CITY COUNCIL REGULAR MEETING AGENDA

REGULAR COUNCIL MEETING
TUESDAY
JANUARY 21, 2025

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 SWEET
COUNCILMEMBER ASLAN
COUNCILMEMBER GARCIA
COUNCILMEMBER HOUSE
COUNCILMEMBER MATTHEWS
COUNCILMEMBER SPENCE

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. **Proclamation**: Martin Luther King Day

6. COUNCIL LIAISON REPORTS

7. APPOINTMENTS

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 the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body...., pursuant to A.R.S. §38-431.03(A)(1).

A. **Consideration of Appointments:** Heritage Preservation Commission

STAFF RECOMMENDED ACTION:

1. Make two appointments to terms expiring in December 2027.

8. LIQUOR LICENSE PUBLIC HEARINGS

Applications under Liquor License Public Hearings may be considered under one public hearing and may be acted upon by one motion unless otherwise requested by Council.

STAFF RECOMMENDED ACTION:

1. Open the Public Hearing
2. Staff Presentation
3. Council Questions
4. Public Comment
5. Close Public Hearing
6. Council Deliberation and Action

The City Council has the option to:

1. Forward the application to the State with a recommendation for approval;
2. Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

A. **Consideration and Action on Liquor License Application:** Kyle Winfree, "All You Mead", at 2781 W Pico Del Monte Cir, Series 13 (Farm Winery), New License

STAFF RECOMMENDED ACTION:

1. Forward the application to the State with a recommendation for approval;
2. Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

B. **Consideration and Action on Liquor License Applications:** Lauren Kay Merrett, "Majestic Marketplace," 601 E Piccadilly Dr, Series 07 (Beer and Wine Bar) and Series 09 (Liquor Store), Owner Transfers.

STAFF RECOMMENDED ACTION:

1. Forward both applications to the State with a recommendation for approval;
2. Forward both applications to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

9. 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:** Approve the Cooperative Purchase Contract with Black & Veatch for Engineering Services on the Rio de Flag Water Reclamation Plant Backup Generators ("the Project") in the amount of $400,000.00.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract with Black & Veatch ("Consultant") for Engineering Services on the Rio de Flag Water Reclamation Plant Backup Generators in the amount of $400,000.00; and
2. Authorize the City Manager to execute the necessary documents.

B. **Consideration and Approval of Contract:** Cooperative Purchase Contract with Samsara, Inc. in the amount of $173,643.52, for the vehicle telematics licensing (hardware is included) for a 36-month period. This contract will provide telematics for specified units with the Streets, Solid Waste, Fleet Services, Sustainability, Library, Water Services, and PROSE sections/divisions.

STAFF RECOMMENDED ACTION:

1. Approve the 36-month Cooperative Purchase Contract with Samsara, Inc. in the amount of $173,643.52; and
2. Authorize the City Manager to execute the necessary documents.

C. **Consideration and Approval of Contract:** First Amendment to the Contract for Purchase of Materials with Mountain States Pipe & Supply Co. in the amount of $549,587.27 for Itron Encoder Receiver Transmitters (ERT) Endpoints and related parts and supplies.

STAFF RECOMMENDED ACTION:

1. Approve the First Amendment to the Contract for Purchase of Materials with Mountain States Pipe & Supply Co. in the amount of $549,587.27 for Itron Encoder Receiver Transmitters Endpoints and related parts and supplies for a total contract amount of $749,587.27; and
2. Authorize the City Manager to execute all necessary documents.

10. ROUTINE ITEMS

A. **Consideration and Approval:** 2025 State and Federal Legislative Priorities

STAFF RECOMMENDED ACTION:

Review and approve the 2025 State and Federal Legislative Priorities.

B. **Consideration and Approval of Grant Agreement:** Approve the Grant Agreement with State of Arizona Department of Public Safety for the Anti-Trafficking Grant Award of $428,658.00.

STAFF RECOMMENDED ACTION:

Approve the acceptance of the grant from the State of Arizona Department of Public Safety Anti-Human Trafficking grant funds in the amount of $428,658.00 for FY2024-2025.

C. **Consideration and Approval of Contracts:** (1) Design Build Services Contract, (2) City Conduit Lease Agreement, (3) City Fiber Network Maintenance Agreement, and (4) Fiber License Agreement, all with Wecom, LLC.

STAFF RECOMMENDED ACTION:

1. Approve (1) Design Build Services Contract, (2) City Conduit Lease Agreement, (3) City Fiber Network Maintenance Agreement, and (4) Fiber License Agreement, all with Wecom, LLC.
2. Authorize the City Manager to execute the necessary documents.

11. REGULAR AGENDA

A. **Consideration and Approval of Grant Agreement:** Approve the Grant Agreement with the Department of Emergency Management and Military Affairs (DEMA) for the Rio de Flag Water Reclamation Plant Backup Generators.

STAFF RECOMMENDED ACTION:

1. Approve the Grant Agreement with DEMA for the Hazard Mitigation Grant Program (HMGP) for Rio de Flag Water Reclamation Plant Backup Generators (HMGP DR-4524-16-11R) for $450,000.00 (90% State Share), with a $50,000.00 (10% local match) requirement; and
2. Authorize the City Manager to execute all necessary documents.

12. OPEN CALL TO THE PUBLIC

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

14. 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 _____, 2025.

_____
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: Georganna Staskey, Deputy City Clerk

Date: 01/15/2025

Meeting Date: 01/21/2025

TITLE:
Consideration of Appointments: Heritage Preservation Commission

STAFF RECOMMENDED ACTION:

1. Make two appointments to terms expiring in December 2027.

Executive Summary:
The Heritage Preservation Commission shall consist of seven (7) voting members. Additional members may be appointed in the future, if and when additional Historic Design Review Districts beyond the first district are created, to represent those additional districts and help develop and adopt design guidelines for those districts. Appointed members shall have an interest in the history of the community and heritage preservation and be committed to represent not only their specific areas of expertise, but also the community at large.

The City of Flagstaff is committed to increasing diversity in every board and commission, please consider how the applicant stated they may contribute to this commitment.

There are three (3) applications on file for voting members. The applications are as follows:

- Abbey Buckham (Current Commissioner)
- Bernadette Burcham (Current Commissioner)
- Jeanne Stevens (new applicant)

In an effort to reduce exposure to personal information, the applicant roster and applications will be submitted to the City Council separately.

COUNCIL APPOINTMENT ASSIGNMENT: Councilmember House and Councilmember Matthews

Financial Impact:
These are voluntary positions and there is no budgetary impact to the City of Flagstaff.

Policy Impact:
None.

Previous Council Decision or Community Discussion:
None.

Options and Alternatives to Recommended Action:

1. Appoint two Commissioners: By appointing members at this time, the Heritage Preservation Commission will have one additional Historic Property Owner seat available, this still

allows the group to meet and provide recommendations to the City Council.
2. Postpone the action to allow for further discussion or expand the list of candidates.

Connection to PBB Priorities and Objectives:
Inclusive and Engaged Community - Foster community pride and civic engagement; advance social equity and social justice in Flagstaff; facilitate and foster diversity and inclusivity; and enhance community outreach and engagement opportunities.

Connection to Regional Plan:
None.

Connection to Carbon Neutrality Plan:
None.

Connection to 10-Year Housing Plan:
None.

Attachments: Heritage Preservation Commission Authority

CHAPTER 2-19
HERITAGE PRESERVATION COMMISSION

SECTIONS:

2-19-001-0001 ESTABLISHMENT OF THE COMMISSION
2-19-001-0002 MEMBERSHIP
2-19-001-0003 TERMS AND OFFICERS
2-19-001-0004 MEETINGS
2-19-001-0005 POWERS AND DUTIES

2-19-001-0001 ESTABLISHMENT OF THE COMMISSION:

There is hereby created a commission to be known as the Heritage Preservation Commission. (Ord. 2010-35, Amended, 11/16/2010)

2-19-001-0002 MEMBERSHIP:

A. The membership of the commission shall consist of seven (7) voting members. Additional members may be appointed in the future, if and when additional Historic Design Review Districts beyond the first district are created, to represent those additional districts and help develop and adopt design guidelines for those districts.

1. At least two (2) members must be professionals in the areas of architecture, history, architectural history, planning, or archaeology.

2. At least two (2) members shall be owners of locally designated historic properties or properties listed on the National Register of Historic Places.

3. At least three (3) members shall be from the general community.

4. Any member may satisfy more than one (1) of the above qualifications and any "professional" category may be filled by a person who is retired from that profession.

B. Appointed members shall have an interest in the history of the community and heritage preservation and be committed to represent not only their specific areas of expertise, but also the community at large. (Ord. 2005-08, Amended, 04/05/2005; Ord. 2007-07, Amended, 02/06/2007; Ord. 2010-35, Amended, 11/16/2010; Ord. 2014-28, Amended, 11/18/2014; Ord. 2015-22, Amended, 01/05/2016; Ord. 2016-33, Amended, 09/20/2016)

2-19-001-0003 TERMS AND OFFICERS:

A. Terms of appointment shall be three years, or until a successor is appointed.

B. A chairperson and vice-chairperson shall be elected from and by the voting membership of the Commission to serve one-year terms. A chairperson may serve no more than two consecutive terms as chairperson (exclusive of a term as vice-chairperson). Upon the conclusion of a second,

consecutive term as chairperson, such commission member shall be ineligible to serve as either Chairperson or Vice-Chairperson until a calendar year has expired. (Ord. 2010-35, 11/16/2010)

2-19-001-0004 MEETINGS:

The Commission shall at a minimum hold at least one (1) regular meeting quarterly, but shall normally hold monthly meetings.

A quorum shall consist of four (4) voting members of the Commission. (Ord. 2005-08, Amended 04/05/2005; Ord. 2010-35, Amended, 11/16/2010; Ord. 2016-30, Amended, 07/05/2016)

2-19-001-0005 POWERS AND DUTIES:

A. The Commission may recommend to the City Council that properties be designated landmarks or historic design review districts, subject to the procedures and requirements of the adopted land use regulations and/or development code of the City of Flagstaff. See Title 10, Chapter 30 of the City Code for Purpose, Applicability, Procedures and Requirements.

B. The Commission shall increase public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs.

C. The Commission shall advise and assist owners of landmarks or historic structures on physical and financial aspects of preservation, renovation, rehabilitation, and reuse.

D. The Commission shall make recommendations to the City Council concerning the utilization of federal, state, local or private funds to promote the preservation of landmarks and historic districts within the City.

E. The Commission may recommend acquisition of landmark structures by the City where:

1. Preservation is essential to the purposes of the Land Development Code;

2. Private preservation is not feasible, and where either imminent demolition is pending or, for a period in excess of one year, required maintenance of said structures according to City Building Codes has not been accomplished due to deficiencies of ownership affecting maintenance; and

3. Where preservation of said structures is related to some other existing plan or report.

F. The Commission shall review and make decisions on any development application for a Certificate of Appropriateness and require the same plans to be submitted to the Development Review Board, plus applicable elevation drawings.

G. The Commission shall develop and adopt design guidelines for historic and non-historic structures within designated design review districts, or individual historic structures or landmarks, to assist property owners and developers in preservation, renovation, rehabilitation, and reuse of historic structures and others within designated districts. If there is more than one designated

district, the Commission shall develop appropriate design guidelines for each district. The design guidelines, and major amendments thereto, shall be subject to a public hearing before the Commission, including notification of the property owners within the district to which they would apply, per procedures outlined in Section 10-30.30 of the City Code.

H. The Commission shall carry out other such duties as determined by the City Council; and present other recommendations the City Council deems pertinent. (Ord. 1857, Enacted, 02/07/1995; Ord. 1997, Amended, 06/15/1999; Ord. 2010-35, Amended, 11/16/2010)

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Georganna Staskey, Deputy City Clerk

Date: 01/15/2025

Meeting Date: 01/21/2025

TITLE:

Consideration and Action on Liquor License Application: Kyle Winfree, "All You Mead", at 2781 W Pico Del Monte Cir, Series 13 (Farm Winery), New License

STAFF RECOMMENDED ACTION:

1. Forward the application to the State with a recommendation for approval;
2. Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Executive Summary:

The liquor license process begins at the State level and applications are then forwarded to the respective municipality for posting of the property and holding a public hearing, after which the Council recommendation is forwarded back to the State. A Series 13 license is for a winery located in Arizona that produces at least 200 gallons but not more than 40,000 gallons of wine annually. The license has on and off-sale retail privileges and allows the holder to sell, deliver and serve wine produced on the premises for on and off-sale consumption and sampling. A farm winery that produces not more than 20,000 gallons of wine in a calendar year may make sales of wine produced on premises to consumers who order by telephone, mail, fax, catalogue or internet per A.R.S. §4-205.04(C)(9)(a)-(g). Other than this exception, Internet sale of liquor is not permitted in the state of Arizona. A.R.S. §4-205.04(D)

All You Mead is an existing business in Flagstaff. If approved, it will be one of two series 13 licenses in Flagstaff.

To view surrounding liquor licenses, please visit the Active Liquor Licenses Map.

The application was properly posted on December 27, 2024 and the Police and Community Development divisions have reviewed the application and their reports are included in the Agenda Packet. No written protests have been received to date.

Financial Impact:

There is no budgetary impact to the City of Flagstaff as this is a recommendation to the State.

Policy Impact:

Not applicable

Previous Council Decision or Community Discussion:

Not applicable

Options and Alternatives to Recommended Action:

1. Forward the application to the State with a recommendation for approval;
2. Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Connection to PBB Priorities and Objectives:
Liquor licenses are a regulatory action and there are no Community Priorities that directly apply.

Connection to Regional Plan:
Not applicable

Connection to Carbon Neutrality Plan:
Not applicable

Connection to 10-Year Housing Plan:
Not applicable

Attachments:
Letter to Applicant
Hearing Procedures
PD Memo
PD Supplemental Report
Code Memo
Series 13 Description
Map

CITY OF
FLAGSTAFF

Office of the City Clerk

1/8/2025

Kyle Nathan Winfree
2781 W Pico Del Monte Cir
Flagstaff, AZ 86001
Kyle.winfree@gmail.com

Dear Mr. Winfree,

Your application for a Series 013 (Farm Winery) Liquor License for All You Mead located at 2781 W Pico Del Monte Cir, Flagstaff, AZ was posted on December 27, 2024. The City Council will consider the application at a public hearing during their scheduled Regular City Council Meeting on **January 21, 2025, which is scheduled to begin at 3:00 p.m.**

It is important that you or your representative attend this Council Meeting via video conference (Microsoft Teams Meeting) or in person and be prepared to answer any questions the City Council may have. Failure to be available for questions could result in a recommendation for denial of your application. We suggest you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures. Please note, should you wish to address Council about your application you are allotted 10 minutes to do so after the staff presentation. *You are not required to speak but we want to make you aware of the opportunity*. Please inform our office if you plan on doing so as we will incorporate any materials or attachments for City Council to review.

The twenty-day posting period for your liquor license application is set to expire on January 17, 2025, and the application may be removed from the premises at that time.

If you have any questions, please email me at georganna.staskey@flagstaffaz.gov.

Sincerely,

Georganna Staskey
City Clerk's Office

Enclosures

City of Flagstaff

Liquor License Application
Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will open the public hearing on the item.

2. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.

3. The presiding officer will request that the Applicant come forward to address the Council regarding the application. The applicant can give a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.

4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.

5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.

6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.

7. The presiding officer will then close the public hearing.

8. The Council will then, by motion, vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

R19-1-702. Determining Whether to Grant a License for a Certain Location

A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:

1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;

2. Number and types of licenses within one mile of the proposed premises;

3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;

4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;

5. Residential and commercial population density within one mile of the proposed premises;

6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;

7. Effect on vehicular traffic within one mile of the proposed premises;

8. Compatibility of the proposed business with other activity within one mile of the proposed premises;

9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;

10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;

11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and

12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.

B. This Section is authorized by A.R.S. § 4-201(I).

FLAGSTAFF POLICE DEPARTMENT
911 SAWMILL RD • FLAGSTAFF, ARIZONA 86001• (928) 779-3646
ADMIN FAX (928)213-3372
TDD 1-800-842-4681

Police Chief
Sean P. Connolly

MEMORANDUM

Memo #25-004

TO: **Chief Connolly**

FROM: **Sgt. N. Almendarez #703**

DATE: **January 7th, 2025**

RE: **New Application – Series 13 (Farm Winery) Liquor License Application– All You Mead**

On January 7th, 2025, I initiated an investigation into a new application for a Series 13 (Farm Winery) liquor license filed by Kyle Nathan Winfree (Agent) Sean Patrick Strain (Controlling Person, Michael George Gowanlock (Controlling Person) and Vanessa Wannie Winfree (Controlling Person). This is for a new application, and the application number is 324028. It is for All You Mead LLC, located at 2781 West Pico Del Monte Circle, Flagstaff, AZ.

I conducted a query through local systems and public access on Kyle, Sean, Michael and Vanessa. I discovered no derogatory records. I conducted a search for current or historical liquor violations on the business and discovered no violations.

I found evidence that the applicants have taken the mandatory liquor license training. This business is not located within 300 feet of a school.

A representative for the business was invited to be present for the council meeting on January 21st, 2025.

All You Mead

Agent: **Kyle Nathan Winfree**

OnCall:

- No arrests
- 10 incidents (reporting party, involved other)

Public Access:

- No record

Controlling Person: **Sean Patrick Strain**

OnCall:

- No arrests
- No incidents

Public Access:

- No record

Controlling Person: **Michael George Gowanlock**

OnCall:

- No record

Public Access

- No record

Controlling Person: **Vanessa Wannie Winfree**

OnCall

- No arrests
- 2 Incidents (other)

Public Access:

- No record

Liquor License History:

- No current or historical liquor violations

Planning and Development Services Memorandum

To: Stacy Saltzburg, City Clerk

From: Reggie Eccleston, Code Compliance Manager

CC: Michelle McNulty, Planning Director

Date: January 10, 2025

Re: Application for Liquor License #324048
2781 W Pico Del Monte Circle, Flagstaff, Arizona 86001
Assessor's Parcel Number 112-62-083
Kyle Nathan Winfree on behalf of All You Mead

This application is a request for a new Series 13 Farm Winery license by Kyle Nathan Winfree on behalf of All You Mead. This business is located within the High Density Residential. This district does allow for this use.

There are no active Zoning Code violations associated with the applicant or the property at this time.

License Types: Series 13 Farm Winery

Non-transferable
On- and Off-sale retail privileges

PURPOSE:
Allows the holder of an in-state domestic farm winery licensee to produce more than 200 gallons, but less than 40,000 gallons of wine during the 12-month reporting period (A.R.S. §205.04(B) and (C)

A farm winery that produces not more than 20,000 gallons of wine in a calendar year may make sales of wine produced on premises to consumers who order by telephone, mail, fax, catalogue or internet per A.R.S. §4-205.04(C)(9)(a)-(g). Other than this exception, Internet sale of liquor is not permitted in the state of Arizona. A.R.S. §4-205.04(D)

ADDITIONAL RIGHTS AND RESPONSIBILITIES:
Applicants, licensees, and managers must take a Title 4 training course (liquor handling, laws and regulations) prior to approval. A pregnancy warning sign for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or at point of display. Arizona Farm Wineries must be kept an Employee Log of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities. All Domestic Farm Wineries licensed in Arizona may sell wine produced or manufactured on the premises for consumption on or off the premises, and may make sales and deliveries of wine to persons licensed to sell wine. May serve wine produced or manufactured on the premises for the purpose of sampling. Licensees must submit an Annual Production Report (the amount of wine manufactured)at the end of each fiscal year. If the total amount of wine manufactured exceeds the amount permitted by a Series 13 license, the licensee shall apply for and receive a Series 01 license (In-state Producer).



2781 W. Pico Del Monte Cir.

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City of Flagstaff maps and data are updated on a regular basis from data obtained from various sources. The City of Flagstaff endeavors to provide accurate information, but accuracy is not guaranteed. You are strongly encouraged to obtain any information you need for a business or legal transaction from a surveyor, engineer, title company, or other licensed professional as appropriate. Information is provided subject to the express condition that you knowingly waive any and all claims for damages against the City of Flagstaff relating to use of this information.

1/8/2025 4:54 PM

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Georganna Staskey, Deputy City Clerk

Date: 01/15/2025

Meeting Date: 01/21/2025

TITLE:

Consideration and Action on Liquor License Applications: Lauren Kay Merrett, "Majestic Marketplace," 601 E Piccadilly Dr, Series 07 (Beer and Wine Bar) and Series 09 (Liquor Store), Owner Transfers.

STAFF RECOMMENDED ACTION:

1. Forward both applications to the State with a recommendation for approval;
2. Forward both applications to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Executive Summary:

The liquor license process begins at the State level and applications are then forwarded to the respective municipality for posting of the property and holding a public hearing, after which the Council recommendation is forwarded back to the State. A **Series 07** beer and wine bar license allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises. A **Series 09** Liquor Store License allows a spirituous liquor store retailer to sell all spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

Series 07 and Series 09 licenses are "quota" licenses available only through the Liquor License Lottery or for purchase on the open market. Majestic Marketplace is an existing liquor store and bar and is requesting an owner transfer for both licenses.

If the Series 07 is approved, it will be one of 26 in Flagstaff. If the series 09 is approved, it will be one of 38 in Flagstaff.

To view surrounding liquor licenses, please visit the Active Liquor Licenses Map.

The application was properly posted on December 27, 2024 and the Police and Community Development divisions have reviewed the application and their reports are included in the Agenda Packet. No written protests have been received to date.

Financial Impact:

There is no budgetary impact to the City of Flagstaff as this is a recommendation to the State.

Policy Impact:

None.

Previous Council Decision or Community Discussion:

None.

Options and Alternatives to Recommended Action:

1. Forward both applications to the State with a recommendation for approval;
2. Forward both applications to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Connection to PBB Priorities and Objectives:
Liquor licenses are a regulatory action and there are no Community Priorities that directly apply.

Connection to Regional Plan:
Not applicable

Connection to Carbon Neutrality Plan:
Not applicable

Connection to 10-Year Housing Plan:
Not applicable

Attachments:
Letter to Applicant
Hearing Procedures
PD Memo 07
PD Memo 09
PD Supplemental Report
Code Memo 07
Code Memo 09
Series 07 Description
Series 09 Description
Map
Map Street View

CITY OF
FLAGSTAFF

Office of the City Clerk

1/8/2025

Lauren Kay Merrett
736 S Longmore St.
Flagstaff, AZ 86001
merecoinc@gmail.com

Dear Ms. Merrett,

Your application for a Series 07 (Beer and Wine Bar) and a Series 09 (Liquor Store) Liquor Licenses for Majestic Marketplace located at 601 E Piccadilly Dr #95, Flagstaff, AZ was posted on December 27, 2024. The City Council will consider the application at a public hearing during their scheduled Regular City Council Meeting on **January 21, 2025, which is scheduled to begin at 3:00 p.m.**

It is important that you or your representative attend this Council Meeting via video conference (Microsoft Teams Meeting) or in person and be prepared to answer any questions the City Council may have. Failure to be available for questions could result in a recommendation for denial of your application. We suggest you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures. Please note, should you wish to address Council about your application you are allotted 10 minutes to do so after the staff presentation. *You are not required to speak but we want to make you aware of the opportunity*. Please inform our office if you plan on doing so as we will incorporate any materials or attachments for City Council to review.

The twenty-day posting period for your liquor license application is set to expire on January 17, 2025, and the application may be removed from the premises at that time.

If you have any questions, please email me at georganna.staskey@flagstaffaz.gov.

Sincerely,

Georganna Staskey
City Clerk's Office

Enclosures

City of Flagstaff

Liquor License Application
Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will open the public hearing on the item.

2. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.

3. The presiding officer will request that the Applicant come forward to address the Council regarding the application. The applicant can give a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.

4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.

5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.

6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.

7. The presiding officer will then close the public hearing.

8. The Council will then, by motion, vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

R19-1-702. Determining Whether to Grant a License for a Certain Location

A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:

1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;

2. Number and types of licenses within one mile of the proposed premises;

3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;

4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;

5. Residential and commercial population density within one mile of the proposed premises;

6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;

7. Effect on vehicular traffic within one mile of the proposed premises;

8. Compatibility of the proposed business with other activity within one mile of the proposed premises;

9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;

10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;

11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and

12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.

B. This Section is authorized by A.R.S. § 4-201(I).

FLAGSTAFF POLICE DEPARTMENT
911 SAWMILL RD • FLAGSTAFF, ARIZONA 86001• (928) 779-3646
ADMIN FAX (928)213-3372
TDD 1-800-842-4681

Police Chief
Sean P. Connolly

MEMORANDUM

Memo #25-002

TO: **Chief Connolly**

FROM: **Sgt. N. Almendarez #703**

DATE: **January 7th, 2025**

RE: **New Application – Series 07 (Beer and Wine Bar) Liquor License Application– Majestic Marketplace**

On January 7th, 2025, I initiated an investigation into a new application for a Series 07 (Beer and Wine Bar) liquor license filed by Lauren Kay Merrett (Agent), Chiragbhai Patel (Controlling Person), Maipal Patel (Controlling Person), Suren Patel (Controlling Person), Vishalkumar Patel (Controlling Person) and Vipul Patel (Controlling Person). This is for a new application, and the application number is 322807. It is for Majestic Marketplace, located at 601 East Picadilly Drive #95, Flagstaff, AZ.

I conducted a query through local systems and public access on Lauren, Chiragbhai, Maipal, Suren, Vishalkumar and Vipul. I discovered no derogatory records. I conducted a search for current or historical liquor violations on the business and discovered historical violations.

I found evidence that the applicants have taken the mandatory liquor license training. This business is not located within 300 feet of a school.

A representative for the business was invited to be present for the council meeting on January 21st, 2025.

FLAGSTAFF POLICE DEPARTMENT
911 SAWMILL RD • FLAGSTAFF, ARIZONA 86001• (928) 779-3646
ADMIN FAX (928)213-3372
TDD 1-800-842-4681

Police Chief
Sean P. Connolly

MEMORANDUM

Memo #25-003

TO: **Chief Connolly**

FROM: **Sgt. N. Almendarez #703**

DATE: **January 7th, 2025**

RE: **New Application – Owner Transfer Series 09 (Liquor Store) Liquor License Application– Majestic Marketplace**

On January 7th, 2025, I initiated an investigation into a new application owner transfer for a Series 09 (Liquor Store) liquor license filed by Lauren Kay Merrett (Agent), Chiragbhai Patel (Controlling Person), Maipal Patel (Controlling Person), Suren Patel (Controlling Person), Vishalkumar Patel (Controlling Person) and Vipul Patel (Controlling Person). This is for a new application, and the application number is 322843. It is for Majestic Marketplace, located at 601 East Picadilly Drive #95, Flagstaff, AZ.

I conducted a query through local systems and public access on Lauren, Chiragbhai, Maipal, Suren, Vishalkumar and Vipul. I discovered no derogatory records. I conducted a search for current or historical liquor violations on the business and discovered historical violations.

I found evidence that the applicants have taken the mandatory liquor license training. This business is not located within 300 feet of a school.

A representative for the business was invited to be present for the council meeting on January 21st, 2025.

Majestic Marketplace Application #322807 (Series 07 Beer and Wine Bar)

Agent: **Lauren Kay Merrett**

OnCall: No records

Public Access: No records

Controlling Person: **Chiragbhai Gopalbhai Patel**

OnCall:

- 2010 Print and Mug record for DPS case related to tobacco offenses
- 7 Incidents listed as suspect in one for disorderly conduct with no prosecution

Public Access:

- No record

Controlling Person: **Maipal Patel**

OnCall:

- No arrests
- 46 Incidents (victim, reporting party)
- One involvement in selling to intoxicated person while training clerk (case was closed, no enforcement)

Public Access:

- No record

Controlling Person: **Suren Babulal Patel**

OnCall:

- Criminal speed arrest in 2016
- 18 Incidents (victim, reporting party)

Public Access:

- No record

Controlling Person: **Vishalkumar Patel**

OnCall:

- No arrest
- 10 incidents (victim, reporting party)

Public Access:

- Two speeding tickets

Case Search

<< return for new case search

2 records found

Case Number	Name	Party Type	Birth Date	Address	Court
J-1302-CT-2019002328	VISHALKUMAR G PATEL	DEFENDANT	03/1985	FLAGSTAFF, AZ 86005	Verde Valley Justice
J-0301-CT-2024005306	**VISHALKUMAR G PATEL**	**DEFENDANT**	**03/1985**	**FLAGSTAFF, AZ 86001**	**Flagstaff Justice**

Controlling Person: **Vipul Vinubhai Patel**

OnCall:

- No arrests
- 29 incidents (victim and reporting party)

Public Access:

- Three civil traffic violations

Case Search

<< return for new case search

3 records found

Case Number	Name	Party Type	Birth Date	Address	Court
M-0341-CT-2023001706	VIPUL VINUBHAI PATEL	DEFENDANT	07/1978	FLAGSTAFF, AZ 86005	Flagstaff Municipal
J-0302-TR-200800144	VIPUL VINUBHAI PATEL	DEFENDANT	07/1978		Williams Justice
J-0302-TR-201001295	**VIPUL VINUBHAI PATEL**	**DEFENDANT**	**07/1978**		**Williams Justice**

Liquor License History:

*Majestic Marketplace

*07030050

*09S030034

*09030034

5 records found as of January 07, 2025

License Number:	INP030031141	Status:	**Active**
Business Name:	**MAJESTIC MARKETPLACE**		
Location Address	601 E PICCADILLY Drive #95		
	FLAGSTAFF	Arizona	86001
County	Coconino	Bus. Phone	6027381421
Licensee/Agent/Tel:	Merrett , Lauren	6027381421	
Owner/Exp Date/Issue Date	Majestic Marketplace Inc	**03/31/2025**	12/16/2024
Status Date/ IP Exp Date	12/16/2024 - 03/31/2025	Lic. Type:	INP

License Number:	INP030031140	Status:	**Active**
Business Name:	**MAJESTIC MARKETPLACE**		
Location Address	601 E PICCADILLY Drive #95		
	FLAGSTAFF	Arizona	86001
County	Coconino	Bus. Phone	6027381421
Licensee/Agent/Tel:	Merrett , Lauren	6027381421	
Owner/Exp Date/Issue Date	Majestic Marketplace Inc	**03/31/2025**	12/16/2024
Status Date/ IP Exp Date	12/16/2024 - 03/31/2025	Lic. Type:	INP

License Number:	09S030034	Status:	**Active**
Business Name:	**MAJESTIC MARKETPLACE**		
Location Address	601 E PICCADILLY Drive #95		
	FLAGSTAFF	Arizona	86001
County	Coconino	Bus. Phone	9287730313
Licensee/Agent/Tel:	Shulman, Lynn	9287730313	
Owner/Exp Date/Issue Date	Majestic Enterprises Inc	**05/31/2025**	05/09/2018
Status Date/ IP Exp Date	05/28/2024 - 05/31/2025	Lic. Type:	09S

License Number:	09030034	Status:	Cancelled
Business Name:	**MAJESTIC MARKETPLACE**		

Location Address	601 E PICCADILLY Drive #95		
	FLAGSTAFF	Arizona	86001
County	Coconino	Bus. Phone	9287730313
Licensee/Agent/Tel:	Shulman, Lynn	9287730313	
Owner/Exp Date/Issue Date	Majestic Enterprises Inc	**05/31/2025**	10/22/1986
Status Date/ IP Exp Date	05/28/2024 - 05/31/2025	Lic. Type:	009

License Number:	07030050	Status:	Cancelled
Business Name:	**MAJESTIC MARKETPLACE**		
Location Address	601 E PICCADILLY Drive #95		
	FLAGSTAFF	Arizona	86001
County	Coconino	Bus. Phone	9287730313
Licensee/Agent/Tel:	Shulman, Lynn	9287730313	
Owner/Exp Date/Issue Date	Majestic Enterprises Inc	**05/31/2025**	12/15/1983
Status Date/ IP Exp Date	05/28/2024 - 05/31/2025	Lic. Type:	007

Historical violations:

3 matches found prior to Friday, February 23, 2018 8:00 a.m.

