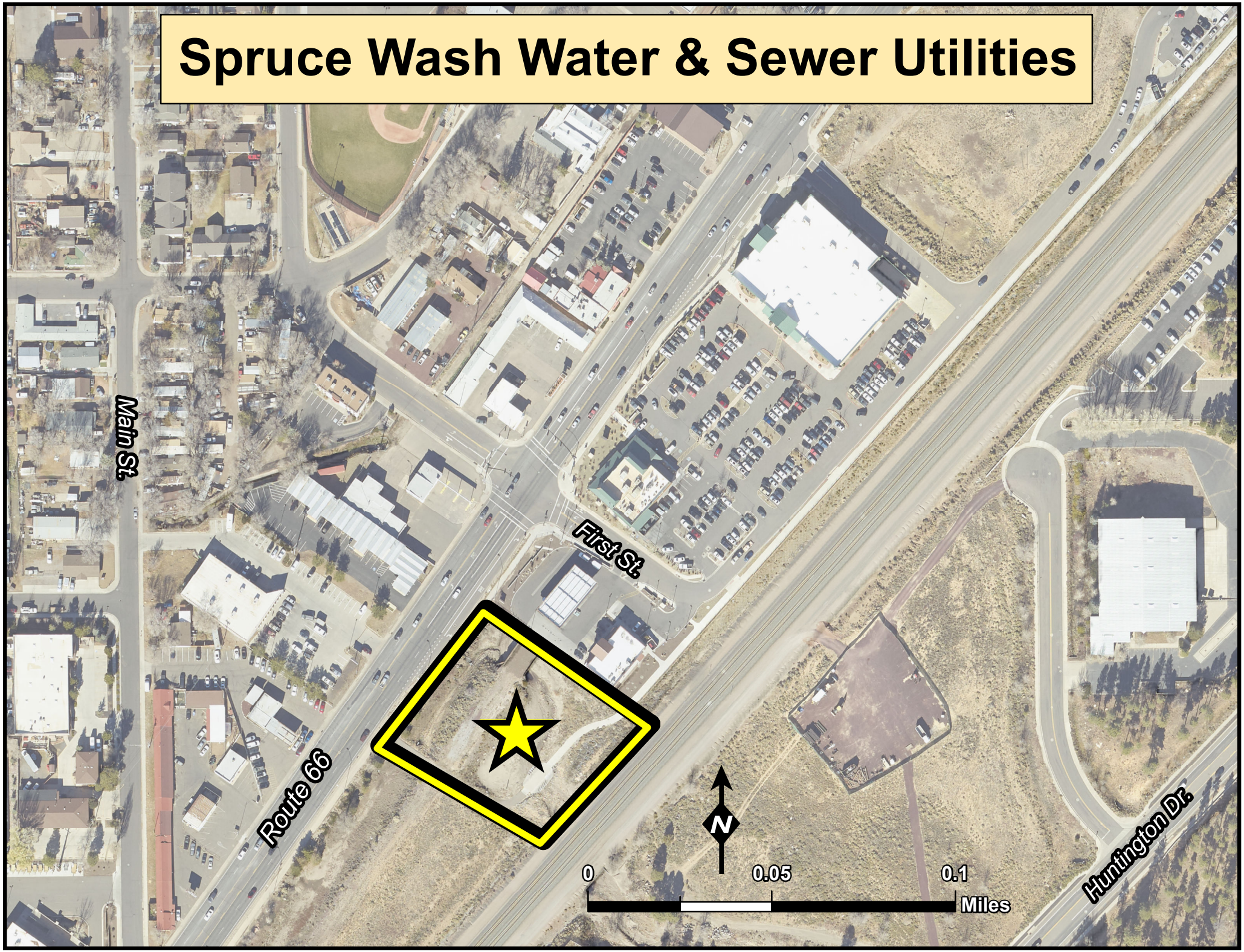
Allowance request is 7.5% of the lowest bid of $613,650.00 from Summit Construction Company, LLC. and Change Order Amount is 10% of the $613,650.00 bid amount from Summit Construction Company, LLC. Adequate funding is in the FY25 authorized budget total of $774,000. The budget accommodates design, construction estimated costs, permitting, testing and inspection, soft costs, and Capital Improvements project management costs.

APPROVALS

	Signature		Date
Project Manager	Ann Taylor	Ann Taylor	10/17/2024
Section Head	Trevor Henry	Trevor Henry	10/17/24
Division Head		Paul Mood	10/18/24

Spruce Wash Water & Sewer Utilities




Spruce Wash Water & Sewer Utilities
Main St.
First St.
Route 66
Huntington Dr.
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Miles

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Genevieve Pearthree, Resilience Analyst

Co-Submitter: Steven Thompson

Date: 10/31/2024

Meeting Date: 11/05/2024

TITLE:

Consideration and Adoption of Resolution No. 2024-43 and Ordinance No. 2024-26: A resolution of the Flagstaff City Council declaring as a public record that certain document filed with the City Clerk entitled "*Animal Keeping Code Amendments*" and an ordinance of the City Council of the City of Flagstaff, Coconino County, Arizona, amending the Flagstaff City Code, Title 6, Police Regulations, Chapter 6-03, Animal Keeping.

STAFF RECOMMENDED ACTION:

1. Adopt Resolution No. 2024-43
2. Read Ordinance No. 2024-26 by title only for the final time
3. City Clerk reads Ordinance No. 2024-26 by title only (if approved above)
4. Adopt Ordinance No. 2024-26

Executive Summary:

This item proposes a text amendment to City Code Title 6: Police Regulations, Chapter 6-03: Animal Keeping to comply with state legislation and to make the code easier to understand and implement. Updates to comply with House Bill 2325 include modifications to the definitions section, the allowed number of chickens (fowl), and the maximum height of a shelter for fowl. Updates to make the code easier to implement include modifications to the definitions section, moving requirements into tables where appropriate, adding clarifying text, moving and condensing text, moving permitting requirements to their own section, and adding clarifying language for permit applicability, application content and review process. No substantive changes to the standards are proposed beyond modifications to comply with state legislation.

Financial Impact:

There are no anticipated financial impacts affiliated with the proposed Police Regulations Text Amendment.

Policy Impact:

There are no anticipated policy impacts affiliated with the proposed Police Regulations Text Amendment.

Previous Council Decision or Community Discussion:

In 2016, City Council approved amendments to Animal Keeping Code that made it feasible to practice animal keeping on small lot sizes within City limits. In 2019, City Council approved an amendment to the Animal Keeping Code to reduce nuisances for neighbors and make enforcement easier, while still allowing for backyard livestock to be raised in City limits.

Options and Alternatives to Recommended Action:

1. Approve the amendment to the Animal Keeping Code as proposed.
2. Approve the amendment to the Animal Keeping Code with only modifications to comply with state legislation.

Background and History:
The proposed amendment (Attachment 1) includes modifications to City Code Title 6: Police Regulations, Chapter 6-03: Animal Keeping. Modifications to comply with state legislation (House Bill 2325) include the following:

6-03-001-0002: Definitions

- Create a new definition of ‘fowl' (chickens).
- Add fowl to the definition of ‘poultry.'
- Add ‘enclosure' to the definition of ‘shelter.'
- Replace the word ‘chickens' with ‘poultry.'

6-03-001-0003: Keeping of Livestock.

- Increase the maximum number of fowl allowed on parcels less than 19,999 square feet from 5 to 6 fowl.
- Limit the height of a shelter for fowl on lots less than 1 acre to 8 feet maximum, but they shall be no taller than the fence line of the property.

Modifications to make the code easier to understand and implement include the following:

6-03-001-0002: Definitions

- Delete standards for beekeeping flyway barriers to avoid repetition in Section 6-03-001-0003: Keeping of Livestock.D: Rules and Restrictions -- Beekeeping.
- Change Sustainability ‘Manager' to ‘Director.'
- Move the statement about the location of shelters, including any associated fencing or screen walls, needing to comply with Zoning Code Division 10-50.50 (Fences and Screening) and Section 10-40.60.020 (Accessory Structures) to Section 6-03-001-0003: Keeping of Livestock.

6-03-001-0003: Keeping of Livestock

- A. General Rules and Restrictions
  - Move Table 6-03-001-0003.A: Number of Livestock Animals Permitted by Zoning Designation to the beginning of this sub-section.
  - Clarify that the primary use of the property must be residential or educational where animal keeping is not a primary use in the zoning district (this change brings the Animal Keeping Code in alignment with the Zoning Code, which already allows Animal Keeping as a primary use in the Estate Residential [ER] and Rural Residential [RR] zones).
  - Move requirements that only apply to small livestock to the small livestock sub-section.
  - Move the statement about the location of shelters, including any associated fencing or screen walls, needing to comply with Zoning Code Division 10-50.50 (Fences and Screening) and Section 10-40.60.020 (Accessory Structures) to this section from Section 6-03-001-0002: Definitions.
- B: Permitting Requirements
  - Move requirements to Section 6-03-001-0004: Permitting Requirements and delete this sub-section.
- B: Rules and Restrictions -- Large Livestock
  - Create a new table for standards for large livestock enclosures, pasture areas, and pigsties.
- C: Rules and Restrictions -- Small Livestock
  - Create a new table for standards for small livestock enclosures and containment areas.
  - Move standards that only apply to small livestock from section 6-03-001-0003.A: Keeping of Livestock -- General Rules and Restrictions to this sub-section.
- D: Rules and Restrictions -- Beekeeping
  - Create a new sub-section for beekeeping rules and restrictions, and move current standards

from Section 6-03-001-0004 this this sub-section.

6-03-001-0004: Permit Requirements

- General changes
  - Change the name of this section from ‘Beekeeping' to ‘Permit Requirements.'
  - Move permit requirements from 6-03-001-0003.B: Keeping of Livestock -- Permitting Requirements to this section.
- A: Applicability
  - Add this sub-section to clarify when a Backyard Livestock Keeping Permit is required.
- B: Application Content
  - Add this sub-section to clarify that the Sustainability Director shall specify the form and content of the Backyard Livestock Keeping Permit application and may require supporting materials as part of the application.
- C. Review and Final Decision
  - Add this sub-section to clarify that the Sustainability Director shall review the Backyard Livestock Keeping Permit application for compliance with Chapter 6-03: Animal Keeping and determine whether the Permit can be issued or if additional information is required, and provide any reason(s) for Permit denial in writing.
- D. Revocation and Appeal
  - No modifications are proposed to this language other than replacing Sustainability ‘Manager' with ‘Director,' ‘permit' with ‘Backyard Livestock Keeping Permit,' and ‘Section' with ‘Division.'
- E. Other Permitting Requirements
  - Add this sub-section to clarify that livestock shelters and any associated fencing or screen walls subject to Zoning Code Section 10-20.40.080 (Minor Improvement Permits) shall obtain an approved Minor Improvement Permit prior to installation or construction.

Connection to PBB Priorities and Objectives:

- Achieve a well-maintained community through comprehensive & equitable code compliance, & development is compatible with community values.
- Promote, protect, and enhance a healthy, sustainable environment and its natural resources.
- Strengthen Flagstaff's resilience to climate change impacts on built, natural, economic, health, and social systems

Connection to Regional Plan:

- Goal E&C.2. Reduce greenhouse gas emissions.
- Goal E&C.3. Strengthen community and natural environment resiliency through climate adaptation efforts.
- Policy LU.3.5.Allow and encourage urban agriculture.

