

CONTRACT FOR SERVICES
Contract No.: 2025-114

This Contract is entered into this ____ day of _____, 20__ by and between the City of Flagstaff, a political subdivision of the State of Arizona (“City”), and **Open Sky Productions LLC, a Utah Limited Liability Company** (“Contractor”).

WHEREAS, the City of Flagstaff desires to receive and Contractor is able to provide the professional services described in more detail below and in the Scope of Work.

NOW THEREFORE, in consideration for the mutual promises contained herein, the City and Contractor (the “Parties”) agree as follows:

SERVICES

1. **Scope of Work:** Contractor shall provide the professional services generally described as follows:

Fourth of July Drone Show

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

2. **Schedule of Services:** Contractor shall perform all work per the schedule set forth in Exhibit A and in accordance with the terms and conditions set forth in this Contract (“Services”).
3. **Show Date and Launch Time:** The drone show will take place on July 4, 2025, at least twenty (20) minutes after sunset.
4. **Overview of Contractor Services:** Subject to the terms of this Agreement Contractor will provide the following Services:
 - a. FAA flight authorization.
 - b. Launch site check (as applicable).
 - c. Full custom show design with 22-40 animations.
 - d. Custom soundtrack synchronized to the show design.
 - e. Standard media package (10 images, 60-90 second drone show highlight video).
 - f. Show size: 300 drones.
 - g. Duration of show: 23-25 minutes (extended show length).
 - h. Staff travel and expenses.
 - i. Equipment freight and logistics expenses.
 - j. Set up, installation, dismantle of equipment.
5. **Event Site:** The Fourth of July Drone Show Services will be provided at the following location:

Coconino High School Ball Fields
2801 N. Izabel St.
Flagstaff, AZ 86004

6. Contractor Permits: Contractor will be responsible for providing the Special Flight Operations Certificate from the FAA and any other necessary flight authorizations, if required (the "Contractor Permits"). All permits licenses and authorizations other than the Contractor Permits will be the sole responsibility of the City.
7. FAA Approval: Drone shows are subject to the Contractor obtaining the Contractor Permits. In the event such Contractor Permits are not obtained for any reason (other than the failure of the City to provide any information reasonably requested by the Contractor to obtain such Contractor Permits), this Contract shall terminate, and the sole right and remedy of the City shall be a refund of any prepaid amounts.
8. Approval of Renderings: City will approve all show design renderings no later than five (5) days before the show, which approval is final and binding, and the Contractor will perform the show substantially as presented.
9. Performance. The City acknowledges that performance of the Services are subject to reasonable technical or other errors, and that the Services shall be deemed to be fully performed provided that at least 90% of the drones function substantially in the manner intended for the Services.
10. Limited Warranty. All Services to be provided hereunder will be provided in a good and professional manner and in accordance with applicable laws. The Contractor will not knowingly infringe upon the intellectual property rights of third parties.
11. Force Majeure. The Contractor shall not be liable for any modification of the Services or any failure to perform or delay in performance under this Contract if such modification, failure, or delay is due to any strike, lockout, riot, civil commotion, sabotage, embargo, epidemic, inclement weather, act of government, war, act of God or other cause beyond its reasonable control (each a "Force Majeure Event"). Without limiting the foregoing, the City acknowledges that the performance of the Services and the safety of all persons present is dependent upon suitable weather conditions on the day of the event. The Contractor will have the sole discretion to determine if weather conditions are suitable for performance of the Services, and may delay, modify, or cancel the Services in their sole discretion.
12. Cancellations. The City acknowledges that the Contractor will spend considerable time and resources in planning the Services, traveling to the event venue and in setting up to perform the Services. In the event of cancellation due to a Force Majeure Event or failure of City to fulfill its contractual obligations, the City will be issued a credit (the "Credit") equal to the amount of the Deposit less any expenses incurred prior to cancellation, including but not limited to labor costs, fees for Contractor Permits and other expenses. The Credit may be applied to a future event to be scheduled within one (1) year of the date of the original event date. Future event dates will be scheduled based on availability at the time of booking. Any unused credits will expire one (1) year following the original event date. The foregoing credit shall be the City's sole right in the case of any Force Majeure Event and in no case will the City be entitled to any refund of any amounts paid.
13. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.