The following are possible matches to your search. Click on the license number associated with the name of the business to view further details.

Date	Description	View
04/02/2013	4---241.A Failure to follow the identification procedure prescribed by statutes	View
04/02/2013	4-244.9 Sell, give, furnish underage person with alcohol	View
10/18/2013	4-244.14 Selling liquor to an intoxicated or disorderly person	View

Planning and Development Services Memorandum

To: Stacy Saltzburg, City Clerk

From: Reggie Eccleston, Code Compliance Manager

CC: Michelle McNulty, Planning Director

Date: January 10, 2025

Re: Application for Liquor License #322807
601 E Piccadilly drive, #95 Flagstaff, Arizona 86001
Assessor's Parcel Number 104-19-164
Lauren Kay Merrett on behalf of Majestic Marketplace

This application is a request for a new Series 7 Wine and Bar license by Lauren Kay Merrett on behalf of Majestic Marketplace. This business is located within the Highway Commercial. This district does allow for this use.

There are no active Zoning Code violations associated with the applicant or the property at this time.

Planning and Development Services Memorandum

To: Stacy Saltzburg, City Clerk

From: Reggie Eccleston, Code Compliance Manager

CC: Michelle McNulty, Planning Director

Date: January 10, 2025

Re: Application for Liquor License #322843
601 E Piccadilly drive, #95 Flagstaff, Arizona 86001
Assessor's Parcel Number 104-19-164
Lauren Kay Merrett on behalf of Majestic Marketplace

This application is a request for a new Series 9 Liquor Store license by Lauren Kay Merrett on behalf of Majestic Marketplace. This business is located within the Highway Commercial. This district does allow for this use.

There are no active Zoning Code violations associated with the applicant or the property at this time.

License Types: Series 07 Beer and Wine Bar License

Transferable (From person to person and/or location to location within the same county only)
On & off-sale retail privileges
Note: Terms in **BOLD CAPITALS** are defined in the glossary.

PURPOSE:
Allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

ADDITIONAL RIGHTS AND RESPONSIBILITIES:
A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of **DELIVERY**. The retailer must complete a Department approved "Record of Delivery" form for each spirituous liquor retail delivery.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept delivery of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Off-sale ("To Go") package sales can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the one provided for the bar.

Bar, beer and wine bar and restaurant licensees must pay an annual surcharge of $20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

License Types: Series 09 Liquor Store License (All spirituous liquors)

Transferable (From person to person and/or location to location within the same county only)
Off-sale retail privileges
Note: Terms in **BOLD CAPITALS** are defined in the glossary.

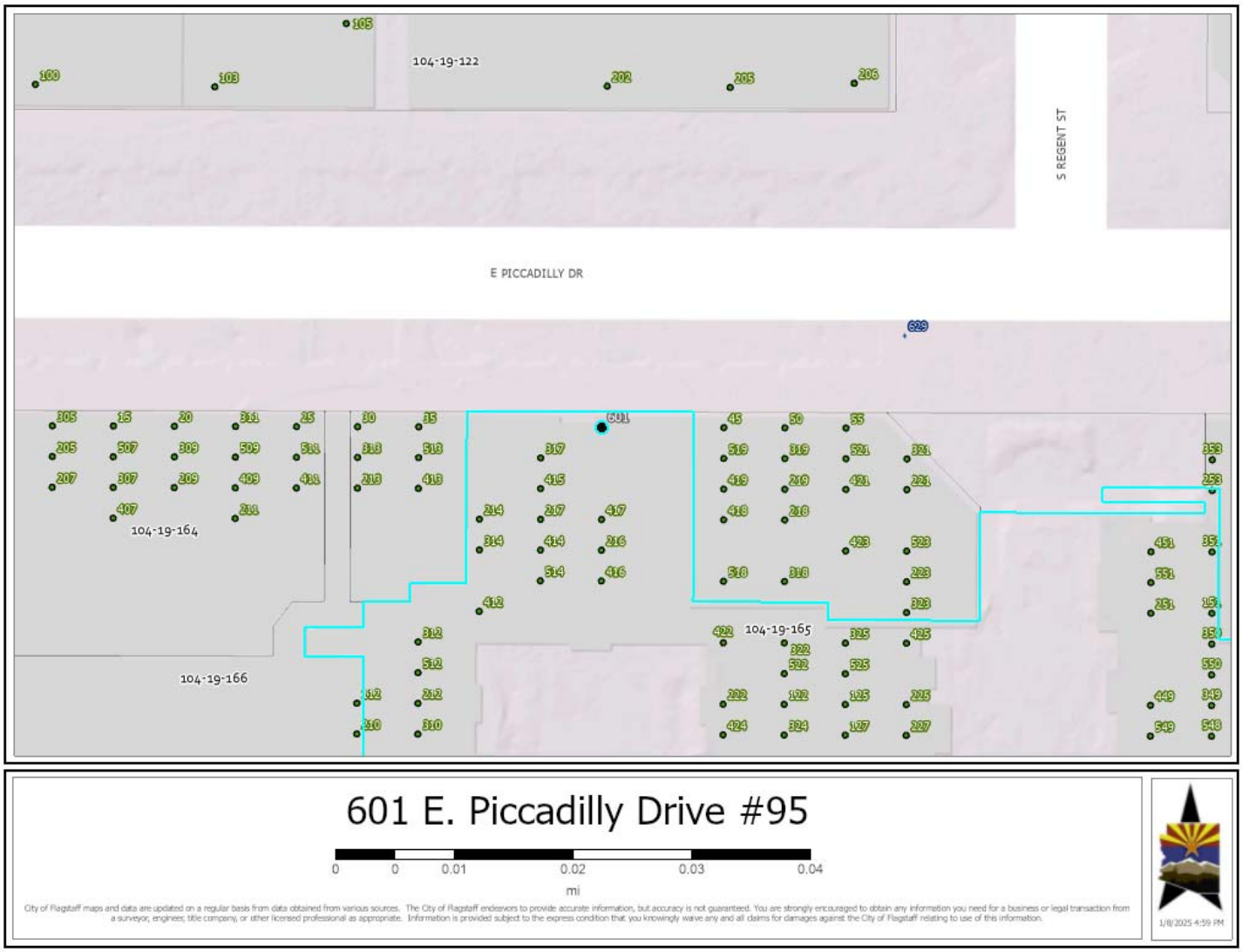
PURPOSE:
Allows a spirituous liquor store retailer to sell all spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

ADDITIONAL RIGHTS AND RESPONSIBILITIES:
A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of **DELIVERY**. The retailer must complete a Department approved "Record of Delivery" form for each spirituous liquor retail delivery.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept delivery of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.



601 E. Piccadilly Drive #95

0 0 0.01 0.02 0.03 0.04

mi

City of Flagstaff maps and data are updated on a regular basis from data obtained from various sources. The City of Flagstaff endeavors to provide accurate information, but accuracy is not guaranteed. You are strongly encouraged to obtain any information you need for a business or legal transaction from a surveyor, engineer, title company, or other licensed professional as appropriate. Information is provided subject to the express condition that you knowingly waive any and all claims for damages against the City of Flagstaff relating to use of this information.

1/8/2025 4:59 PM


601
MAJESTIC MARKETPLACE

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Geneva Lanzetta, Capital Improvements Project Manager

Date: 01/15/2025

Meeting Date: 01/21/2025

TITLE:

Consideration and Approval of Contract: Approve the Cooperative Purchase Contract with Black & Veatch for Engineering Services on the Rio de Flag Water Reclamation Plant Backup Generators ("the Project") in the amount of $400,000.00.

STAFF RECOMMENDED ACTION:

1. Approve the Cooperative Purchase Contract with Black & Veatch ("Consultant") for Engineering Services on the Rio de Flag Water Reclamation Plant Backup Generators in the amount of $400,000.00; and
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

The recommended Cooperative Purchase Contract with Black & Veatch will authorize the Consultant to conduct Engineering Services at the Rio de Flag Water Reclamation Plant (RDF WRP). The award amount of $400,000.00 to the Consultant will provide the Engineering Services related to Project design for a future construction project. This includes civil site, process mechanical, electrical, and instrumentation and control design necessary to support installation of required infrastructure at two locations: the influent pump station (IPS) and the Treatment Plant.

In addition to the design tasks, the contract will also encompass the documentation of electrical and instrumentation and control (I&C) standards. These standards are intended to be used for standardizing projects at the RDF WRP and other facilities within the City of Flagstaff.

The City of Flagstaff is upgrading the RDF WRP to function more effectively as an end-of-the-line facility. To support this new operational strategy, the Project will include the addition of standby power systems, including generators and automatic transfer switches, at both the IPS and the water reclamation facility.

This Project is funded by a grant agreement from the Arizona Department of Emergency and Military Affairs (DEMA). It is anticipated that this Grant Agreement will be presented to City Council at an upcoming City Council meeting.

Financial Impact:

The Project is funded by a grant agreement (HMGP DR-4524-16-11R) from the Arizona Department of Emergency and Military Affairs (DEMA) in the amount of $450,000 with a $50,000 local match requirement (Proposition 441 funding). The FY2024-25 budget for this project is $455,600 in account #410-08-375-3529-3.

This is Pre-Construction and Design Phase #1 of a 4-phase grant award. Once the City has demonstrated completion of Phase #1, DEMA will release the remaining funds to construct ($5,190,000.00).

Policy Impact:

Not applicable

Previous Council Decision or Community Discussion:
On January 21, 2025, Council will be presented the Grant Agreement between the City of Flagstaff and DEMA for Phase #1 of the grant award: pre-construction and design.

The Project's FY25 budget was approved in the FY25 Capital Improvements 5-Year Plan.

Options and Alternatives to Recommended Action:

1. Approve the Cooperative Purchase Contract as recommended. Approval will allow for the completion of engineering, design, and geotechnical assessment needed to construct backup power at the Rio de Flag Water Reclamation Plant; or
2. Reject the Cooperative Purchase Contract. This action would delay the Project. If rejection occurs, possible options include:
    a. Evaluate other procurement options for the Project; or
    b. Suspend or cancel the Project.

Background and History:
The Rio de Flag Water Reclamation Plant (RDF WRP) is currently supplied with two primary power feeds from APS, providing redundancy in the event of a power failure on the primary feed. However, these feeds are managed by a manual switchgear operated by APS, meaning that if power is lost, the facility must rely on APS to manually switch to the alternate feed. If both feeds fail, the facility is rendered inoperable. A significant loss of voltage could result in the death of critical microorganisms and equipment failure at the RDF WRP. In such an event, flow would be redirected to the Wildcat Hill WRP, potentially overwhelming their capacity and risking operation noncompliance, as well as threatening both environmental and public health.

Additionally, wildfires present a significant and growing risk to power supplies in Northern Arizona. Each year, wildfires threaten APS power lines statewide, while other hazards such as flooding, storms, and wind also pose risks to power continuity. These threats have intensified over the past decade.

To address these risks, the Project will require a minimum of four transfer switches and two to three backup generators. Automatic transfer switches will be implemented to ensure the RDF WRP can seamlessly switch to back up power until the primary feed is restored. These upgrades will safeguard voltage stability and ensure continuous plant operation in the event of a power failure.

The Purchasing Section has reviewed the competitively solicited cooperative purchase options available and confirmed that the Solid Waste Authority of Palm Beach County conducted a competitive and open procurement process through Request for Qualifications Solicitation that resulted in a Contract with Black & Veatch. This underlying agency contract has been verified as valid and appropriate for the purchase of the specified services and presents the best value to the City of Flagstaff.

The local match for this Project will be provided through the Prop 441 bond, enabling the work to proceed with minimal value engineering.

Community Benefits and Considerations:
This is the first step in a Grant Funded Project that will allow for a project total of $5.69M for backup generators to keep the plant from shutting down and supply adequate voltage to the facility, keeping operations in compliance and ensuring safe and reliable access to reclaimed water in Flagstaff.

Community Involvement:
This is a voter-approved bond project from Proposition 441.

Connection to PBB Priorities and Objectives:
Sustainable, Innovative Infrastructure: Deliver outstanding services to residents through a healthy, well-maintained infrastructure system.

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.
Policy WR 2.2. Maintain and develop facilities to provide reliable, safe, and cost-effective water, wastewater, and reclaimed water services.
Goal WR.4. Logically enhance and extend the City's public water, wastewater, and reclaimed water services, including their treatment, distribution, and collection systems in both urbanized and newly developed areas of the City, to provide efficient delivery of services.

Connection to Carbon Neutrality Plan:
Water Security (WS-1) Improve water infrastructure and expand water reuse.

Connection to 10-Year Housing Plan:
Not applicable.

Connection to Division Specific Plan:

Attachments: Cooperative Purchase Contract
Project Location Map

COOPERATIVE PURCHASE CONTRACT
Contract No. 2025-151

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 Black & Veatch Corporation, a Delaware Corporation ("Consultant").

RECITALS:

A. Consultant is a fully authorized vendor of Consulting Engineering Services for Water, Wastewater and Electrical Utility Systems;

B. The Solid Waste Authority of Palm Beach County conducted a competitive and open procurement process through Request for Qualifications 23-604/PA that resulted in Agreement No. 23-604 with Consultant ("Agency Contract"); and

C. The City has authority to enter into a cooperative purchase contract with Consultant 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: Consultant 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:

Engineering Design for the
Rio de Flag Water Reclamation Plant Standby Power and ATS Upgrades

2. Specific Requirements of City: Consultant 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. Consultant 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:

   4.1 Payment to Consultant for the materials and/or services not to exceed **four hundred thousand dollars and zero cents ($400,000.00);** made in accordance with assurances that the Fee Schedule attached as ***Exhibit C*** represents rates for service at or below the rates established in the Agency Contract.

   4.2 Any adjustment to the Payment amount must be approved by mutual written consent of the parties through a formal amendment. The City Manager or his/her designee may approve

an amendment if the amendment price increase is less than $100,000; otherwise, City Council approval is required.

5. Grant Funding: This Project is funded in part by the Arizona Department of Emergency and Military Affairs, Grant Agreement HMGP DR-4524-16-11R. The Grant Terms and Conditions attached hereto as ***Exhibit D*** are incorporated by reference and shall apply to performance of this Contract.

6. 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, Consultant shall furnish City with a copy of the current Certificate of Insurance required by the Agency Contract.

7. Term and Renewal: This Cooperative Purchase Contract shall commence upon execution by the Parties and shall continue for a period of three (3) years with an option for two (2) one (1)- year renewal periods presuming that the underlying Agency Contract has not expired or been terminated.

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:
Geneva Lanzetta, EIT
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
geneva.lanzetta@flagstaffaz.gov

To Consultant:
Andrew Mally
Black & Veatch Corporation
11401 Lamar Ave
Overland Park, KS 66211
mallyaj@bv.com

With a copy to:
Emily Markel
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
emarkel@flagstaffaz.gov

With a copy to:
Stacey Brechler-Knaggs
Grants, Contracts & Emergency Management Director
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
sknaggs@flagstaffaz.gov

(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.

CONSULTANT:

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 January 6, 2025

RIO DE FLAG WATER RECLAMATION PLANT

STANDBY POWER AND ATS UPGRADES

Scope of Services

©Black & Veatch Holding Company 2022. All rights reserved.

PREPARED FOR:

13 DECEMBER 2024

PREPARED BY:

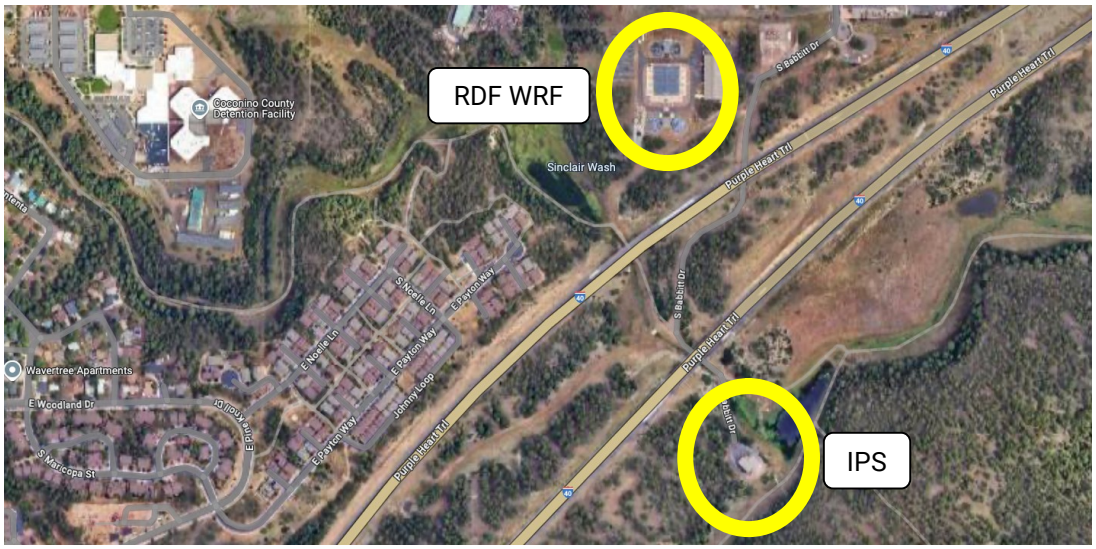
BLACK & VEATCH

City of Flagstaff
Rio de Flag WRP
Standby Power and ATS Upgrades

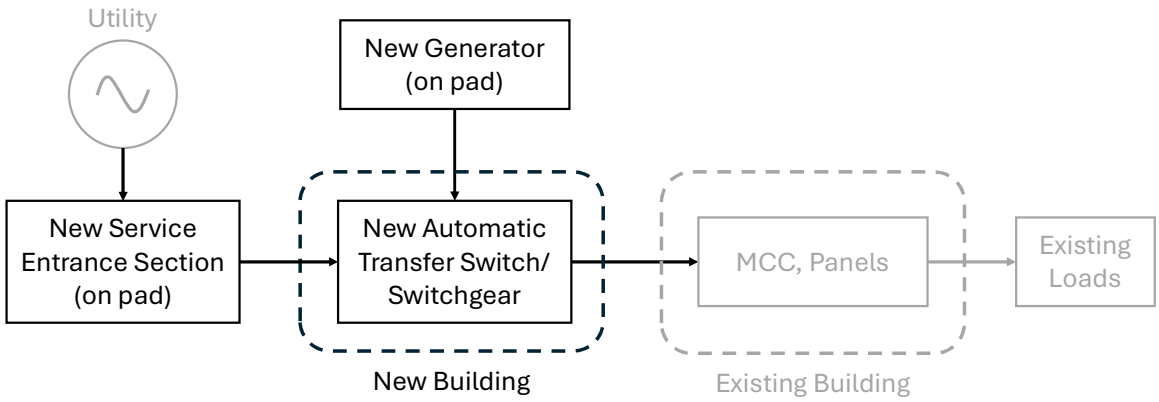
SCOPE OF SERVICES

GENERAL

The City of Flagstaff is in the process of making upgrades at the Rio de Flag WRP to operate more like an end-of-the-line facility. To support the new operational approach, the City is interested in adding standby power facilities including standby power generators and automatic transfer systems at the influent pump station (IPS) and at the water reclamation facility (WRF).



Location Map



Schematic of improvements at IPS and WRF

The project will take place in phases including detailed design and construction. Upon completion of the detailed design documents, the construction phase will commence including procurement of equipment, installation, and start-up/commissioning. This scope of work only includes design phase services. The City will self-perform early procurement, if required, for long-lead items.

Basic Scope of Services

The basic scope of services herein includes civil site, process mechanical, electrical, and instrumentation and control design required to support installation of the required infrastructure at two (2) sites; 1) the IPS and 2) the treatment plant.

In addition to design related tasks, this scope includes documentation of electrical and I&C standards that may be used to standardize projects at the Rio de Flag WRP and other facilities within the City of Flagstaff.

In general, this scope document is organized as follows:

- Task Group 100 – Project Management and Administration
- Task Group 200 – Preliminary Evaluations
- Task Group 300 – Preliminary Design Report
- Task Group 400 – Detailed Design
- Allowances
    - Allowance 1 – Early Procurement Documents
    - Allowance 2 – Coordination with other Contractors
    - Allowance 3 – Miscellaneous expenses: local travel, printing, shipping

Detailed Scope of Services

The following tasks are intended to facilitate evaluation and design of the identified improvements above.

Task Group 100 – Project Management and Administration

Subtask 101 – Project Management. This subtask shall generally consist of the following activities:

1. Maintain contact with and respond to communication and correspondence from the City of Flagstaff project manager and other staff for the duration of the project.
2. Provide a monthly progress report with each invoice, including a summary of progress-to-date for key tasks, cost expenditures, a summary of the decision or comments log / issue resolution, and an updated progress schedule, if required.

3. Coordinate all internal independent quality control reviews. Senior level quality control reviews will be performed as part of the basic services for each deliverable noted in this scope of work.

4. Internal personnel scheduling and general and financial project management is also included as part of this subtask for the duration of the project.

Subtask 102 – Invoicing and Progress Reports. Consultant will review project budget, update, and submit invoicing, and prepare progress reports with a description of each task and the work completed through the invoice period.

Subtask 103 – Project Meetings. Consultant will attend meetings as required to support development of the design documents and to coordinate with City staff. The level of effort for this task assumes the consultant will hold progress meetings at least monthly and will organize and attend a preliminary design workshop, electrical and I&C standards workshop, and detailed design submittal review meetings at the 30%, 60% and 90% design milestones. A total of 10 meetings and/or workshops are assumed for the full duration of the design phase of the project.

Level of effort for each meeting is assumed to be 1 hour for the Project Manager, 1 hour for the Engineering Manager, and 2 hours for up to 2 design support staff. Consultant will prepare meeting minutes to document all discussions and decisions and will distribute for review by the project team. Meetings are assumed to be held virtually.

Deliverables for this task group include the following:

- Monthly Invoices
- Monthly Progress Reports
- Meeting Minutes and Presentations

Task Group 200 – Preliminary Evaluations

Subtask 201 – Site Investigations. Consultant will visit the project site up to two (2) times during the design phase of the project to review field conditions, hard copy data when required, and to interview staff to gather information pertinent to development of a complete set of design documents. Field visits will be documented in a site visit memorandum and transmitted to the City.

Subtask 202 – Document Electrical and I&C Standards. Consultant will document electrical and I&C standards to assist the City with establishing uniform standards for current and future projects within the City of Flagstaff. Standards will be based on a combination of existing standards used within the City, recommended standards established jointly between Consultant and the City of Flagstaff, and best industry practices.

Consultant will provide the standards documentation for review by the City and will schedule a workshop to discuss City comments and revisions required. Following the workshop, consultant will finalize the standards document.

Standards expected to be documented include:
1. Preferred Electrical Equipment Manufacturers (OITs, Instruments, PLCs, Switchgear, VFDs, MCCs, Panels)
2. Preferred Instrumentation and Controls Manufacturers (Instruments, PLC, OITs)
3. SCADA HMI Hardware and Software
4. Panel Layout and Wiring
5. Communication Protocol and Networking
6. Equipment Tagging
7. Electrical and P&ID Legends and Abbreviations

Where required, standards may include typical standard drawings for use as reference when implementing projects at other facilities.

Assumptions:
The document developed as part of this task will become the standards document for use by the City of Flagstaff following completion of this project. The intent will be for the standards to be a "living document" structured so it can be updated as manufacturers, standards, and technologies continue to develop and change.

PLC and SCADA programming standards will be added to the standards document during the construction phase of this project. The purpose of deferring the programming standards to construction is to improve efficiency by developing the standards in cooperation with the City as the programs are developed by the Consultant during the construction phase. A workshop driven format will be used to facilitate development of the standards and coordination with the City. Upon completion of the construction phase programming, the standards will be added to the document.

Task Group 300 – Preliminary Design Report

<u>Subtask 301 – Draft Preliminary Design Report</u>

Consultant will develop a preliminary design report (PDR) formally identifying the design requirements, initial footprint, and the basis for the detailed design documents that will be developed as part of Task Group 0300.

The following is a general outline of the expected information to be included in the PDR:

a. *General*
   - Project scope and background
b. *Civil/Process Mechanical*
   - Description of proposed improvements and operational requirements

- Description and preliminary site layout for both the treatment facility standby power systems and the IPS

c. *Architectural*
- Not used.

d. *Structural*
- Basic design criteria for new electrical building to house generator, switchgear and ATS.

e. *Building Mechanical*
- Not used.

e. *Electrical*
- Electrical design criteria including applicable codes and standards
- Description of electrical improvements required in each area
- Preliminary Power Distribution Functional Diagram

f. *Instrumentation and Control*
- Instrumentation and Control design criteria
- Description of instrumentation and control improvements in each area
- Preliminary Network Diagrams
- Preliminary P&IDs

g. *Maintenance of Plant Operations*
- Outage planning requirements

Consultant will prepare and submit a draft preliminary design report for review by the City via Bluebeam. The Bluebeam session will be used to collect City comments which will be summarized in table format and will be prepared for discussion at a review meeting. A final copy of the table and decision log will be provided to the City to document all agreements and decisions arrived at during the review meetings, and to confirm a resolution has been reached for each comment.

Consultant will conduct a Quality Control review of the draft preliminary design report in accordance with Black & Veatch policies and procedures.

Deliverables for this subtask will be transmitted via ftp site or e-mail and will include the following:
- 1 pdf copy of the draft preliminary design report in Bluebeam

Subtask 302 – Final Preliminary Design Report

Consultant will revise the preliminary design report consistent with City comments and will seal the report as final.

Deliverables for this subtask will be transmitted via ftp site or e-mail and include the following:
- 1 pdf copy of the final preliminary design report

Items to be provided by the City:

- Record drawings, Power Studies (Arc Flash, Coordination, Short Circuit), specifications, O&M manuals, existing operational records including power consumption, O&M activities and frequency, and consumables quantities and costs for the following (Note: Capital and O&M costs for new and/or modified equipment by Consultant).

Task Group 400 – Detailed Design

Detailed design efforts assume the use of Black & Veatch standards for CADD and specifications. City of Flagstaff preferences for manufacturers will be factored into specifications where required. Specifications are assumed to include City of Flagstaff front-end documents that will be tailored by the Consultant for the project.

The anticipated drawing list for this scope of work is as follows:

No.	Sheet	Description
1	CG01	Cover Sheet and Sheet List
2	CG02	Notes, Legend and Abbreviations
3	CG03	Overall Site Plan
4	CY01	Grading and Paving Site Plan 1
5	CY02	Grading and Paving Site Plan 2
6	CY03	Enlarged Site Plans and Details
7	CZ01	Miscellaneous Site Details
8	SG01	Structural Notes, Legend, and Abbreviations
9	SZ01	Generator Support Foundation Details – WRP
10	SZ02	Prefabricated Building Foundation Details – WRP
11	SZ03	Generator Support Foundation Details – IPS
12	SZ04	Prefabricated Building Foundation Details – IPS
13	EG01	Legend and Abbreviations
14	EG02	Power Distribution Functional Diagram - WRP
15	EG03	Power Distribution Functional Diagram – IPS
16	EY01	Electrical Site Plan – WRP
17	EY02	Electrical Site Plan – IPS
18	EY03	Duct Bank Sections
19	EE01	Electrical Building and Switchyard Demo Plan - WRP
20	EE02	Electrical Building and Switchyard Plan - WRP
21	EE03	Electrical Building and Switchyard Demo Plan - IPS
22	EE04	Electrical Building and Switchyard Plan - IPS
23	EE05	Service Entrance / Switchgear Demo One-line - WRP
24	EE06	Service Entrance / Switchgear One-line - WRP
25	EE07	Service Entrance / Switchgear PLC One-line - WRP
26	EE08	MCC One-lines – WRP
27	EE09	Service Entrance / Switchgear Demo One-line - IPS
28	EE10	Service Entrance / Switchgear One-line – IPS

29	EE11	Service Entrance / Switchgear PLC One-line - IPS
30	EE12	MCC One-lines – IPS
31	EZ01	Miscellaneous Electrical Details
32	EZ02	Schedules
33	IG01	Instrumentation Legend and Abbreviations 1
34	IG02	Instrumentation Legend and Abbreviations 2
35	IZ01	Network Diagram - WRP
36	IZ02	Network Diagram - IPS
37	IZ03	Panel Details - WRP
38	IZ04	Panel Details - IPS
39	IE01	Switchgear P&ID – WRP
40	IE02	Generator P&ID – WRP
41	IE03	Generator and ATS P&ID – IPS

Subtask 401 – 30% Design. Based on the results of the work performed in Task Group 0200, Consultant will prepare design documents to a 30% design level for review by the City. 30% documents will consist of drawings by each discipline identified in the project sheet list required to provide design information to a 30% level of detail. The remaining sheets and details identified in the drawings list, but not required for the 30% submittal will be added at the 60%, 90% and final design stage as appropriate for each milestone level of detail.

Plans and specifications will be submitted for review by the City via Bluebeam. City comments will be collected via Bluebeam session and will be summarized in table format for discussion at the 30% design review meeting. Responses will be prepared for each comment and plans will be updated to reflect decisions made based on the 30% plans. A final copy of the table and decision log will be provided to the City to document all agreements and decisions arrived at during the review meeting.

Consultant will conduct a 30% Quality Control review in accordance with Black & Veatch policies and procedures.

Deliverables for this subtask will be transmitted via ftp site or e-mail as appropriate and will include the following:

- 1 – Cover letter summarizing documents delivered
- 1 –Drawing set in pdf format in Bluebeam
- 1 – Specification volume in pdf format in Bluebeam
- Electronic copy of comment summary log
    - Prior to 60% Review Meeting
    - Complete after 60% Review Meeting

Subtask 402 – 60% Design. Based on the results of the City's review of the 30% design documents, Consultant will prepare design documents to a 60% design level for review by the City. 60% documents will consist of drawings by each discipline identified in the project sheet list required to provide design information to a 60% level of detail. The

remaining sheets and details identified in the drawings list, but not required for the 60% submittal will be added at the 90% and final design stage.