Connection to Carbon Neutrality Plan:

- CR-2: Strengthen existing community systems to create resilience to both short-term shocks and long-term change.
- SC-4: Reduce organic waste going to the landfill and reduce food insecurity.

Connection to 10-Year Housing Plan:
None.

Attachments: 2024 Animal Keeping Code Amendments
Res. 2024-43
Ord. 2024-26

HB 2325
Presentation

2024 Animal Keeping Code Amendments

Provisions that are being deleted are shown in bold **~~strikethrough.~~**
Provisions that are being added are shown in bold **red** text.

CHAPTER 6-03
ANIMAL KEEPING

SECTIONS:

6-03-001-0001 PURPOSE

6-03-001-0002 DEFINITIONS

6-03-001-0003 KEEPING OF LIVESTOCK

6-03-001-0004 **~~BEEKEEPING~~** **PERMIT REQUIREMENTS**

6-03-001-0005 VIOLATION

6-03-001-0001 PURPOSE

The purpose of this chapter is to ensure that the keeping, raising, and maintenance of livestock animals and bees within the City does not create an adverse impact on adjacent properties by reason of dust, fumes, noise, odor, insect or vermin infestations, or visual blight, and to maintain the animal welfare and public health, safety, and well-being. This chapter does not pertain to common domestic household pets such as dogs, cats, and others.

6-03-001-0002 DEFINITIONS

For the purposes of this chapter, the following terms, phrases and words and their derivations will have the meaning given as set forth below when not inconsistent with the context:

BEE COLONY: The hive and its equipment and appurtenances including honey bees, comb, honey, pollen and brood.

BEEHIVE: A structure for housing honey bees.

DIRECTOR: The City of Flagstaff Sustainability Director, or designee.

EQUINE: Horse or other member of the horse family including mules and donkeys.

FLYWAY BARRIER: A solid wall, fence, dense vegetation, or combination of these materials **around the hive so that all bees are forced to fly at an elevation of at least six (6) feet above ground level in the vicinity of the beehive.** ~~**at least six (6) feet high that extends at least ten (10) feet beyond the hives on each end of a bee colony.**~~

FOWL: A cock or hen of the domestic chicken.

LARGE LIVESTOCK: Equine, cattle, swine, donkeys, mules, llamas, ostriches, goats, sheep, alpaca, and other similarly sized animals.

LIVESTOCK: Domesticated animals commonly raised to produce commodities such as food, fiber, and labor.

LIVESTOCK CONTAINMENT AREA: The portion of a property where livestock are held or kept, including runs, pens, stalls, yards, and cages. ~~**The location of shelters, including any associated fencing or screen walls, shall comply with the accessory structures and fencing and screening requirements of Division 10-50.50 (Fences and Screening) and Section 10-40.60.020 (Accessory Structures.**~~

~~**MANAGER: The Sustainability Manager, or designee.**~~

NUISANCE: Anything offensive or obnoxious to the health and welfare of the inhabitants of the City; or any act or thing repugnant to, or creating a hazard to, or having a detrimental effect on the property of another person or to the community.

PASTURE: Open, uncultivated land used for the grazing of livestock.

POULTRY: A domesticated bird that is used to produce meat or eggs, including but not limited to, ~~**chickens**~~ **fowl**, ducks, pigeons, and quail.

SHELTER: A structure**, enclosure,** or environment, adequate to the species of animal, which provides protection from adverse weather conditions and predators (e.g., chicken coop, rabbit hutch, barn, etc.). Shelters must be covered, properly ventilated, and designed to be easily accessed, cleaned, and maintained.

SMALL LIVESTOCK: Rabbits, ~~**chickens**~~ **poultry**, miniature, dwarf or pygmy goats that are neutered, and other similarly sized animals.

6-03-001-0003 KEEPING OF LIVESTOCK

The following standards apply to the keeping of livestock animals within City limits:

A. General Rules and Restrictions.

1. The number of **livestock** animals permitted in each zone is established in Table 6-03-001-0003.A: ~~(~~Number of **Livestock** Animals Permitted by Zoning Designation~~)~~ below.

Table 6-03-001-0003.A: Number of Livestock Animals Permitted by Zoning Designation

Type of Animal	Zones in Which Specific Animals Are Permitted	Maximum Number of Animals Permitted Per Lot Size						
		≤19,999 sq ft	20,000 – 29,999 sq ft	30,000 – 39,999 sq ft	40,000 – 79,999 sq ft	80,000 – 119,999 sq ft	120,000 – 159,999 sq ft	≥160,000 sq ft
Large Livestock								
Equine, cattle, swine, donkeys, mules, llamas, ostriches, goats, sheep, alpaca, and other similarly sized animals	ER and RR	0	0	0	4	5	6	7
Small Livestock								
Goats (Miniature, Pygmy, Dwarf)	All zones[1]	2	2	2	4	4	4	4
Rabbits and Poultry (excluding Fowl)	All zones[1]	5	10	15	20	25	25	25
Fowl	All zones[1]	6	10	15	20	25	25	25
Bees								
Bee Colonies	All zones[1]	2	4	6	8	8	8	8

[1] **The primary use of the property must be residential or educational where animal keeping is not a primary use in the zoning district.**

2. The ~~**principal**~~ **primary** use of the property on which livestock animals are kept must be residential or educational **where Animal Keeping is not a primary use in the zoning district.**

3. At all times, livestock must be contained in **the** rear yard of **the** residence unless such residence is on a parcel zoned Estate Residential **(ER)** or Rural Residential **(RR)**. Livestock containment areas or shelters must be provided to sufficiently contain the livestock on the property and keep them from roaming at large.

4. Offspring of animals maintained on the same property that are less than four (4) months old or that have not been weaned, whichever is longer, will not be subject to the maximum number of animals permitted per lot size established by this chapter.

5. All animals, livestock containment areas and shelters must be maintained in such a manner so as to not become a public health nuisance. Livestock containment areas and shelters must be clean and sanitary, and generally free of fecal and other matter that may attract flies, rodents, or cause an offensive odor that can be detected from beyond the property line. Fecal and other matter must be double-bagged and disposed of in City garbage receptacles. Nothing in this subsection shall be deemed to prohibit the use of animal manure or droppings to fertilize any farm, garden, lawn or ranch in such a manner and for such purposes as are compatible with customary methods of good horticulture.

6. Feeding of livestock shall be done exclusively from containers (e.g., troughs) or on an impervious platform. The area where livestock is fed must be located at least twenty (20) feet from any neighboring dwelling. Food for feeding livestock shall be stored in rodent and predator resistant containers.

7. Watering troughs or tanks shall be provided for livestock, which shall be equipped with adequate facilities for draining the overflow, so as to prevent the ponding of water, the breeding of flies, mosquitoes or other insects, or any additional health hazards. Watering troughs must be located at least twenty (20) feet from a neighboring dwelling.

8. Shelters must be maintained to reduce the risk of fire in accordance with the City of Flagstaff Fire Code.

9. No incineration of animal refuse shall be permitted on the premises.

10. Only ~~**chickens, domestic fowl,**~~ **poultry** or rabbits can be slaughtered on site. Slaughter shall not occur in view from any public area or any adjacent property owned by another. Slaughter shall be done in a humane and sanitary manner. Slaughter must be for personal consumption and in compliance with all county, State, and federal laws.

11. All animal-keeping facilities must be designed in a manner such that water runoff does not become a health hazard or nuisance to uses on other properties, and is contained and disposed of and does not contribute to the pollution of local groundwater or the flooding of adjacent properties.

12. No person shall keep or harbor any animal which by frequent or habitual howling, yelping, barking, crowing or the making of any other noise, day or night, unreasonably disturbs the peace and quiet of any person or persons.

~~**13. Small livestock must be kept in a shelter from sunset to sunrise.**~~

1~~4~~**3**. All waste from animals must be contained on site. Any pollutants or non-stormwater related discharges shall be subject to Chapter 12-03 (Illicit Discharge Detection and Elimination).

14. The location and design of shelters and any associated fencing or screen walls shall comply with the requirements of Division 10-50.50 (Fences and Screening), Section 10-40.60.020 (Accessory Structures), and Section 10-20.40.080 (Minor Improvement Permits).

~~**B. Permitting Requirements.**~~

~~**1. No person shall keep, harbor, or maintain care, custody, or control over any livestock without obtaining a permit. Any person desiring a permit shall submit an application to the Sustainability Section.**~~

~~**2. Permit applications shall include:**~~

~~**a. A signed statement that the applicant will comply with the provisions of this chapter.**~~

~~b. Proof of satisfactory knowledge of animal keeping best practices by completing a short questionnaire designed by the Sustainability Section.~~

~~c. The submittal of a site plan demonstrating the design, size, and location of shelters and livestock containment areas, as well as feed and watering trough locations.~~

~~3. Animal keeping in Estate Residential and Rural Residential zones is exempt from the permit requirements of this chapter.~~

~~4. The Manager may suspend, revoke or take other authorized adverse action against any permit granted pursuant to this section if any condition or requirement of this chapter is violated, if the keeping of animals becomes a public nuisance, or for other good cause.~~

~~5. An applicant or permit holder may appeal the denial or revocation of a permit by submitting a written appeal to the City of Flagstaff Sustainability Section within ten (10) days after issuance of the denial or notice of revocation. Within five (5) days after receipt of the written appeal, or such longer period of time agreed to by the applicant, the appeal will be reviewed, and a response will be provided by the City Manager or designee, who shall be a Deputy City Manager.~~

~~C~~B. Rules and Restrictions – Large Livestock.

~~1. Shelters for large livestock must be located:~~

~~a. No less than seventy-five (75) feet from any dwelling unit.~~

~~b. No less than ten (10) feet from any property line.~~

~~2. At least ten thousand (10,000) square feet of pasture must be made available for each large livestock animal.~~

~~3. No pigsty shall be built or maintained on marshy ground or land subject to overflow, or within one hundred fifty (150) feet of any watercourse or other source of water supply, or within three hundred (300) feet of a dwelling unit on an adjoining property.~~

1. In addition to the General Rules and Restrictions in Section 6-03-001-0003.A: Keeping of Livestock, above, the keeping of large livestock animals shall comply with the following standards:

Table 6-03-001-0003.B: Large Livestock Standards

Large Livestock Shelters and Pasture Areas	
Distance to any dwelling unit	**75 feet (min.)**
Distance to any property line	**10 feet (min.)**
Large Livestock Pasture Areas	
Pasture area that must be made available for each large livestock animal	**10,000 square feet (min.)**
Pigsties	
Distance to any watercourse or other source of water supply	**150 feet (min.)**
Distance to a dwelling unit on an adjoining property	**300 feet (min.)**
Additional restrictions on pigsties	**No pigsty shall be built or maintained on marshy ground or land subject to overflow**

~~D~~C. Rules and Restrictions – Small Livestock.

In addition to the General Rules and Restrictions in Section 6-03-001-0003.A: Keeping of Livestock, above, the keeping of small livestock animals shall comply with the following standards:

1. Male miniature goats must be neutered by four (4) months of age.

~~**2. Shelters for small livestock must meet the following requirements:**~~

~~**a. Be located no less than ten (10) feet from property lines abutting another residential lot or parcel.**~~

~~**b. May extend up to any property line abutting a public alley right-of-way or private alley tract.**~~

~~**c. Be located at least twenty (20) feet from the nearest neighboring dwelling.**~~

~~**d. Have a minimum of four (4) square feet of indoor space per poultry or rabbit.**~~

~~3~~2. Winged animals must have wings clipped or be contained in a covered enclosure at all times to ensure containment on property.