14. Key Personnel/Subcontractors: Firm's Key Personnel, Subcontractors (if any), and contact information are designated in Exhibit A. Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The City Representative for this Contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

CITY RESPONSIBILITIES

15. City Representative: The City Representative is Amy Hagin, Assistant Parks and Recreation Director, or their designee. All communications to the City shall be through the City Representative. City Representative is responsible for bringing any request for a Contract amendment or price adjustment to the attention of the City Buyer.
16. City Cooperation: City will cooperate with Contractor by placing at its disposal all available information concerning the City, City property, or the City program reasonably necessary for Firm's performance of this Contract.
17. Launch and Flight Area: City agrees to provide, at its own expense, access and permission to use the location specified for the show, in such form as the Contractor may require, in order to obtain the Contractor Permits and for event coordination, which must be provided at least seven (7) days prior to the scheduled event date. Approval and confirmation of the Latitude and Longitude for the event site must be confirmed by the City in writing upon signing this Agreement, as the site location and characteristics may influence the design and performance of the Services.
18. Event Site Security: City will provide all necessary security services to ensure the safety of Contractor equipment and personnel.

CONTRACT TERM

19. Contract Term: The Contract shall be effective as of the date signed by both parties and shall terminate when all obligations under this Contract and the attached Scope of Work have been performed.
20. Termination: This Contract may be terminated pursuant to the Standard Terms and Conditions attached hereto as Exhibit B.

PAYMENT

21. Compensation: Contractor shall be paid **ninety-five thousand dollars and zero cents (\$95,000.00)** for satisfactory performance of the services in accordance with the Scope of Work identified in Exhibit A. Fifty percent of the total compensation (\$47,500) is due as a deposit upon execution of this Contract. The remaining fifty percent (\$47,500) is due within seven (7) days of satisfactory completion of Contractor's Services.
22. Price Adjustment: Any price adjustment must be approved by the City in writing as a formal Contract Amendment. The City Manager or his/her designee (the Purchasing Director) may approve an amendment if the total amount of the Contract as amended is less than \$100,000; otherwise, City Council approval is required.

INSURANCE

23. Insurance: Contractor shall meet the minimum insurance requirements of the City, as set forth in Exhibit C.
24. Indemnification: Contractor agrees to indemnify, defend, save, and hold harmless the City, its officers, officials, agents, and employees from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses, including court costs, attorney's fees, and costs of claim processing, investigation and litigation (hereinafter collectively referred to as "Claims") that arise out of any actual or alleged bodily injury to any person (including death) or property damage caused or alleged to have been caused, in whole or in part, by the acts, errors, omissions, or negligence of the Contractor or any of Contractor's directors, officers, agents, employees, or volunteers in connection with or incident to this Contract. This indemnity provision shall survive the termination, cancellation, or revocation, whether in whole or in part, of this Contract.

MISCELLANEOUS

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

To the City:
 Emily Markel
 Purchasing Manager
 City of Flagstaff
 211 W. Aspen
 Flagstaff, Arizona 86001
emarkel@flagstaffaz.gov

To Contractor:
 Nathan Mortensen
 CEO
 Open Sky Productions, LLC
 922 S 500 W
 Salt Lake City, UT 84101
nate@openskypro.com

With a copy to:
 Amy Hagin
 Assistant Park and Recreation Director
 City of Flagstaff
 211 W. Aspen
 Flagstaff, AZ 86001
AHagin@flagstaffaz.gov

With a copy to:
 Haley Reynolds
 Recreation Supervisor
 City of Flagstaff
 211 W. Aspen
 Flagstaff, AZ 86001
Haley.Reynolds@flagstaffaz.gov

26. Authority: Each party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.

(Remainder of Page Intentionally Left Blank)

OPEN SKY PRODUCTIONS, LLC.

Print name:_____

Title:_____

CITY OF FLAGSTAFF

Print name:_____

Title:_____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

Notice to Proceed issued: _____, 2025



OPEN SKY

DRONE LIGHT SHOWS

Show Contract

Open Sky Productions, LLC (the "Company")
922 S 500 W STE F
Salt Lake City, UT 84101
801-996-4857

Date: March 12, 2025

Project Reference: Drone Shows for City of Flagstaff July 4th, 2025
To: Haley Reynolds, City of Flagstaff (the "Client")
Address: 2323 N Walgreen Blvd, Flagstaff, AZ 86004

Show Date(s): July 4th, 2025
Launch Time: At least 20 min after sunset
Show Size: 300 drones
Venue Name & Address: Coconino High School Ball Fields - 2801 N Izabel St, Flagstaff, AZ 86004

1) Company Services:

- a) Subject to the terms of this Agreement the Company will provide the following services (the "**Services**"):
 - i) FAA flight authorization
 - ii) Launch site check (as applicable)
 - iii) Full custom show design with 22-40 animations
 - iv) Custom soundtrack synchronized to the show design
 - v) Standard media package (10 images, 60-90 second drone show highlight video)
 - vi) Duration of show: 23-25 minutes (extended show length)
 - vii) Staff travel and expenses
 - viii) Equipment freight and logistics expenses
 - ix) Set up, installation, dismantle of equipment
- b) The Company will be responsible for providing the Special Flight Operations Certificate from the FAA and any other necessary flight authorizations, if required (the "**Company Permits**"). All permits licenses and authorizations other than the Company Permits will be the sole responsibility of the Client.