Plans and specifications will be submitted for review by the City via Bluebeam. City comments will be collected via Bluebeam session and will be summarized in table format for discussion at the 60% design review meeting. Responses will be prepared for each comment and plans will be updated to reflect decisions made based on the 60% plans. A final copy of the table and decision log will be provided to the City to document all agreements and decisions arrived at during the review meeting.

Consultant will conduct a 60% Quality Control review in accordance with Black & Veatch policies and procedures.

Deliverables for this subtask will be transmitted via ftp site or e-mail as appropriate and will include the following:

- 1 – Cover letter summarizing documents delivered
- 1 – Drawing set in pdf format in Bluebeam
- 1 – Specification volume in pdf format in Bluebeam
- Electronic copy of comment summary log
    - Prior to 60% Review Meeting
    - Complete after 60% Review Meeting

Subtask 403 – 90% Design. Based on the results of the City's review of the 60% design documents, consultant will continue to develop the plans to a 90% design level. 90% documents will consist of all drawings and specifications required for a complete project.

Plans will be submitted for review by City Staff via Bluebeam and via pdf to the City of Flagstaff Building Safety Department as required. City and Building Safety comments will be summarized in table format and will be prepared for discussion at the 90% design review meeting. Responses will be prepared for each comment and plans will be updated to reflect decisions made based on the 90% plans. A final copy of the table and decision log will be provided to the City to document all agreements and decisions arrived at during the review meeting.

Consultant will conduct a 90% Quality Control review in accordance with Black & Veatch policies and procedures.

Deliverables for this subtask will be transmitted via ftp site or e-mail as appropriate and will include the following:

- 1 – Cover letter summarizing documents delivered
- 1 –Drawing set (All Drawings) in pdf format in Bluebeam and as a separate file for building department review
- 1 – Specification volume in pdf format in Bluebeam and as a separate file for building department review

- Electronic copy of comment summary log
    - Prior to 90% Review Meeting
    - Complete after 90% Review Meeting

Subtask 404 – Final Design. Final documents will consist of all drawings and specifications.

Consultant will conduct a Final Quality Control review in accordance with Black & Veatch policies and procedures.

Plans will be submitted for use in preparing a Guaranteed Maximum Price (GMP) proposal by the CMAR for use by the City of Flagstaff. It is assumed that all comments will have been addressed ahead of submission of final plans and specifications.

Deliverables for this subtask will be transmitted via ftp site or e-mail as appropriate and will include the following:

- 1 – Cover letter summarizing documents delivered
- 1 – Drawing set (all drawings) in pdf format
- 1 – Specification volume in pdf format

Subtask 405 – Code Compliance. Consultant will review building codes and will contact City of Flagstaff building officials to ensure that the design documents meet requirements prior to soliciting formal approval. Feedback from the building department will be documented via memorandum for any meetings or phone discussions that take place pertaining to the project.

Subtask 406 – Opinion of Probable Construction Cost. Consultant will prepare an opinion of probable construction cost at the 30%, 60%, 90% and Final Design milestones. OPCC will be consistent with the AACE classification system (Class 5 at the 30% milestone, Class 4 at 60% milestone, Class 3 at the 90% and Final milestone). OPCC will be submitted within 2 weeks of completing each milestone submittal.

Allowances

Allowance 1 – Early Procurement Documents. This allowance includes developing early procurement documents for long-lead item, division 1 specifications, technical specifications, preliminary drawings and shop drawing reviews. It is assumed that the City will self-perform early procurement.

Allowance 2 – Coordination with other contractors. This allowance includes coordinating with other City contractors performing work at the WRF.

Allowance 3 – Miscellaneous expenses. This allowance includes local travel expenses, shipping, etc.

Clarifications and Exclusions:

- Creation of as-built drawings for existing facilities that are not included as part of this scope. Verification of the existing equipment involved in the design will be provided to the extent that the new work requires.
- City of Flagstaff internal forms or fees associated with approval by City Building Safety staff. Review of any comments received by the building department and incorporation of required changes is included in the base design scope and fee.
- Site topographic survey or verification of existing site survey. General site review will be conducted verify accuracy of visual components as required. (Site survey is not anticipated to be necessary for this project).
- Site geotechnical investigations or reporting.
- Review or modifications to the existing HVAC systems. Based on the expected improvements, changes to the HVAC systems are not anticipated.
- Contractor coordination during design, bidding assistance, or creation of addenda.

CITY OF FLAGSTAFF

RIO DE FLAG WRP STANDBY POWER AND ATS UPGRADES

DESIGN SCHEDULE

TASK	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
NOTICE-TO-PROCEED & PROJECT KICK-OFF												
100 - PROJECT MANAGEMENT AND ADMINISTRATION												
101 - Project Management												
102 - Invoicing and Progress Reports												
103 - Project Meetings												
200 - PRELIMINARY EVALUATIONS												
201 - Site Investigations												
202 - Document Electrical and I&C Standards												
300 - PRELIMINARY DESIGN REPORT												
301 - Draft Preliminary Design Report												
302 - Final Preliminary Design Report												
400 - DETAILED DESIGN												
401 - 30% Design												
402 - 60% Design												
403 - 90% Design												
404 - Final Design												
405 - Code Compliance												
406 - Opinion of Probable Construction Cost												

Task Duration City Review Milestone Deliverable

Revised 12/11/2024

City of Flagstaff
Rio de Flag WRP Standby Power and ATS Upgrades
Design Fee Estimate

Revised by BV on January 7, 2025

TASK	DESCRIPTION	HOURS														
		Project Director	Project Manager	Engineering Manager	Lead Civil Engineer	Civil Engineer	Structural Engineer	Senior Electrical Engineer	Electrical Engineer	Senior I&C Engineer	I&C Engineer	Senior CADD Technician	CADD Technician	Admin	*TOTAL HOURS*	*LABOR COST*
TASK GROUP 100 - PROJECT MANAGEMENT AND ADMINISTRATION																
101	Project Management	4	16	8	0	0	0	0	0	0	0	0	0	0	28	$ 7,344
102	Invoicing and Progress Reports	4	16	0	0	0	0	0	0	0	0	0	0	32	52	$ 9,088
103	Project Meetings	0	10	10	0	0	0	12	8	12	8	0	0	0	60	$ 13,708
	Subtotal Task Group 100	**8**	**42**	**18**	**0**	**0**	**0**	**12**	**8**	**12**	**8**	**0**	**0**	**32**	**140**	**$ 30,140**
TASK GROUP 200 - PRELIMINARY EVALUATIONS																
201	Site Investigations	0	0	8	8	0	0	0	8	0	8	0	0	0	32	$ 6,408
202	Document Electrical and I&C Standards	0	4	8	0	0	0	4	20	20	10	0	0	8	74	$ 15,074
	Subtotal Task Group 200	**0**	**4**	**16**	**8**	**0**	**0**	**4**	**28**	**20**	**18**	**0**	**0**	**8**	**106**	**$ 21,482**
TASK GROUP 300 - PRELIMINARY DESIGN REPORT																
301	Draft Preliminary Design Report	0	4	4	4	12	20	20	32	10	36	8	16	8	174	$ 33,420
302	Final Preliminary Design Report	0	2	2	2	6	2	12	24	4	12	4	24	4	98	$ 17,556
	Subtotal Task Group 300	**0**	**6**	**6**	**6**	**18**	**22**	**32**	**56**	**14**	**48**	**12**	**40**	**12**	**272**	**$ 50,976**
TASK GROUP 400 - DETAILED DESIGN																
401	30% Design	0	4	4	4	24	40	4	40	18	44	12	48	8	250	$ 46,024
402	60% Design	0	8	4	4	20	40	16	92	18	44	12	60	8	326	$ 60,508
403	90% Design	0	8	6	4	20	40	20	132	20	24	24	36	8	342	$ 64,676
404	Final Design	0	4	2	2	10	20	18	96	4	12	8	24	4	204	$ 38,272
405	Code Compliance	0	0	0	0	4	0	6	14	0	0	0	0	0	24	$ 4,622
406	Opinion of Probable Construction Cost	0	4	4	0	4	0	12	24	4	4	0	0	0	56	$ 11,592
	Subtotal Task Group 400	**0**	**28**	**20**	**14**	**82**	**140**	**76**	**398**	**64**	**128**	**56**	**168**	**28**	**1,202**	**$ 225,694**
	Total Hours	**8**	**80**	**60**	**28**	**100**	**162**	**124**	**490**	**110**	**202**	**68**	**208**	**80**	**1,720**	
	Bill Rate	$ 288	$ 272	$ 230	$ 205	$ 155	$ 240	$ 240	$ 183	$ 240	$ 183	$ 154	$ 135	$ 112		
	Labor Cost	$ 2,304	$ 21,760	$ 13,800	$ 5,740	$ 15,500	$ 38,880	$ 29,760	$ 89,670	$ 26,400	$ 36,966	$ 10,472	$ 28,080	$ 8,960		
															Subtotal - B&V Labor	**$ 328,292**
															Allowance 1 - Early Procurement Documents for Long-Lead Items	**$ 70,000**
															Allowance 2 - Coordination with other Contractors	**$ 1,000**
															Allowance 3 - Miscellaneous Expenses	**$ 708**
															Total Proposed Fee	**$ 400,000**

AGREEMENT

FOR

CONSULTING ENGINEERING SERVICES FOR WATER, WASTEWATER AND ELECTRICAL UTILITY SYSTEMS

BETWEEN

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

AND

BLACK & VEATCH

AGREEMENT NO.: 23-604

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY
7501 NORTH JOG ROAD
WEST PALM BEACH, FLORIDA 33412
(561) 640-4000

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CONSULTING ENGINEERING SERVICES FOR WATER, WASTEWATER AND ELECTRICAL UTILTY SYSTEMS

This Agreement is made and entered into as of Sept 25th, 2023, (hereinafter referred to as the Agreement), by and between **Solid Waste Authority of Palm Beach County**, a special district created by Chapter 2001-331, Laws of Florida, as amended, by and through its Governing Board, (hereinafter referred to as the AUTHORITY) and **BLACK & VEATCH CORPORATION** (hereinafter referred to as the CONSULTANT and Parties when referred to collectively), a Delaware Corporation, authorized to do business in the State of Florida, whose Federal Employer Identification Number is **43-1833073**.

Whereas, AUTHORITY desires to employ the services of the CONSULTANT for the purpose of providing Consulting Engineering Services for Water, Wastewater and Electrical Utility Systems and,

Whereas, the AUTHORITY'S Request for Qualifications (RFQ) No. 23-604/PA was undertaken in accordance with Section 287.055, Florida Statutes, Florida's Consultant Competitive Negotiation Act and the Parties hereto have complied with all the requirements therein, and

Whereas, CONSULTANT represents it is qualified, capable and prepared to provide such services.

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is acknowledged by the other, the AUTHORITY and CONSULTANT agree as follows:

DEFINITIONS:

"Approval"/"Acceptance"/"Authorization": when referring to AUTHORITY'S approval, acceptance or authorization shall not constitute acceptance or approval of the buildability or suitability of any documents nor the approval or acceptance of the condition, status or progress of the work, but only establishes that the AUTHORITY has verified such documents exist and that progress payments may be made. No liability shall flow to, be assumed by, or incurred of the AUTHORITY for its acceptance, approval or authorization of any documents or work hereunder.

"Observe", "Observation(s)", "Visit(s)" "Inspect(s)": site visits by the CONSULTANT to determine if construction is being performed in compliance with the Construction Documents, applicable specifications and other contractual requirements (Contract Documents), and if the contractor is progressing according to the project schedule.

SECTION 1 – EFFECTIVE DATE AND INCORPORATION OF RECITALS:

The foregoing recitals and definitions are hereby incorporated herein by reference.

1.1 The Effective Date of this Agreement shall be September 30, 2023, and the Initial Term of this Agreement shall expire on September 29, 2026.

1.2 The Initial Term of this Agreement shall be for Three (3) years, beginning on the Effective Date, unless otherwise terminated earlier as provided for herein. The AUTHORITY shall have the option of extending this Agreement for Three (3) years, as approved by the AUTHORITY'S Board, or designee, in its sole and unfettered discretion, on the same terms and conditions. Such extension shall be in the form of a written Amendment to the Agreement executed by both Parties.

SECTION 2 - AUTHORITY'S MINIMUM PERFORMANCE STANDARDS AND EXPECTATIONS

2.1 After acceptance by the AUTHORITY of the Study and Report Phase documents indicating any specific modifications or changes in the general scope, extent or character of the project desired by the AUTHORITY and upon written authorization from the AUTHORITY, CONSULTANT shall proceed with the performance of

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the services called for in the preliminary Design Phase, and shall submit preliminary design documents and a revised opinion of probable Total Project Costs within the period indicated in each service authorization.

2.2 After acceptance, for payment purposes, by the AUTHORITY of the Preliminary Design Phase documents and revised opinion of probable Total Project Costs, indicating any specific modifications or changes in the general scope, extent or character of the project desired by the AUTHORITY, and upon written authorization from the AUTHORITY, CONSULTANT shall proceed with the performance of the services called for in the Final Design Phase. CONSULTANT shall deliver Contract Documents and a revised opinion of probable Total Project Costs for all work of Contractor(s) on the project within the period indicated in each service authorization.

2.3 CONSULTANT'S services under the Study and Report Phase, Preliminary Design Phase and Construction Document Phase shall each be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted for payment by the AUTHORITY or (2) forty-five calendar days after the date when such submissions are delivered to the AUTHORITY for final payment. In each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the design of the project or to make any changes requested by the AUTHORITY shall be allowed.

2.4 After acceptance by the AUTHORITY of the CONSULTANT'S Drawings, Specifications and other Final Design Phase documentation including the most recent opinion of probable Total Project Costs and upon written authorization to proceed, CONSULTANT shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractor(s).

2.5 The Construction Monitoring Services Phase will commence with the execution of the first prime contract to be executed for the work of the project or any part thereof, and will terminate upon written recommendation by CONSULTANT of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the project involves more than one prime contract.

2.6 The Operational Phase will commence during the Construction Phase and will terminate upon final completion or as otherwise specified in the CSA/Work Assignment.

2.7 If the AUTHORITY has requested significant modifications or changes in the general scope, extent or character of the project, the time of performance of CONSULTANT'S services shall be adjusted accordingly as mutually agreed upon by the Parties.

2.8 If CONSULTANT'S services for design or during construction of the project are delayed or suspended in whole or in material part by the AUTHORITY for more than three months for reasons beyond CONSULTANT'S control, CONSULTANT shall be entitled to an equitable adjustment in compensation. In the event that the work designed or specified by CONSULTANT is to be furnished or performed under more than one prime contract, or if CONSULTANT'S services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), AUTHORITY and CONSULTANT shall, prior to commencement of the Final Design Phase, develop a schedule for performance of CONSULTANT'S services during the Construction Document, Bidding or Negotiating and Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate contracts. This schedule is to be prepared whether or not the work under such contracts is to proceed concurrently and is to be included in service CSA/Work Assignment.

SECTION 3 - BASIC SERVICES OF CONSULTANT

3.1 General

3.1.1 CONSULTANT shall provide for AUTHORITY, professional Engineering services in all phases of any project to which this Agreement applies as hereinafter provided. These services will include serving as AUTHORITY'S professional engineering representative for the project(s), providing professional engineering consultation and advice and furnishing required civil, structural, mechanical, environmental and electrical engineering services and required architectural services incidental thereto.

3.1.2 The services of this Agreement may include a series of separate individual tasks or projects, all related to general consulting services, as more particularly described below. Work assignments will be subject to scope definition and determination of level of effort on a task-by-task basis. During the term of this Agreement, the AUTHORITY may require engineering services that are expected to be more extensive in scope or of a different nature than that described in this Section. In such an event, the AUTHORITY may, at its sole and unfettered discretion, obtain said services in accordance with the State of Florida Consultants Competitive Negotiation Act. If so, it is mutually understood that the relationship between CONSULTANT and AUTHORITY under this Agreement shall be considered as neither barring CONSULTANT from, nor granting special consideration to CONSULTANT in, participating in the evaluation process for a consultant to provide such additional services.

3.1.3 Each task to be performed under this Agreement shall be assigned to CONSULTANT by a separate written service authorization called a Consultant Services Authorization/Work Assignment (CSA/Work Assignment). For each CSA/Work Assignment, AUTHORITY shall require CONSULTANT to provide a proposed written scope of work including schedule and cost, for AUTHORITY review. Upon mutual agreement of the scope of work, schedule and cost (lump sum fee or estimated salary cost ceiling arrived at in accordance with the Fee Schedule of this Agreement), AUTHORITY shall issue a notice to proceed for each CSA/Work Assignment. Approval and issuance of CSA/Work Assignment shall constitute proper Notice to Proceed.

3.1.4 The types of individual CSA/Work Assignments to be assigned to CONSULTANT under this Agreement shall include, but not necessarily be limited to, those listed in the Scope of Work.

3.1.5 Assignment of tasks to the CONSULTANT will be at the sole and unfettered discretion of the AUTHORITY. The AUTHORITY may choose to select another firm or use in-house staff to perform any of the tasks described, in whole or in part. Task scope and fee negotiation will be performed on a task-by-task basis. It is intended that the Agreement for the above described project be for a term of three years, subject to annual performance review by the AUTHORITY. No minimum amount of professional services or compensation is guaranteed to the CONSULTANT. This is not an exclusive contract. The AUTHORITY may enter into similar agreements with other architects or engineers to provide the same or similar services during the term of this Agreement.

3.2 Study and Report Phase

If required by Consultant Services Authorization/Work Assignment (CSA/Work Assignment) CONSULTANT shall complete the following as may be modified by the applicable CSA/Work Assignment:

3.2.1 Consult with AUTHORITY, to clarify and define AUTHORITY'S requirements for the project and review available data.

3.2.2 Advise AUTHORITY, in writing, as to the necessity of AUTHORITY providing or obtaining from others data or services required for the completion of CONSULTANT'S services under Agreement, and

assist AUTHORITY in obtaining such data and services. When authorized, obtain necessary data or information directly from AUTHORITY'S files or field observations.

3.2.3 Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the project and participate in consultations with such authorities.

3.2.4 Provide analyses of AUTHORITY'S needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.

3.2.5 Provide a general economic analysis of AUTHORITY'S requirements applicable to various alternatives.

3.2.6 Prepare a Report, containing but not limited to schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved (including applicable requirements of governmental authorities having jurisdiction as aforesaid) and the alternative solutions available to AUTHORITY, and setting forth CONSULTANT'S findings and recommendations. This Report will be accompanied by CONSULTANT'S opinion of probable costs for the project, including the following, which will be separately itemized: construction cost, allowance for engineering costs and contingencies, and (on the basis of information furnished by AUTHORITY) allowances for such other items as charges and costs; i) of all other professionals and consultants, ii) for the cost of land acquisition and rights-of-way, iii) for compensation for or damages to properties, iv) for interest and financing charges and v) for other services to be provided by others for AUTHORITY. The total of all such costs, allowances, etc. are hereinafter called "Total Project Costs".

3.2.7 Furnish five (5) copies of the Analyses and Report documents and review them in person with AUTHORITY unless otherwise stated in the Consultant Services Authorization/Work Assignment (CSA/Work Assignment).

3.3 Preliminary Design Phase

If required by Consultant Services Authorization/Work Assignment (CSA/Work Assignment) CONSULTANT shall complete the following as may be modified by the applicable CSA/Work Assignment:

3.3.1 In consultation with AUTHORITY and on the basis of the accepted Study and Report documents, determine the general scope, extent and character of the project.

3.3.2 Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the project.

3.3.3 Act as the criteria professional for the AUTHORITY.

3.3.4 Advise AUTHORITY, in writing, if additional data or services are required from the AUTHORITY or others for the completion of CONSULTANT'S services under this Agreement and assist AUTHORITY in obtaining such data and services. When authorized, obtain data or information directly from AUTHORITY'S files or field observations.

3.3.5 Submit a revised opinion of probable Total Project Costs, based on the information contained in the preliminary design documents.

3.3.6 Furnish five (5) copies of the above Preliminary Design documents and present and review them in person with AUTHORITY unless otherwise stated in the CSA/Work Assignment.

3.4 Construction Document Phase

If required by Consultant Services Authorization/Work Assignment (CSA/Work Assignment) CONSULTANT shall complete the following as may be modified by the applicable CSA/Work Assignment:

3.4.1 On the basis of the accepted Preliminary Design documents and the revised opinion of probable Total Project Costs, prepare for incorporation in the Contract Documents final drawings (hereinafter called "Drawings") to show the specific scope, extent and character of the work to be furnished and performed by Contractor(s) and Specifications which will be in conformance with AUTHORITY forms as applicable. CONSULTANT shall permit no change in, or conflict with, AUTHORITY forms without prior written approval.

3.4.2 Provide technical criteria, written descriptions and design data for AUTHORITY use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the project, and assist AUTHORITY in consultations with appropriate authorities.

3.4.3 Advise AUTHORITY of any adjustments to the latest opinion of probable Total Project Costs caused by changes in general scope, extent or character or design requirements of the project. Furnish to AUTHORITY a revised opinion of probable Total Project Costs based on the Drawings and Specifications.

3.4.4 Assist AUTHORITY in the preparation of contract forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders for review by AUTHORITY and other related documents if requested by the AUTHORITY. No change shall be made in any AUTHORITY form without prior written approval of the AUTHORITY. All requests for changes to the AUTHORITY forms shall be in writing.

3.4.5 Furnish five (5) copies of the above documents and of the Drawings and Specifications and review them in person with the AUTHORITY unless otherwise stated in the CSA/Work Assignment. On the basis of the accepted Construction Documents, prepare three (3) sets of signed and sealed Construction Documents for building permit purposes. Provide corrections and/or changes required by the permitting agency. Provide three (3) sets of approved construction plans and master sets of technical specifications for the AUTHORITY'S use to issue bidding documents unless otherwise stated in the CSA/Work Assignment. Construction documents shall also be provided on a storage medium compatible with AUTHORITY'S computer reading and drafting system. CONSULTANT shall deliver interim copies of computer medium if requested by the AUTHORITY.

3.4.6 Assist AUTHORITY in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services.

3.5 Bidding or Negotiating Phase

If required by Consultant Services Authorization/Work Assignment (CSA/Work Assignment) CONSULTANT shall complete the following as may be modified by the applicable CSA/Work Assignment:

3.5.1 Attend the pre-bid meeting(s), issue addenda to all recipients of bid documents, prepare written clarifications or additional instructions, as appropriate to interpret, clarify or expand the Bidding Documents.

3.5.2 Consult with and advise the AUTHORITY as to the acceptability of sub-contractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.

3.5.3 Consult with the AUTHORITY and advise on the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

3.5.4 Attend the bid opening and assist AUTHORITY in evaluating bids or proposals as to the compliance with all requirements of the bids or proposals.

3.5.5 Submittal of written Contract Award Recommendation for construction, materials, equipment and services.

SECTION 4 - CONSTRUCTION MONITORING SERVICES PHASE

4.1 Construction Phase

If required by Consultant Services Authorization/Work Assignment (CSA) CONSULTANT shall complete the following as may be modified by the applicable CSA/Work Assignment:

4.1.1 Provide general administration of Construction Contract. CONSULTANT shall consult with and advise AUTHORITY and act as AUTHORITY'S representative within the limits of the construction documents.

4.1.2 Attend construction conference(s) in connection with the work of Contractor(s) while it is in progress unless otherwise stated in the CSA/Work Assignment.

4.1.3 Unless otherwise stated in the CSA/Work Assignment, CONSULTANT shall make regular visits to the project site, including visits by supervising officer personnel, at intervals appropriate to the various stages of construction as CONSULTANT deems necessary in order to observe and inspect as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s) work. In no event shall such site visits be less frequent than once per week. Based on information obtained during such visits and on such observations and inspections, CONSULTANT shall verify that such work is proceeding in accordance with the Contract Documents and CONSULTANT shall keep AUTHORITY informed of the progress of the work.

4.1.4 The purpose of CONSULTANT'S representation by the Resident Project Representative (and assistants, if any) at the site will be to better enable the CONSULTANT to carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase. In addition, as an experienced and qualified design professional, CONSULTANT will endeavor to assure AUTHORITY that the completed work of Contractor(s) conforms to the Contract Documents, and that the design as reflected in the Contract Documents has been implemented by Contractor(s).

4.1.5 Defective Work: During such visits and on the basis of such observations and inspections, CONSULTANT may disapprove of or reject Contractor(s) work while it is in progress if CONSULTANT believes that such work will not produce a completed project that conforms to the Contract Documents, or that it will prejudice the design concept of the project as reflected in the Contract Documents.

4.1.6 Interpretations and Clarifications: CONSULTANT shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.

4.1.7 Shop Drawings: CONSULTANT shall review and approve when acceptable; shop drawings, samples and other data which Contractor(s) are required to submit for compliance with the Contract Documents.

4.1.8 Substitutes: CONSULTANT shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s) and notify the AUTHORITY of such substitutes prior to use.

4.1.9 Inspections and Tests: CONSULTANT shall have authority to require special inspection or testing of the work unless otherwise stated in the CSA/Work Assignment. CONSULTANT shall receive and review all certificates of inspections, testing's and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (to determine that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

4.1.10 Disputes and Changes during Construction: If requested by AUTHORITY, CONSULTANT shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of AUTHORITY and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. This section includes, holding meetings and negotiations with the Contractor to resolve disputes or changes to the Contract, including review and processing of all change orders.

4.1.11 Applications for Payment: Based on CONSULTANT'S on-site observations and inspections as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules:

4.1.11.1 CONSULTANT shall determine the amounts owing to Contractor(s) and recommend, in writing, payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to AUTHORITY, based on such observations, inspections and review, that the work has progressed to the point indicated, and that, in accordance with the standard of care referenced herein, the work is in compliance with the Contract Documents. This recommendation will be subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation. In the case of unit price work, CONSULTANT'S recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

4.1.11.2 By recommending any payment, CONSULTANT represents that the quality and quantity of Contractor(s) work, as it has been furnished and performed is in compliance with the Contract Documents.

4.1.12 Contractor(s) Completion Documents: CONSULTANT shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents. Such review by the CONSULTANT is to determine that their content complies with the requirements of, and in the case of certificates of inspection, warranties, tests and approvals the results certified indicate compliance with the Contract Documents; and CONSULTANT shall transmit them to AUTHORITY with written comments.

4.1.13 Asbestos: CONSULTANT shall not specify any materials which contain Asbestos. In addition, as part of the project close-out, CONSULTANT shall provide certification that no asbestos containing materials were specified or approved for installation to the extent that CONSULTANT should have reasonably known.

4.1.14 Inspections: CONSULTANT shall conduct inspections and conduct and/or observe any tests necessary to determine if the work is substantially complete. A final inspection will be made to determine if the completed work is acceptable so that CONSULTANT may recommend, in writing, final payment to Contractor(s) and may give written notice to AUTHORITY and the Contractor(s) that the work is acceptable and in compliance with the Contract documents. CONSULTANT shall have no control or responsibility for means, methods or safety of Contractor.

4.2 Start-Up, Turnover and Commissioning Phase

If required by Consultant Services Authorization/Work Assignment (CSA/Work Assignment) CONSULTANT shall complete the following as may be modified/supplemented by the applicable CSA/Work Assignment:

4.2.1 Provide assistance in the closing of any financial or related transaction for the project.

4.2.2 Provide assistance in connection with the start-up, refining and adjusting of any equipment or system, including performing a final inspection at the end of the warranty period.

4.2.3 In conjunction with AUTHORITY, visit the project to inspect and point out any apparent defects in the completed construction, assist AUTHORITY in consultations and discussions with Contractor(s) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective work, including assisting the AUTHORITY during warranty of the project(s).

4.2.4 Assist the AUTHORITY in training AUTHORITY'S staff to operate and maintain the project.

4.2.5 Assist the AUTHORITY in developing systems and procedures for control of the operation and maintenance of, and record keeping for, the project.

4.2.6 Prepare a set of reproducible record drawings (as-builts) and AutoCAD files showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to CONSULTANT confirmed by CONSULTANTS observations and inspections and which CONSULTANT considers significant.

4.2.7 If the AUTHORITY designates a person to represent the AUTHORITY at the site who is not the CONSULTANT or CONSULTANT'S agent or employee, the duties, responsibilities and limitations of authority of such other person and the effect thereof on the duties and responsibilities of CONSULTANT and the Resident Project Representative (and any assistants) will be set forth in the CSA/Work Assignment issued for the project.

SECTION 5- ADDITIONAL SERVICES OF CONSULTANT

5.1 Services Requiring Authorization in Advance

Only if authorized in writing by the AUTHORITY, and not included in basic services, CONSULTANT may begin the authorized work and receive additional compensation for furnishing or obtaining the requested additional services of the types listed in this Section.

5.1.1 Preparation of applications and supporting documents for private or governmental grants, loans or advances in connection with the project; preparation or review of environmental impact statements or other required environmental permits.

5.1.2 Services resulting from significant changes in the general scope, extent or character of the project or its design including, but not limited to changes in size, complexity of the AUTHORITY'S schedule, character of construction or method of financing; and revising previously accepted studies, reports,

design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or order enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond CONSULTANT'S control. Such services may be considered as additional services, provided such services are not required as the result of any act, error or omission of the CONSULTANT or any person or entity providing services on behalf of the CONSULTANT in the performance of this Agreement.

5.1.3 Providing renderings or models for AUTHORITY'S use.

5.1.4 Providing any type of property surveys or related engineering services needed for the transfer of interests in real property.

5.1.5 Preparing to serve or serving as a CONSULTANT or EXPERT WITNESS for the AUTHORITY in any litigation involving the project except for negotiations in seeking settlement of disputes and assistance in consultations which is included as part of Basic Services or in situations where CONSULTANT may be responsible due to incompetence, errors, omissions, or fraud.

5.1.6 Services in connection with work change directives and change orders to reflect changes requested by the AUTHORITY, which require additional design services from the CONSULTANT.

5.2 AUTHORITY'S Responsibilities

The AUTHORITY shall perform the following in a timely manner so the services of the CONSULTANT are not delayed:

5.2.1 Designate a person to act as the AUTHORITY'S representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the AUTHORITY'S policies and decisions with respect to CONSULTANT'S services for the project.

5.2.2 As requested, in writing, by CONSULTANT, provide criteria and information as to the AUTHORITY'S requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which the AUTHORITY will require to be included in the Contract Documents.

5.2.3 Arrange for access to, and make provisions where necessary for CONSULTANT to enter upon, property as required for CONSULTANT to perform services under this Agreement.