~~4. Livestock containment areas must have a minimum of ten (10) square feet of permeable outdoor space per poultry or rabbit, and one hundred thirty (130) square feet of permeable space per miniature goat.~~

~~5~~3. Turkeys, peafowl, geese, and all other similarly noisy birds are prohibited in all zones within the City.

~~6~~4. Male poultry over the age of four (4) months shall not be permitted within the City.

5. Small livestock must be kept in a shelter from sunset to sunrise.

6. All shelters and pasture areas for small livestock shall comply with the following standards:

Table 6-03-001-0003.C: Small Livestock Standards

Small Livestock Shelters	
Distance to any property line abutting another residential lot or parcel	**10 feet (min.)**
Distance to any property line abutting a public alley right-of-way or private alley tract	**0 feet (min.)**
Distance to the nearest neighboring dwelling	**20 feet (min.)**
Area of indoor space within a small livestock shelter per poultry or rabbit	**4 square feet (min.)**
Fowl shelter height on a residential lot less than one (1) acre in size	**8 feet maximum height but shall not be higher than the fence line of the property**
Small Livestock Containment Areas	
Area of permeable space within the livestock containment area per poultry or rabbit	**10 square feet (min.)**
Area of permeable space within the livestock containment area per goat (miniature, dwarf, or pigmy)	**130 square feet (min.)**

D. Rules and Restrictions – Beekeeping

In addition to the General Rules and Restrictions in Section 6-03-001-0003.A: Keeping of Livestock, above, the keeping of bees shall comply with the following standards:

1. Beehives shall only be located in rear yards and shall be placed a minimum of ten (10) feet from any property line, except that in the Rural Residential (RR) zone beehives also may be placed

in the interior side yards. In all zones the entrance to the beehive shall face away from the property line closest to the hive.

2. A flyway barrier shall be established and maintained so that all bees are forced to fly at an elevation of at least six (6) feet above ground level in the vicinity of the beehive. Any fence, wall, or natural barrier proposed as a flyway barrier shall comply with the provisions of Division 10-50.50 (Fences and Screening), as well as the following:

a. Be a minimum of six (6) feet tall;

b. Be solid such that bees cannot fly through it;

c. Be placed parallel to the property line; and

d. Extend a minimum of five (5) feet beyond the beehive(s) in each direction.

3. A convenient source of water shall be made available for the bees at all times of the year so that bees are less likely to congregate at swimming pools, pet watering bowls, bird baths, or other water sources.

4. In any instance in which a colony exhibits unusually defensive characteristics by stinging or attempting to sting without provocation or exhibits an unusual disposition toward swarming, beekeepers shall promptly re-queen the colony with another queen. Queens shall be selected with a gentle disposition from stock bred for gentleness. Beekeepers must be able to produce proof of a receipt from a queen breeder.

~~**6-03-001-0004 BEEKEEPING**~~

~~**The following standards apply to provide for the safe and orderly keeping of bees:**~~

~~**A. Beekeeping is allowed in all zones where the use of the property on which the beehives are kept is residential or educational.**~~

~~**B. Beehives shall only be located in rear yards and shall be placed a minimum of ten (10) feet from any property line, except that in the Rural Residential (RR) zone beehives also may be placed**~~

~~in the interior side yards. In all zones the entrance to the beehive shall face away from the property line closest to the hive.~~

~~C. A flyway barrier shall be established and maintained so that all bees are forced to fly at an elevation of at least six (6) feet above ground level in the vicinity of the beehive. Any fence, wall, or natural barrier proposed as a flyway barrier shall comply with the provisions of Division 10-50.50 (Fences and Screening), as well as the following:~~

1. ~~Be a minimum of six (6) feet tall;~~

2. ~~Be solid such that bees cannot fly through it;~~

3. ~~Be placed parallel to the property line; and~~

4. ~~Extend a minimum of five (5) feet beyond the beehive(s) in each direction.~~

~~D. A convenient source of water shall be made available for the bees at all times of the year so that bees are less likely to congregate at swimming pools, pet watering bowls, bird baths, or other water sources.~~

~~E. In any instance in which a colony exhibits unusually defensive characteristics by stinging or attempting to sting without provocation or exhibits an unusual disposition toward swarming, beekeepers shall promptly re-queen the colony with another queen. Queens shall be selected with a gentle disposition from stock bred for gentleness. Beekeepers must be able to produce proof of a receipt from a queen breeder.~~

~~Table 6-03-001-0003.A~~

~~Number of Animals Permitted by Zoning Designation~~

~~Type of Animal~~	~~Zones in Which Specific Animals Are Permitted~~	~~Maximum Number of Animals Permitted Per Lot Size~~						
		~~≤19,999 sq ft~~	~~20,000 – 29,999 sq ft~~	~~30,000 – 39,999 sq ft~~	~~40,000 – 79,999 sq ft~~	~~80,000 – 119,999 sq ft~~	~~120,000 – 159,999 sq ft~~	~~≥160,000 sq ft~~
~~Large Livestock~~								
~~Equine, Cattle, Swine, Llamas, Alpacas, Goats, Sheep, Other Large Livestock Not Prohibited by This Chapter~~	~~ER and RR~~	~~0~~	~~0~~	~~0~~	~~4~~	~~5~~	~~6~~	~~7~~
~~Small Livestock~~								
~~Goats (Miniature, Pygmy, Dwarf)~~	~~All zones*~~	~~2~~	~~2~~	~~2~~	~~4~~	~~4~~	~~4~~	~~4~~
~~Ducks, Rabbits, Chickens~~	~~All zones*~~	~~5~~	~~10~~	~~15~~	~~20~~	~~25~~	~~25~~	~~25~~
~~Bees~~								
~~Bee Colonies~~	~~All zones*~~	~~2~~	~~4~~	~~6~~	~~8~~	~~8~~	~~8~~	~~8~~

~~* The principal use of the property must be residential or educational.~~

6-03-001-0004 PERMITTING REQUIREMENTS

A. Applicability

1. No person shall keep, harbor, or maintain care, custody, or control over any livestock animal without first obtaining an approved Backyard Livestock Keeping Permit from the

Sustainability Division, except that animal keeping in Estate Residential (ER) and Rural Residential (RR) zones does not require an approved Backyard Livestock Keeping Permit.

B. Application Content

1. The Director shall specify the form and content of the Backyard Livestock Keeping Permit application. The Director may require supporting materials as part of the application, including, but not limited to, a signed statement that the applicant shall comply with the provisions of this chapter, proof of satisfactory knowledge of animal keeping best practices, and a site plan showing the location and design of proposed animal keeping shelter(s), containment areas, and feed and watering troughs.

C. Review and Final Decision

1. The Director shall review the Backyard Livestock Keeping Permit application and supporting documentation for compliance with the requirements of Chapter 6-03: Animal Keeping.

2. The Director shall determine whether the Backyard Livestock Keeping Permit can be issued or if additional information is required from the applicant to complete the application. If the permit application is denied, the reason shall be stated in writing.

D. Revocation and Appeal

1. The Director may suspend, revoke, or take other authorized adverse action against any Backyard Livestock Keeping Permit granted pursuant to this section if any condition or requirement of this chapter is violated, if the keeping of animals becomes a public nuisance, or for other good cause.

2. An applicant or permit holder may appeal the denial or revocation of a Backyard Livestock Keeping Permit by submitting a written appeal to the City of Flagstaff Sustainability Division within ten (10) days after issuance of the denial or notice of revocation. Within five (5) days after receipt of the written appeal, or such longer period of time agreed to by the applicant, the appeal will be reviewed, and a response will be provided by the City Manager or designee, who shall be a Deputy City Manager.

E. Other Permitting Requirements

1. Livestock shelters and any associated fencing or screen walls subject to Zoning Code Section 10-20.40.080 (Minor Improvement Permits) shall obtain an approved Minor Improvement Permit prior to installation or construction.

6-03-001-0005 VIOLATION

A. It shall be unlawful for any person to cause, facilitate, or aid or abet a violation of any provision of this chapter or to fail to perform any act or duty required by this chapter in connection with the keeping of animals.

B. Any person found responsible for violating any provision of this chapter will be subject to a fine of no less than one hundred dollars ($100.00) for every offense. Recurring violations will be subject to larger fines. Any violation that is continuing in nature shall constitute a separate offense on each successive date the violation continues.

C. Civil actions or proceedings to enforce the requirements of this chapter will be commenced and prosecuted in compliance with Section 1-15-001-0011, Civil Enforcement Procedures.

RESOLUTION NO. 2024-43

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "2024 *ANIMAL KEEPING CODE AMENDMENTS*"

RECITALS:

WHEREAS, pursuant to A.R.S. § 9-802 a municipality may enact or amend provisions of the City Code by reference to a public record, provided that the adopting ordinance is published in full;

WHEREAS, the City of Flagstaff wishes to incorporate by reference amendments to the Flagstaff Police Code, Ordinance No. 2024-26, by first declaring said amendments to be a public record;

WHEREAS, the City Council of the City of Flagstaff believes it is in the best interest of the City to allow City residents to keep certain animals as a healthy and affordable source of food, fiber, and labor;

WHEREAS, on May 21, 2024, House Bill 2325 was signed into law amending A.R.S. Title 9, Chapter 5, Article 6.1 by adding section § 9-462.10, and amending A.R.S. Title 11, Chapter 6, Article 2 by adding Section 11-820.04;

WHEREAS, the City Council has determined that Chapter 6-03 of the City Code regarding animal keeping should be amended to clarify the rules and regulations related to the keeping of animals within the City and to comply with House Bill 2325;

WHEREAS, the City Council intends, by adopting the proposed amendments, to protect and promote the public health, safety, convenience, and general welfare of the citizens of the City of Flagstaff.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

That certain document known as *"2024 Animal Keeping Code Amendments"* attached hereto as Exhibit A is hereby declared to be a public record, and one (1) paper copy and one (1) electronic copy maintained in compliance with A.R.S. § 44-7041 shall remain on file with the City Clerk and kept available for public use and inspection.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of November, 2024.

_____

MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibits:
2024 Animal Keeping Code Amendments

ORDINANCE NO. 2024-26

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF CITY CODE, TITLE 6, POLICE REGULATIONS, CHAPTER 6-03, ANIMAL KEEPING, BY ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT ENTITLED *"2024 ANIMAL KEEPING CODE AMENDMENTS"*; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City Council of the City of Flagstaff believes it is in the best interest of the City to allow City residents to keep certain animals as a healthy and affordable source of food, fiber, and labor;

WHEREAS, on May 21, 2024, House Bill 2325 was signed into law amending A.R.S. Title 9, Chapter 5, Article 6.1 by adding section § 9-462.10, and amending A.R.S. Title 11, Chapter 6, Article 2 by adding Section 11-820.04;

WHEREAS, the City Council has determined that Chapter 6-03 of the City Code regarding animal keeping should be amended to clarify the rules and regulations related to the keeping of animals within the City and to comply with House Bill 2325;

WHEREAS, the City Council intends, by adopting the proposed amendments, to protect and promote the public health, safety, convenience, and general welfare of the citizens of the City of Flagstaff.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That certain document known as "2024 Animal Keeping Code Amendments", one (1) paper copy and (1) electronic copy of which are on file in the office of the City Clerk of the City of Flagstaff, Arizona, is declared a public record by Resolution No. 2024-43 of the City of Flagstaff, Arizona, and is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance and its provisions are hereby declared to amend the Flagstaff City Code, replacing and superseding the existing relevant provisions of the City Code, as set forth therein.