2) Client Responsibilities:

- a) Access and permission to use the location specified for the show, in such form as the Company may require, in order to obtain the Company Permits and for event coordination, which must be provided at least seven (7) days prior to the scheduled event date
- b) An appropriate site for the Services to be performed. Approval and confirmation of the Latitude and Longitude for the event site must be confirmed by the Client in writing upon signing this Agreement, as the site location and characteristics may influence the design and performance of the Services
- c) All necessary security services to ensure the safety of Company equipment and personnel
- d) All permits, licenses, and authorizations necessary for the event and Services, save and except for the Company Permits.

3) Price Includes:

- a) The Services described above
- b) The Company Permits

- c) Company travel to and from the event location
- a) General Aviation Liability Insurance and Workers Comp coverage

4) Price and Payment Terms:

- a) Price for Services: \$95,000 (Final Price)
 - i) 50% due as deposit upon signing of contract
 - ii) 50% due upon completion of Company Services

5) Additional Provisions:

- a) The Client will approve all renderings no later than 5 days before the show, which approval is final, and binding and the Company will perform the show substantially as presented
- b) Company shall provide evidence to the Client of workers' compensation coverage of at least \$1,000,000
- c) Company shall provide evidence to the Client of owned automotive liability insurance of at least \$2,000,000
- d) Company shall provide evidence to the Client of general liability insurance of at least \$5,000,000
- e) Company shall provide evidence to the Client of aviation liability insurance of at least \$5,000,000

6) General:

- a) The Terms and Conditions attached as Schedule "A" form part of this Agreement. By signing below the parties each acknowledge that they have had an opportunity to review such terms and conditions and the parties accept and agree to such terms.
- b) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic signature and/or transmitted in electronic form and the parties to this Agreement consent thereto.

THE PARTIES have entered into this Agreement as of.

For and on Behalf of
Open Sky Productions, LLC

The above quotation is accepted by:

Authorized Signature

Name: Nathan Mortensen

Title: CEO

Date: 3/12/2025

Authorized Signature

Name:

Title:

Date:

Schedule "A" - Terms and Conditions

1. **Deposits.** A non-refundable deposit equal to fifty percent (50%) of the total price (the "Deposit") is required upon execution of this Agreement to secure your booking. If a show is booked within two weeks (14 days) of the required date, then full payment is required upon booking.
2. **Payment.** All payments shall be made by way of a money transfer, wire transfer, or other form of immediately available funds. Any amounts not paid when due hereunder shall accrue interest at the rate of 12% per annum, compounding monthly.
3. **FAA Approval.** Drone shows are subject to the Company obtaining the Company Permits. In the event such Company Permits are not obtained for any reason (other than the failure of the Client to provide any information reasonably requested by the Company to obtain such Company Permits), this Agreement shall terminate, and the sole right and remedy of the Client shall be a refund of any prepaid amounts. In the event such Company Permits are not obtained due to the failure of the Client to provide any information reasonably requested by the Company, this Agreement shall terminate, without liability of the Company to the Client, and the Company shall be entitled to retain the Deposit as liquidated damages, which amount the parties agree is a reasonable estimate of the Company's damages in such circumstance.
4. **Performance.** The Client acknowledges that performance of the Services are subject to reasonable technical or other errors, and that the Services shall be deemed to be fully performed provided that at least 90% of the drones function substantially in the manner intended for the Services.
5. **Limited Warranty.** All Services to be provided hereunder will be provided in a good and professional manner and in accordance with applicable laws. The Company will not knowingly infringe upon the intellectual property rights of third parties.
6. **Disclaimer of Warranties.** The Company makes no representation or warranty whatsoever either expressed or implied, statutory, or otherwise other than as expressly set forth herein and the Client hereby waives the benefit of any such expressed or implied, statutory or other representations or warranties.
7. **Force Majeure.** The Company shall not be liable for any modification of the Services or any failure to perform or delay in performance under this Agreement if such modification, failure, or delay is due to any strike, lockout, riot, civil commotion, sabotage, embargo, epidemic, inclement weather, act of government, war, act of God or other cause beyond its reasonable control (each a "**Force Majeure Event**"). Without limiting the foregoing, the Client acknowledges that the performance of the Services and the safety of all persons present is dependent upon suitable weather conditions on the day of the event. The Company will have the sole discretion to determine if weather conditions are suitable for performance of the Services, and may delay, modify, or cancel the Services in their sole discretion.
8. **Cancellations.** The Client acknowledges that the Company will spend considerable time and resources in planning the Services, traveling to the event venue and in setting up to perform the Services. In the event of cancellation due to a Force Majeure Event or failure of client to fulfill their contractual obligations, the Client will be issued a credit (the "Credit") equal to the amount of the Deposit less any expenses incurred prior to cancellation, including but not limited to labor costs, fees for Company Permits and other expenses. The Credit may be applied to a future event to be scheduled within one (1) year of the date of the original event date. Future event dates will be scheduled based on availability at the time of booking. Any unused credits will expire one (1) year following the date of the original event. The foregoing credit shall be the Client's sole right in the case of any Force Majeure Event and in no case will the Client be entitled to any refund of any amounts paid.
9. **Insurance.** The parties will each maintain and keep in force during the term of this Agreement general or aviation liability insurance including coverage for personal injury, products liability, and contractual liability, in the amount equivalent to at least USD \$2,000,000.00
10. **Limitation of Liability.** Limitation of Liability. The aggregate liability of the respective parties, and their officers, directors, employees, agents, and consultants (who shall collectively be included in the definition of the "Company" or "Client" for purposes of this section), whether arising under this agreement, contract, tort, negligence, statutory liability or other legal theory, shall be limited to the direct and actual money damages effectively incurred by the indemnified party.
11. **Mutual Indemnity.** Mutual Indemnity. The Company agrees to defend, indemnify and hold harmless the Client, its' employees, agents, invitees and/or volunteers from any claims, demands, causes of action, liability, loss, property damage or any type of damage and/or injury (to property or person, including without limitation wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state or local government body or agency, arising out the services provided by the Company. The Client agrees to defend, indemnify and hold harmless the Company, its' employees, agents, invitees and/or volunteers from any claims, demands, causes of action, liability, loss, property damage or any type of damage and/or injury (to property or person, including without limitation wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state or local government body or agency, arising out of or incident to any acts, omissions, negligence, or conduct of the Client, its personnel, employees, agents, contractors, or volunteers in connection with or arising out of the Client's negligence, or intentional acts or failure to act, arising out of this Agreement.
12. **Termination.** Without limiting any other rights or remedies available at law or in equity or otherwise, the Company may terminate this Agreement if:
 - (a) the Client is in breach or default of any of its obligations under this Agreement and such breach or default continues unrectified for fifteen (15) days following the provision of written notice of such breach or default.
 - (b) the Client enters into proceedings in bankruptcy or insolvency, makes an assignment for the benefit of its creditors, is adjudged to be bankrupt or insolvent, a petition is filed against the Client under a bankruptcy law, corporate reorganization law, or any other law for the relief of debtors or similar law or a receiver, trustee or similar person is appointed with respect to the Consultant's assets; or
 - (c) the Client ceases to carry on its business.
13. **Assignment.** Neither the Company nor the Client shall have the right to transfer or assign this Agreement or any rights, remedies, obligations or benefits hereunder without the prior written permission from the other party.
14. **Waiver.** The waiver of one breach or default shall not constitute the waiver of any subsequent breach or default and shall not act to amend or negate the rights of any party.
15. **Severability.** Any provision of this Agreement prohibited by or unlawful or unenforceable under any applicable law shall, at the sole option of the Company, be ineffective without invalidating the remaining provisions of this Agreement; provided, however, that to the extent that the provisions of any such applicable law can be waived, they are hereby waived by the Client.
16. **Relationship.** The relationship between the Company and the Client will, at all times be one of independent contractors and nothing herein shall be construed as implying a partnership or joint venture relationship.
17. **Headings.** The inclusion in this Agreement of headings and subheadings is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
18. **Applicable Laws.** This Agreement shall be governed by the laws of the State of Utah. Jurisdiction and venue shall be the courts of Utah in and for Salt Lake County.
19. **Entire Agreement.** This Agreement contains the entire understanding between the parties and other than as expressly set forth herein there are no other terms, conditions, representations, or warranties of any kind. This Agreement may not be modified except by another agreement, in writing, signed by both parties to this agreement.