5.2.4 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by CONSULTANT. If requested by CONSULTANT, render in writing decisions pertaining thereto within such time as may be identified by CONSULTANT. However, said decisions shall create no liability on the part of the AUTHORITY for approval or acceptance.

5.2.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project unless otherwise stated in the CSA/Work Assignment.

5.2.6 If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

5.2.7 Furnish to CONSULTANT data or estimated figures as to the AUTHORITY'S anticipated costs for services to be provided by others for the AUTHORITY so that CONSULTANT may make the necessary findings to properly support opinions of probable Total Project Costs.

5.2.8 Attend the pre-bid conference, bid opening, pre-construction conferences, and substantial completion inspections and final completion inspections.

5.2.9 Give prompt written notice to CONSULTANT whenever the AUTHORITY observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT'S services, or any defect or non-conformance in the work of any Contractor.

SECTION 6 - PAYMENTS TO CONSULTANT

6.1 The total amount to be paid by the AUTHORITY under this Agreement and method of payment shall be set forth on each CSA/Work Assignment. For those CSA's/Work Assignments that are not a fixed price, the CONSULTANT shall notify the AUTHORITY in writing when 75% of the "not to exceed amount" has been reached on each CSA/Work Assignment. The CONSULTANT will bill the AUTHORITY on a monthly basis, or as otherwise provided in a CSA/Work Assignment, at the amounts set forth for services rendered toward the completion of the Scope of Work on each CSA/Work Assignment. Where incremental billings for partially completed items are permitted, the total incremental billings shall not exceed the percentage of estimated completion of identifiable deliverables or accepted deliverables as of the billing date.

6.2 Proper Pay Applications received from the CONSULTANT pursuant to this Agreement will be reviewed and upon approval by the AUTHORITY indicating that services have been received. Invoices will be paid in accordance with the Florida Local Government Prompt Act, Florida State Statute 218.735, as amended. All payments to subcontractors shall also be made in accordance with this Prompt Payment Act.

6.3 Fixed Price Method of Payment: The scope of work for services, projects or programs shall be thoroughly defined and outlined prior to its authorization. The AUTHORITY and CONSULTANT shall mutually agree to a fixed price for services to be rendered and a detailed scope of work. Should the AUTHORITY deem that a change in the scope of work is appropriate, then a decrease or increase shall be agreed to in writing. Prior to execution of a fixed price authorization, the CONSULTANT shall have submitted a detailed cost proposal including the estimated labor hours, labor rates as established in Section 6.5, sub-contractual services, out of pocket expenses and other related costs supporting the proposed work. Fixed price contracts shall include all services including labor, reimbursement expenses if any, and overhead and profit as part of the fixed price.

6.4 Computation of Time Charges/Not to Exceed Method of Payment: When a service is to be compensated for on a time charge/not to exceed basis, the CONSULTANT will submit a not to exceed budget to the AUTHORITY for prior approval based on estimated labor hours and labor rates as established in this Payments to Consultants Section, which shall not exceed established hourly rates as shown in Fee Schedule attached hereto, or the latest rates approved by the AUTHORITY, plus sub-contractual services, out of pocket expenses and other related costs supporting the proposed work and approved by the AUTHORITY. Should the CONSULTANT find it necessary to change assigned personnel during the execution of the work, the CONSULTANT must make every effort to substitute equally qualified staff at the same loaded labor rate as identified in Fee Schedule. The CONSULTANT must obtain prior written authorization from the AUTHORITY for all staff changes and substitutions that are made after the initial CSA/Work Assignments has been executed. The AUTHORITY shall not be obligated to reimburse the CONSULTANT for costs incurred in excess of the total not to exceed cost amount approved by the AUTHORITY. Specifically, and for purposes of clarity, the AUTHORITY will not be liable for payment of these items.

6.5 The AUTHORITY agrees to pay the CONSULTANT compensation based upon the actual hourly labor rates (employee hourly salaries) for services rendered by personnel directly engaged on AUTHORITY projects. The break-even multiplier will be calculated using the audited overhead plus the fringe benefit rates. The billing multiplier will be calculated by adding a negotiated profit of up to 10% to the breakeven multiplier. The billing multiplier will be capped at 3.00. Therefore, the billing multiplier will be the lesser of the number calculated as described above or 3.00. The billing multiplier will be rounded to the nearest second decimal place. The labor billing rate for each employee will be calculated by multiplying the respective actual hourly labor rates and the billing multiplier.

The labor, general overhead, fringe benefit rate, and profit factors may be subject to audit. The Fiscal Year 2023 established loaded hourly labor rates are set forth in Fee Schedule attached hereto and made a part hereof. Fee Schedule may be adjusted with the AUTHORITY's approval once per year on or after the anniversary date of this Agreement to reflect any changes in CONSULTANT staff status, the actual raw labor rates at that time, and the audited labor multiplier. Thereafter, the CONSULTANT may request adjustments to Fee Schedule, subject to the AUTHORITY's approval, on or after the twelve (12) month anniversary date of the Initial Adjustment. At the time of requesting a labor rate adjustment, the CONSULTANT will provide a report of an independent certified public accountant on statement of direct labor, fringe benefits and general overhead. If a rate adjustment is not requested by the CONSULTANT within six (6) months of each anniversary date of the Initial Agreement, the AUTHORITY will not approve a rate adjustment until the date of the next anniversary of the Initial Adjustment.

6.6 For routine consulting projects and construction/field work projects lasting less than one-hundred and sixty (160) hours, the audited office multiplier can be used for establishing loaded labor rates. For all other construction and/or field work tasks/projects exceeding the above threshold, the loaded labor rate for the individuals performing the field work will be calculated using the audited field multiplier.

6.7 Unless specifically approved in advance by the AUTHORITY in writing, CONSULTANT is not allowed to bill any labor and expense associated with CONSULTANT's internal Quality Assurance, Quality Control, financial management, and monthly invoicing for work performed on AUTHORITY's projects. Cost categories and items that are included in the audited overhead cannot be billed to the AUTHORITY.

6.8 The Maximum Hourly Compensation will not exceed $300.00, without prior written approval of the AUTHORITY.

6.9 Compensation for subconsultants will be negotiated on a per consultant services authorization/Work Assignment (CSA/Work Assignment) basis. Compensation will be through either a direct mark-up no greater than eight percent (8%) or through the addition of time for the management effort required for any approved subconsultant. If the CONSULTANT chooses to add time to manage its subconsultants instead of direct markup, such tasks shall be clearly identified in the proposal by including a separate line item on the labor/budget estimates. Sub-contractual services shall be approved by the AUTHORITY in writing prior to performance of the sub-contractual work. Consulting time for processing and management of the subconsultant shall not be included in direct costs if a direct mark-up is applied for management efforts.

6.10 Reimbursable expenses will be reimbursed up to the not-to-exceed amount identified on each CSA/Work Assignment. All reimbursable expenses will be estimated up front at the time of negotiating each CSA/Work Assignment. All requests for payment of reimbursable expenses eligible for reimbursement under the terms of the Agreement shall be actual expenses incurred and include copies of paid receipts, invoices, or other documentation acceptable to the AUTHORITY Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in each CSA/Work Assignment. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Agreement will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes, as amended. Per Diem, car rental, mileage, meals, and lodging expenses are not allowable for CONSULTANT or its staff from the local office.

6.11 In order for both Parties to close their books and records, the CONSULTANT will clearly state "Final" on the CONSULTANT'S final/last billing to the AUTHORITY for each CSA/Work Assignment. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to the AUTHORITY for the identified CSA/Work Assignment. Since this account will thereupon be closed, any and other further charges, if not properly included on this invoice, are waived by the CONSULTANT for the identified Service Authorization. The AUTHORITY and CONSULTANT acknowledge that the AUTHORITY shall not be liable for any further charges and costs not included in this "Final" invoice.

SECTION 7 - CONSTRUCTION COST AND OPINIONS OF COST

7.1 Construction Cost

7.1.1 The construction cost of the entire project (herein referred to as "Construction Cost") means the total cost to the AUTHORITY of those portions of the entire project designed and specified by CONSULTANT, but it will not include CONSULTANT'S compensation and expenses, the cost of land acquisition, rights-of-way, or compensation for or damages to, properties unless the Agreement so specifies. It will not include AUTHORITY'S legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the project or the cost of other services to be provided by others to AUTHORITY.

7.1.2 If required by AUTHORITY and accepted by the CONSULTANT, there shall be a Construction Budget Cap as set forth in each CSA/Work Assignment for each project, and the CONSULTANT agrees to maintain this amount or he/she shall redesign at no cost to the AUTHORITY until construction and demolition can be achieved within this limit. The program shall not be lessened by design requirements to decrease costs without the prior express written approval of AUTHORITY. Similarly, "Add" Alternates for program requirements are not allowable in order for the CONSULTANT to lessen costs to meet the Fixed Limit Construction Budget Cap.

7.2 Opinions of Cost

Since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s) methods of determining prices, or over competitive bidding or market conditions, CONSULTANT'S opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of CONSULTANT'S experience and qualifications and represent CONSULTANT'S best judgment as an experienced and qualified professional engineer, familiar with the construction industry.

SECTION 8 - GENERAL CONSIDERATIONS

8.1 Standard of Care

8.1.1 CONSULTANT has, during the evaluation and negotiation phase of this solicitation process that has preceded the Effective Date of this Agreement, represented to AUTHORITY that the CONSULTANT is possessed of a level of skill, knowledge, experience and expertise of a nationally recognized engineering firm. CONSULTANT acknowledges that AUTHORITY has relied on CONSULTANT'S representations of skill, knowledge, experience and expertise. By executing this Agreement, CONSULTANT agrees that CONSULTANT will exercise that degree of care, knowledge, skill and ability as other engineers possessing the degree of skill, knowledge, experience and expertise which CONSULTANT has represented to the AUTHORITY. CONSULTANT shall perform such duties as may be assigned without neglect. CONSULTANT accepts the relationship of fair dealing and confidence established by this Agreement and agrees with AUTHORITY to cooperate with AUTHORITY and to utilize CONSULTANT'S best skill, efforts and judgment in furthering the interests of the AUTHORITY. CONSULTANT agrees to perform each assignment in an efficient and economical manner consistent with the AUTHORITY'S interests.

8.1.2 CONSULTANT further contracts with AUTHORITY to furnish its professional skill and judgment with due care in accordance with applicable Federal, State and local laws, codes and regulations as amended and supplemented which are in effect on the date of this Agreement first written. It is specifically understood that the Accessibility provisions of the Americans with Disabilities Act (ADA) shall be complied with and incorporated into the project.

8.1.3 Although specific provisions of this Agreement refer to some services with terms such as "complete", "accurate", "full extent", "highest", "in detail", "verify", "certify", "represent", "substantiate", "inspect", "monitor", "discover", "as often as necessary", "approve", "accept", "reject", and "enforce", such terms and similar terms shall be qualified by the standard of care stated in the preceding two paragraphs.

8.1.4 The CONSULTANT shall not be responsible for the means, methods, techniques, sequences and operations of construction or safety precautions and programs unless such means, methods, techniques, sequences and operations of construction or safety precautions and programs are provided for in Construction Documents.

8.2 Termination

8.2.1 This Agreement may be terminated by the CONSULTANT upon sixty (60) calendar days prior written notice to the AUTHORITY in the event of failure by the AUTHORITY to perform in accordance with the terms of this Agreement through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the AUTHORITY, with or without cause, and solely for convenience, within five (5) calendar days upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Agreement, the CONSULTANT shall be paid for services rendered to the AUTHORITY'S satisfaction through the date of termination specified in this notice. CONSULTANT agrees to waive and make no claim for lost profits or other consequential damages. After receipt of a Termination Notice and except as otherwise directed by the AUTHORITY the CONSULTANT shall do all of the following:

a) Stop work on the date and to the extent specified.
b) Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
c) Transfer all work in process, completed work, and other materials related to the terminated work to the AUTHORITY.
d) Continue and complete all parts of the work that have not been terminated.

8.2.2 Should a termination for breach later be declared wrongful, said termination shall be considered and treated as a termination without cause.

8.2.3 Notwithstanding any breach of this Agreement by either of the Parties, the status of payment to the CONSULTANT, or the AUTHORITY'S exercise of its rights of termination, it is hereby agreed between the Parties that copies of any and all property, work product, documentation, reports, computer systems and software, schedules, graphs, outlines, books, manuals, logs, files, deliverables, photographs, videos, tape recordings or data relating to this project which have been created as a part of CONSULTANT'S services, or authorized by the AUTHORITY as a reimbursable expense, whether generated directly by the CONSULTANT, or by or in conjunction or consultation with any other party whether or not a party to this Agreement, whether or not in privity of contract with the AUTHORITY or CONSULTANT, and wherever located, shall be the property of the AUTHORITY. Use by the AUTHORITY of any draft, incomplete, or other materials which are not submitted as final work product shall be at the AUTHORITY's sole risk.

8.3 Truth-in-Negotiation Certificate

8.3.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the execution of this Agreement and no higher than the average rates charged by the CONSULTANT to any other customers or clients for the same or substantially similar service.

8.3.2 The said rates and costs shall be adjusted to exclude any significant sums should the AUTHORITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The AUTHORITY shall exercise its rights under this "Certificate" within one (1) year following final payment. AUTHORITY has the authority and right to audit CONSULTANT'S records under this provision during the one (1) year period.

8.4 Personnel

8.4.1 The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to fully, efficiently and properly perform the services under this Agreement. Such personnel shall not be employees of or have any conflicting relationship with the AUTHORITY.

8.4.2 All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, licensed, authorized or permitted under state and local law to perform such services during the entire Initial and Extended Term of this Agreement, if any.

8.4.3 Any changes or substitutions in the CONSULTANT'S key personnel or subconsultants must be made known to the AUTHORITY'S representative and written approval must be granted by the AUTHORITY before said change or substitution can become effective.

8.4.4 The CONSULTANT represents that all services shall be performed by skilled and competent personnel to the professional standard of care set forth in the Standard of Care Section above.

The following personnel shall be considered key personnel:

Chris Barlow, Contract Manager
Isabel Botero, Project Director
Rafael E. Frias, Principal-in-Charge
Brad Vanlandingham, Technical Advisor
Tammy Martin, Electrical Project Manager
Lucas Botero, Wastewater Project Manager
Emeliz Torres, Water Supply and Treatment
Charles Moseley, Construction Management

Office No.: 754-229-3130 Cell No.: 561-236-2858 Email: Barlowc@bv.com

8.4.5 CONSULTANT'S Representative:

The CONSULTANT will identify the name of the Project Engineer/Manager and Resident Project Representative during the scoping phase prior to execution of the CSA/Work Assignment. The Project Engineer/Manager and Resident Project Representative shall devote such time as may be necessary to the project and as may be appropriate to and consistent with full, proper and timely performance of this Agreement. These individuals shall be assigned to the project through final acceptance of construction. The Project Engineer/Manager nor the Resident Project Representative shall not be removed from his/her responsibilities on this project without the written consent of the AUTHORITY. The AUTHORITY shall retain reasonable right of approval of the CONSULTANT'S designated Project Engineer/Manager and Resident Project Representative and the right to require the CONSULTANT to replace its designated Project Engineer/Manager or Resident Project Representative with another individual acceptable to the AUTHORITY.

8.5 EQUAL BUSINESS OPPORTUNITY PROGRAM:

The Governing Board of the AUTHORITY has implemented the Economic Inclusion Policy administered by the Equal Business Opportunity (EBO) Program Office to ensure that all segments of its business population including, but not limited to, local, small, minority, and women-owned businesses, have an equitable opportunity to participate in the AUTHORITY's procurement process, in accordance with Section 6.1 through 6.4 of the Purchasing Manual, which is hereby incorporated herein by reference. Program tools and solicitation incentives are hereby referred to as the Affirmative Procurement Initiatives (API).

A. Affirmative Procurement Initiative (API):

CONSULTANT hereby acknowledges and agrees the selected API requirement as set forth in the solicitation which requirements shall also be extended to any change order or subsequent contract modification, and absent EBO's granting of a waiver, that its full compliance with the specified API terms and conditions are material to its satisfactory performance under this Agreement.

S/M/WBE SUBCONTRACTING PARTICIPATION:

The AUTHORITY established a mandatory minimum **Twenty Percent (20%)** Small/Minority/Women Business Enterprise (S/M/WBE) Subcontracting Affirmative Procurement Initiative (API Preference for Professional Services in this Agreement in accordance with the solicitation.

The CONSULTANT acknowledges its commitment to achieve the **Twenty percent (20%)** S/M/WBE Participation goal. All firms must perform a "Commercially Useful Function" on this contract. See Definition Section of the Authority's Purchasing Manual, as incorporated herein.

B. S/M/WBE Subconsultant/Supplier Utilization Plan:

The Subcontractor/Supplier Utilization Plan submitted by the CONSULTANT to AUTHORITY with its proposal for this contract contains the names of the certified S/M/WBE Subconsultants to be used by CONSULTANT on this Agreement.

During the price proposal negotiation phase for each work assignment, The CONSULTANT must identify the respective percentages and dollar value of the total prime contract dollar value to be awarded and performed by each S/M/WBE Subconsultant, and documentation including a description of each S/M/WBE Subconsultant's scope of work and confirmation of each S/M/WBE subconsultant's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached as **EBO Forms** and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the EBO, the failure of CONSULTANT to attain this subcontracting goal for S/M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the AUTHORITY, and may result in debarment from performing future AUTHORITY contracts, withholding of payment for retainage up to the dollar amount of the underutilization below the agreed upon S/M/WBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the EBO Program Policy, or under any other law.

C. Calculating S/M/WBE Participation:

The percentage of participation shall be calculated by dividing the sum of the contract value performed by the Certified S/M/WBE Prime Bidder that provides goods and/or services necessary to support the required services under this Agreement and the payments made to the Certified S/M/WBE Subcontractors included in the CONSULTANT's Subcontractor/Supplier Utilization Plan, if any, by the contract amount.

The goal is to encourage doing business with certified local S/M/WBE firms with certifications from any certifying organization in the State of Florida approved by the AUTHORITY. For the purpose of this requirement, an eligible local S/M/WBE firm included in the CONSULTANT's plan submitted in response to the solicitation giving rise to this Agreement must have had a valid certification prior to the due date for responses to solicitation. Certified local S/M/WBE firms added after contract award must have a valid certification prior to the date upon which they are added. Furthermore, such firms shall be domiciled in Palm Beach County as defined in the AUTHORITY's Purchasing Manual, Section 6, incorporated herein, as of the aforementioned dates required for certification.

D. Demonstration of Good Faith Effort:

CONSULTANT is required to demonstrate a Good Faith Effort, as defined in the AUTHORITY's Purchasing Manual, to accomplish the Affirmative Procurement Initiative as described in Part A of this Section , and to meet the commitments in the S/M/WBE Subcontractor/Supplier Utilization Plan contained therein.". No additions, deletions, substitutions or modifications to the Subcontractor/Supplier Utilization Plan may be made without the prior approval of the EBO office. Requests for additions, deletions, substitutions or modifications must be submitted in writing and shall state the nature of the requested change, and in the case of requested additions or substitutions, the S/M/WBE Subcontractor/Supplier name, scope of work, and dollar value of work to be performed in addition to any other documentation requested by the EBO office. Upon approval, this request shall constitute a duly authorized modification of this Agreement and considered an amendment hereto by consent of the PARTIES satisfying the requirements of the Agreement without necessity of further action of any type by the PARTIES. Among other things, in demonstration of a Good Faith Effort in relation to this Agreement, CONSULTANT shall follow all requirements of the EBO Program, including:

1. If CONSULTANT is unable to meet the participation requirements for S/M/WBEs specified in its Subcontractor/Supplier Utilization Plan, the CONSULTANT shall seek substitute or additional S/M/WBEs to fulfill the requirements; the requested substitution must be approved by the Director of the EBO Office or designee and the Originating Department Director or designee.

2. If, after reasonable Good Faith Efforts, the CONSULTANT is unable to find an acceptable substitute or additional S/M/WBE, a post-award waiver shall be requested. The request shall document the reasons for the CONSULTANT's inability to meet the goal requirement. In the event the CONSULTANT is found not to have performed Good Faith Efforts in its attempt to find a suitable substitute or additional for the initial S/M/WBE proposed utilization, the Agreement may, in the AUTHORITY's sole and unfettered discretion, be terminated for material breach and or AUTHORITY may pursue other penalties and sanctions permitted by this Agreement.

3. If requesting a post-award vendor subcontracting waiver, the CONSULTANT shall request waiver of a specified subcontracting goal by submitting a Post-Award Vendor Subcontracting Waiver Request Form (Exhibit "C-2"). Documentation and supporting evidence of all Good Faith Efforts made to comply with the subcontracting goal must also be submitted. **CONSULTANT shall submit request by visiting swa.gob2g.com or the EBO Office at 561-640-4000 Ext. 4532**

E. Equal Business Opportunity (EBO) Program Compliance – General Provisions

1. CONSULTANT acknowledges that the AUTHORITY's EBO Program is in furtherance of the AUTHORITY's efforts at economic inclusion, and that CONSULTANT's commitments including, but not limited to, the Subcontractor/Supplier Utilization Plan, are part of CONSULTANT's scope of work as referenced in the AUTHORITY's solicitation that formed the basis for contract award and subsequent execution of this Agreement. CONSULTANT's compliance with the EBO Program and

exercise of a Good Faith Effort to achieve the S/M/WBE Participation Goals are considered by the PARTIES to this Agreement to be material terms. CONSULTANT voluntarily agrees to fully comply with the EBO Program terms as a condition for being awarded this Agreement by the AUTHORITY. Without limitation, CONSULTANT further agrees to the following terms as part of its contract responsibilities under the EBO Program:

a) CONSULTANT shall cooperate fully with the EBO Office and other AUTHORITY departments in their data collection and monitoring efforts regarding CONSULTANT's utilization and payment of all of its subcontractors and suppliers, including both S/M/WBE and non-S/M/WBE firms for their performance of Commercially Useful Functions on this Agreement, including, but not limited to, the timely submission of completed forms to the Office of EBO as specified in the EBO Program Policy & Procedures, the timely reporting of payments, and entry of data into the **Equal Business Opportunity Management System**, and ensuring the timely compliance of its subcontractors and suppliers with this requirement. **CONSULTANT shall report and enter data by visiting swa.gob2g.com;**

b) CONSULTANT shall cooperate fully with any AUTHORITY or EBO investigation (and shall also respond truthfully and promptly to any AUTHORITY or EBO inquiry) regarding possible non-compliance with EBO Program requirements on the part of CONSULTANT or its Subconsultants or suppliers;

c) CONSULTANT shall permit the EBO, upon reasonable notice, to undertake inspections as necessary, including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subconsultants and workers to determine whether there has been a violation of the terms of this Agreement;

d) CONSULTANT shall immediately notify AUTHORITY through the EBO or the Originating Department for this Agreement of any proposed changes to CONSULTANT's Subconsultant/Supplier Utilization Plan, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONSULTANT to replace the Subconsultant/Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subconsultant/Supplier Utilization Plan, including, but not limited to, proposed self-performance of work by CONSULTANT of work previously designated for performance by Subconsultant or supplier, substitutions of new Subconsultants, terminations of previously designated Subconsultants, or reductions in the scope of work and value of work awarded to Subconsultants or suppliers by submitting a Change To Utilization Plan form (Exhibit"C-1"), and Post Award Vendor Subcontracting Waiver Request (Exhibit "C-2) and shall be subject to advanced written approval by the Originating Department and the EBO;

e) CONSULTANT shall immediately notify the Originating Department and EBO of or change in its ownership or business structure;

f) CONSULTANT shall retain all records of its Subconsultant payments for this Agreement for a minimum of five (5) years following the conclusion of this Agreement;

g) In instances wherein the EBO determines that a Commercially Useful Function is not actually being performed by the S/M/WBE firms listed in a CONSULTANT's Subconsultant/Supplier Utilization Plan, the CONSULTANT shall not be given credit for the participation of its S/M/WBE subcontractor(s) or joint venture partner(s) towards attainment of S/M/WBE firm utilization goals, and the CONSULTANT and its listed S/M/WBE firms may be subject to sanctions and penalties in accordance with the EBO Program Policy and Procedures;

h) CONSULTANT acknowledges that the AUTHORITY will not execute an agreement for this project until the CONSULTANT and each of its Subconsultants for this project have registered and/or maintained active status in the AUTHORITY's Equal Business Opportunity Management System and CONSULTANT has represented to AUTHORITY which primary commodity codes each registered Subconsultant will be performing under for this Agreement;

i) CONSULTANT acknowledges that the AUTHORITY will not execute an agreement for this project until the CONSULTANT provides an executed agreement with each of its S/M/WBE Subconsultants or suppliers with a contract term having the same as with this Agreement at a minimum.

F. Affirmative Procurement Initiatives - Compliance

1. Commercial Nondiscrimination Policy Compliance:

As a condition of entering into this Agreement, the CONSULTANT represents and warrants that it has complied with throughout the course of this bidding and contract award process, and will continue to comply with, the AUTHORITY's Commercial Nondiscrimination Policy, as described in Section 6 of the Purchasing Manual, as incorporated herein. As part of such compliance, CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability or genetic information, in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the AUTHORITY's relevant marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in AUTHORITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONSULTANT's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the AUTHORITY pursuant to the bid solicitation for this Agreement is hereby attached and incorporated into the material terms of this Agreement. CONSULTANT shall incorporate this clause into each of its subcontractor and supplier agreements entered into pursuant to AUTHORITY contracts.

2. Prompt Payment:

Upon execution of this Agreement by CONSULTANT, CONSULTANT shall be required to submit to AUTHORITY accurate payment information with each invoice regarding each of its Subconsultants to ensure that the CONSULTANT's reported subcontract participation is accurate. CONSULTANT shall pay its Subconsultants in compliance within timeframes set forth in accordance with the Florida Local Government Prompt Payment Act, or within ten (10) days of receipt of payment from the AUTHORITY, whichever is sooner.

3. Violations:

In addition to the above, CONSULTANT acknowledges and agrees that it is a violation of the EBO Program Policy and Procedures and a material breach of this Agreement to:

a) Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE for purposes of benefitting from the EBO Program;

b) Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the EBO Program;

c) Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE firm;

d) Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the EBO Program; and

e) Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the EBO Program.

4. Penalties, Sanctions and Debarment:

Any person who violated the provisions of this section shall be subject to the sanctions and penalty provisions of Section 6.1 through 6.4 of the AUTHORITY's Purchasing Manual, as incorporated herein by reference that include, but are not limited to:

a) Suspension of contract;

b) Withholding of funds;

c) Recession of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

d) Refusal to accept a response or proposal to a future bid or RFP;

e) Debarment of a Respondent, Contractor or other business firm from eligibility for providing goods or services to the AUTHORITY for a period not to exceed three (3) years (subject to change upon AUTHORITY Board approval); and

f) Liquidated damages equal to the difference in dollar value of S/M/WBE participation as committed to in the Agreement, and the dollar value of S/M/WBE participation as actually achieved.

8.6 Independent Contractor Relationship

8.6.1 The CONSULTANT is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the AUTHORITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees or others perform the work under this Agreement. The CONSULTANT'S relationship and the relationship of its employees or any others performing work under this Agreement shall at all times and without exception be that of an Independent Contractor and not as employees or agents of the AUTHORITY.

8.6.2 The CONSULTANT does not have the power or authority to bind the AUTHORITY in any promise, agreement or representation other than specifically provided for in this Agreement.

8.7 Contingent Fees

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not

paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, fit, or any other consideration contingent upon or resulting from the award or making of this Agreement.

8.8 Authority to Conduct Business

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and perform all requirements in this Agreement for the entirety of the Initial and extended term, if any, of this Agreement. Proof of such licenses and approvals shall be submitted to the AUTHORITY upon request.

8.9 Federal and State Tax

8.9.1 The AUTHORITY is exempt from payment of Florida State Sales and Use Taxes. The AUTHORITY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the AUTHORITY. The CONSULTANT is not authorized to use the AUTHORITY'S Tax Exemption Number in securing such materials.

8.9.2 The CONSULTANT shall be responsible for payment of its own and its share of its employee's payroll, payroll taxes, and benefits with respect to this Agreement.

8.10 Availability of Funds

The AUTHORITY'S performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the AUTHORITY Governing Board.

8.11 Insurance

8.11.1 CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described herein. CONSULTANT shall agree to provide the AUTHORITY with at least thirty (30) days prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as AUTHORITY'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the Agreement. In the event that subconsultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the AUTHORITY for any claim in excess of the subconsultants insurance coverage, to the extent that insurance meeting the limits would have afforded coverage to the AUTHORITY, as indicated in the Insurance Checklist. CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the AUTHORITY. CONSULTANT shall maintain insurances as indicated on the Insurance Requirements Checklist attached hereto for the entire term of the Agreement including any renewals.

8.11.2 Additional Insured: CONSULTANT shall endorse the AUTHORITY as an Additional Insured with a CG 2026 Additional Insured – Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Solid Waste Authority of Palm Beach County, its Officers, Employees and Agents." CONSULTANT shall provide the Additional Insured endorsements coverage on a primary basis.

8.11.3 Waiver of Subrogation: Except for CONSULTANT'S Worker's Compensation and Professional Liability policies, CONSULTANT hereby waives any and all rights of Subrogation against the

AUTHORITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.

8.11.4 Certificate(s) of Insurance: Prior to execution of this Agreement, CONSULTANT shall deliver to the AUTHORITY a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include the following language: "Should any of the policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions." CONSULTANT shall provide notice to the AUTHORITY at any time CONSULTANT becomes aware of any cancellation or material change in the insurance policies. The certificate of insurance shall be issued to:

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, FL 33412

8.11.5 Umbrella or Excess Liability: If necessary, CONSULTANT may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The AUTHORITY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

8.11.6 Right to Review: AUTHORITY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. AUTHORITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

8.12 Disclosure and Ownership of Documents

8.12.1 The CONSULTANT shall deliver to the AUTHORITY, for acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the AUTHORITY under this Agreement.

8.12.2 All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the AUTHORITY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the AUTHORITY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, utilized, or purchased under this Agreement for an AUTHORITY project or at the AUTHORITY'S expense shall be and remain the AUTHORITY'S property and may be reproduced and reused at the sole and unfettered discretion of the AUTHORITY. However, CONSULTANT will incur and assume no liabilities for modification or reuse unless CONSULTANT agrees with and is compensated for said reuse.

8.12.3 All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein

relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

8.13 Jurisdiction, Venue, Waiver of Jury Trial and Remedies

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be in a State court of competent jurisdiction located in Palm Beach County. With the exception of the choice of law and venue provisions contained herein, no remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No single or partial failure by any party to exercise any right, power, or remedy hereunder shall preclude that party from exercising that right, power or remedy in the future. **THE AUTHORITY AND CONSULTANT FREELY AND VOLUNTARILY AGREE TO WAIVE ITS RESPECTIVE RIGHT TO A JURY TRIAL ON ANY ISSUE(S) SO TRIABLE.**

8.14 Conflict of Interest

8.14.1 The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Florida Statutes 112.311, as amended. The CONSULTANT further represents that no person having any conflicting interest shall be employed for said performance.