SECTION 2. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 3. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. Clerical Corrections

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

SECTION 5. Effective Date

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of November, 2024.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Conference Engrossed

backyard fowl; regulation; prohibition

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

CHAPTER 192

HOUSE BILL 2325

AN ACT

AMENDING TITLE 9, CHAPTER 4, ARTICLE 6.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-462.10; AMENDING TITLE 11, CHAPTER 6, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-820.04; RELATING TO MUNICIPAL AND COUNTY ZONING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 9, chapter 4, article 6.1, Arizona Revised Statutes, is amended by adding section 9-462.10, to read:

9-462.10. Backyard fowl regulation; prohibition; exceptions; state preemption; definition

A. A MUNICIPALITY MAY NOT ADOPT ANY LAW, ORDINANCE OR OTHER REGULATION THAT PROHIBITS A RESIDENT OF A SINGLE-FAMILY DETACHED RESIDENCE ON A LOT THAT IS ONE-HALF ACRE OR LESS IN SIZE FROM KEEPING UP TO SIX FOWL IN THE BACKYARD OF THE PROPERTY. A MUNICIPALITY MAY:

1. PROHIBIT A RESIDENT FROM KEEPING MALE FOWL, INCLUDING ROOSTERS.

2. REQUIRE FOWL TO BE KEPT IN AN ENCLOSURE LOCATED IN THE REAR OR SIDE YARD OF THE PROPERTY AT LEAST TWENTY FEET FROM A NEIGHBORING PROPERTY AND RESTRICT THE SIZE OF THE ENCLOSURE TO A MAXIMUM OF TWO HUNDRED SQUARE FEET WITH A MAXIMUM HEIGHT OF EIGHT FEET.

3. REQUIRE THE ENCLOSURE TO BE MAINTAINED AND MANURE PICKED UP AND DISPOSED OF OR COMPOSTED AT LEAST TWICE WEEKLY.

4. REQUIRE THAT COMPOSTED MANURE BE KEPT IN A WAY THAT PREVENTS MIGRATION OF INSECTS.

5. REQUIRE WATER SOURCES WITH ADEQUATE OVERFLOW DRAINAGE.

6. REQUIRE THAT FEED BE STORED IN INSECT-PROOF AND RODENT-PROOF CONTAINERS.

7. PROHIBIT FOWL FROM RUNNING AT LARGE.

B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A MUNICIPALITY SHALL ENACT AN ORDINANCE THAT REQUIRES AN ENCLOSURE LOCATED IN A RESIDENTIAL COMMUNITY ON A LOT LESS THAN ONE ACRE IN SIZE TO BE SHORTER THAN THE FENCE LINE OF THE PROPERTY.

C. AN ORDINANCE THAT IS ENACTED AFTER THE EFFECTIVE DATE OF THIS SECTION DOES NOT APPLY TO AN ENCLOSURE THAT WAS CONSTRUCTED ON OR BEFORE THE EFFECTIVE DATE OF THIS SECTION.

D. THE PROPERTY RIGHTS OF PROPERTY OWNERS IN THIS STATE OUTLINED IN THIS SECTION ARE OF STATEWIDE CONCERN. THIS SECTION PREEMPTS ALL LOCAL LAWS, ORDINANCES AND CHARTER PROVISIONS TO THE CONTRARY.

E. FOR THE PURPOSES OF THIS SECTION, "FOWL" MEANS A COCK OR HEN OF THE DOMESTIC CHICKEN.

Sec. 2. Title 11, chapter 6, article 2, Arizona Revised Statutes, is amended by adding section 11-820.04, to read:

11-820.04. Backyard fowl regulation; prohibition; exceptions; state preemption; definition

A. A COUNTY MAY NOT ADOPT ANY LAW, ORDINANCE OR OTHER REGULATION THAT PROHIBITS A RESIDENT OF A SINGLE-FAMILY DETACHED RESIDENCE ON A LOT THAT IS ONE-HALF ACRE OR LESS IN SIZE FROM KEEPING UP TO SIX FOWL IN THE BACKYARD OF THE PROPERTY. A COUNTY MAY:

1. PROHIBIT A RESIDENT FROM KEEPING MALE FOWL, INCLUDING ROOSTERS.

2. REQUIRE FOWL TO BE KEPT IN AN ENCLOSURE LOCATED IN THE REAR OR SIDE YARD OF THE PROPERTY AT LEAST TWENTY FEET FROM A NEIGHBORING PROPERTY AND RESTRICT THE SIZE OF THE ENCLOSURE TO A MAXIMUM OF TWO HUNDRED SQUARE FEET WITH A MAXIMUM HEIGHT OF EIGHT FEET.

3. REQUIRE THE ENCLOSURE TO BE MAINTAINED AND MANURE PICKED UP AND DISPOSED OF OR COMPOSTED AT LEAST TWICE WEEKLY.

4. REQUIRE THAT COMPOSTED MANURE BE KEPT IN A WAY THAT PREVENTS MIGRATION OF INSECTS.

5. REQUIRE WATER SOURCES WITH ADEQUATE OVERFLOW DRAINAGE.

6. REQUIRE THAT FEED BE STORED IN INSECT-PROOF AND RODENT-PROOF CONTAINERS.

7. PROHIBIT FOWL FROM RUNNING AT LARGE.

B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A COUNTY SHALL ENACT AN ORDINANCE THAT REQUIRES AN ENCLOSURE LOCATED IN A RESIDENTIAL

COMMUNITY ON A LOT LESS THAN ONE ACRE IN SIZE TO BE SHORTER THAN THE FENCE LINE OF THE PROPERTY.

C. AN ORDINANCE THAT IS ENACTED AFTER THE EFFECTIVE DATE OF THIS SECTION DOES NOT APPLY TO AN ENCLOSURE THAT WAS CONSTRUCTED ON OR BEFORE THE EFFECTIVE DATE OF THIS SECTION.

D. THE PROPERTY RIGHTS OF PROPERTY OWNERS IN THIS STATE OUTLINED IN THIS SECTION ARE OF STATEWIDE CONCERN. THIS SECTION PREEMPTS ALL LOCAL LAWS AND ORDINANCES TO THE CONTRARY.

E. FOR THE PURPOSES OF THIS SECTION, "FOWL" MEANS A COCK OR HEN OF THE DOMESTIC CHICKEN.

Chapter 6-03: Animal Keeping Code Amendment

Flagstaff City Council | October 15, 2024

Genevieve Pearthree, AICP | Resilience Analyst

Steven Thompson | Sustainability Program Manager

TEAM FLAGSTAFF
WE MAKE THE CITY BETTER

Text Amendment Summary

Update City Code Title 6: Police Regulations, Chapter 6-03: Animal Keeping

1. Comply with state legislation (House Bill 2325)
2. Make the code easier to implement

Animal Keeping Code applies to livestock animals and bees within the City limits (does not apply to common domestic household pets, such as dogs, cats, etc.)

HB 2325: Required Updates

- “A municipality may not adopt any law, ordinance or other regulation that prohibits a resident of a single-family detached residence on a lot that is one-half acre or less in size from **keeping up to six fowl in the backyard of the property.**”
- “A municipality shall enact an ordinance that requires **an enclosure** located in a residential community on a lot less than one acre in size to be **shorter than the fence line of the property.**”

Updates to Comply with HB 2325

- 6-03-001-0002: Definitions
  - Create a new definition of ‘fowl’
  - Add fowl to the definition of ‘poultry’
  - Add ‘enclosure’ to the definition of ‘shelter’
  - Replace the word ‘chickens’ with ‘poultry’
- 6-03-001-0003: Keeping of Livestock
  - Increase the maximum number of fowl (chickens) allowed on parcels less than 19,999 square feet from 5 to 6 fowl
  - Limit the height of a shelter for fowl on lots less than 1 acre to 8 feet or no taller than the fence line of the property

Updates to Make the Code Easier to Implement

- 6-03-001-0002: Definitions
  - Minor updates
- 6-03-001-0003: Keeping of Livestock
  - Move, clarify, and consolidate text
  - Move Table 6-03-001-0003.A: Number of Livestock Animals Permitted by Zoning Designation to the beginning of this Section
  - Bring Animal Keeping Code in alignment with Zoning Code
  - Convert text to tables for large and small livestock standards
  - Move standards for beekeeping into this section
  - Move permitting requirements into their own section

Updates to Make the Code Easier to Implement

- 6-03-001-0004: Permitting Requirements
  - Clarify when a Backyard Livestock Keeping Permit is required
  - Clarify that the Sustainability Director shall specify the form and content of the Backyard Livestock Keeping Permit application and may require supporting materials
  - Clarify that the Backyard Livestock Keeping Permit is reviewed for compliance with Chapter 6-03: Animal Keeping
  - Clarify that any reason(s) for permit denial must be provided in writing
  - Clarify that livestock shelters and any associated fencing or screen walls subject to Zoning Code Section 10-20.40.080 (Minor Improvement Permits) shall obtain an approved MIP prior to installation or construction

Options & Staff Recommended Action

1. Approve the amendment to the Animal Keeping Code as proposed—**Staff recommended action**
2. Approve the amendment to the Animal Keeping Code with only modifications to comply with state legislation

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Allison Hughes, Support Services Manager

Co-Submitter: Alyssa Ebers

Co-Submitter: Megan Dales

Date: 10/31/2024

Meeting Date: 11/05/2024

TITLE:

Consideration and Adoption of Resolution No. 2024-44: A resolution of the Flagstaff City Council, approving an Intergovernmental Agreement between the City of Flagstaff and Coconino County for submission of a grant application and approval upon award of the U.S. Department of Justice, Fiscal Year 2024 Edward Byrne Memorial Justice Assistance (JAG) Grant.

STAFF RECOMMENDED ACTION:

1. Read Resolution No. 2024-44 by title only
2. City Clerk reads Resolution No. 2024-44 by title only (if approved above)
3. Adopt Resolution No. 2024-44

Executive Summary:

Approval of the IGA will allow the City of Flagstaff to pass through U.S. Department of Justice funds to the Coconino County Sheriff's Department for the purchase of less-lethal equipment. The funds will be used to equip our deputies with essential less-lethal tools necessary to meet the goals and objectives of this grant program.

Financial Impact:

Project Name: IGA between the City of Flagstaff and Coconino County for submission of a grant application-FY24 Edward Byrne Memorial Justice Assistance Grant
Cost: $25,383
Account Number Budgeted: 001-04-062-6101-2-4273
FY Budgeted Amount: $25,383
Grant Funded: Yes
Funding Source: FY24 Edward Byrne Memorial Justice Assistance Grant

Policy Impact:

The grant application and Intergovernmental Agreement (IGA) aim to strengthen public safety by enhancing crime prevention and control efforts through increased funding and resource-sharing between the Flagstaff Police Department and the Coconino County Sheriff's Office. This collaboration fosters more efficient and effective responses to community needs while expanding resources for victim assistance to ensure timely and adequate support. Additionally, the agreement promotes transparency and accountability by keeping the Council and public informed about the grant's application, objectives, and outcomes, reinforcing trust in law enforcement practices. By aligning funding with strategic priorities, this initiative delivers long-term community benefits, enhancing justice administration and building a safer, more resilient community.