EXHIBIT B

STANDARD TERMS AND CONDITIONS

(Last Updated January 19, 2023)

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

IN GENERAL

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

MATERIALS

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

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

PAYMENT

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

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

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

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

SERVICES

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

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

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

INSPECTION. RECORDS. ADMINISTRATION

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

INDEMNIFICATION

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

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

39. RESERVED.

CONTRACT CHANGES

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

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

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

EMPLOYEES AND SUBCONTRACTORS

47. **SUBCONTRACTING:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. The City reserves the right to withhold consent if the subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
48. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition, any Contractor whose business is located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02, *Civil Rights*, which also prohibits discrimination based on sexual orientation, or gender identity or expression.
49. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor's personnel shall abstain from use or possession of illegal drugs while engaged in performance of the Contract.
50. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors shall comply with all state and federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of state and federal immigration laws and regulations shall constitute a material breach of the Contract and shall subject Contractor to penalties up to and including termination of the Contract. The City may, at its sole discretion, conduct random verification of the employment records of the employees of the Contractor and any subcontractors to ensure compliance with all state and federal immigration laws and regulations. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contract if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

DEFAULT AND TERMINATION

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

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

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

MISCELLANEOUS

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

- 68. NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no cents (\$100,000), the Party shall certify that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.
- 69. CHANGES TO CONTRACT:** The Contract shall not be modified within the first year after Contract award where: (a) an amendment may result in a competitive advantage that was not made available to other proposers/bidders; or (b) requests for changes may delay commencement of performance.
- 70. FORCED LABOR OF ETHNIC UYGHURS:** If Contractor engages in for-profit activity and has ten (10) or more employees, pursuant to A.R.S. §35-394, the Contractor certifies that it does not currently, and agrees for the duration of the contract that it will not, use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and 3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Contractor becomes aware during the term of the contract that the company is not in compliance with the written certification, the Contractor shall notify the City within five (5) business days after becoming aware of the noncompliance. If the Contractor does not provide the City with a written certification that the Contractor has remedied the noncompliance within 180 days after notifying the City of the noncompliance, this Contract terminates, except that if the contract termination date occurs before the end of the remedy period the Contract terminations on the Contract termination date.

EXHIBIT C

SPECIAL INSURANCE REQUIREMENTS

(Open Sky Productions, LLC)

(Last Updated January 19, 2023)

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

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

Where applicable, as related to the Scope of Work, Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$5,000,000
Each Occurrence	\$5,000,000
Personal & Advertising Injury	\$3,000,000
Errors & Omissions/Professional	\$1,000,000

b. Automobile Liability

Any Automobile Owned	\$2,000,000
Hired, and Non-owned Vehicles	\$1,000,000
Combined Single Limit Per Accident for Bodily Injury & Property Damage	

c. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$1,000,000
Disease - Each Employee	\$1,000,000
Disease - Policy Limit	\$1,000,000

d. Aviation Liability \$5,000,000

4. RESERVED NOT REQUIRED

- 5. SELF-INSURED RETENTION:** Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that Contractor reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and/or subcontractors. Contractor shall be solely responsible for any self-insured retention amounts. The City at its option may require Contractor to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.
- 6. OTHER INSURANCE REQUIREMENTS:** The insurance policies shall contain, or be endorsed to contain, the following provisions:
- a. Additional Insured: In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents, employees, and/or subcontractors shall be named and endorsed as additional insureds with respect to liability arising out of the Contract and activities performed by or on behalf of Contractor, including products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
 - b. Broad Form: Contractor's insurance policy shall contain broad form contractual liability coverage.
 - c. Primary Insurance: Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and/or subcontractors. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and/or subcontractors shall be in excess of the coverage of Contractor's insurance and shall not contribute to it.
 - d. Each Insured: Contractor's insurance policies shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Not Limited: Coverage provided by Contractor shall not be limited to the liability assumed under the indemnification provisions of the Contract.

f. Waiver of Subrogation: The insurance policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees, and/or subcontractors for losses arising from work performed by Contractor for the City.

7. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of the Contract shall provide the required coverage and shall not be suspended, voided, cancelled, and/or reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Procurement Agent and shall reference the Contract Number.
8. **ACCEPTABILITY OF INSURERS:** Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a “Best’s” rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency.
9. **CERTIFICATES OF INSURANCE:** Contractor shall furnish the City with certificates of insurance (ACORD form) as required by the Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City Contract number shall be noted on the certificates of insurance. If requested by the City, all certificates of insurance and endorsements must be received and approved by the City before the Contractor commences work.
10. **POLICIES:** The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by the Contract. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City’s receipt of Contractor’s policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City’s right to insist on strict fulfillment of Contractor’s obligations under the Contract.
11. **MODIFICATIONS:** Any modification or variation from the insurance requirements in the Contract must have the prior approval of the City’s Attorney’s Office in consultation with the City’s Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.