8.14.2 The CONSULTANT shall promptly notify the AUTHORITY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the AUTHORITY as to whether the association, interest or circumstance would, in the opinion of the AUTHORITY, constitute a conflict of interest if entered into by the CONSULTANT. If, in the opinion of the AUTHORITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the AUTHORITY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the AUTHORITY by the CONSULTANT under the terms of this Agreement.

8.15 Excusable Delays

8.15.1 The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes beyond the control of the CONSULTANT or its subconsultants and without their fault or negligence. Such causes may include, under relevant circumstances: acts of God; natural or public health emergencies; strikes not within CONSULTANT'S work force, company or agent's thereof; freight embargoes; and "abnormally severe and unusual" weather conditions.

8.15.2 Upon the CONSULTANT'S request, the AUTHORITY shall consider the facts and extent of any failure to perform the work and, if in the reasonable opinion of the AUTHORITY the CONSULTANT'S failure to perform was without it or its subconsultants fault or negligence, this Agreement shall be revised accordingly; this is subject to the AUTHORITY'S rights to change, terminate, or stop any or all of the work at any time.

8.16 Arrears

The CONSULTANT shall not pledge the AUTHORITY'S credit or make it a guarantor of payment of surety for any Agreement, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further

warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

8.17 Modifications of Work

8.17.1 The AUTHORITY reserves the right to make changes in the work required by any CSA/Work Assignment, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the AUTHORITY'S notification of a contemplated change, the CONSULTANT shall promptly do all of the following: (1) if requested by AUTHORITY, provide an estimate for the increase or decrease in cost due to the contemplated change, and (2) notify the AUTHORITY of any estimated change in the completion date; and (3) advise the AUTHORITY in writing if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Agreement.

8.17.2 If the AUTHORITY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Work affected by a contemplated change, pending the AUTHORITY'S decision to proceed with the change.

8.17.3 If the AUTHORITY elects to make the change, the AUTHORITY shall issue an amendment to the applicable CSA/Work Assignment and the CONSULTANT shall not commence work on any such change until such written amendment has been issued and executed.

8.18 Notice

All notices required in this Agreement if sent to the AUTHORITY shall be mailed to:

Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, FL 33412

Attention: Executive Office
Office No.: 561-640-4000 Fax No.:561-640-3400

and if sent to the CONSULTANT shall be mailed to:

Black and Veatch Corporation
8461 Lake Worth Road
Suite 166
Lake Worth, Florida 33467
Attention: Chris Barlow, (Contract Manager
Office No.: 754-229-3130 Email: barlowc@bv.com

8.19 Severability

8.19.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

8.19.2 The provisions of this section shall not prevent the entire Agreement from being void if a provision which is of the essence of the Agreement is determined to be void.

8.20 Entirety of Contractual Agreement

8.20.1 The AUTHORITY and the CONSULTANT agree that this Agreement, including but not limited to the portions of the AUTHORITY's Purchasing Manual that are incorporated herein by reference, sets forth the entire agreement between the PARTIES, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the Parties hereto.

8.20.2 This Agreement includes the following exhibits, which are attached hereto and made a part hereof:

Scope of Work
Fee Schedule
S/M/WBE Participation
Insurance Requirement Checklist

8.21 Successors and Assigns

AUTHORITY and CONSULTANT each binds itself and its partners, successors, assigns and legal representatives to the other party to this Agreement and to such other parties, the partners, successors, executors, administrators, assigns, and legal representatives. CONSULTANT shall not assign this Agreement without the prior express written approval of the AUTHORITY via executed amendment.

8.22 Public Entity Crimes

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and subconsultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the Effective date of this agreement. This notice is required by F.S. 287.133(3)(a).

8.23 AutoCAD File

CONSULTANT agrees to provide AUTHORITY an electronic copy of the AutoCAD file used by CONSULTANT to develop the final Contract Documents and an electronic copy of the record drawings. The hard copy of the Contract Documents containing the CONSULTANT'S professional engineering stamp shall take precedence over the AutoCAD files.

8.24 Proprietary Information

Notwithstanding any other provision of this Agreement, all of CONSULTANT's pre-existing computer programs, standard details, figures, templates, specifications or software developed by CONSULTANT outside of this Agreement shall remain the exclusive property of CONSULANT. The AUTHORITY reserves the right to reuse any pre-existing standard details, figures, templates or specification utilized by CONSULTANT on AUTHORITY projects for any work related to the repair, expansion, rehabilitation, or modification of such projects.

8.25 Criminal History Records Check

The CONSULTANT shall comply with the provisions of Palm Beach County Ordinance 2003-030, as amended, the Criminal History Records Check Ordinance (*Ordinance*), if CONSULTANT'S employees or subconsultants are required under this Agreement to enter a *critical facility* as identified in Palm Beach County Board of County Commissioners Resolution R-2003-1274. The CONSULTANT acknowledges and agrees that all employees and subconsultants who are to enter a *critical facility* will be subject to a fingerprint based on criminal history records check. Although AUTHORITY agrees to pay for all applicable FDLE/FBI fees required for criminal history records checks, the CONSULTANT shall be solely responsible for the financial schedule, and staffing implications associated in complying with Ordinance 2003-030.

8.26 Inspector General

Palm Beach County has established the Office of the Inspector General (OIG), Ordinance No. 2009-049 which is authorized and empowered to review past, present and proposed county contracts, transactions, accounts and records. The AUTHORITY has entered into an Interlocal Agreement (ILA) for Inspector General Services. This Agreement provides for the Inspector General to provide services to the AUTHORITY in accordance with the AUTHORITY, functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the AUTHORITY and receiving AUTHORITY funds shall fully cooperate with the Inspector General including providing access to records relating to this Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the Contractor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

8.27 Indemnification

8.27.1 General

Having considered the risks and potential liabilities that may exist during the performance of the services and in consideration of the promises included herein, AUTHORITY and CONSULTANT agree to allocate such liabilities in accordance with this Section.

8.27.2 Indemnification

The CONSULTANT shall indemnify and hold harmless the AUTHORITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement.

8.27.3 Survival

Upon completion of all services, obligations and duties provided for in this Agreement or in the event of termination of this Agreement for any reason, the terms and conditions of this Section shall survive.

8.28 Compliance with Laws

In performance of the Services, the CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

8.29 Sub-consulting

8.29.1 AUTHORITY reserves the right, and in its sole and unfettered discretion, to accept the use of a subconsultant or to reject the selection of a particular subconsultant under this Agreement.

8.29.2 If a subconsultant fails to perform or make progress as required by this Agreement, and it is necessary to replace the subconsultant to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subconsultant by the AUTHORITY.

8.30 Waiver

A waiver by either AUTHORITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

8.31 Public Records, Access and Audits

8.31.1 It is the intent of this Section to maintain compliance with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended.

8.31.2 **DESIGNATED RECORDS CUSTODIAN CONTACT INFORMATION:**

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:
RECORDS MANAGER
SOLID WASTE AUTHORITY OF PALM BEACH COUNTY
7501 NORTH JOG ROAD
WEST PALM BEACH, FL. 33412
561-640-4000 EXT. 4606
RECORDS CUSTODIAN@SWA.ORG

8.31.3 The CONSULTANT shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work, in accordance with the timeframes and classifications for records retention as per the General Records Schedule GS1-SL for State and Local Government Agencies (see: https://dos.myflorida.com/library-archives/records-management/general-records-schedules/) after completion or termination of this Agreement. Upon AUTHORITY'S request, CONSULTANT shall provide AUTHORITY with access to such records during normal business hours at a location within Palm Beach County for purposes of inspection or audit.

8.31.4 Notwithstanding anything herein to the contrary, the CONSULTANT expressly acknowledges that: i) it is providing a specific service to the AUTHORITY in the performance of this Agreement; ii) acting on behalf of the AUTHORITY in the performance of this Agreement; iii) that it has read and is familiar with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended, and both understand its responsibility and obligation to comply with this law; and iv) to the extent any question(s) arise regarding its duties to produce public records, it shall contact the Records Manager with same.

8.31.5 Any public records requests directed to, or related in any way to this Agreement shall be directed solely to the Records Manager. If the requested records are not in the possession of the Records Manager they shall immediately notify the CONSULTANT and the CONSULTANT must provide the records or allow access to the records within a reasonable time. A CONSULTANT who fails to provide the records to the public agency within a reasonable time may be subject to penalties under Florida Statutes (F.S) §119.10, and §119.10(2) provides that a person who willfully and knowingly violates the Public Records Act commits a misdemeanor of the first degree, which is punishable by up to a year in jail and a fine not to exceed $1,000.

8.31.6 Therefore, the CONSULTANT is required to:

1) Keep and maintain public records that ordinarily and necessarily would be required by the AUTHORITY in order to perform the service;
2) Upon AUTHORITY's request from the AUTHORITY's Records Manager; provide the AUTHORITY with a copy of the requested records to allow the records to be inspected or copied within a reasonable time on the same terms and conditions that the AUTHORITY would provide the records at a cost that does not exceed the cost provided by Florida law;
3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if the CONSULTANT does not transfer the records to the AUTHORITY; and
4) Upon completion of the Agreement, transfer at no cost to the AUTHORITY, all public records in possession of the CONSULTANT or keep and maintain public records to the AUTHORITY upon completion or termination of the Agreement; the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the AUTHORITY, upon request from the AUTHORITY's Records Manager, either during performance of the Agreement or after termination or completion of the Agreement in a format that is compatible with the information technology systems of the AUTHORITY.

8.31.7 Failure of the CONSULTANT to comply with these requirements shall be a material breach of this Agreement.

8.32 Contract Administration

Services of CONSULTANT shall be under the general direction of the Director of (Department), or designee, who shall act as the AUTHORITY'S representative during the term of this Agreement.

8.33 Scrutinized Companies

8.33.1 When Agreement value is greater than one million dollars ($1,000,000): As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or is engaged in business operations in Cuba or Syria.

If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONSULTANT, this Agreement may be terminated and a civil penalty equal to the greater of $2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification may be submitted at the time of renewal of this Agreement.

8.33.2 As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONSULTANT, this Agreement may be terminated and, if said false certification stated that CONSULTANT was not engaged in a boycott of Israel, a civil penalty equal to the greater of $2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification may be submitted at the time of renewal of this Agreement.

8.34 Agreements with Other Governmental Entities

8.34.1 The CONSULTANT agrees that this Agreement constitutes an offer to all State Agencies, Political Subdivisions and municipalities or other local government agency of the State of Florida under the same terms and conditions, for the same prices and for the same effective period as specified in this Agreement should the CONSULTANT deem it in the best interest of their business to do so.

8.34.2 The Agreement in no way restricts or interferes with any State Agency or Political Subdivision and municipalities or other governmental agency of the State of Florida from re-solicitation.

8.35 Third Party Beneficiary Disclaimer:

It is not the intent of these documents to create third party beneficiary status in any person or entity that is not a direct party this Agreement and no language in this Agreement should be construed or interpreted as creating a third-party beneficiary.

8.36 E-VERIFY – EMPLOYMENT ELIGIBILITY

A. The CONSULTANT certifies, warrants and represents that it is in compliance with Section 448.095, Florida Statutes, as may be amended, and that CONSULTANT shall: (1) register with and use the E-Verify System (E-Verify.gov) to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the CONSULTANT'S subcontractors/subconsultants performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers. CONSULTANT shall obtain from each of its subcontractors/subconsultants an affidavit stating that the subcontractor/subconsultant does not employ, contract with, or sub-contract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. CONSULTANT shall maintain a copy of any such affidavit from a subcontractor/subconsultant for, at a minimum, the duration of the sub-contract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

B. AUTHORITY shall terminate this Agreement if it has a good faith belief that CONSULTANT has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If AUTHORITY has a good faith belief that one of CONSULTANT'S subcontractor/subconsultant has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, AUTHORITY shall notify CONSULTANT to terminate its contract with the subcontractor/subconsultant and CONSULTANT shall immediately terminate its contract with the subcontractor/subconsultant. If AUTHORITY terminates this Agreement pursuant to the above, CONSULTANT shall be barred from being awarded a future contract by AUTHORITY for a period of one (1) year from the date on which the Agreement was terminated. In the event of such contract termination, CONSULTANT shall also be liable for any additional costs incurred by AUTHORITY as a result of the termination.

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IN WITNESS WHEREOF, the **Solid Waste Authority of Palm Beach County,** at a regular meeting thereof, by action of the AUTHORITY Board authorizing and directing the foregoing be adopted, has caused these presents to be signed by its Executive Director, and **CONSULTANT** has executed this Agreement all as of the day and year first above written.

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:

Witness:

1. _____

2. _____

By: _____
Daniel Pellowitz
Executive Director

APPROVE AS TO LEGAL SUFFICIENCY

By: Michael W. Jones
Digitally signed by Michael W. Jones
DN: DC=org, DC=pbcgov, OU=Enterprise, OU=CATT, OU=Users, CN=Michael W. Jones, E=MJones@pbcgov.org
Reason: I am the author of this document
Location:
Date: 2023.09.25 12:57:40-04'00'
Foxit PDF Reader Version: 12.0.1
Michael W. Jones, Esq.
General Counsel

APPROVE AS TO TERMS AND CONDITIONS

By: _____
Signature
Nathan Mayer, P.E., BCEE
Print Name
Director of Project Management
Title

CONSULTANT:

Attest:

_____
Corporate Assistant Secretary

By: _____

Witness:

1. _____

2. _____

Name: William J. Wells

Title: Vice President

Date: 9/13/23

BLACK & VEATCH CORPORATION CORPORATE SEAL DELAWARE

(Corporate Seal)

Approved by Authority Board on DATE, Item

SCOPE OF WORK

INTRODUCTION:

The AUTHORITY requires consulting engineering services related to the AUTHORITY's solid waste management facilities. The CONSULTANT will receive a Consultant Services Authorization (CSA) for individual projects that will be assigned at the sole and unfettered discretion of the AUTHORITY.

SCOPE OF WORK:

The CONSULTANT shall provide professional consulting engineering and related services in all phases of any project relating to water, wastewater and electric utility systems. These consulting services include, but are not limited to:

- Basic Services:
  - AUTHORITY's Professional Representative
  - Study and Report Phase
  - Preliminary Design Phase
  - Construction Document Phase
  - Bidding or Negotiating Phase
- Construction Management Services:
  - Construction Administration Phase
  - Assistance in Start-Up, Turnover and Commissioning Phase
- Additional Services
  - Any additional services as needed by the AUTHORITY.

The work includes, but is not limited to:

- Planning, surveying, design, preparation of studies and reports, permitting, preparation of construction documents, construction management services including procurement and resident services during construction and all necessary incidental and related activities and services required for current and future utility systems and other improvements or modifications in connection with such utilities, as required.
- Federal, State and local legislation in water, wastewater and electrical utilities, leachate forcemain and alternative water supply, and domestic and industrial wastewater treatment activities as it may apply to the AUTHORITY.
- Federal and local administrative regulations, rules, guidelines, orders, etc. in utility system management as it may apply to AUTHORITY operations.
- Assistance in obtaining and/or renewing permits for utility systems including water distribution and wastewater collection systems and electric generation and distribution systems, SCADA and other control and monitoring systems.
- Existing system evaluations including but not limited to condition assessments and capacity analysis.
- Systems needs analysis.
- Preparation of basis of design manuals for upgrades, replacement and/or new systems.
- Preparation of design criteria for use in design/build, Construction Manager at Risk or other types of procurements for upgrades, retrofits, replacement and/or new systems.
- Provide evaluation services, resident project representative services and or inspection services related to construction of upgrades, retrofits, replacement and or new systems.

To Be Determined Based on the Authority's Needs for Individual Projects

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EXHIBIT "B"

FEE SCHEDULE

EXHIBIT B

FEE SCHEDULE
2023-2024

BLACK & VEATCH

EMPLOYEE NAME		BILLING RATE
LAST	FIRST	$/HR
Hines	Jaclyn Grace	$78.20
Waalewyn	Christine A.	$89.64
Bachelani	Shaina	$96.13
Jenkins	Jordan	$95.15
Mungal	Alexis Shastra	$101.32
Little	Sheree Z.	$104.39
Diaz Fernandez	Camila	$107.64
Kobrosly Lozada	Angeluz Del Valle	$112.20
Villalobos	Juan David	$116.73
Podolsky	Ryan Nicholas	$124.27
Hernandez Rebollo	Jessica Nicolette	$125.58
Gonzalez	Melody	$128.50
Kimbell	Lee	$129.33
Franco	Felipe	$136.22
Crenshaw	Thomas	$138.00
Anda	Adriana Maria	$139.70
Testa	Irene	$147.24
Garcia	David	$150.07
Cevallos	Kevin	$151.32
Miller	Sam	$153.62
Sarmiento	Anamaria	$156.66
Mitchell	Justin	$162.68
Garcia	Natalia	$163.13
Abdool-Ghany	Aqeel Rashaad	$163.33
Locasto	Frank	$166.46
Croswait	Martie	$166.49
Glatt	Clayton	$169.00
Cruz	Rony	$179.93
Coyne	Kevin	$181.96
Barrios	Diego	$188.13
King	Steven	$188.96
Santiago	Robert	$193.01
Baltodano	Sergio	$193.40
Kusmaul	Laurie	$198.41
Martins	David	$200.58
Torres	Emeliz	$201.45
Fuller	Andrew	$202.82
Rishel	Phil	$211.28
Collazuol	Timothy	$212.21
Lytvyn	Olena	$213.31
Kadava	Raghu	$214.32
Chomtid	Mark	$215.10
Alexandrou	Nicholas	$215.66
Mazer	Michael Robert	$224.42

EMPLOYEE NAME		BILLING RATE
LAST	FIRST	$/HR
Murch	Renee	$225.62
Bednar	Todd	$226.60
Dinges	Jon Michael	$226.66
Serra	Pablo-Gala	$228.92
Schemensky	Benjamin	$229.88
Schlutermann	George	$232.83
Velez	Melissa	$232.89
Martin	Tammy	$233.66
Mier	Jena	$235.12
Chadwick	Danny	$238.28
O'Connell	Stephen	$240.55
Chambers	Robert S.	$248.74
Barlow	Chris	$248.74
Hemmy	Troy S.	$252.32
Wu	Rayn	$256.01
Jackson	Jo Ann	$263.13
Schwerman	Amanda	$269.33
Botero	Isabel	$275.44
Seastead	Mark	$285.04
Vanlandingham	Brad	$288.05
Moseley	Charles	$294.48
Rectenwald	Ed	$295.88
Beriswill	Jeffrey Alan	$298.63
Inman	Julie	$300.00
Kleveter	Mark	$300.00
Burbano	Arturo	$300.00
Mackenzie	Mike	$300.00
Joyce	George	$300.00
Frias	Rafael	$300.00

NOTES:

Employees not on this Fee Schedule may be added on an individual CSA basis with the AUTHORITY'S approval.

CONSULTANT shall submit to the AUTHORITY, on an annual basis, the raw labor rates and a report of an independent certified public accountant on statement of Direct Labor, Fringe Benefits and General Overhead as described in the Agreement.

As stated in the Agreement, Section 6.8, the Maximum Hourly Compensation will not exceed $300.00, unless approved by the AUTHORITY.

EXHIBIT "C"

S/M/WBE PARTICIPATION

SMALL/MINORITY/WOMEN BUSINESS ENTERPRISE COMMITMENT FORM

Solid Waste Authority of Palm Beach County
Small/Minority/Women Business Enterprise (S/M/WBE)
Commitment Form

Solicitation Name: RFQ 23-604/PA Consulting Engineering Services for Water/Wastewater and Electrical Utility Systems

Respondent Name: Black & Veatch Corporation

Please acknowledge the statements below by initialing each box:

X	In responding to this solicitation, I hereby affirm my firm's commitment to meet the **Small/Minority/Women Business Enterprise (S/M/WBE)** Subcontracting Requirement indicated in the solicitation.
X	I understand a **Small/Minority/Women Business Enterprise (S/M/WBE) Subcontracting Participation** goal of **Twenty Percent** (20%) applies to this solicitation.
X	I understand that to count towards the AUTHORITY'S **S/M/WBE** Participation Subcontracting goal, a Consultant or Subcontractor/Supplier must be certified as an eligible **S/M/WBE**, have a significant business presence within Palm Beach County, and perform a commercially useful function in accordance with the Economic Inclusion Policy and Procedures.
X	I understand that the failure to include a completed, signed copy of this Commitment Form to acknowledge the **S/M/WBE** requirements for this solicitation will render this response NON-RESPONSIVE.
X	I understand that in the absence of a Subcontracting Goal Waiver Request Form granted by the Equal Business Opportunity Program, the failure of the firm to attain these Subcontracting goals for S/M/WBE participation in the performance of a commercially useful function under the terms of its contract shall be a material breach and subject to penalties and/or sanctions available under the terms of this Agreement for violations of the Economic Inclusion Policy, or under any other law.

Consultant's Authorized Agent

Name: Rafael E. Frias, III, PE

Sign and Date: 3/21/2023

SMALL/MINORITY/WOMEN BUSINESS ENTERPRISE SUBCONTRACTOR/SUPPLIER PARTICIPATION SCHEDULE

This form has also been submitted online via the Authority's procurement site Periscope.

Supplier Response Form

Equal Business Opportunity Office
Small/Minority/Women Business Enterprise Subcontractor/Supplier Participation Schedule

DATE: 03/21/23

SOLICITATION INFORMATION					
Contract #:	RFQ 23-604/PA				
Project Name:	Consulting Engineering Ser		Project Start Date:	TBD	
Project Location:	7501 NORTH JOG ROAD WEST PALM BEACH, FLORIDA 33412				
Bidder/ Proposer:	Black & Veatch Corporatior				
Address:	8461 Lake Worth Road, Suite 166, Lake Worth, FL 33467				
Contact Person:	Chris Barlow, PE, CDT	Email Address:	BarlowC@BV.com	Phone #:	561-236-2858

ORGANIZATION STATUS						
Business Association	Business Name	Type of Work to be Performed	NIGP Code	Certification Type	% of Work	$ Amount
Prime Bidder/Proposer	Black & Veatch Corporatior	Prime	918-42,	Corporat	80 %	$ TBD
S/M/WBE Subcontractor	Brown & Phillips, Inc.	Surveying	30500	S/M/WBI	2 %	$ TBD
S/M/WBE Subcontractor	Craig A. Smith & Associate	Survey, Subsurface Utility	92517, 9	S/MBE	2 %	$ TBD
S/M/WBE Subcontractor	JLA Geosciences, Inc.	Hydrogeology	91843, 9	SBE	4 %	$ TBD
S/M/WBE Subcontractor	Smith Engineering Consult	Electrical	9253130	SBE	10 %	$ TBD
S/M/WBE Subcontractor	Tierra South Florida, Inc.	Geotechnical - Soils, Geote	912-16-(	S/MBE	2 %	$ TBD
				SUB-TOTAL PARTICIPATION %:	20 %	$ TBD
				SUB-TOTAL CONTRACT AMOUNT:		$ TBD

BIDDER/PROPOSER SIGNATURE

The listing of S/M/WBE(s) shall constitute a representation by the Bidder/Proposer to the Authority that the Bidder/Proposer believes such S/M/WBE(s) to be technically and financially qualified and available to perform the work described. Bidders/Proposers are advised that the information contained herein may be verified.

By executing this form, I hereby certify to all that I have full legal authority to execute this document on behalf of the companies mentioned above, and that my signature is specifically being relied on as such for all purposes related to this solicitation, including any resulting contract award. I understand that if this certification is determined to be incorrect for any reason, that my response to this solicitation may be deemed non-responsive or I may be subject to any applicable penalties/sanctions set forth in Section (6) of the Authority's Purchasing Manual or applicable law.

Bidder/Proposer Signature	Name & Title (Print)	Date
	Rafael E. Frias, III, PE	03/21/23

SMALL/MINORITY/WOMEN BUSINESS ENTERPRISE SUBCONTRACTOR/SUPPLIER PARTICIPATION SCHEDULE CONTINUED

Use to list additional subcontractors

ORGANIZATION STATUS						
Business Association	Business Name	Type of Work to be Performed	NIGP Code	Certification Type	% of Work	$ Amount
Non S/M/WBE Subcontractor	N/A				%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
Non S/M/WBE Subcontractor					%	$
				TOTAL PARTICIPATION %:	100%	$
				TOTAL CONTRACT AMOUNT:	$	

STATEMENT OF INTENT TO PERFORM AS AN S/M/WBE SUBCONTRACTOR/SUPPLIER

Smith Engineering Consultants, Inc.

Equal Business Opportunity Office
Statement Of Intent To Perform As An S/M/WBE Subcontractor/Supplier

SOLICITATION #:	RFQ 23-604/PA
CONTRACT #:	N/A

A signed *Statement of Intent to Perform as a Small/Minority/Women Business Enterprise (S/M/WBE) Subcontractor/Supplier* form must be completed by the Bidder and owner or authorized principal of each S/M/WBE firm listed in the *S/M/WBE Subcontractor/Supplier Participation Schedule*.

STATEMENT OF INTENT

The undersigned is certified as an S/M/WBE vendor in accordance with the Solid Waste Authority of Palm Beach County's Equal Business Opportunity Program Policy: _X_ Yes ____ No

Smith Engineering Consultants, Inc. (Name of S/M/WBE Subcontractor/Supplier) agrees to perform work on the above contract as a (check one):

Individual Partnership (Corporation) Other

The S/M/WBE subcontractor will enter into a formal agreement with Black & Veatch Corporation (Name of Bidder/Proposer) conditioned upon the Bidder/Proposer executing a contract with the Authority.

DESCRIPTION OF WORK TO BE PERFORMED & VALUE

Please provide the details and value of the work to be performed:

Item No.	Type of Work	Agreed Upon Price	% of Work
1	Electrical	$ TBD	10 %
2		$	%
3		$	%
4		$	%
	TOTAL VALUE OF WORK	$ TBD	10 %

S/M/WBE SUBCONTRACTOR/SUPPLIER SIGNATURE

By executing this form, I hereby certify to all that I have full legal authority to execute this document on behalf of the companies mentioned above, and that my signature is specifically being relied on as such for all purposes related to this solicitation, including any resulting contract award. I understand that if this certification is determined to be incorrect for any reason, that my response to this solicitation may be deemed non-responsive or I may be subject to any applicable penalties/sanctions set forth in Section (6) of the Authority's Purchasing Manual or applicable law.

S/M/WBE Subcontractor (Signature)	President Title
Larry M. Smith Name of S/M/WBE Subcontractor (Print)	3/15/2023 Date
Prime Contractor (Signature)	Vice President Title
Rafael E. Frias, III, PE Prime Contractor (Print)	3/21/2023 Date

Smith Engineering Consultants, Inc. S/M/WBE Certificates

Office of
Equal Business Opportunity
50 South Military Trail, Suite 202
West Palm Beach, FL 33415
(561) 616-6840
www.pbcgov.com/oebo

PALM BEACH COUNTY OEBO OFFICE OF EQUAL BUSINESS OPPORTUNITY
SMALL BUSINESS IS BIG BUSINESS

Palm Beach County
Board of County
Commissioners

Dave Kerner, Mayor
Robert S. Weinroth, Vice Mayor
Maria G. Marino
Gregg K. Weiss
Maria Sachs
Melissa McKinlay
Mack Bernard

County Administrator

Verdenia C. Baker

"An Equal Opportunity Affirmative Action Employer"

Official Electronic Letterhead

January 18, 2022

Smith Engineering Consultants Inc.
2161 Palm Beach Lakes Blvd Ste. S-312
West Palm Beach FL 33409

Dear Larry Smith:

The Palm Beach County Office of Equal Business Opportunity (OEBO) has completed its review of your application and documents and is pleased to announce that your firm has been certified as a Small Business Enterprise (SBE) for three (3) years, expiring January 13, 2025.

- **9253130 - Electrical Engineering**
- **91842 - Engineering Consulting**
- **92567 - Mechanical Engineering**

You will not receive Small Business Enterprise (SBE) consideration if you bid in another area. Enclosed is your certificate. Your firm shall be subject to the provisions of the Palm Beach County Purchasing Ordinance and all State and Federal laws relating to the transaction of business.

This certification entitles you to participate in contracting opportunities when the products and services offered by your firm are being considered for bid. As an additional service to your firm, you will be included in the Palm Beach County Directory of certified S/M/WBE firms. If you wish to have your firm's listing changed, please contact our office at (561) 616-6840 for an application to modify your certification.

Your company's certification is subject to periodic review to verify your continued eligibility. Any changes you report to any County Department/Division must also be reported to OEBO. Your company name and vendor code must be the same in both Purchasing and OEBO. Failure to maintain your firm in accordance with S/M/WBE requirements contained in the Palm Beach County Code or failure to report changes in the status of your firm may result in your firm being decertified. Remember, whenever you respond to a County bid you must do so under the name of Smith Engineering Consultants Inc, with vendor code SMIT0174.

Sincerely,

Anthony Gregory
Small Business Development Specialist II

Smith Engineering Consultants, Inc. S/M/WBE Certificates

Palm Beach County
Office of Equal Business Opportunity

Certifies That

Smith Engineering Consultants Inc.

Vendor # **SMIT0174**

is a Small Business Enterprise (SBE) as prescribed by section 2-80.21 - 2.80.30 of the Palm Beach County Code for a three year period from
January 14, 2022 to January 13, 2025

The following services and/or products are covered under this certification:

Electrical Engineering; Engineering Consulting; Mechanical Engineering

Allen Gray, Manager
01/14/2022

PALM BEACH COUNTY FLORIDA

Palm Beach County Board of County Commissioners
Robert S. Weinroth, Mayor
Gregg K. Weiss, Vice Mayor
Maria G. Marino
Dave Kerner
Maria Sachs
Melissa McKinlay
Mack Bernard

County Administrator
Verdenia C. Baker

The School District of Palm Beach County, FL
Office of Diversity In Business Practices

CERTIFIES your firm as an:

Small Business Enterprise (SBE)

SMITH ENGINEERING CONSULTANTS, INC.

NIGP ***92500, 92531, 92567***

This certificate is valid from

June 30, 2022—, January 1, 2025

The following areas that your firm has been certified:

Professional Engineering Services, Electrical Engineering, and Mechanical Engineering.

Certification is not a guarantee that your firm will receive work. Please ensure that your company is registered with www.bidsync.com to receive notification of upcoming opportunities. Any change to your certification requires you to submit proof of expertise, licensure and a business history (at minimum) to justify the additional certification. You must notify this office if the status of your firm changes. Failure to report changes that affect the ownership and control of your firm may result in decertification.