Previous Council Decision or Community Discussion:

Yes - Council approved the previous Intergovernmental Agreement to benefit from the Fiscal Year 2024 JAG

grant.

Options and Alternatives to Recommended Action:
-Approve the Intergovernmental Agreement between the City and County.
-Not approve the IGA between the City and County.

Background and History:
The U.S Department of Justice, Office of Justice Programs (OJP) Bureau of Justice Assistance (BJA), was created in 1984 to provide federal leadership in developing the nation's capacity to prevent and control crime, administer justice, and assist crime victims. The Edward Byrne Memorial Justice Assistance Grant (JAG) Program allows states, tribes, and local governments to support a broad range of activities to prevent and control crime based on their own local needs and conditions. JAG blends the previous Byrne Formula and Local Law Enforcement Block Grant (LLEBG) Programs to provide agencies with the flexibility to prioritize and spend funds where they are most needed. The formula calculates direct allocations for local governments within each state, based on their share of the total violent crime reported with the state.

Connection to PBB Priorities and Objectives:
The grant application and Intergovernmental Agreement (IGA) aim to strengthen public safety by enhancing crime prevention and control efforts through increased funding and resource-sharing between the Flagstaff Police Department and the Coconino County Sheriff's Office. This collaboration fosters more efficient and effective responses to community needs while expanding resources for victim assistance to ensure timely and adequate support. Additionally, the agreement promotes transparency and accountability by keeping the Council and public informed about the grant's application, objectives, and outcomes, reinforcing trust in law enforcement practices. By aligning funding with strategic priorities, this initiative delivers long-term community benefits, enhancing justice administration and building a safer, more resilient community.

Connection to Regional Plan:
The grant application and Intergovernmental Agreement (IGA) align with the **Flagstaff Regional Plan Policy PF.3.1**, which emphasizes maintaining high-quality, effective, and efficient law enforcement, fire, and emergency services. This policy underscores the importance of balancing public safety services with operational goals, government plans, policies, population needs, and available funding.

By leveraging Fiscal Year 2024 grant funds, the IGA directly supports this policy by ensuring that both the Flagstaff Police Department and the Coconino County Sheriff's Office have the resources necessary to deliver enhanced public safety services. The collaborative approach allows the agencies to optimize their effectiveness through shared resources and coordinated efforts, ensuring alignment with population demands and regional public safety goals. Furthermore, the transparent use of these funds reflects a commitment to sound fiscal management, ensuring that services remain sustainable and in line with public policies and budgetary limitations. This grant initiative strengthens the region's ability to meet evolving public safety needs while upholding the policy's focus on quality and efficiency.

Connection to Carbon Neutrality Plan:
Does Not Apply

Connection to 10-Year Housing Plan:
Does Not Apply

Connection to Division Specific Plan:
The JAG formula program provides agencies with the flexibility to prioritize and place justice funds where they are needed most. The formula calculates direct allocations for local governments within each state, based on their share of the total violent crime reported with the state. The City has been certified as disparate and must submit a joint application for the aggregate of funds allocated. The JAG disparate jurisdictions are certified by the Director of the Bureau of Justice Assistance (BJA), based in part on input from the state's Attorney General. The disparate allocation occurs when the city is scheduled to received one- and one-half times more than the County, while the County bears more than 50% of the costs of prosecution of incarceration that arise

for Part 1 violent crimes committed in the city.

City funds will be used to purchase essential equipment and training to enhance the effectiveness, safety, and readiness of our department. Specifically, we are requesting funds for pistol rated shields for patrol vehicles, chemical immobilization training for Animal Control officers, and media room equipment for the Public Relations Office. These equipment purchases and training initiatives directly support our mission to protect and serve the community. Pistol-rated shields enhance officer and public safety during high-risk situations, chemical immobilization training ensures humane and effective animal control, and a well-equipped media room strengthens community engagement and transparency. We are committed to utilizing these resources efficiently to promote a safer, more informed, and resilient community.
As part of the joint application process an IGA is required to be submitted to the funding agency indicating who will serve as applicant/fiscal agent for the joint funds. The IGA will authorize payment to the County in the amount of $7,615.00 for the JAG funds upon successful award.

Equipping deputies with less-lethal tools provides several important benefits to the community. It enhances public safety by enabling deputies to de-escalate dangerous situations more effectively, reducing the likelihood of fatal outcomes and promoting safer interactions between law enforcement and the public. Faster response and resolution times are also achieved, as deputies can manage incidents independently without waiting for backup, which is often hours away in rural areas. This use of less-lethal options aligns with community expectations for responsible policing, fostering trust and transparency. Additionally, quicker incident resolution allows for more efficient resource allocation, ensuring better law enforcement coverage across the county. Vulnerable rural communities, often underserved and hard to reach, will benefit from having better-equipped deputies, improving their safety and security. Finally, reducing operational risks for both deputies and residents contributes to a more resilient public safety system, meeting both community needs and law enforcement objectives.

Attachments: Res. 2024-44
JAG IGA
JAG Application Program Narrative

RESOLUTION NO. 2024-44

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN COCONINO COUNTY AND THE CITY OF FLAGSTAFF FOR THE APPLICATION FOR THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FY 2024 LOCAL SOLICITATION / CFDA #16.738

RECITALS:

WHEREAS, this Agreement is made under the authority of Arizona Revised Statues Section 11-952 as a joint exercise of powers; and

WHEREAS, both parties are required to enter into this Intergovernmental Agreement as co-applicants of a grant under Edward Byrne Memorial Justice Assistance Grant Program and to designate a fiscal agent for purposes of administering grant funds; and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Flagstaff City Council hereby authorizes the Mayor to execute the Intergovernmental Agreement between Coconino County and the City of Flagstaff, Arizona, attached hereto as Exhibit A, which shall become effective upon the date first executed by both parties ("Effective Date").

SECTION 2. Effective Date.

This resolution shall be immediately effective upon adoption.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of November, 2024.

_____

MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibits:
Exhibit A – IGA

GMS APPLICATION NUMBER: 2024-JAG

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FLAGSTAFF, AZ AND COUNTY OF COCONINO, AZ

EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FY 2024 LOCAL SOLICITATION / CFDA #16.738

This Agreement is made and entered into this____day of_____, 2024, by and between COCONINO COUNTY, acting by and through its governing body, the Board of Supervisors, hereinafter referred to as COUNTY, and the CITY of FLAGSTAFF, acting by and through its governing body, the City Council, hereinafter referred to as CITY, both of Coconino County, State of Arizona:

WHEREAS, this Agreement is made under the authority of Arizona Revised Statues Section 11-952 as a joint exercise of powers; and,

WHEREAS, both parties are required to enter into this Intergovernmental Agreement as co-applicants of a grant under Edward Byrne Memorial Justice Assistance Grant Program (JAG) and to designate a fiscal agent for purposes of administering grant funds; and,

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

NOW THEREFORE, the COUNTY and CITY agree as follows:

Section 1.

CITY agrees to serve as fiscal agent for purposes of accepting the JAG program grant award and to pay COUNTY a total of $7,615.00 of JAG funds.

Section 2.

COUNTY agrees to use $7,615.00 for the purposes outlined in the FY 2024 JAG Program award period of October 1, 2024, through September 30, 2027.

Section 3.

Nothing in the performance of this Agreement shall impose any liability for claims against either party other than claims for which liability may be imposed by the Federal Tort Claims Act. By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

Section 4.

Each party to this agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party. Neither party agrees to indemnify or hold harmless the other party.

Section 5.

Notwithstanding any other provision contained herein, this Agreement may be terminated if either party does not receive sufficient grant funds to carry out their purposes under the JAG program. Each party agrees to appropriate funds to continue its effort to apply for funding from the JAG program. If JAG funds are not awarded, the obligations of the parties shall terminate.

Section 6.

Before this Agreement can become effective and binding on either party, it must be approved by the respective governing bodies and the legal counsel of each party.

Section 7.

This Agreement shall remain in effect for the period of October 1, 2024, through September 30, 2027.

Section 8.

The County and the City, as co-applicants, agree to comply with the and Mandatory Award Terms and Conditions, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, and Standard Assurances provisions attached as Exhibit A to this Agreement.

Section 9.

This Agreement may be cancelled pursuant to Arizona Revised Statutes Section 38-511.

Approved by Resolution of the respective governing bodies hereto:

Dated:_____ Dated:_____

CITY OF FLAGSTAFF, AZ	COUNTY OF COCONINO, AZ
Becky Daggett, Mayor	Judy Begay, Chair
ATTEST:	ATTEST:
City Clerk	Clerk of the Board
APPROVED AS TO FORM AND PROPER AUTHORITY:	APPROVED AS TO FORM AND PROPER AUTHORITY:
City Attorney	Deputy County Attorney

EXHIBIT A

General Conditions" for OJP Awards in FY 2024

August 9, 2024

OJP expects that all (or virtually all) awards made in FY 2024 will include all of the award conditions set out below.

Individual awards typically also will include additional award conditions. Those additional conditions may relate to the particular statute, program, or solicitation under which the award is made; to the substance of the funded application; to the recipient's performance under other federal awards; to the recipient's legal status (e.g., as a for-profit entity); or to other pertinent considerations.

- **Requirements of the award; incorporation by reference; remedies for non-compliance or for materially false statements**
- **Applicability of Part 200 Uniform Requirements**
- **Compliance with DOJ Grants Financial Guide**
- **Reclassification of various statutory provisions to a new Title 34 of the United States Code**
- **Required training for Grant Award Administrator and Financial Manager**
- **Requirements related to "de minimis" indirect cost rate**
- **Requirement to report potentially duplicative funding**
- **Requirements related to System for Award Management and Universal Identifier Requirements**
- **Employment eligibility verification for hiring under the award**
- **Requirement to report actual or imminent breach of personally identifiable information (PII)**
- **All subawards ("subgrants") must have specific federal authorization**
- **Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed $250,000**
- **Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)**
- **Determination of suitability to interact with participating minors**
- **Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events**
- **Requirement for data on performance and effectiveness under the award**
- **OJP Training Guiding Principles**
- **Effect of failure to address audit issues**
- **Potential imposition of additional requirements**
- **Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42**
- **Compliance with DOJ regulations pertaining to civil rights and nondiscrimination -**

28 C.F.R. Part 54

- **Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38**
- **Meaningful access requirement for individuals with limited English proficiency**
- **Restrictions on "lobbying"**
- **Compliance with general appropriations-law restrictions on the use of federal funds (FY 2024)**
- **Compliance with restrictions on the use of federal funds - prohibited and controlled equipment under OJP awards**
- **Reporting potential fraud, waste, and abuse, and similar misconduct**
- **Restrictions and certifications regarding non-disclosure agreements and related matters**
- **Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)**
- **Encouragement of policies to ban text messaging while driving**
- **Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ**

EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM
FY 2024 LOCAL SOLICITATION

PROGRAM NARRATIVE (Attachment 1)

The Employer Identification Number (EIN) on the SF-424 is the City of Flagstaff Municipal Government EIN. The Flagstaff Police Department has a vendor number that is 86-6000282, The City of Flagstaff's Unique Entity ID number is XMMUMPKTLVQ3, SAMS expiration date 04/20/2025. The Coconino County's DUNS number is 838150878, SAMS expiration date 11/15/2024.

Program Objectives

Flagstaff Police Department (FPD) –
City of Flagstaff, Flagstaff Police Department FPD is applying for $25,383.00 under the purpose of: LAW ENFORCEMENT PROGRAMS. The FPD portion of $17,768 will fund the purchase of essential equipment and training to enhance the effectiveness, safety, and readiness of our department. Specifically, we are requesting funds for:

1. **Pistol-Rated Shields for Patrol Vehicles**
Equipping patrol vehicles with pistol-rated shields is crucial for ensuring the safety of officers and the public during high-risk incidents. These shields provide immediate ballistic protection, enabling officers to respond effectively to active shooter situations, armed confrontations, or rescue operations in dangerous environments. Quick access to this equipment can be the difference between life and death in rapidly evolving scenarios, ensuring both officer and civilian safety.

2. **Chemical Immobilization Training for Animal Control Officers**
Animal Control Officers are frequently called upon to handle aggressive or dangerous animals. Chemical immobilization training equips officers with the skills and knowledge to safely subdue animals in situations where traditional methods are ineffective or pose safety risks. This training not only protects the officers and the public from potential harm but also ensures humane treatment of animals. Properly trained personnel will reduce the risk of injuries, liability, and the need for lethal force.

3. **Media Room Equipment for the Public Relations Office**
The ability to communicate effectively with the public is a cornerstone of modern public safety. A well-equipped media room will allow our Public Relations Office to provide timely and transparent information during emergencies, foster community trust, and promote public safety initiatives. This equipment will enhance our ability to deliver press releases, hold briefings, and communicate important information through digital and social media platforms. Having a dedicated, professional setup ensures that our communications are clear, reliable, and accessible to the public and media outlets.

These equipment purchases and training initiatives directly support our mission to protect and serve the community. Pistol-rated shields enhance officer and public safety during high-risk situations, chemical immobilization training ensures humane and effective animal control, and a well-equipped media room strengthens community engagement and transparency. We are committed to utilizing these resources efficiently to promote a safer, more informed, and resilient community.

Coconino County Sheriff's Office (CCSO) –

CCSO is applying for $7,615.00 under the purpose of: LAW ENFORCEMENT PROGRAMS. The designated Coconino County funds will be utilized to purchase equipment needed to outfit our deputies with less-lethal equipment. The equipment is essential for Sheriff's deputies to successfully accomplish the goals and objectives of this grant program. The Coconino County Sheriff's Office is seeing increased violent crime in our rural county. Sheriff's deputies patrol rural communities alone with backup sometimes hours away. Most of our county is made up of geographically rugged terrain and rural communities. Having our deputies outfitted with less-lethal equipment can decrease fatal responses and shorten resolution time, freeing up much needed resources and reducing operational risk.

Organization Capabilities/Competencies

This funding request aligns with the Flagstaff Police Department's COMPSTAT goals by enhancing operational efficiency, increasing public safety, improving resource deployment, and fostering community trust through data-driven strategies. The requested equipment and training—pistol-rated shields for patrol vehicles, chemical immobilization training for animal control officers, and media room equipment for the Public Relations Office—will directly contribute to meeting our COMPSTAT objectives to include improved officer safety, risk mitigation, reduction in injuries, efficient resource deployment, increase operational efficiency, enhanced community engagement and transparency, improved information flow to support crime reduction, and crisis communication capability.

The City of Flagstaff Grants Management Team (GMT) is composed of the Grants and Contracts Manager, Grants Specialist, Financial Officer/Accountant, and the Project Representative. This team approach has assured the city's success in grant compliance from application to closeout. The GMT ensures all terms and conditions of the grant agreement are followed, provides oversight and monitoring for necessary financial and performance reports, monitors contract performance, and ensures all evaluation, audit and closeout procedures are met.

The City of Flagstaff has a full-time Grants and Contracts Manager position which involves researching, monitoring, and applying for available municipal-related grants, monitoring, implementing, evaluating, and assuring the compliance of terms and conditions, and in general, is the central coordinator for all grants; which may involve internal auditing and internal accountability for proper grant compliance. The Grants Specialist position provides support to the Grant and Contracts Manager in these functions. The Accountants assigned to the grants have a high level of technical expertise in governmental budgeting and accounting. In addition, the Project Representatives have extensive knowledge in the targeted areas in which they are seeking funds and are responsible for administering the programs.

The City receives numerous federal grants, which are audited yearly by an Independent Auditor on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB 2 CFR Part 200. The Single Audit Report, Schedule of Expenditures of Federal Awards for the past five years, have reflected no audit findings.

The Coconino County Sheriff's Office is highly capable of implementing this project. Key players have been identified to oversee this project. We have a full-time Grants Manager and Finance Manager that will monitor, evaluate, and assure the compliance of terms and conditions along

with coordinating the implementation and reporting of the project. We have armory staff that will provide required inventory, maintenance, repair, and documentation of the equipment. The Coconino County Sheriff's Office collaborates with the Flagstaff Police Department in a joint SWAT program. Having this equipment will protect team members during events.

Program Activities - Design and Implementation

The requested equipment and training—pistol-rated shields for patrol vehicles, chemical immobilization training for animal control officers, and media room equipment for the Public Relations Office—will directly contribute to meeting our COMPSTAT objectives in the following ways:

1. Pistol-Rated Shields for Patrol Vehicles

- **Improved Officer Safety and Faster Response Times:** Having ballistic shields readily available in patrol vehicles ensures officers are better equipped to respond to armed incidents, reducing response time and improving safety during critical events such as active shooter situations.
- **Enhanced Crime Suppression and Risk Mitigation:** This equipment supports proactive policing strategies by enabling officers to engage safely in high-risk situations, increasing the likelihood of de-escalation and arrest, which directly impacts crime rate reduction.
- **Reduction in Injuries and Use-of-Force Incidents:** With access to protective equipment, officers are less likely to resort to deadly force, contributing to our department's goals of minimizing use-of-force incidents.

COMPSTAT Metrics Supported:

- Reduction in violent crime
- Improved officer and public safety metrics
- Decrease in response times to critical incidents

2. Chemical Immobilization Training for Animal Control Officers

- **Efficient Resource Deployment:** Properly trained animal control officers can more effectively respond to calls involving dangerous or stray animals, freeing up police resources for higher-priority incidents.
- **Reduced Liability and Community Complaints:** Humane handling of animals through chemical immobilization techniques reduces the risk of injuries and complaints, contributing to our department's goal of building public trust and minimizing liabilities.
- **Increased Operational Efficiency:** With specialized training, animal control officers can quickly resolve incidents, supporting our goal of reducing service request backlogs and improving response times.

COMPSTAT Metrics Supported:

- Reduction in repeat service calls for animal-related incidents
- Fewer injuries or complaints related to animal control interventions
- Improved efficiency and response times for non-criminal incidents

Media Room Equipment for the Public Relations Office

- **Enhanced Community Engagement and Transparency:** With professional media room equipment, our Public Relations Office can provide timely updates on crime trends, emergency responses, and safety initiatives, promoting transparency and trust between the department and the public.
- **Improved Information Flow to Support Crime Reduction:** Clear, reliable communication through social media and press briefings helps disseminate information on crime prevention efforts and community safety programs, increasing public participation and support.
- **Crisis Communication Capability:** During emergencies, having a fully equipped media room ensures that critical information is quickly shared with the public, aiding in community safety and supporting real-time COMPSTAT-driven decisions.

COMPSTAT Metrics Supported:

- Increased community satisfaction and trust levels
- Improved communication metrics (response to press releases, social media engagement)
- Timely dissemination of public safety information to reduce fear of crime

CompStat is a multifaceted, dynamic approach to crime reduction. Data is collected, disseminated and analyzed on a regular basis so that effective strategies and tactics can be developed to prevent or solve crimes. Using these strategies, department personnel and resources are rapidly deployed. CompStat is a valuable tool for the Flagstaff Police Department and effectively reduces crime and protects property.

The Coconino County Sheriff's Office will enter into an Intergovernmental Agreement with the City of Flagstaff. Once this document has been fully executed, we will follow the County's established best practices and procurement methods to purchase the equipment. The armory staff will inventory the equipment, assign to deputies, and provide training.

Project Plan - Impact/Outcomes, Evaluation, and Sustainment

This plan outlines the projected implementation, impact, outcomes, and sustainment of the requested equipment and training.

For the **pistol-rated shields**, we will install them in key patrol vehicles and train officers on proper usage, safety protocols, and tactical deployment. These shields will be integrated into regular tactical drills and high-risk scenario planning. The projected impact includes faster safer responses to armed incidents, reduced officer injuries, and decreased reliance on deadly force, leading to increased public confidence in law enforcement. To sustain these efforts, we will establish maintenance and replacement schedules, incorporate shield training into ongoing tactical exercises, and assess future needs as new patrol vehicles are deployed.

The **chemical immobilization training** for animal control officers will include initial certification courses followed by annual refresher training. Officers will be equipped with the necessary tools, enabling them to handle animal-related incidents efficiently and independently, which will free up patrol resources. The expected impact includes improved safety, reduced complaints and liability, and more humane animal handling. Sustaining this program will involve budgeting

for refresher courses and supplies, along with continuous evaluation to update training as needed.

The **media room equipment** for the Public Relations Office will be installed along with staff training on usage and production techniques. The improved media room will enhance communication and transparency, allowing for quicker dissemination of crime prevention information, emergency updates, and community outreach efforts. This will strengthen public trust, foster community engagement, and improve media relations. To maintain these efforts, we will ensure regular software updates, equipment maintenance, and ongoing staff training on new technologies. Performance metrics from media outreach will be incorporated into COMPSTAT reviews to track and enhance effectiveness.

In the short term, these initiatives will result in trained personnel, safer tactical responses, improved animal control operations, and a more robust media communication strategy. Long-term outcomes include reduced violent crime and use-of-force incidents, fewer repeat service calls, improved operational efficiency, and stronger public trust. With proper sustainment through budget planning, refresher training, and continuous evaluation, these investments will have a lasting impact on public safety, resource management, and community engagement. This comprehensive plan aligns with our department's COMPSTAT goals, ensuring measurable improvements and promoting a safer, more connected community.

CCSO- Utilizing less-lethal systems offers the protection and power law enforcement need to keep themselves and the community safe without taking unnecessary risks. A new study suggests that less-lethal weapons decrease rates of officer and offender injuries. These new technologies offer the promise of more effective control over resistive suspects with fewer serious injuries.

Once purchased, equipment will be inventoried, policies and standard operating procedures will be updated, deputies will complete thorough training, and equipment will be issued. Armory staff will be responsible for the routine maintenance of the equipment.

Command staff review regular crime statistics to make informed decisions of crime patterns, hot spots, and gauge effectiveness of solutions implemented, through the philosophy of Community Policing. Through these reviews, Command Staff will evaluate this program and its effectiveness.

The Sheriff's Office is utilizing multiple revenues and grant funding to continue increasing our less-lethal equipment to outfit all deputies.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Brandi Suda, Finance Director

Co-Submitter: Rick Tadder, Management Services Director

Date: 10/31/2024

Meeting Date: 11/05/2024

TITLE:

Consideration and Approval of Budget Adjustment: Fiscal Year 2023-24 Year End Budget Adjustment for Police and City Manager Divisions and Fiscal Year 2024-35 Budget Adjustments for City Manager Division

STAFF RECOMMENDED ACTION:

1. Approve the transfer of FY2023-24 budget appropriations from the General Fund Non-Department account to the Police Department and City Manager Division in the amounts of $1,900,000 and $9,800, respectively.
2. Approve the transfer of FY2024-25 budget appropriation from the General Fund Non-Department account to City Manager Division in the amount of $65,000.