Patrick Chrysostome, Manager

THE SCHOOL DISTRICT PALM BEACH COUNTY

Dicky Sykes Director

Smith Engineering Consultants, Inc. Local Business Tax Receipt

ANNE M. GANNON
CONSTITUTIONAL TAX COLLECTOR
Serving Palm Beach County
Serving *you.*

P.O. Box 3353, West Palm Beach, FL 33402-3353
www.pbctax.com Tel: (561) 355-2264

****LOCATED AT****
2161 PALM BEACH LAKES
BLV#S312
WEST PALM BEACH, FL 33409

TYPE OF BUSINESS	OWNER	CERTIFICATION #	RECEIPT #/DATE PAID	AMT PAID	BILL #
56-0016 ENGINEER BUSINESS	SMITH ENGINEERING CONSULTANTS	8228	B22.618458 - 08/02/22	$33.00	B40117964

This document is valid only when receipted by the Tax Collector's Office.

STATE OF FLORIDA
PALM BEACH COUNTY
2022/2023 LOCAL BUSINESS TAX RECEIPT

LBTR Number: 200701768
EXPIRES: SEPTEMBER 30, 2023

This receipt grants the privilege of engaging in or managing any business profession or occupation within its jurisdiction and MUST be conspicuously displayed at the place of business and in such a manner as to be open to the view of the public.

8
6 - 3175

SMITH ENGINEERING CONSULTANTS INC
SMITH ENGINEERING CONSULTANTS INC
2161 PALM BEACH LAKES BLVD # S312
WEST PALM BEACH FL 33409-6607

STATEMENT OF INTENT TO PERFORM AS AN S/M/WBE SUBCONTRACTOR/SUPPLIER

JLA Geosciences, Inc.

Equal Business Opportunity Office
Statement Of Intent To Perform As An S/M/WBE Subcontractor/Supplier

SOLICITATION #:	RFQ 23-604 /PA
CONTRACT #:	N/A

A signed *Statement of Intent to Perform as a Small/Minority/Women Business Enterprise (S/M/WBE) Subcontractor/Supplier* form must be completed by the Bidder and owner or authorized principal of each S/M/WBE firm listed in the *S/M/WBE Subcontractor/Supplier Participation Schedule.*

STATEMENT OF INTENT

The undersigned is certified as an S/M/WBE vendor in accordance with the Solid Waste Authority of Palm Beach County's Equal Business Opportunity Program Policy: _X_ Yes ____ No

JLA Geosciences, Inc. (Name of S/M/WBE Subcontractor/Supplier) agrees to perform work on the above contract as a (check one):

Individual Partnership (Corporation) Other

The S/M/WBE subcontractor will enter into a formal agreement with Black & Veatch Corporation (Name of Bidder/Proposer) conditioned upon the Bidder/Proposer executing a contract with the Authority.

DESCRIPTION OF WORK TO BE PERFORMED & VALUE

Please provide the details and value of the work to be performed:

Item No.	Type of Work	Agreed Upon Price	% of Work
1	Hydrogeology	$ TBD	4 %
2		$	%
3		$	%
4		$	%
	TOTAL VALUE OF WORK	$ TBD	4 %

S/M/WBE SUBCONTRACTOR/SUPPLIER SIGNATURE

By executing this form, I hereby certify to all that I have full legal authority to execute this document on behalf of the companies mentioned above, and that my signature is specifically being relied on as such for all purposes related to this solicitation, including any resulting contract award. I understand that if this certification is determined to be incorrect for any reason, that my response to this solicitation may be deemed non-responsive or I may be subject to any applicable penalties/sanctions set forth in Section (6) of the Authority's Purchasing Manual or applicable law.

S/M/WBE Subcontractor (Signature)	President, JLA Geosciences, Inc. Title
James L. Andersen Name of S/M/WBE Subcontractor (Print)	3/13/2023 Date
Prime Contractor (Signature)	Vice President Title
Rafael E. Frias, III, PE Prime Contractor (Print)	3/21/2023 Date

JLA Geosciences, Inc. S/M/WBE Certificates

Office of
Equal Business Opportunity
50 South Military Trail, Suite 202
West Palm Beach, FL 33415
(561) 616-6840
www.pbcgov.com/oebo

Palm Beach County
Board of County Commissioners

Gregg K. Weiss, Mayor

Maria Sachs, Vice Mayor

Maria G. Marino

Michael A. Barnett

Marci Woodward

Sara Baxter

Mack Bernard

County Administrator

Verdenia C. Baker

"An Equal Opportunity Affirmative Action Employer"

Official Electronic Letterhead

03/01/2023

Via Email: jandersen@jlageosciences.com; jpavlock@jlageosciences.com

James Andersen - President
JLA Geosciences, Inc.
1931 Commerce Ln, Ste. 3
Jupiter FL 33458

Dear James Andersen:

The Palm Beach County Office of Equal Business Opportunity (OEBO) has completed its review of your application and documents and is pleased to announce that your firm has been re-certified for:

- **91843 - Environmental Consulting**
- **91855 - Geological Consulting and Study**
- **96143 - Hydrological and Oceanography Services**
- **92683 - Site Assessment, Environmental**
- **96892 - Water Supply Plant Operating and Monitoring System Services**

as a Small Business Enterprise (SBE) foAr three (3) years, expiring **April 09, 2026**. You will not receive Small Business Enterprise (SBE) consideration if you bid in another area. Enclosed is your certificate.

Your firm shall be subject to the provisions of the Palm Beach County Purchasing Ordinance and all State and Federal laws relating to the transaction of business.

This certification entitles you to participate in contracting opportunities when the products and services offered by your firm are being considered for bid. As an additional service to your firm, you will be included in the Palm Beach County Directory of certified S/M/WBE firms. If you wish to have your firm's listing changed, please contact our office at (561) 616-6840.

Your company's certification is subject to periodic review to verify your continued eligibility. Any changes you report to any County Department/Division must also be reported to OEBO. Your company name and vendor code must be the same in both Purchasing and OEBO. Failure to maintain your firm in accordance with S/M/WBE requirements contained in the Palm Beach County Code or failure to report changes in the status of your firm may result in your firm being decertified. Remember, whenever you respond to a County bid you must do so under the name of **JLA Geosciences, Inc,** with vendor code **VC0000018145.**

Sincerely,

Terry Newton
SBD Specialist I

JLA Geosciences, Inc. S/M/WBE Certificates

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

January 6, 2022

REGISTERED VENDOR NO.: 106981

Mr. James L. Andersen, President
JLA Geosciences, Inc.
1907 Commerce Lane, Suite 104
Jupiter, FL 33458

CERTIFICATION EFFECTIVE DATE:
February 6, 2022

CERTIFICATION EXPIRATION DATE:
February 6, 2025

Dear Mr. Anderson:

Congratulations, the South Florida Water Management District (District) has recertified your firm as a Small Business Enterprise (SBE). This certification is valid for three (3) years and may **only** be applied when business is conducted in the following area(s):

Environmental and Geological Consulting; Hydrological; Computer Modeling; Water Supply Plant Operating and Monitoring Systems Services

Your submittal of bids or proposals to supply other products or services outside of the specialty area(s) noted above will not count toward SBE participation. If you require certification in other specialty areas, please contact the Procurement Bureau, SBE Section, for additional information.

Renewal is required every three (3) years and should be requested a minimum of 45 days prior to the above expiration date.

If any changes occur within your company during the certification period such as ownership, affiliate company status, address, telephone number, licensing status, gross revenue, or any information that relates to your SBE Certification status, you must notify this office in writing immediately. It is imperative that we maintain current information on your company at all times.

Certification is not a guarantee that your firm will receive work, nor an assurance that your firm will remain in the District's vendor database.

We look forward to a mutually beneficial working relationship.

Sincerely,

Jennifer Dollar
SBE Program Specialist
Procurement Bureau

JD

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • 1-800-432-2045
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov

JLA Geosciences, Inc. S/M/WBE Certificates

Palm Beach County
Office of Equal Business Opportunity

Certifies That

JLA Geosciences, Inc.

Vendor # **VC0000018145**

is a Small Business Enterprise (SBE) as prescribed by section 2-80.21 - 2.80.30 of the Palm Beach County Code for a three year period from
April 10, 2023 *to* **April 09, 2026**

The following services and/or products are covered under this certification:

Environmental Consulting; Geological Consulting and Study; Hydrological and Oceanography Services; Site Assessment, Environmental; Water Supply Plant Operating and Monitoring System Services

Allen Gray, Manager
02/28/2023

Palm Beach County Board of County Commissioners
Gregg K. Weiss, Mayor
Maria Sachs, Vice Mayor
Maria G. Marino
Michael A. Barnett
Marci Woodward
Sara Baxter
Mack Bernard

County Administrator
Verdenia C. Baker

Palm Beach County
Office of Equal Business Opportunity

Certifies That

JLA Geosciences, Inc.
Vendor # VC0000018145

is a Small Business Enterprise as prescribed by section 2-80.20 – 2-80.40 of the Palm Beach County Code for a three year period from April 10, 2020 to April 9, 2023

The following Services and/or Products are covered under this certification:

Environmental Consulting
Geological Consulting and Study
Site Assessment, Environmental
Hydrological and Oceanography Services
Water Supply Plant Operating and Monitoring System Services

Allen F. Gray, Manager
March 6, 2020

Palm Beach County Board of County Commissioners
Dave Kerner, Mayor
Robert S. Weinroth, Vice Mayor
Hal Valeche
Gregg K. Weiss
Mary Lou Berger
Melissa McKinlay
Mack Bernard

County Administrator
Verdenia C. Baker

Assistant County Administrator
Jon Van Arnam

JLA Geosciences, Inc. Local Business Tax Receipt

ANNE M. GANNON
CONSTITUTIONAL TAX COLLECTOR
Serving Palm Beach County
Serving *you.*

P.O. Box 3353, West Palm Beach, FL 33402-3353
www.pbctax.com Tel: (561) 355-2264

****LOCATED AT****
1907 COMMERCE LN Ste 104
JUPITER, FL 33458

TYPE OF BUSINESS	OWNER	CERTIFICATION #	RECEIPT #/DATE PAID	AMT PAID	BILL #
54-0097 GEOLOGY BUSINESS	JLA GEOSCIENCES INC	PG1103	B22.607544 - 07/13/22	$33.00	B40156235

This document is valid only when receipted by the Tax Collector's Office.

STATE OF FLORIDA
PALM BEACH COUNTY
2022/2023 LOCAL BUSINESS TAX RECEIPT

LBTR Number: 2017099524
EXPIRES: SEPTEMBER 30, 2023

JLA GEOSCIENCES INC
JLA GEOSCIENCES INC
1907 COMMERCE LN STE 104
JUPITER FL 33458-5516

17
6 - 5285

This receipt grants the privilege of engaging in or managing any business profession or occupation within its jurisdiction and MUST be conspicuously displayed at the place of business and in such a manner as to be open to the view of the public.

STATEMENT OF INTENT TO PERFORM AS AN S/M/WBE SUBCONTRACTOR/SUPPLIER

Tierra South Florida, Inc.

Equal Business Opportunity Office
Statement Of Intent To Perform As An S/M/WBE Subcontractor/Supplier

SOLICITATION #:	RFQ 23-604/PA
CONTRACT #:	N/A

A signed *Statement of Intent to Perform as a Small/Minority/Women Business Enterprise (S/M/WBE) Subcontractor/Supplier* form must be completed by the Bidder and owner or authorized principal of each S/M/WBE firm listed in the *S/M/WBE Subcontractor/Supplier Participation Schedule*.

STATEMENT OF INTENT

The undersigned is certified as an S/M/WBE vendor in accordance with the Solid Waste Authority of Palm Beach County's Equal Business Opportunity Program Policy: X Yes ____ No

Tierra South Florida, Inc. (Name of S/M/WBE Subcontractor/Supplier) agrees to perform work on the above contract as a (check one):

Individual Partnership (Corporation) Other

The S/M/WBE subcontractor will enter into a formal agreement with Black & Veatch Corporation (Name of Bidder/Proposer) conditioned upon the Bidder/Proposer executing a contract with the Authority.

DESCRIPTION OF WORK TO BE PERFORMED & VALUE

Please provide the details and value of the work to be performed:

Item No.	Type of Work	Agreed Upon Price	% of Work
1	Geotechnical - Soils, Geotechnical Engineering, Materials Testing	$ TBD	2 %
2		$	%
3		$	%
4		$	%
	TOTAL VALUE OF WORK	$ TBD	2 %

S/M/WBE SUBCONTRACTOR/SUPPLIER SIGNATURE

By executing this form, I hereby certify to all that I have full legal authority to execute this document on behalf of the companies mentioned above, and that my signature is specifically being relied on as such for all purposes related to this solicitation, including any resulting contract award. I understand that if this certification is determined to be incorrect for any reason, that my response to this solicitation may be deemed non-responsive or I may be subject to any applicable penalties/sanctions set forth in Section (6) of the Authority's Purchasing Manual or applicable law.

S/M/WBE Subcontractor (Signature)	President Title
Raj Krishnasamy, P.E. Name of S/M/WBE Subcontractor (Print)	3/13/2023 Date
Prime Contractor (Signature)	Vice President Title
Rafael E. Frias, III, PE Prime Contractor (Print)	3/21/2023 Date

Tierra South Florida, Inc. S/M/WBE Certificates

WEST PALM BEACH
Procurement

Office of Equal Opportunity
M/WBE Program
P.O. Box 3366
West Palm Beach, FL 33402
Tel. (561) 822-2100
Fax (561) 822-1564
TTY: 1-800-955-8771
www.wpb.org/procurement

"The Capital City of the Palm Beaches"

August 4, 2022

Tierra South Florida, Inc.
Attention: Raj Krishnasamy
2765 Vista Parkway, Suite 10
West Palm Beach, Florida 33411

Dear Mr. Krishnasamy:

Congratulations! Your company has been certified as a Small Business Enterprise with the City of West Palm Beach. Your certification will remain in effect until **August 3, 2025.**

There are many benefits to certification with the City, which include:

- Notification of opportunities to participate in City contracts in your business area of specialty;
- Providing your business and contact information to contractors who are selected for major bids;

Please notify us of any changes in ownership, control of your company or contact information during the period of your certification. If we can assist you in any way, please do not hesitate to call on us.

Sincerely,

Frank Hayden
Director Office of Equal Opportunity

Encls.

Tierra South Florida, Inc. S/M/WBE Certificates

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

October 21, 2021

REGISTERED VENDOR NO.: 115348

Mr. Raj Krishnasamy, P.E., President
Tierra South Florida, Inc.
2765 Vista Parkway, Suite 10
West Palm Beach, FL 33411

CERTIFICATION EFFECTIVE DATE:
October 31, 2021

CERTIFICATION EXPIRATION DATE:
October 31, 2024

Dear Mr. Krishnasamy:

Congratulations, the South Florida Water Management District (District) has recertified your firm as a Small Business Enterprise (SBE). This certification is valid for three (3) years and may **only** be applied when business is conducted in the following area(s):

Geotechnical Engineering Service, Material Testing Services; and Inspection & Certification Services

Your submittal of bids or proposals to supply other products or services outside of the specialty area(s) noted above will not count toward SBE participation. If you require certification in other specialty areas, please contact the Procurement Bureau, SBE Section, for additional information.

Renewal is required every three (3) years and should be requested a minimum of 45 days prior to the above expiration date.

If any changes occur within your company during the certification period such as ownership, affiliate company status, address, telephone number, licensing status, gross revenue, or any information that relates to your SBE Certification status, you must notify this office in writing immediately. It is imperative that we maintain current information on your company at all times.

Certification is not a guarantee that your firm will receive work, nor an assurance that your firm will remain in the District's vendor database.

We look forward to a mutually beneficial working relationship.

Sincerely,

Jennifer Dollar
Contract Purchasing Tech 2
Procurement Bureau

JD

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • 1-800-432-2045
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov

Tierra South Florida, Inc. S/M/WBE Certificates

SMALL BUSINESS CERTIFICATION

The City of West Palm Beach's Small Business Program

Certifies that

TIERRA SOUTH FLORIDA, INC

Has met the necessary requirements for certification as a Small Business under the Small Business Program as prescribed by the City of West Palm Beach's Ordinance Number 3366-00.

The following List of Services and/or Product are covered under this certification:

* * * *

- Construction Services, General: Boring, Drilling, Testing, and Soundings
- Quality Control Test Services for Construction
- Engineering: Geotechnical – Soils, Harbors, Jetties; Piers; Ship Terminal Facilities – Engineering
- Public Works and Related Services – Inspection Services, Construction Type

* * * *

Issued by the City of West Palm Beach for a three year period August 4, 2022 to August 3, 2025

Certificate Vendor Number: 1030047

Frank Hayden
Director Office of Equal Opportunity

State of Florida

Minority Business Certification

Tierra South Florida, Inc.

Is certified under the provisions of
287 and 295.187, Florida Statutes, for a period from:
09/17/2021 to 09/17/2023

Jonathan R. Satter, Secretary
Florida Department of Management Services

Department of MANAGEMENT SERVICES
Office of Supplier Diversity

Office of Supplier Diversity
4050 Esplanade Way, Suite 380
Tallahassee, FL 32399
850-487-0915
www.dms.myflorida.com/osd

Tierra South Florida, Inc. S/M/WBE Certificates

MINORITY/WOMAN BUSINESS CERTIFICATION

The City of West Palm Beach's Minority/Women Business Program

Certifies that

TIERRA SOUTH FLORIDA, INC

Has met the necessary requirements for certification as a Minority/Women Business under the Minority/Women Business Program as prescribed by the City of West Palm Beach's Ordinance Number 4679-18

The following List of Services and/or Product are covered under this certification:

* * * *

- Construction Services, General: Boring, Drilling, Testing, and Soundings
- Quality Control Test Services for Construction
- Engineering: Geotechnical – Soils, Harbors, Jetties; Piers; Ship Terminal Facilities – Engineering
- Public Works and Related Services – Inspection Services, Construction Type

* * * *

Issued by the City of West Palm Beach for a three-year period August 4, 2022 to August 3, 2025

Frank Hayden
Procurement Official

Certificate Vendor Number: 1030047

Tierra South Florida, Inc. Local Business Tax Receipt

ANNE M. GANNON
CONSTITUTIONAL TAX COLLECTOR
Serving Palm Beach County
Serving *you.*

P.O. Box 3353, West Palm Beach, FL 33402-3353
www.pbctax.com Tel: (561) 355-2264

****LOCATED AT****
2765 VISTA PARKWAY STE 9
WEST PALM BEACH, FL 33411

TYPE OF BUSINESS	OWNER	CERTIFICATION #	RECEIPT #/DATE PAID	AMT PAID	BILL #
56-0016 ENGINEER BUSINESS	KRISHNASAMY RAJ	28073	B22 618576 - 08/02/22	$33.00	B40122609

This document is valid only when receipted by the Tax Collector's Office.

STATE OF FLORIDA
PALM BEACH COUNTY
2022/2023 LOCAL BUSINESS TAX RECEIPT

LBTR Number: 200817991
EXPIRES: SEPTEMBER 30, 2023

This receipt grants the privilege of engaging in or managing any business profession or occupation within its jurisdiction and MUST be conspicuously displayed at the place of business and in such a manner as to be open to the view of the public.

9 6 - 3768

TIERRA SOUTH FLORIDA INC
TIERRA SOUTH FLORIDA INC
2765 VISTA PKWY STE 9
WEST PALM BEACH FL 33411-2734

STATEMENT OF INTENT TO PERFORM AS AN S/M/WBE SUBCONTRACTOR/SUPPLIER

Brown & Philips, Inc.

Equal Business Opportunity Office
Statement Of Intent To Perform As An S/M/WBE Subcontractor/Supplier

SOLICITATION #:	RFQ 23-604/PA
CONTRACT #:	N/A

A signed *Statement of Intent to Perform as a Small/Minority/Women Business Enterprise (S/M/WBE) Subcontractor/Supplier* form must be completed by the Bidder and owner or authorized principal of each S/M/WBE firm listed in the *S/M/WBE Subcontractor/Supplier Participation Schedule.*

STATEMENT OF INTENT

The undersigned is certified as an S/M/WBE vendor in accordance with the Solid Waste Authority of Palm Beach County's Equal Business Opportunity Program Policy: _X_ Yes ____ No

Brown & Phillips, Inc. (Name of S/M/WBE Subcontractor/Supplier) agrees to perform work on the above contract as a (check one):

Individual Partnership (Corporation) Other

The S/M/WBE subcontractor will enter into a formal agreement with Black & Veatch Corporation (Name of Bidder/Proposer) conditioned upon the Bidder/Proposer executing a contract with the Authority.

DESCRIPTION OF WORK TO BE PERFORMED & VALUE

Please provide the details and value of the work to be performed:

Item No.	Type of Work	Agreed Upon Price	% of Work
1	Surveying	$ TBD	2 %
2		$	%
3		$	%
4		$	%
	TOTAL VALUE OF WORK	$ TBD	2 %

S/M/WBE SUBCONTRACTOR/SUPPLIER SIGNATURE

By executing this form, I hereby certify to all that I have full legal authority to execute this document on behalf of the companies mentioned above, and that my signature is specifically being relied on as such for all purposes related to this solicitation, including any resulting contract award. I understand that if this certification is determined to be incorrect for any reason, that my response to this solicitation may be deemed non-responsive or I may be subject to any applicable penalties/sanctions set forth in Section (6) of the Authority's Purchasing Manual or applicable law.

S/M/WBE Subcontractor (Signature)	CEO Title
Anthony Brown Name of S/M/WBE Subcontractor (Print)	March 14, 2023 Date
Prime Contractor (Signature)	Vice President Title
Rafael E. Frias, III, PE Prime Contractor (Print)	March 21, 2023 Date

Brown & Philips, Inc. S/M/WBE Certificates

Palm Beach County
Office of Equal Business Opportunity

Certifies That
Brown & Phillips, Inc.
Vendor # **BROW0082**

is a Small/Minority Business Enterprise (S/MBE) as prescribed by section 2-80.21 - 2.80.30 of the Palm Beach County Code for a three year period from
January 31, 2022 to January 30, 2025

The following services and/or products are covered under this certification:

Mapping & Geographical Information Systems (GIS) Services; Surveyor Services, Land; Geographic Information Systems (GIS)

Allen Gray, Manager
01/27/2022

PALM BEACH COUNTY • FLORIDA

Palm Beach County Board of County Commissioners
Robert S. Weinroth, Mayor
Gregg K. Weiss, Vice Mayor
Maria G. Marino
Dave Kerner
Maria Sachs
Melissa McKinlay
Mack Bernard

County Administrator
Verdenia C. Baker

State of Florida

Minority Business Certification

Brown & Phillips, Inc.

Is certified under the provisions of
287 and 295.187, Florida Statutes, for a period from:
11/23/2021 to 11/23/2023

J. Todd Inman
Florida Department of Management Services

Department of MANAGEMENT SERVICES
Office of Supplier Diversity

Office of Supplier Diversity
4050 Esplanade Way, Suite 380
Tallahassee, FL 32399
850-487-0915
www.dms.myflorida.com/osd

Brown & Philips, Inc. S/M/WBE Certificates

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

January 26, 2022

REGISTERED VENDOR NO.: 100981

Mr. Anthony Brown, CEO
Brown & Phillips, Inc.
1860 Old Okeechobee Road, Suite 509
West Palm Beach, FL 33409

CERTIFICATION EFFECTIVE DATE:
January 26, 2022

CERTIFICATION EXPIRATION DATE:
January 26, 2025

Dear Mr. Brown:

Congratulations, the South Florida Water Management District (District) has recertified your firm as a Small Business Enterprise (SBE). This certification is valid for three (3) years and may **only** be applied when business is conducted in the following area(s):

Professional Surveying and Mapping; and GIS Services

Your submittal of bids or proposals to supply other products or services outside of the specialty area(s) noted above will not count toward SBE participation. If you require certification in other specialty areas, please contact the Procurement Bureau, SBE Section, for additional information.

Renewal is required every three (3) years and should be requested a minimum of 45 days prior to the above expiration date.

If any changes occur within your company during the certification period such as ownership, affiliate company status, address, telephone number, licensing status, gross revenue, or any information that relates to your SBE Certification status, you must notify this office in writing immediately. It is imperative that we maintain current information on your company at all times.

Certification is not a guarantee that your firm will receive work, nor an assurance that your firm will remain in the District's vendor database.

We look forward to a mutually beneficial working relationship.

Sincerely,

Jennifer Dollar
SBE Program Specialist
Procurement Bureau

JD

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • 1-800-432-2045
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov

Brown & Philips, Inc. S/M/WBE Certificates

WEST PALM BEACH
Procurement

Office of Equal Opportunity
M/WBE Program
P.O. Box 3366
West Palm Beach, FL 33402
Tel. (561) 822-2100
Fax (561) 822-1564
TTY: 1-800-955-8771
www.wpb.org/procurement

"The Capital City of the Palm Beaches"

August 23, 2022

Brown & Phillips, Inc.
Attention: Molly Brown
1860 Old Okeechobee Road, Suite 509
West Palm Beach, Florida 33409

Dear Mr. Brown:

Congratulations! Your company has been certified as a Minority/Women Business Enterprise with the City of West Palm Beach. Your certification will remain in effect until **August 22, 2025.**

There are many benefits to certification with the City, which include:

- Notification of opportunities to participate in City contracts in your business area of specialty;
- Providing your business and contact information to contractors who are selected for major bids;

Please notify us of any changes in ownership, control of your company or contact information during the period of your certification. If we can assist you in any way, please do not hesitate to call on us.

Sincerely,

Frank Hayden
Director Office of Equal Opportunity

Encls.

Brown & Philips, Inc. S/M/WBE Certificates

Vendor Information

CLOSE WINDOW

Print

Business & Contact Information

BUSINESS NAME	**BROWN & PHILLIPS, INC.**
CONTACT PERSON	**Molly Brown**
PHYSICAL ADDRESS	**1860 OLD OKEECHOBEE RD SUITE 509** **WEST PALM BEACH, FL 33409** [map]
MAILING ADDRESS	**1860 OLD OKEECHOBEE RD SUITE 509** **WEST PALM BEACH, FL 33409-5253** [map]
PHONE	**561-615-3988**
FAX	**561-615-3991**
EMAIL	**tony@brown-phillips.com**
WEBSITE	**http://brown-phillips.com**
SYSTEM VENDOR NUMBER	**20096568**
NEXT RENEWAL	**3/28/2024**

Classifications

CERTIFIED AS M/WBE	**Yes**
CERTIFIED AS SBE	**Yes**
CERTIFIED AS MBE	**Yes**

NIGP Code	Description
NIGP 30500	ENGINEERING AND ARCHITECTURAL EQUIPMENT, SURVEYING EQUIPMENT, DRAWING INSTRUMENTS, AND SUPPLIES

Brown & Philips, Inc. Local Business Tax Receipt

ANNE M. GANNON
CONSTITUTIONAL TAX COLLECTOR
Serving Palm Beach County
Serving *you.*

P.O. Box 3353, West Palm Beach, FL 33402-3353
www.pbctax.com Tel: (561) 355-2264

****LOCATED AT****
1860 OLD OKEECHOBEE RD Ste 509
WEST PALM BEACH FL 33409

TYPE OF BUSINESS	OWNER	CERTIFICATION #	RECEIPT #/DATE PAID	AMT PAID	BILL #
LAND SURVEYOR & MAPPER BUSINESS	BROWN & PHILLIPS INC	L86473	B22.635440 8/18/2022	33.00	B40140470

This document is valid only when receipted by the Tax Collector's Office.

BROWN & PHILLIPS INC
BROWN & PHILLIPS INC
1860 OLD OKEECHOBEE RD STE 509
WEST PALM BEACH FL 33409

STATE OF FLORIDA
PALM BEACH COUNTY
2022 / 2023 LOCAL BUSINESS TAX RECEIPT
LBTR Number: 201358283
EXPIRES: 9/30/2023

This receipt grants the privilege of engaging in or managing any business profession or occupation within its jurisdiction and MUST be conspicuously displayed at the place of business and in such a manner as to be open to the view of the public.

ANNE M. GANNON
CONSTITUTIONAL TAX COLLECTOR
Serving Palm Beach County
Serving *you.*

P.O. Box 3353, West Palm Beach, FL 33402-3353
www.pbctax.com Tel: (561) 355-2264

****LOCATED AT****
1860 OLD OKEECHOBEE RD Ste 509
WEST PALM BEACH FL 33409

TYPE OF BUSINESS	OWNER	CERTIFICATION #	RECEIPT #/DATE PAID	AMT PAID	BILL #
LAND SURVEYOR & MAPPER	PHILLIPS III JOHN E &	L54826	B22.635363 8/18/2022	33.00	B40124822

This document is valid only when receipted by the Tax Collector's Office.

BROWN & PHILLIPS INC
BROWN & PHILLIPS INC
1860 OLD OKEECHOBEE RD STE 509
WEST PALM BEACH FL 33409

STATE OF FLORIDA
PALM BEACH COUNTY
2022 / 2023 LOCAL BUSINESS TAX RECEIPT
LBTR Number: 200907700
EXPIRES: 9/30/2023

This receipt grants the privilege of engaging in or managing any business profession or occupation within its jurisdiction and MUST be conspicuously displayed at the place of business and in such a manner as to be open to the view of the public.

STATEMENT OF INTENT TO PERFORM AS AN S/M/WBE SUBCONTRACTOR/SUPPLIER

Craig A. Smith & Associates

Equal Business Opportunity Office
Statement Of Intent To Perform As An S/M/WBE Subcontractor/Supplier

SOLICITATION #:	RFQ 23-604/PA
CONTRACT #:	N/A

A signed *Statement of Intent to Perform as a Small/Minority/Women Business Enterprise (S/M/WBE) Subcontractor/Supplier* form must be completed by the Bidder and owner or authorized principal of each S/M/WBE firm listed in the *S/M/WBE Subcontractor/Supplier Participation Schedule*.

STATEMENT OF INTENT

The undersigned is certified as an S/M/WBE vendor in accordance with the Solid Waste Authority of Palm Beach County's Equal Business Opportunity Program Policy: _X_ Yes ____ No

Craig A. Smith & Associates (Name of S/M/WBE Subcontractor/Supplier) agrees to perform work on the above contract as a (check one):

Individual Partnership (Corporation) Other

The S/M/WBE subcontractor will enter into a formal agreement with Black & Veatch Corporation (Name of Bidder/Proposer) conditioned upon the Bidder/Proposer executing a contract with the Authority.