Executive Summary:

For fiscal year 2023-24, two divisions are anticipated to be over-budget and need a budget adjustment/transfer to ensure compliance with state statutes. The Police Department needs a $1.9 million budget adjustment and the City Manager Division needs a $9,800 budget adjustment. The Police Department overage is due to an additional $3.2 million contribution made by the City's General Fund to the City's Public Safety Personnel Retirement System (PSPRS) - Police Plan with expectation that the plan will return to fully funded status as of June 30, 2024. The small overage within the City Manager's Office budget is due to personnel costs higher than anticipated when adopting the budget.

For fiscal year 2024-25, the City Manager Office's budget is anticipated to be over-budget by $65,000. This is based on City Council direction and approval for salary market increases that were not anticipated when the budget was originally adopted.

A.R.S. § 42-17106 does not allow a city or town to revise its adopted budget to increase total expenditures. The statute does allow cities or towns to revise their budgets to avoid potential over expenditures at the department level. Subsection B of the statute allows budgeted expenditures at the department level to be revised by allowing the city/town council to transfer monies between budget items (departments) if all of the following apply: (1) the monies are available; (2) the transfer is in the public interest and based on a demonstrated need; (3) the transfer does not result in a violation of the limitations prescribed in Arizona Constitution, Article IX, §§19 and 20; and (4) a majority of the members of the city/town council votes affirmatively on the transfer at a public meeting.

These budget adjustments are necessary to ensure compliance with state statutes and meet these criteria with City Council approval.

Financial Impact:

Per state statutes, the City is not allowed to increase our total budget after adoption, therefore we recommend transferring budget authority for a net zero impact to the total adopted budget to ensure compliance.

FY2023-24 Budget Adjustment:

- Decrease General Fund Non-Departmental Budget by $1,900,000.
- Increase Police Department Budget by $1,900,000.
- Decrease General Fund Non-Departmental Budget by $9,800.
- Increase City Manager's Office Budget by $9,800.

The additional $3.2 million contribution to PSPRS- Police Plan was funded with the following resources:

- $600,000 in expected savings with the Police Department operating budget
- $316,000 in savings from public safety radios replacement purchase
- $889,000 from the FY2023-24 pension set aside
- $1,395,000 from the FY2025-26 pension set aside (reserved funding with the General Fund 5-year plan)

The additional contribution to PSPRS - Police is consistent with the City's PSPRS Pension Funding Policy.

FY2024-25 Budget Adjustment:

- Decrease General Fund Non-Departmental Budget by $65,000
- Increase City Manager's Office Budget by $65,000

Policy Impact:
City Council has the responsibility to adopt an annual budget and this action would reallocate resources as adopted in June 2023.

Previous Council Decision or Community Discussion:
On June 4, 2024, Council approved the City's Public Safety Personnel Retirement System Pension Funding Policy. This Policy calls for the City to assure that PSPRS pension plans are 100% funded.

Options and Alternatives to Recommended Action:

- Approve the FY 2023-24 and FY2024-25 Budget Adjustments as recommended.
- Adjust and approve the FY 2023-24 and FY2024-25 Budget Adjustments.

Background and History:
For the June 30, 2023, actuarial report, the Police plan fell below 100% funded (97.7%). Therefore, staff made an additional $3.2M contribution in fiscal year 2023-24 to bring the plan back to fully funded. This contribution is being made with existing total budget capacity as required by state statutes. As noted earlier, resources will come from our pension savings set aside and savings from police operations. The set aside funds were part of the initial financing plan to help assure the plans are meeting their funded status. We will not need to use the PSPRS Contingency Reserve Fund. That fund remains intact for larger potential impact due to economic and market changes as well as material changes to the pension plan actuarial assumptions in the future. City staff met with Public Safety Personnel Safety Retirement staff to discuss the City's annual progress since our pension financing in August 2020 to better understand possible future changes in funding status and design an improved plan to maintain the 100% funded status of our plans. The two major factors for the decreasing in funded status are the impacts of higher than anticipated salary growth and actuarial audit adjustment.

The City Manager Division budget was not provided for a portion of the employee travel allowance and personnel costs were higher than anticipated when adopting the FY 2023-24 budget. The Division's budget, other than personnel, is only $20,177 and would be very difficult to maintain operations by cutting $9,800 out of this budget. For the $65,000 FY2024-25 budget adjustment, the salary increase was not anticipated and not within division's control. The Division budget outside of personnel is very limited making it impossible for the Division to make the necessary cuts to absorb this increase within that budget.

Connection to PBB Priorities and Objectives:
High Performing Governance: Maintain the organization's fiscal stability through strong financial policies and

best practices.

Connection to Regional Plan:
None.

Connection to Carbon Neutrality Plan:
None.

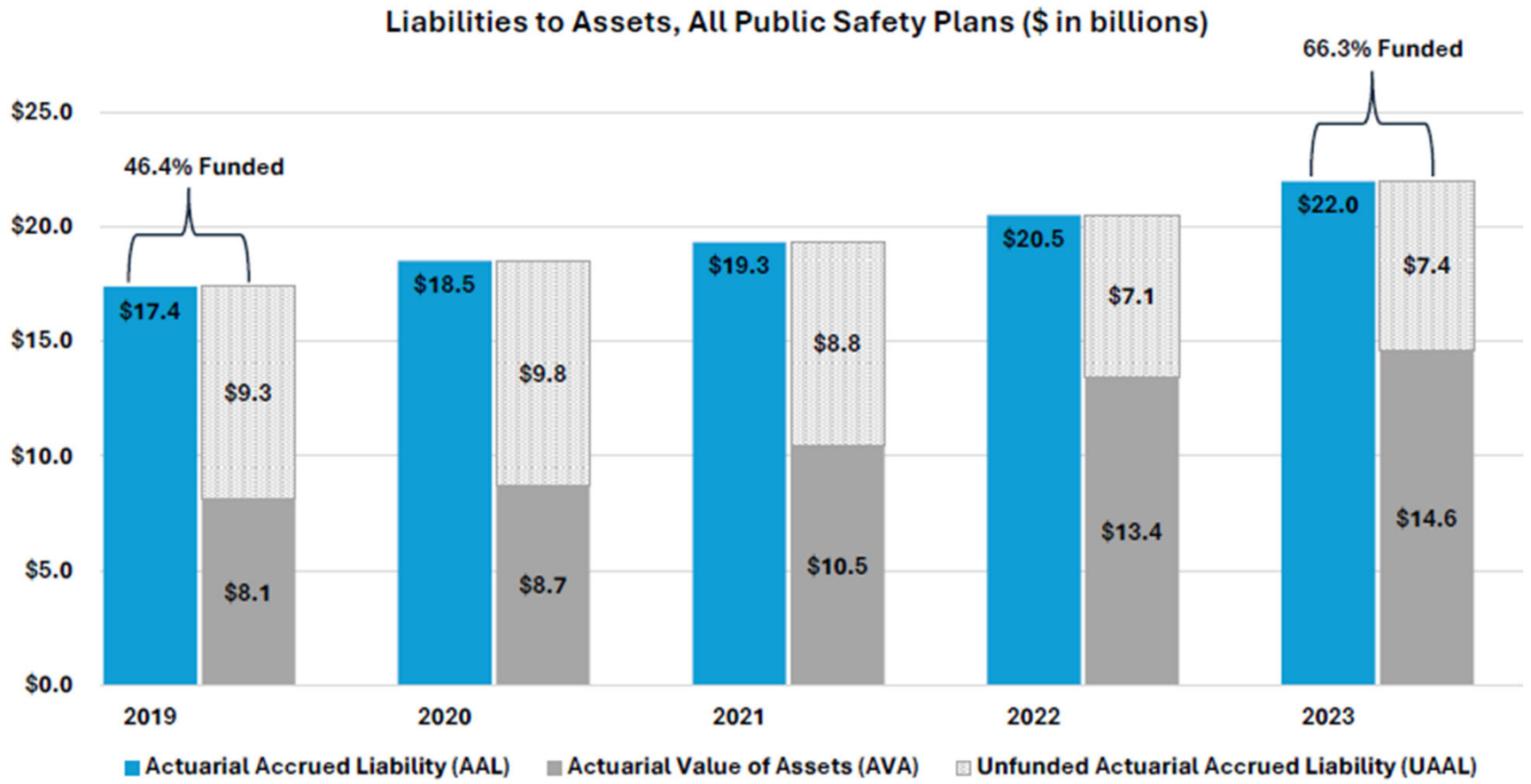
Connection to 10-Year Housing Plan:
None.

Connection to Division Specific Plan:
Maintain Public Safety Personnel Retirement Plans above 100% funded.

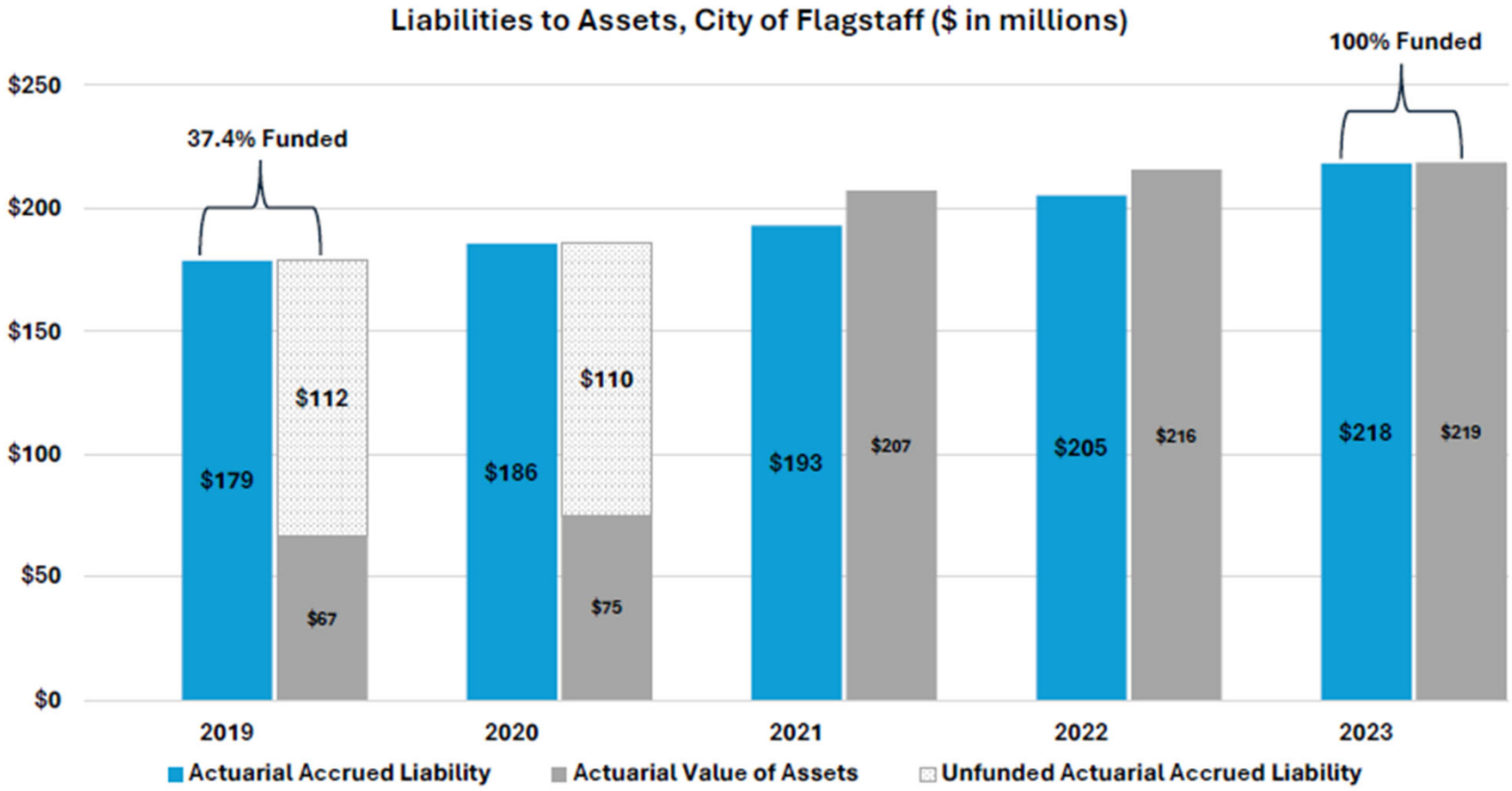
Attachments: Presentation

Additional Pension Contribution - FY2023-24 Budget Adjustment
CITY OF FLAGSTAFF
ARIZONA
ESTABLISHED 1882
TEAM FLAGSTAFF
WE MAKE THE CITY BETTER