DESCRIPTION OF WORK TO BE PERFORMED & VALUE

Please provide the details and value of the work to be performed:

Item No.	Type of Work	Agreed Upon Price	% of Work
1	Survey, Subsurface Utility engineering (SUE), Site Civil	$ TBD	2 %
2		$	%
3		$	%
4		$	%
	TOTAL VALUE OF WORK	$ TBD	2 %

S/M/WBE SUBCONTRACTOR/SUPPLIER SIGNATURE

By executing this form, I hereby certify to all that I have full legal authority to execute this document on behalf of the companies mentioned above, and that my signature is specifically being relied on as such for all purposes related to this solicitation, including any resulting contract award. I understand that if this certification is determined to be incorrect for any reason, that my response to this solicitation may be deemed non-responsive or I may be subject to any applicable penalties/sanctions set forth in Section (6) of the Authority's Purchasing Manual or applicable law.

S/M/WBE Subcontractor (Signature)	President Title
Stephen C. Smith, P.E. Name of S/M/WBE Subcontractor (Print)	March 15, 2023 Date
Prime Contractor (Signature)	Vice President Title
Rafael E. Frias, III, PE Prime Contractor (Print)	March 21, 2023 Date

Craig A. Smith & Associates S/M/WBE Certificates

Office of
Equal Business Opportunity
50 South Military Trail, Suite 202
West Palm Beach, FL 33415
(561) 616-6840
www.pbcgov.com/oebo

PALM BEACH COUNTY OEBO
OFFICE OF EQUAL BUSINESS OPPORTUNITY
SMALL BUSINESS IS BIG BUSINESS

Palm Beach County
Board of County
Commissioners

Robert S. Weinroth, Mayor
Gregg K. Weiss, Vice Mayor
Maria G. Marino
Dave Kerner
Maria Sachs
Melissa McKinlay
Mack Bernard

County Administrator

Verdenia C. Baker

"An Equal Opportunity Affirmative Action Employer"

Official Electronic Letterhead

09/15/2022

STEPHEN C. SMITH, P.E.,
CAS Engineering Associates
Craig A. Smith & Associates, LLC
4152 W Blue Heron Blvd Ste 116
Riviera Beach FL 334044858

Dear STEPHEN C. SMITH, P.E.:

Your **Small/Minority Business Enterprise (S/MBE)** certification has been modified and include the following services:

- 92517 - Civil Engineering
- 92528 - Drainage Engineering
- 92546 - Geotechnical Engineering
- 96252 - Mapping & Geographical Information Systems (GIS) Services
- 92567 - Mechanical Engineering
- 92583 - Sanitary Engineering
- 92587 - Sewage Collection, Treatment, and Disposal/Engineering
- 92586 - Surveyor Services, Land
- 96291 - Utility Locator Service (Underground)
- 92596 - Waste Water Treatment Engineering
- 92597 - Water Supply, Treatment, and Distribution/Engineering

Your certification expiration date remains the same, **February 06, 2025**. You will not receive **Small/Minority Business Enterprise (S/MBE)** consideration if you bid in another area. Enclosed is your new certificate.

Your company's certification is subject to periodic review to verify your continued eligibility. Any changes to your business must be reported to the Office of Equal Business Opportunity (OEBO). Your company name and vendor code must be the same in both the Vendor Self Service database (VSS) and OEBO. Failure to maintain your firm in accordance with S/M/WBE requirements contained in the Palm Beach County Code or failure to report changes in the status of your firm may result in your firm being decertified. Remember, whenever you respond to a County bid you must do so under the name of **CAS Engineering Associates** with vendor code **VS0000024110.**

Sincerely,

Angela Smith,
Small Business Development Specialist

Craig A. Smith & Associates S/M/WBE Certificates

CRAIG A. SMITH & ASSOCIATES
A SMART-INFRASTRUCTURE COMPANY

SWA SOLID WASTE AUTHORITY of Palm Beach County

Vendor Registration: View

General | Public Profile | Users | Contacts | Employees | Certifications | Contracts | Workforce Comp/EEO | Registrations

CRAIG A. SMITH & ASSOCIATES, LLC

Home
View »
Search »
Message »
Settings »
Help & Support »
Logoff
Show All | Hide All

Vendor Registration

TYPE	SWA's Vendor Registration (Renew/Update)
DESCRIPTION	Solid Waste Authority of Palm Beach County Vendor Registration
DATE SUBMITTED	2/8/2023
STATUS	Accepted
REVIEWER	Heiley Vivas
DATE REVIEWED	2/15/2023
REVIEW COMMENTS	
EXPIRATION DATE	2/14/2025

Settings

CERTIFIED AS M/WBE	
CERTIFIED AS SBE	Yes
CERTIFIED AS MBE	Yes
CERTIFIED AS WBE	
CERTIFIED AS OTHER	
NOTES	Small Business Enterprise (SBE) Palm Beach County SBE, Certification #VS0000002737 Expires 10-20-2023 SFWMD SBE - Cert #1000000089 Exp Aug 22, 2025 City of West Palm Beach SBE- Cert #4679-18 Exp Dec 28, 2025 Minority Business Enterprise (MBE) Palm Beach County MBE VS0000024110 Exp Feb 6, 2025

Entity Information

BUSINESS NAME	CRAIG A. SMITH & ASSOCIATES, LLC
CONTACT FOR THIS SUBMISSION	Andrea Cole (change contact)
PRIMARY CONTACT EMAIL	acole@craigasmith.com
PHONE	561-314-4445
FAX	561-314-4458
COMPANY EMAIL	ssmith@craigasmith.com
TAX ID NUMBER	863889398
COMPANY TYPE	LLC
PHYSICAL ADDRESS	21045 Commercial Trail Boca Raton, FL 33486 [map]
MAILING ADDRESS	4152 W Blue Heron Blvd Suite 116 Riviera Beach, FL 33404 [map]



561.314.4445 | 21045 Commercial Trail, Boca Raton, FL 33486

Craig A. Smith & Associates S/M/WBE Certificates



MODIFICATION

Palm Beach County
Office of Equal Business Opportunity

Certifies That

CAS Engineering Associates, d/b/a Craig A. Smith & Associates, LLC

Vendor # **VS0000024110**

is a Small/Minority Business Enterprise (S/MBE) as prescribed by section 2-80.21 - 2.80.30 of the Palm Beach County Code for a three year period from
September 14, 2022 to February 06, 2025

The following services and/or products are covered under this certification:

Civil Engineering; Drainage Engineering; Geotechnical Engineering; Mapping & Geographical Information Systems (GIS) Services; Mechanical Engineering; Sanitary Engineering; Sewage Collection, Treatment, and Disposal/Engineering; Surveyor Services, Land; Utility Locator Service (Underground); Waste Water Treatment Engineering; Water Supply, Treatment, and Distribution/Engineering

Allen Gray, Manager
09/14/2022

PALM BEACH COUNTY • FLORIDA

Palm Beach County Board of County Commissioners
Robert S. Weinroth, Mayor
Gregg K. Weiss, Vice Mayor
Maria G. Marino
Dave Kerner
Maria Sachs
Melissa McKinlay
Mack Bernard

County Administrator
Verdenia C. Baker

Craig A. Smith & Associates Local Business Tax Receipt

CRAIG A. SMITH & ASSOCIATES
A SMART-INFRASTRUCTURE COMPANY

ANNE M. GANNON
CONSTITUTIONAL TAX COLLECTOR
Serving Palm Beach County • Serving you.

Home Property Tax Business Tax Tangible Tax Tourist Development Tax Checkout

2022/2023 Local Business Tax Receipt

Business Account Information

LBTR Num: 200900590
Business Name:
CRAIG A SMITH AND ASSOCIATES LLC
Mailing Address:
21045 COMMERCIAL TRL
BOCA RATON FL 33486

Tax Type: 56-0016
Location Address:
21045 COMMERCIAL TRL
BOCA RATON, FL 33486
DBA: CRAIG A SMITH AND ASSOCIATES LLC

Status: Active
License Cert Number: N/A
Business Start Date: 7/15/08
Owner Name:
CRAIG A SMITH AND ASSOCIATES LLC

Last updated 3/15/2023 03:36:30 PM

Business Account Information

LBTR Num: 200900592
Business Name:
CRAIG A SMITH AND ASSOCIATES LLC
Mailing Address:
21045 COMMERCIAL TR
BOCA RATON FL 33486

Tax Type: 54-0098
Location Address:
21045 COMMERCIAL TR
BOCA RATON, FL 33486
DBA: CRAIG A SMITH AND ASSOCIATES LLC

Status: Active
License Cert Number: N/A
Business Start Date: 7/15/08
Owner Name:
CRAIG A SMITH AND ASSOCIATES LLC



561.314.4445 21045 Commercial Trail Boca Raton, FL 33486 www.craigasmith.com

EXHIBIT C
CONTINUED

EXHIBIT "C-1"

Change To Utilization Plan

SOLICITATION INFORMATION	
Instructions: List all changes in the use of certified or non-certified Subcontractors/Suppliers in relation to the Prime Contractor's original Utilization Plan or latest Change to Utilization Plan approved by the Equal Business Opportunity (EBO) Office for the contract listed below.	
Name of Prime Contractor:	
Contract Name:	

ORGANIZATION STATUS

All sections of the following table must be completed.

Role	Name of Firm	Certifications (S/M/WBE)	New*/Remove**/Change Value	Estimated Total Contract Value ($)	NIGP Code (5-Digit)	Start Date (New Sub Only)
SUB				$		
SUB				$		
SUB				$		
SUB				$		
SUB				$		

**IF A NEW FIRM IS ADDED TO THE CONTRACT, ENSURE THEY ARE REGISTERED AS A VENDOR WITH THE AUTHORITY. IF REMOVING/REDUCING THE DOLLAR VALUE FOR A FIRM, ATTACH DOCUMENTATION ESTABLISHING THAT THE FIRM WAS NOTIFIED AND EVIDENCE OF JUSTIFICATION FOR REQUEST.

Note: If the Subcontractor changes listed on this document result in not meeting the subcontracting goal for this contract, you will be contacted by the EBO for further action.

JUSTIFICATION FOR ALL CHANGES TO UTILIZATION

BIDDER/PROPOSER SIGNATURE

By executing this form, I hereby certify to all that I have full legal authority to execute this document on behalf of the companies mentioned above, and that my signature is specifically being relied on as such for all purposes related to this solicitation, including any resulting contract award. I understand that if this certification is determined to be incorrect for any reason, that my response to this solicitation may be deemed non-responsive or I may be subject to any applicable penalties/sanctions set forth in Section (6) of the Authority's Purchasing Manual or applicable law.

Prime Contractor's Authorized Agent	Name (Print)	Date
Equal Business Opportunity Office	**Sign & Date**	**Approved/Denied**

EXHIBIT "C-2"

Post-Award Vendor Subcontracting Waiver Request

DATE: _____

CONTRACT INFORMATION					
Contract Title:					
Contract #:					
Prime Contractor:					
Contact Person:		**Phone #:**		**Email:**	

RATIONALE FOR WAIVER	
The purpose of this waiver is to specify the good faith efforts made in meeting the required subcontracting goal(s) for this project. The prime contractor is required to submit a *change to the Utilization Plan* (if not previously submitted) with this *Post-Award Vendor Subcontracting Waiver Request form.*	
1a. Select the statement below that best explains why the required subcontracting goal(s) were not met: (Check all that apply)	
	The Authority issued a change order that limited subcontracting opportunities of the scope of work causing the subcontracting goal(s) to not be met.
	The Authority issued a change order that required expedited completion of the scope of work, causing the subcontracting goal(s) to not be met.
	The S/M/WBE previously selected for utilization is not available to perform the scope of work and could not be replaced with another S/M/WBE that could perform the scope of work.
	The S/M/WBE previously selected for utilization is no longer certified in accordance with the Economic Inclusion Policy and Procedures, and could not be replaced with another S/M/WBE that could perform the scope of work.
	There were other issue(s) that resulted in the subcontracting goal(s) not being met

EXHIBIT "C-2"

Post-Award Vendor Subcontracting Waiver Request

1b. In the box below, please provide further detail for each statement selected above.

2. List and explain all communication efforts between your firm and each potential S/M/WBE subcontractor related to participation on this contract. Attach all supporting documentation (e.g. emails, call logs, and faxes) to verify communication. In addition, provide response(s) from S/M/WBE subcontractor(s); attach additional page, if necessary.

EXHIBIT "C-2"
Post-Award Vendor Subcontracting Waiver Request

3a. Select the statement that best describes other good faith efforts made: (Check all that apply)	
	Helped a vendor become a certified S/M/WBE so they could become a subcontractor on the project
	Offered joint check services or bonding assistance for lines of credit to S/M/WBE subcontractors
	Advertised and contacted certified firms using S/M/WBE Certification lists from the website, trade organizations, professional organizations, and others
	Other:
	N/A – No Good Faith Effort attempted

3b. In the box below, please provide further details for each statement selected above and attached supporting documentation.

AFFIRMATION

By executing this form, I hereby certify to all that I have full legal authority to execute this document on behalf of the companies mentioned above, and that my signature is specifically being relied on as such for all purposes related to this solicitation, including any resulting contract award. I understand that if this certification is determined to be incorrect for any reason, that my response to this solicitation may be deemed non-responsive or I may be subject to any applicable penalties/sanctions set forth in Section (6) of the Authority's Purchasing Manual or applicable law.

Signature	Name & Title (Print)

FOR EBO USE ONLY

Signature	**Waiver Status:**	☐ Approved ☐ Denied
Name & Title (Print)	**Date:**	

EXHIBIT "D"
INSURANCE REQUIREMENTS CHECKLIST

Solid Waste Authority of Palm Beach County

INSURANCE REQUIREMENTS CHECKLIST

TYPE OF COVERAGE		MINIMUM COVERAGE LIMITS
Must be Included if marked "X"	**Comprehensive Commercial General Liability Primary Basis**	**Bodily Injury & Property Damage** $1,000,000. Per Occurrence $2,000,000. General Aggregate or CSL $2,000,000. Products – Comp/Op Aggregate
	(Please note special instructions →)	Silica products exclusion must be eliminated if cement/concrete materials will be used during construction. Prior to accessing the SWA property or commencing activities under this agreement, the insured is required to provide the SWA with an acceptable certificate of insurance, including an Additional Insured, and Waiver of Subrogation endorsement. Minimum insurance coverage and limits marked on this list are required and must be no more restrictive than most recent ISO forms. A certificate must include the current date and list the SWA as a Certificate Holder. The prime firm is responsible, insurance requirements extend to employees and subcontractors. Endorsements must be listed by form name and number, or copies provided. The SWA may request copies of policy documents.
X	Occurrence Form	
X	Premises Operations	
X	Delete XCU Exclusion	
X	Products Completed Operations	
X	Contractual Liability	
X	Independent Contractors	
X	Broad Form Property	
X	Personal Injury	
	Blasting	
	Demolition	
	Watercraft – by exception for non-Owned or Hull/ P&I (if used in project)	
	Pollution extension, CPL, or separate EIL	
	Automobile Liability	**Bodily Injury & Property Damage** $1,000,000. Combined Single Limit (Ea. accident) $ 10,000. Personal Injury Protection (PIP)
X	Any Auto Covered or Scheduled	
X	Non-owned/Hired (if no owned vehicles)	
X	**Workers' Compensation Employer's Liability** If required F.S. Chapter 440/Federal Gov't.	**Statutory Limits** $100,000. Occurrence $500,000. Aggregate $100,000. Disease
X	**Umbrella/Excess Lability**	$1,000,000. Occurrence
X	**Professional Liability/Errors and Omissions**	$1,000,000. Each Loss
	Environmental Impairment Liability (EIL), Contractor Pollution Liability (CPL)	$_____. BI & PD Aggregate or CSL
	Cyber Liability	$_____. Each Incident/Claim
	Builder's Risk	100% of Value Property Under Construction

The SWA of Palm Beach County, its Officers, Employees and Agents must be named as an Additional Insured except for Workers' Compensation and Employer's Liability, Professional Liability, and Inland Marine. Vendor must use the following ISO form(s), or others approved by the SWA Risk Management: Additional Insured Endorsement Form(s) CG2010, and CG2026. Must use ISO Waiver of Subrogation Endorsement CG2404 except for Workers' Compensation, Professional Liability, and Inland Marine. Include the SWA Agreement Title, Number, and specific project description on the certificate.

Exhibit C - Provided by BV on January 7, 2025

FEE SCHEDULE BLACK & VEATCH CORPORATION HOURLY BILLABLE RATE	
PROJECT DIRECTOR	$ 288.00
SENIOR PROJECT MANAGER	$ 272.00
PROJECT MANAGER	$ 250.00
ENGINEERING MANAGER	$ 230.00
TECHNICAL EXPERT/QC	$ 250.00
SENIOR ENGINEER/SPECIALIST	$ 240.00
LEAD ENGINEER	$ 205.00
PROJECT/DESIGN ENGINEER	$ 183.00
STAFF ENGINEER	$ 155.00
SR ARCHITECT	$ 224.00
ARCHITECT	$ 170.00
SR RESIDENT/CM	$ 272.00
RESIDENT	$ 202.00
SENIOR DESIGNER	$ 176.00
DESIGNER	$ 151.00
SR GIS SPECIALIST	$ 160.00
GIS SPECIALIST	$ 135.00
SENIOR CADD TECH	$ 154.00
CADD TECH	$ 135.00
ADMIN MANAGER/PROJECT CONTROLS	$ 154.00
ADMIN	$ 112.00

GRANT PROVISIONS

Grant Project Title: Rio de Flag Water Reclamation Plant Generators

Funding Agency: Arizona Department of Emergency and Military Affairs

Grant Agreement No.: HMGP DR-4524-16-11R

FEDERAL - GRANT PROVISIONS

The Contractor and its Subcontractor shall comply with the following grant provisions;

Applicable Laws
Compliance with all applicable Federal, State, and Local laws and regulations.

Awards to debarred and suspended parties
The City will not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Orders 12549 and 12689, ``Debarment and Suspension."

Contracting with small and minority firms, women's business enterprise and labor surplus area firms.
(1) The Contractor will take all necessary affirmative steps to assure that minority firms,women's business enterprises, and labor surplus area firms are used when possible.
(2) Affirmative steps shall include:
(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

Equal Employment Opportunity
Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

Clean Water and Air Act
Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

Energy Policy and Conservation Act
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 (Pub. L. 94-163, 89 Stat. 871).

Resource Conservation and Recovery Act
Compliance with the Resource Conservation and Recovery Act (RCRA) requires federal agencies to assess the impact that debris, debris removal, hazardous wastes, and hazardous waste clean-up projects will have on air and water quality and take actions to prevent degradation. RCRA gives EPA the authority to control hazardous waste from the "cradle-to-grave" to facilities that generate hazardous materials and sets forth a framework for the management of non-hazardous waste (42 USC, 6901).

Conflicts of Interest

The City (grantee) and Contractor (subgrantees) will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Copyrights

Reports, maps or other documents produced in whole or in part are works for hire and shall not be the subject of any application for copyright by or on behalf of the Contractor or its Subcontractor. The Contractor shall advise the City or its designee at the time of delivery of any copyrighted or copyrightable work furnished under this Agreement, or any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

Patent Fees and Royalties

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in Funding Agency Contracting Provisions for Construction Projects the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.

Responsible Contractors

The City will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Access and Retention of Records

Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

This content is from the eCFR and is authoritative but unofficial.

Title 2 —Grants and Agreements
Subtitle A —Office of Management and Budget Guidance for Federal Financial Assistance
Chapter II —Office of Management and Budget Guidance
Part 200 —Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.
Source: 89 FR 30136, Apr. 22, 2024, unless otherwise noted.

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, 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.

(B) 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.

(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 FR 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."

(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

NOT APPLICABLE

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.

(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.

(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.

(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).

(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 governmentwide exclusions in the System for Award Management (SAM), in accordance with the 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.

(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. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

FY 2022 DHS Standard Terms and Conditions

The Fiscal Year (FY) 2022 DHS Standard Terms and Conditions apply to all new federal financial assistance awards funded in FY 2022. These terms and conditions flow down to subrecipients unless an award term or condition specifically indicates otherwise. The United States has the right to seek judicial enforcement of these obligations.

All legislation and digital resources are referenced with no digital links. The **FY** 2022 DHS Standard Terms and Conditions will be housed on dhs.gov at www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions.

A. Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

I. DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances as instructed by the awarding agency.

II. DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002.

III. By accepting this agreement, recipients, and their executives, as defined in 2 C.F.R. § 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

B. General Acknowledgements and Assurances

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.

I. Recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS.

II. Recipients must give DHS access 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 or personnel.

III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.

IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance.

V. Recipients (as defined in 2 C.F.R. Part 200 and including recipients acting as pass-through entities) of federal financial assistance from DHS or one of its awarding component agencies must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award for the first award under which this term applies. Recipients of multiple awards of DHS financial assistance should only submit one completed tool for their organization, not per award. After the

initial submission, recipients are required to complete the tool once every two (2) years if they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool.

The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

C. Standard Terms & Conditions

I. Acknowledgement of Federal Funding from DHS

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

II. Activities Conducted Abroad

Recipients must ensure that project activities performed outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

III. Age Discrimination Act of 1975

Recipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

IV. Americans with Disabilities Act of 1990

Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101– 12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

V. Best Practices for Collection and Use of Personally Identifiable Information

Recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

VI. Civil Rights Act of 1964 – Title VI

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the

United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

VII. Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. § 3601 et seq.), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

VIII. Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

IX. Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

X. Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).

XI. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons.

XII. Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

XIII. Energy Policy and Conservation Act

Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94- 163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

XIV. Ensuring the Future is Made in All of America by All of America's Workers

Recipients must comply with the "Build America, Buy America" provisions of the Infrastructure Investment and Jobs Act and E.O. 14005 which provide that, as appropriate and to the extent consistent with law, the recipient must use all practicable means within their authority under a federal award to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products.)

XV. False Claims Act and Program Fraud Civil Remedies

Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§3729-3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)

XVI. Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

XVII. Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.

XVIII. Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C.) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

XIX. Hotel and Motel Fire Safety Act of 1990

Recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control

guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a

XX. **John S. McCain National Defense Authorization Act of Fiscal Year 2019**

Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

XXI. Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: https://www.dhs.gov/guidance- published-help-department- supported-organizations-provide-meaningful-access-people-limited and additional resources on http://www.lep.gov.

XXII. Lobbying Prohibitions

Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt 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 any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

XXIII. National Environmental Policy Act

Recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq. and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

XXIV. Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statues, regulations, and guidance governing the participations of faith- based organizations in individual DHS programs.

XXV. Non-Supplanting Requirement

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

XXVI. Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

XXVII. Patents and Intellectual Property Rights

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

XXVIII. Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (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.

XXIX. Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973), (codified as amended at 29 U.S.C. § 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

XXX. Reporting of Matters Related to Recipient Integrity and Performance

General Reporting Requirements:

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

XXXI. Reporting Subawards and Executive Compensation

Reporting of first tier subawards.

Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part

170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

XXXII. SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

XXXIII. Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

XXXIV. Trafficking Victims Protection Act of 2000 (TVPA)

Trafficking in Persons.

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. § 7104. The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated here by reference.

XXXV. Universal Identifier and System of Award Management

Requirements for System for Award Management and Unique Entity Identifier Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

XXXVI. USA PATRIOT Act of 2001

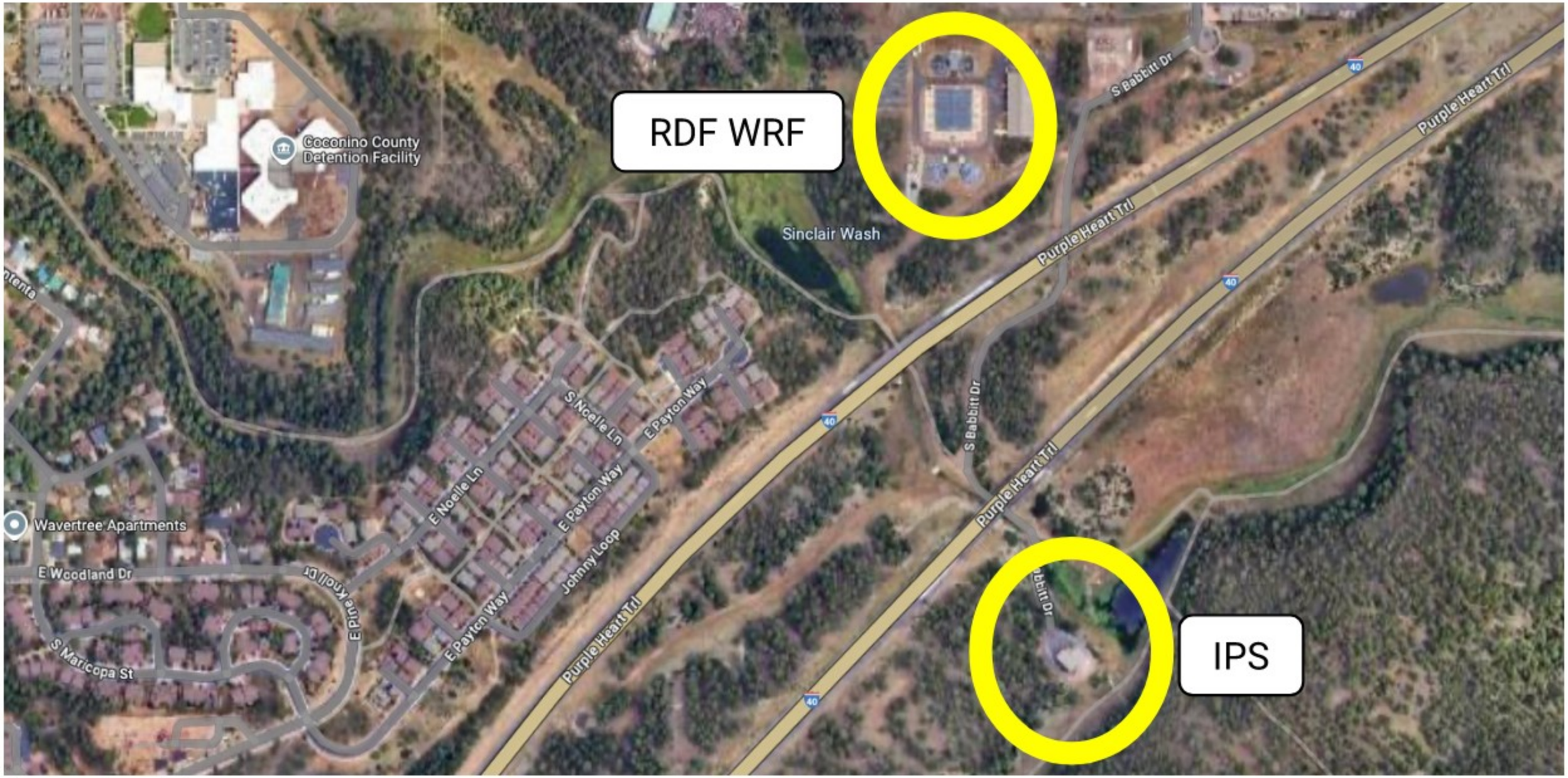
Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

XXXVII. Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

XXXVIII. Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.



Location Map

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Nathan Naliborski, Fleet Manager

Co-Submitter: Jen Brown

Date: 01/15/2025

Meeting Date: 01/21/2025

TITLE:

Consideration and Approval of Contract: Cooperative Purchase Contract with Samsara, Inc. in the amount of $173,643.52, for the vehicle telematics licensing (hardware is included) for a 36-month period. This contract will provide telematics for specified units with the Streets, Solid Waste, Fleet Services, Sustainability, Library, Water Services, and PROSE sections/divisions.

STAFF RECOMMENDED ACTION:

1. Approve the 36-month Cooperative Purchase Contract with Samsara, Inc. in the amount of $173,643.52; and
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

The Cooperative Purchase Contract will result in the purchase of vehicle/equipment telematics for 203 city capital assets, including refuse trucks, plow trucks, pickups, and various equipment. Public Works, Sustainability, PROSE, Water Services, and the Library will utilize this contract to document various aspects of their fleets. The information is used in route optimization, fuel savings, best practice operations and training. The information is also used in incident investigations and accidents. The data has proven invaluable to limit exposure to the city and assist as one piece of data used to understand activities and equipment status.

Financial Impact:

The City Divisions involved in this Cooperative Purchase Contract will use funds from their existing budget accounts to pay for the software licensing. All but one City Division currently uses vehicle telematics from another vendor. This contract with Samsara, Inc. provides telematics at a lower monthly cost per asset compared to the current provider, is substantially more reliable, and offers better service.

Policy Impact:

Vehicle/equipment telematics will be used to enhance and manage city capital assets. Fleet utilization will be greatly enhanced through the addition of telematics on city assets.

Previous Council Decision or Community Discussion:

None

Options and Alternatives to Recommended Action:

1. Do not approve the Cooperative Purchase Contract with Samsara, Inc. telematics. City Divisions will continue to utilize existing telematics; or
2. Provide alternative direction to staff and discuss further with end users.

Background and History:
City Divisions work to enhance and effectively manage their current fleet and equipment. Telematics technology enables city departments to better track and manage their vehicles and equipment through the use of GPS and telecommunication technologies. Telematics can capture numerous data points such as location, speed, performance, vehicle health, and live camera feeds. This detailed and immediate data can enhance operator safety, vehicle efficiency, training, service levels, vehicle condition, and sustainability. City staff have been utilizing telematics for several years on select equipment. Samsara, Inc.'s telematics software not only provides cost savings on monthly expenses but also offers a more advanced platform compared to previous providers. For several months, staff members have been testing the Samsara, Inc. software and devices on their fleet, experiencing firsthand the benefits. Samsara, Inc. is available through a Sourcewell contract 020221-SAM.

Connection to PBB Priorities and Objectives:
Provide Exceptional Service: Provide employees with tools, training, and support.
Invest in Our People: Ensure effective resources for employees.
High Performing Governance: Ensuring the most effective and efficient use of City assets.

Connection to Regional Plan:
N/A

Connection to Carbon Neutrality Plan:
Ability to enhance route optimization and reduce green house gas emissions through the monitoring of consumption, miles traveled, use and equipment best practices. The data collected is a piece of our fleet tracking anaclitics program that informs good procedures.

Connection to 10-Year Housing Plan:
N/A

Connection to Division Specific Plan:
N/A

Attachments: 2025-152 Samsara - GPS Fleet Tracking Software Cooperative Purchase

COOPERATIVE PURCHASE CONTRACT
Contract No. 2025-125

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 Samsara Inc. a/k/a Samsara a/k/a Samsara Networks, Inc., a Delaware corporation ("Contractor").

RECITALS:

A. Contractor is a fully authorized vendor of fleet management technologies with related software solutions;

B. Sourcewell (a State of Minnesota local government agency and service cooperative) conducted a competitive and open procurement process through Request for Proposal 020221 that resulted in Contract No. 020221-SAM with Contractor ("Agency Contract"); and

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:

GPS Fleet Tracking Hardware and Licenses

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 that would affect City's payments to Contractor, including, specifically changes in price for materials and/or services.

4. Payment:

   4.1 Payment to Contractor for the materials and/or services not to exceed **$173,643.52 (one hundred seventy-three thousand six hundred forty-three dollars and fifty-two cents)**; made in accordance with the price list and terms set forth in the Agency Contract.