PSPRS Pension Funding History



Flagstaff Pension Funding History



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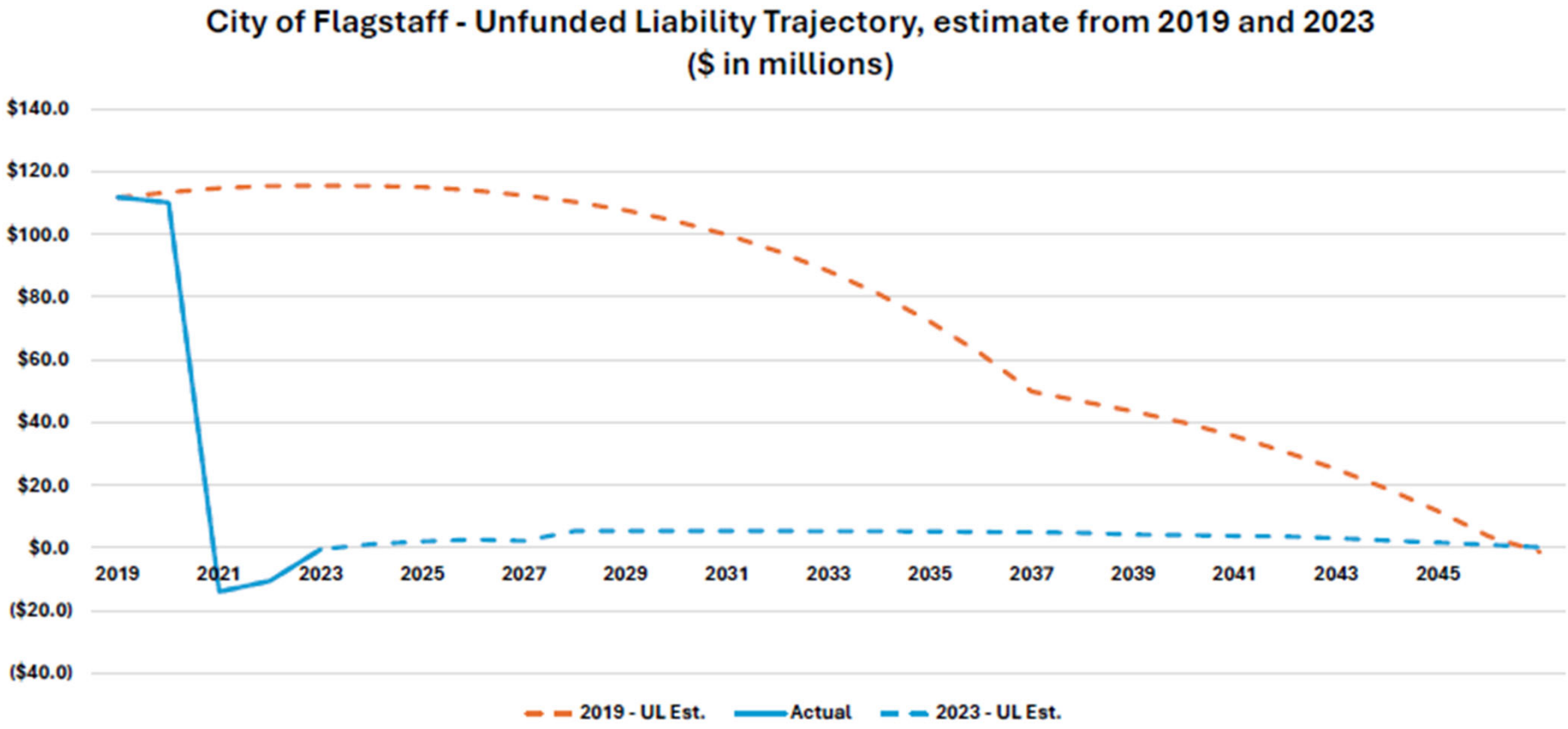


Flagstaff Pension Funding History

Financial Benefit from Pension Financing

- Deposited $116M into the PSPRS plans
- Market rate of returns
  - FY 2021 = 26.7%
  - FY 2022 = 4.2%
  - FY 2023 = 7.7%
  - FY 2024 = 10.0% (est.)
- Approximately $56 million in investment growth in PSPRS

WE ARE DOING BETTER WITH DEBT FINANCING THAN THE PSPSR ACTUARIAL MODEL!

- Debt Financing $131M at an effective rate of 2.69%
- Just under 4 year of interest expense ~ $14 million

- Deposited $14M into the Contingency Reserve Funds (CRF)
- More conservative investment per CRF policy ~ 2.4% annual return
- $1.3 million in investment growth in PSPRS

Flagstaff PSPRS Funding Policy

- Since the 2020 pension financing, the City maintains a commitment to stay at or above 100% funded
- Our Pension Policy considers the following to maintain funding levels
  - Contributions based on budget, not actuals
  - Continue City funding related to DROP employees
  - Calculate based on Normal Cost, do not include credits
  - Provide additional contribution from pension set aside
  - Provide additional contributions from the Contingency Reserve Fund ($15.5M current balance)

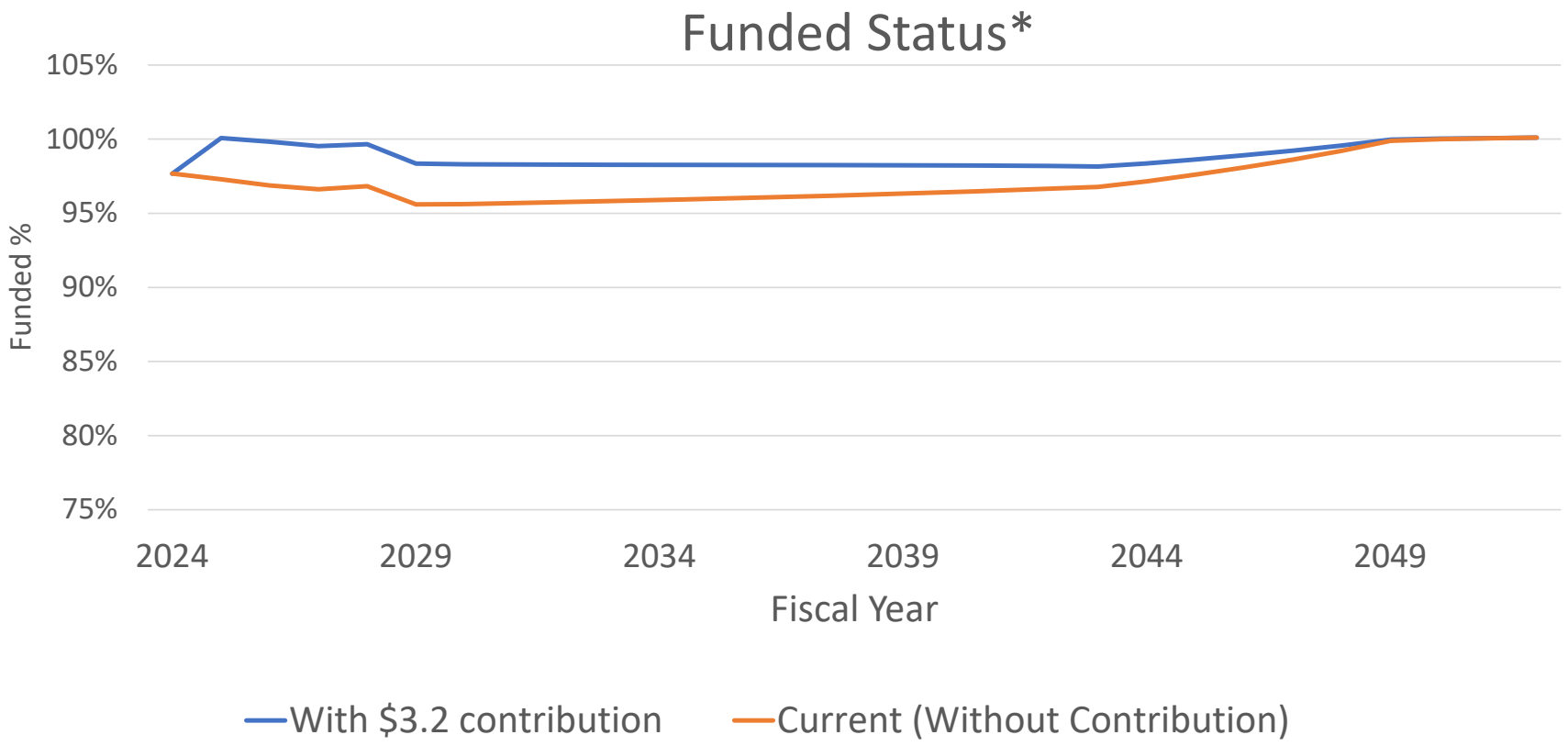
PSPRS – Police Plan

- As of 6/30/23: 97.7% funded status
- Underfunded by $2.5 million
- Causes:
  - Salary growth significantly greater than anticipated
  - Actuarial audit adjustments
  - Other actuarial assumption changes since 2020
    - Assumed Earning Rate Change from 7.4% to 7.2%
    - Assumed Payroll Growth Change from 3.5% to 2.0%

PSPRS – Police Plan

- The City made an additional contribution in June for $3.2M
- Payment based on our pension policy to stay 100% funded
- With the additional contribution:
  - We anticipate our funded status to be at or above 100% as of 6/30/24
  - Stabilize the annual contribution rates and amounts in future years
- Expect to be very close to 100% funded for next 5 years with only minor additional contributions needed

PSPRS – Police Plan



* Per the pension modeler provided by PSPRS.

Funding for $3.2M Contribution

Funding for the $3.2M Contribution

Staff were able to identify the following resources to fund the additional contribution

- $600,000 – savings in FY2023-24 police operation budget
- $316,000 – savings from public safety radio replacements purchase
- $889,000 – FY2023-24 pension contingency set aside
- $1,395,000 – FY2025-26 pension contingency set aside

- Pension Contingency Reserve funds were not used to fund this additional contribution.
- The FY2024-25 pension contingency set aside ($1,989,000) is still available if needed.

Questions?
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CITY BETTER