   4.2 Any adjustment to the Payment amount must be approved by mutual written consent of the parties through a formal amendment. The City Manager or his/her designee 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 and Renewal: This Cooperative Purchase Contract shall commence upon execution by the Parties and shall continue for a period of three (3) years with an option for two (2), one (1) year renewal periods presuming that the underlying Agency Contract has not expired or been terminated.

7. Notice: Any formal notice required under the Contract shall be in writing and sent by certified mail and email as follows:

To the City:
Nathan Naliborski
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
NNaliborski@flagstaffaz.gov
928-213-2187

To Contractor:
Samsara Inc.
Taylor Prenovost
1 De Haro Street
San Francisco, CA 94107
Taylor.prenovost@samsara.com

With a copy to:
Liane Garcia
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
lgarcia@flagstaffaz.gov

(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.

CONTRACTOR:SAMSARA INC.

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 January 6, 2025

EXHIBIT A
SCOPE OF WORK
(attached)

1. City of Flagstaff Quote (8 pages)

samsara

Connected Operations™

Samsara Inc
1 De Haro Street
San Francisco, CA 94107
www.samsara.com

QUOTE #Q-1725486

Issued 01-02-2025

Expires 01-26-2025

Prepared For:
City of Flagstaff
211 W Aspen Ave
Flagstaff, Arizona
86001--5399

Prepared By:
Taylor Prenovost
taylor.prenovost@samsara.com

Quote Summary

	Subtotal
Hardware and Accessories	USD $0.00
Licenses License Term – 36 Months	
Shipping and Handling	USD $2,268.10
Upfront Hardware Sales Tax	USD $0.00
Annual License Sales Tax	USD $4,803.64
First Year Payment	USD $59,393.24
Payments Beginning Year Two	USD $57,125.14

If shipping is "Pending" - Amount is pending due to size of order; Shipping and Handling subject to change.
If Sales tax is "Pending" – Final amount will be provided prior to payment
*3% fee
charged on non-ACH charges (Canada Exempt)
*Sales tax subject to change

samsara

Connected Operations™

Samsara Inc
1 De Haro Street
San Francisco, CA 94107
www.samsara.com

SHIP TO Nathan Naliborski
211 W Aspen Ave
Flagstaff, Arizona, 86001-5399
United States

Hardware and Accessories	Quantity	Net Unit Price	Total Price
Enhanced VG Series OBDII J1962 L-mount cable CBL-VG-COBDII-Y1	188	$0.00	$0.00
Vehicle IoT Gateway, model VG55 HW-VG55-NA	188	$0.00	$0.00
Enhanced VG Series J1939 or J1708 (9-pin) CBL-VG-CJ1939	188	$0.00	$0.00
Mounting Bracket for AG51, AG52, and AG53 ACC-AG-BMNT	15	$0.00	$0.00
AG51 Unpowered Asset Gateway HW-AG51	15	$0.00	$0.00
Forward-facing dash-camera, Series 4 HW-CM33	9	$0.00	$0.00
AHD Camera Connector (1 camera) HW-CM-AHD1	9	$0.00	$0.00
Extension Cable for Camera Connector CBL-CM-B3AU	1	$0.00	$0.00
		Hardware Due	USD$0.00

Licenses	Quantity	Annual Unit Price	Total Annual Price
License for Vehicle Gateways - Public Sector Only, No WiFi, No ELD LIC-VG-PS	188	$234.00	$43,992.00
License for Unpowered Asset Tracker LIC-AG-UNPWR	15	$108.00	$1,620.00
License for Forward-Facing Dash Camera LIC-CM1-ENT	9	$396.00	$3,564.00
Live Streaming LIC-CM-STRM	9	$49.50	$445.50
License for HD Camera Connector (1 camera) LIC-CM-AHD1	9	$300.00	$2,700.00

samsara

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Samsara Inc
1 De Haro Street
San Francisco, CA 94107
www.samsara.com

Annual License Due	USD $52,321.50

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Samsara Inc
1 De Haro Street
San Francisco, CA 94107
www.samsara.com

Thank you for considering Samsara for your fleet.

Samsara provides real-time visibility, business-relevant tools, and powerful analytics that enable customers to increase the productivity of their fleets and reduce operating costs. A solution for your fleet is proposed below.

What is included?

Samsara's fleet tracking solution includes hardware accessories and a per-gateway license. Gateway licenses provide all ongoing elements of the service, including:

- Real-time location and vehicle telematics
- Dashboard access with unlimited administrator accounts
- Driver App for iOS and Android devices with unlimited driver accounts
- Over-the-air software feature upgrades
- API access as it relates to features for integration with 3rd party systems
- Maintenance and phone support

Samsara does not include hidden costs in its licenses. If you want access to Samsara's full set of fleet features--including but not limited to WiFi hotspot and ELD capabilities--you will need to upgrade your license. Samsara reserves the right to audit usage of features unrelated to the solution as well as remove them from the Samsara Dashboard.

Payment Terms

This order form includes a license fee for the Samsara Software associated with the Hardware to be paid annually beginning on the License Start Date and, if applicable, a one-time Hardware cost to be paid upfront as of the license start date. The annual fees are payable by recurring wire transfer. All transfers made by credit card are subject to a processing fee up to 3%, subject to applicable law. Late payments are subject to a 1.5% per month late fee. If license payments are delinquent by 30 days, Samsara may suspend the Service until late payments are remitted.

License Term

The license term for the Samsara Software licenses purchased under this Order Form begins on the day Samsara activates the applicable Samsara Software license by providing you a claim number and access to the Hosted Software ("License Start Date"). If Hardware associated with a then-unactivated Samsara Software license will be shipped to you under this Order Form, such Samsara Software license will be activated on the day the Samsara Hardware ships. Notwithstanding the foregoing, if you are renewing the license term for a previously-activated Samsara Software license under this Order Form, the License Start Date for the renewal license

term shall be the day that Samsara extends your access to the Hosted Software for the renewal license term. Samsara Hardware requires a valid license to function.

Samsara may ship Hardware under this Order Form subject to a schedule as mutually agreed between the Parties or as determined by Samsara. By signing this Order Form, you confirm that each “Ship To” delivery address set forth herein is accurate and that any individual accepting delivery at that address is authorized to do so on your behalf. To the extent such Hardware is associated with then-unactivated Samsara Software licenses, the Samsara Software license term for each such Hardware device will start on the day that device ships regardless of the shipment schedule for the other such Hardware devices. If all such Hardware is shipped in one shipment, the license term for all such Hardware will be the full license term under this Order Form. If such Hardware is shipped in multiple shipments, only the license term of such Hardware in the initial shipment will be such full license term. The license term of the remaining such Hardware shipped after the initial shipment will be set to match the then-remaining license term of the initial shipment, so that the license term for all such Hardware under this Order Form expires on the same date. The total cost of the licenses for such Hardware shipped after the initial shipment will be pro-rated based on their actual license term, rounded up to the nearest month, as compared to the full license term under this Order Form. Certain payment amounts under this Order Form assume that the entire order is fulfilled at the same time and are subject to potential reduction based on the actual schedule of order fulfillment.

You agree that you will only use the features included with the Samsara Software licenses purchased under this Order Form (“Licensed Scope”). Samsara reserves the right to audit usage of Samsara Software and to remove your access to such features beyond the Licensed Scope (for example, the licensed feature scope or licensed user count, as applicable) at any time. If you would like to use features beyond the Licensed Scope, you are required to purchase the applicable Samsara Software licenses and if applicable install the applicable Hardware that include such scope. If Samsara becomes aware that you are using features beyond the Licensed Scope, Samsara reserves the right to charge you for the applicable Samsara Software licenses that include such Licensed Scope at list price, and you agree to immediately pay such amounts. Samsara further reserves the right to change, discontinue, or remove features included in a Samsara Software license at any time.

You acknowledge and agree that, during your license term, you may not downgrade your Samsara Software license plan to a lower Samsara Software license plan (e.g., downgrading your “Enterprise” license to a “Premier” license).

Support and Warranty

Samsara stands behind its Products. During the applicable warranty period, defective Hardware will be remedied pursuant to our Hardware Warranty Policy at www.samsara.com/support/hardware-warranty. Additional support information can be found at www.samsara.com/support.

Terms

Unless otherwise set forth herein, your use and access of the Hardware, Products, and Services specified herein are governed by Samsara’s standard terms of service found at https://www.samsara.com/legal/public-sector-customers-platform-terms-of-service/, unless the Parties have entered into a separate terms of service agreement and/or a separate terms of service agreement is attached to the Order Form, in which case such separate terms of service agreement shall govern (the 'Terms of Service') provided that notwithstanding anything stated in the Terms of Service to the contrary, Customer agrees the following sections from Samsara’s standard terms of

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1 De Haro Street
San Francisco, CA 94107
www.samsara.com

service found at https://www.samsara.com/legal/public-sector-customers-platform-terms-of-service/ shall apply: License (Section 4), Product Updates (Section 7), Data Protection Addendum (Section 10.3), Non-Samsara Products (Section 14), and Hardware Warranty (Section 17). You agree to be bound by the Terms of Service, and any capitalized terms not defined herein shall have the meaning set forth in the Terms of Service. The terms and conditions of the Terms of Service and this Order Form are the exclusive agreement of the parties with respect to the subject matter hereof and no other terms or conditions, including those associated with any Customer payment portal or onboarding of Samsara as a Customer vendor, shall be binding upon Samsara or otherwise have any force or effect.

To the extent Samsara allows you to make subsequent purchases of Products via Purchase Order without a corresponding Quote, you agree that (i) such Purchase Order shall be subject to the terms and conditions of this Order Form, including with respect to payment and license terms, as well as the applicable Terms of Service; and (ii) to the extent there is a conflict between such Purchase Order and this Order Form, including with respect to payment and license terms, as well as the applicable Terms of Service, the terms of this Order Form shall prevail, and no additional terms included in such Purchase Order that are not included in this Order Form shall apply. You acknowledge and agree that any reference to a Purchase Order in this Order Form is solely for your convenience in record keeping, and the existence of a Purchase Order or any delivery of Products to you following receipt of any Purchase Order shall not be deemed an acknowledgement of or agreement to any terms or conditions associated with any such Purchase Order or in any way be deemed to modify, alter, supersede or supplement the Terms of Service or this Order Form.

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Samsara Inc
1 De Haro Street
San Francisco, CA 94107
www.samsara.com

Notification of Confidentiality

You agree that the pricing and payment terms specified in this Order Form shall (i) be held in strict confidence; (ii) not be disclosed to any Samsara competitor or other entity, except as pre-approved in writing by Samsara; and (iii) not be used except to evaluate the suitability of the Samsara Products for your business. You will immediately notify Samsara in the event of any unauthorized use or disclosure under these terms. Violation of these obligations will cause irreparable harm to Samsara for which Samsara may obtain compensatory and timely injunctive relief from a court, as well as any other remedies that may be available, including recovery of all reasonable attorney's fees and costs incurred in seeking such remedies. Your obligations specified herein shall last until the pricing and payment terms herein are, through no fault or action by you, public. This Order Form is a legally binding agreement between you ("Customer") and Samsara Inc. ("Samsara"). IN WITNESS WHEREOF, Customer has caused this Order Form to be executed by its duly authorized representative.

Billing Details:

Bill to:

City of Flagstaff

211 W Aspen Ave
Flagstaff, Arizona, 86001--5399

Billing Contact:

Name:

Title:

Billing Email: Bayley.Chotena@flagstaffaz.gov

Phone Number:

Payment Information:

Payment Method: ACH

Payment Terms: Net 30

Payment Frequency: Direct Annual

If a Purchase Order (PO) is required for invoicing, please check this box:

If yes, please provide the PO Number:

If your organization requires invoice submission via an electronic invoice portal, please email any e-invoicing requirements to billingsupport@samsara.com.

Please email any tax documentation to billingsupport@samsara.com.

I confirm acceptance of this Order Form on behalf of the Customer identified herein and represent

Samsara Inc
1 De Haro Street
San Francisco, CA 94107
www.samsara.com

and warrant that I have full and complete authority to bind the Customer to this Order Form, including all terms and conditions herein." "Please confirm acceptance of this Order Form by signing below:

EXHIBIT B
AGENCY CONTRACT
(attached)

1. Sourcewell Agency Contract 020221-SAM 41 pages
2. Sourcewell Agency Contract Extension 1 page
3. Samsara Pricing 8 pages
4. Samsara Terms of Service 13 pages

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Sourcewell

Solicitation Number: 020221

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Samsara Inc., 1990 Alameda Street, 5th Floor, San Francisco, CA 94103 (Vendor).

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Fleet Management Technologies with Related Software Solutions from which Vendor was awarded a contract.

Vendor desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

A. EFFECTIVE DATE. This Contract is effective upon the date of the final signature below.

B. EXPIRATION DATE AND EXTENSION. This Contract expires March 26, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended up to one additional one-year period upon request of Sourcewell and with written agreement by Vendor.

C. SURVIVAL OF TERMS. Articles 11 through 14 survive the expiration or cancellation of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

A. EQUIPMENT, PRODUCTS, OR SERVICES. Vendor will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Vendor's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

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All Equipment and Products provided under this Contract must be new/current model. Vendor may offer close-out or refurbished Equipment or Products if they are clearly indicated in Vendor's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. WARRANTY. Vendor will extend to the Participating Entity the return and warranty terms set forth in Vendor's Hardware Warranty and RMA Policy, subject to the related limitations set forth therein. Vendor's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer.

C. DEALERS, DISTRIBUTORS, AND/OR RESELLERS. Upon Contract execution, Vendor will make available to Sourcewell a means to validate or authenticate Vendor's authorized dealers, distributors, and/or resellers relative to the Equipment, Products, and Services related to this Contract. This list may be updated from time-to-time and is incorporated into this Contract by reference. It is the Vendor's responsibility to ensure Sourcewell receives the most current version of this list.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced as stated in Vendor's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. SHIPPING AND SHIPPING COSTS. All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Vendor must permit the Equipment and Products to be returned within 30 days of the date of delivery at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery.

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Vendor must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Vendor in breach of this Contract if the Vendor intentionally delivers substandard or inferior Equipment or Products. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Vendor as soon as possible and the Vendor will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

B. SALES TAX. Each Participating Entity is responsible for supplying the Vendor with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Vendor may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Vendor determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Vendor may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Contract Administrator. This form is available from the assigned Sourcewell Contract Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

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A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Vendor understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Vendor is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Vendor's employees may be required to perform work at government-owned facilities, including schools. Vendor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Vendor that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Vendor. Typically, a Participating Entity will issue an order directly to Vendor. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration of this Contract; however, Vendor performance, Participating Entity payment, and any applicable warranty periods or other Vendor or Participating Entity obligations may extend beyond the term of this Contract.

Vendor's acceptable forms of payment are included in Attachment A. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity. By accessing the Contract, Participating Entities agree not to file any claims or causes of action against Sourcewell, or otherwise seek to hold Sourcewell, including

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its agents and employees, liable in connection with Vendor's Equipment, Products, and Services.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Vendor, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Vendor will require Participating Entity's acceptance of Vendor's then-current Terms of Service. Some Participating Entitles may require the use of a Participating Addendum; the terms of which will be worked out directly between the Participating Entity and the Vendor. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements) not addressed in this Contract, the Participating Entity and the Vendor may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Vendor in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the goods to be purchased, provided that such termination will be effective as of the date of the beginning of the period for which funds have not been appropriated;
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements; or
3. Vendor commits any material breach of this Contract or the additional terms agreed to between the Vendor and a Participating Entity, and such breach continues for a period of 30 days following receipt of written notice to cure.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Vendor will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

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- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Vendor must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Vendor must provide a contract sales activity report (Report) to the Sourcewell Contract Administrator assigned to this Contract. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made).

The Report must contain the following fields:

- Customer Name (e.g., City of Staples Highway Department);
- Customer Physical Street Address;
- Customer City;
- Customer State/Province;
- Customer Zip Code;
- Customer Contact Name;
- Customer Contact Email Address;
- Customer Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Vendor.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Vendor will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Vendor may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Vendor will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Vendor's name and Sourcewell-assigned contract number in the memo; and must be

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mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Vendor agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Vendor is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Vendor's Authorized Representative is the person named in the Vendor's Proposal. If Vendor's Authorized Representative changes at any time during this Contract, Vendor must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. AUDIT. Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. ASSIGNMENT. Neither the Vendor nor Sourcewell may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed assignment agreement, except in the case of a merger, acquisition, or sale of all or substantially all of the assets of Vendor. Such consent will not be unreasonably withheld.

C. AMENDMENTS. Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.

D. WAIVER. If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.

E. CONTRACT COMPLETE. This Contract contains all negotiations and agreements between Sourcewell and Vendor. No other understanding regarding this Contract, whether written or

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oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22, the terms of Articles 1-22 will govern.

F. RELATIONSHIP OF THE PARTIES. The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. LIABILITY

Vendor must indemnify, save, and hold Sourcewell, including its agents and employees, harmless from any claims or causes of action, including attorneys' fees, arising out of the breach of this Contract by the Vendor or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. In no event will Vendor be liable to Sourcewell for incidental, special, exemplary, or consequential damages, including lost profits, loss of data or goodwill, service interruption, computer damage or system failure, or the cost of substitute services. Vendor's indemnification and liability obligations to a Sourcewell Participating Entity will be as set forth in Vendor's Terms of Service, subject to the limitations set forth therein.

Vendor's indemnification and hold harmless obligations under this Section 11 and Section 13 below are contingent upon: (a) Sourcewell providing Vendor with prompt written notice of a claim; (b) Sourcewell providing reasonable cooperation to Vendor, at Vendor's expense, in the defense and settlement of such claim; and (c) Vendor having sole authority to defend or settle such claim. Notwithstanding subsection (c) of this provision, Sourcewell may employ, at its sole cost and expense, separate counsel of its own choosing, but in no event Vendor will be liable for any damages or liability arising out of Sourcewell's employment of its own counsel.

12. GOVERNMENT DATA PRACTICES

Vendor and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract.

If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify Sourcewell and Sourcewell will assist with how the Vendor should respond to the request.

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13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:

   a. Sourcewell grants to Vendor a royalty-free, worldwide, non-exclusive right and license to use theTrademark(s) provided to Vendor by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Vendor.

   b. Vendor grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Vendor's Trademarks in advertising and promotional materials for the purpose of marketing Vendor's relationship with Sourcewell.

2. *Limited Right of Sublicense*. The right and license granted herein includes a limited right of each party to grant sublicenses to its and their respective distributors, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

   a. Sourcewell must not alter Vendor's Trademarks from the form provided by Vendor and must comply with Vendor's removal requests as to specific uses of its trademarks or logos.

   b. Vendor must not alter Sourcewell's Trademarks from the form provided by Sourcewell and must comply with Sourcewell's removal requests as to specific uses of its trademarks or logos.

   c. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's Trademarks only in good faith and in a dignified manner consistent with such party's use of the Trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Vendor agrees to indemnify and hold harmless Sourcewell against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Vendor in violation of applicable patent or copyright laws ("IP Claim"). Vendor will have no liability under this section to the extent that any IP Claim results from: (a) modifications to the Equipment or Products made by a party other than Vendor or a party acting on Vendor's behalf; (b) the combination, operation or use of the Equipment or Products with equipment, devices, software or data not supplied by Vendor nor reasonably contemplated by this Contract; (c) a party's failure to use updated or modified versions of the Equipment or Products provided by Vendor to avoid a claim; (d) Vendor's compliance with any designs, specifications or plans provided by Sourcewell or a Participating Entity; or (e) use of the Products other than in accordance with this Contract, any additional terms agreed between Vendor and a Participating Entity, or any

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documentation provided by Vendor. Vendor's indemnification and liability obligations to a Sourcewell Participating Entity will be as set forth in Vendor's Terms of Service, subject to the limitations set forth therein.

5. Termination. Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of vendors which may be used until the next printing). Vendor must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. PUBLICITY. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. MARKETING. Any direct advertising or marketing campaigns with Participating Entities regarding Vendor's Sourcewell Contract must be approved by Sourcewell. Materials should be sent to the Sourcewell Contract Administrator assigned to this Contract.

D. ENDORSEMENT. The Vendor must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

Minnesota law governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state court in Todd County or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found to be illegal, unenforceable, or void then both Sourcewell and Vendor will be relieved of all obligations arising under such provisions. If the remainder of this Contract is capable of performance, it will not be affected by such declaration or finding and must be fully performed.

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17. PERFORMANCE, DEFAULT, AND REMEDIES

A. PERFORMANCE. During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Vendor may escalate the resolution of the issue to a higher level of management. The Vendor will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending*. Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed will be borne by the Vendor.

B. DEFAULT AND REMEDIES. Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

Written notice of default and a reasonable opportunity to cure must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Vendor must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an “AM BEST” rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers’ Compensation and Employer’s Liability.*
Workers’ Compensation: As required by any applicable law or regulation.

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Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:
$500,000 each accident for bodily injury by accident
$500,000 policy limit for bodily injury by disease
$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Vendor will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:
$1,000,000 each occurrence Bodily Injury and Property Damage
$1,000,000 Personal and Advertising Injury
$2,000,000 aggregate for Products-Completed operations
$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Vendor will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:
$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Vendor will maintain umbrella coverage over Workers' Compensation, Commercial General Liability, and Commercial Automobile.

Minimum Limits:
$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Vendor will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

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$2,000,000 per occurrence
$2,000,000 annual aggregate

Failure of Vendor to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Vendor must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Contract Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Vendor to provide certificates of insurance, in no way limits or relieves Vendor of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Vendor agrees to list Sourcewell and its Participating Entities that place orders with Vendor, including their officers, agents, and employees, as an additional insured under the Vendor's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Vendor, and products and completed operations of Vendor. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Vendor waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Vendor or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Vendor or its subcontractors. Where permitted by law, Vendor must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

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19. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Vendor must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Vendor certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Vendor declares bankruptcy, Vendor must immediately notify Sourcewell in writing.

Vendor certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Vendor further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may also require additional requirements based on specific funding specifications. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Vendor’s Equipment, Products, or Services with United States federal funds.

A. EQUAL EMPLOYMENT OPPORTUNITY. Except as otherwise provided under 41 C.F.R. § 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 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing

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regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. 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 C.F.R. § 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 C.F.R. § 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. Vendor must be in compliance with all applicable Davis-Bacon Act provisions.

C. 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 C.F.R. § 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. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

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D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 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 C.F.R. § 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. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of $150,000 require 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). Vendor certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 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 OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 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. Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Vendors must file any required certifications. Vendors must not have 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. Vendors must 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 non-federal award. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

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H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Vendor must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Vendor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Vendor must 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.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Vendor must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). 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. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 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 during 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.

22. CANCELLATION

Sourcewell or Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Vendor's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

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Sourcewell

DocuSigned by:
Jeremy Schwartz
C0FD2A139D06489...

By: _____

Jeremy Schwartz

Title: Chief Procurement Officer

4/1/2021 | 1:57 PM CDT

Date: _____

Samsara Inc.

DocuSigned by:
Adam Eltoukhy
022A22405912470...

By: _____

Adam Eltoukhy

Title: VP & General Counsel

4/1/2021 | 12:47 PM PDT

Date: _____

Approved:

DocuSigned by:
Chad Coauette
7E42B8F817A64CC...

By: _____

Chad Coauette

Title: Executive Director/CEO

4/1/2021 | 7:57 PM CDT

Date: _____

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RFP 020221 - Fleet Management Technologies with Related Software Solutions

Vendor Details

Company Name:	Samsara Networks Inc
Does your company conduct business under any other name? If yes, please state:	Samsara
Address:	1990 Alameda St 5th Floor San Francisco, CA 94103
Contact:	Brian Glowiak
Email:	brian.glowiak@samsara.com
Phone:	860-680-2388
Fax:	860-680-2388
HST#:	47-3100039

Submission Details

Created On:	Friday January 08, 2021 12:36:01
Submitted On:	Tuesday February 02, 2021 15:13:45
Submitted By:	Hannah Bennett
Email:	hannah.bennett@samsara.com
Transaction #:	9af6e246-5365-482f-a9fd-4c3e157b3b47
Submitter's IP Address:	52.119.119.247

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Please do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; mark "NA" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (and applicable d/b/a, if any):	Samsara Networks Inc.	*
2	Proposer Address:	Samsara Networks Inc., 1990 Alameda Street, 5th Floor, San Francisco, CA, 94103	*
3	Proposer website address:	www.samsara.com	*
4	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Adam Eltoukhy, VP & General Counsel 1990 Alameda Street 5th Floor San Francisco, CA 94103. adam.eltoukhy@samsara.com	*
5	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Brian Glowiak, Regional Sales Manager, Public Sector 1234 Samsara Miami, FL 33101 Brian.Glowiak@Samsara.com 860-680-2388	*
6	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Courtney McGowan, Director, Public Sector 1234 Samsara Miami, FL 33101 Courtney@Samsara.com	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *	

7	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	Samsara is the global leader in Industrial IoT. Our mission is to increase the efficiency, safety, and sustainability of the operations that power our economy. Samsara's portfolio of complete Internet of Things ("IoT") solutions combine hardware, software, and cloud to bring real-time visibility, analytics, and AI to operations. Since Sanjit Biswas and John Bicket founded Samsara in 2015, the company has grown to over 1400 employees with major offices in San Jose, Atlanta, and London with headquarters in San Francisco and today we serve over 24,000 customers across diverse industries, including transportation, logistics, field services, passenger transit, waste management, food and beverage, oil & gas, utilities, construction, state and local gov, and manufacturing. Our core company values are 1. Obsess over customers 2. Adopt a growth mindset 3. Build for the long term. Samsara is a privately held company led by Sanjit Biswas, CEO & Co-Founder, and John Bicket, CTO & Co-Founder, both of whom sit on the Board. Sanjit and John are joined on the board by Marc Andreessen, Founding Partner, Andreessen Horowitz, and Hemant Taneja, Managing Director, General Catalyst. Prior to Samsara, our leadership team worked together for over a decade. The Samsara leadership team previously founded Meraki (now part of Cisco Systems), the cloud-managed networking leader that powers over 2 million networks worldwide. Much of our expertise in building large-scale cloud systems, obsessing over customer feedback to quickly innovate and grow our solutions, security, simplicity, ease of use, etc. carried over to Samsara and contributes to our explosive growth, success, and leadership in this space. Samsara's full executive team can be viewed here at https://www.samsara.com/about Samsara's core competencies include vehicle telematics, driver safety, asset tracking, mobile workflow, remote site visibility, and industrial process controls - all in an integrated, open, real-time, cloud platform. We have one of the strongest engineering teams in the world and are unparalleled in our ability to hear a customer problem statement and then design and build advanced technology as a solution fit. In the past year, we've doubled our customer and employee base and launched in 10 new countries. Most importantly, we are continuing to invest heavily in innovative and cost-effective ways to help our customers increase the efficiency, safety, and sustainability of their operations while also helping them meet and exceed the expectations of the customers and citizens they serve.	*
8	What are your company's expectations in the event of an award?	In the event of an award, Samsara's expectations are to enable our Public Sector sales teams to help our prospective customers take the easiest path to purchase through this contract. As stated in the pre-bid meeting by Sourcewell representatives, being able to leverage the Sourcewell contract is a massive benefit to all parties involved and can save months of time and effort as compared to going through a full RFP process with each and every city/county/state. This especially rings true in the current environment we have all been exposed to in the wake of Covid-19. Early retirements, furloughs, hiring freezes, etc., are all challenges we've seen in the market and it's become more difficult for agencies to find the time and resources to go through a true internal RFP process. Additionally, Samsara is very excited at the potential to be a part of Sourcewell's approved contract because there have been times where our sales team has had the request to use Sourcewell to purchase Samsara, however, we have had to use other cooperative contracts to earn their business to bypass an RFP. Sourcewell is typically the first contract that is mentioned in our discussions and we would love to leverage this as it seems to be the preferred option for many of our customers in the Public Sector.	*
9	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Please find Samsara's Dun & Bradstreet report attached. Samsara has raised over $930 million in equity financing to date, most recently raising $400 million in May 2020 at a $5.4 billion valuation, and Samsara maintains sufficient capital to provide services to its over 20,000 customers. Samsara is also number 25 on the Forbes Cloud 100 list (https://www.forbes.com/cloud100/#369e41325f94) and number 4 on the LinkedIn Top Startups List for 2020 (https://www.linkedin.com/pulse/linkedin-top-startups-2020-50-us-companies-rise-jessi-hempel/) We would be happy to provide more information on a call, if desired.	*
10	What is your US market share for the solutions that you are proposing?	Samsara has secured the title of the fastest-growing fleet technology company in the industry, with over 20,000 customers of different sizes and industries.	*
11	What is your Canadian market share for the solutions that you are proposing?	Samsara has secured the title of the fastest-growing fleet technology company in the industry, with over 20,000 customers of different sizes and industries, including throughout Canada.	*
12	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No	*

13	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	Samsara would be best described as a SaaS provider. Samsara makes builds and designs all of its own hardware (gateways, dashcams, sensors, security cameras, industrial gateways and monitors, accessories, and more) and also all of its own software. This gives Samsara a unique edge because our products and software are extremely easy to use, seamlessly integrated, and help our customers consolidate platforms and simplify their operations. Our hardware and software are both created in house by badged Samsara Engineering and Development team members. Samsara sells its products mostly directly by our own sales team, and also through multiple partners with varying geographic coverage. These partners are external third parties and are not Samsara employees.	*
14	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	Samsara is registered on the FMCSA's ELD list.	*
15	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	Neither Samsara Networks Inc. nor its subsidiaries have been suspended or debarred in the past ten years.	*

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *	
16	Describe any relevant industry awards or recognition that your company has received in the past five years	Please find below a list of awards and certifications: - 2019 LinkedIn Top Startups - #3 - 2019 Cloud 100 - Forbes - 2019 Top Startup - LinkedIn - 2019 International Business Awards - Company of the Year in Transportation (Gold), Most Innovative Tech Company of the Year (Silver), Hardware Networking for CM32 (Gold), IoT Analytics Solution for CM32 (Bronze) - 2018 Top CEO, Sanjit Biswas, Small to Medium Business - Glassdoor - 2018 Top Startups - LinkedIn 2018 American Business Awards - New Product of the Year in Transportation (Gold), Most Innovative Tech Company of the Year (Silver) - 2018 People's Choice American Business Award - B2B Products 2018 Internet of Things 50 - The Channel Co CRN Top 10 Fleet Management Solutions Providers 2017 - Logistics Tech Outlook 20 Fastest-Growing IoT Companies - Insight Success Magazine - 2017 Emerging Vendors - The Channel Co CRN	*
17	What percentage of your sales are to the governmental sector in the past three years	2%	*
18	What percentage of your sales are to the education sector in the past three years	1%	*
19	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	GSA, PEPPM, MAPC. The annual sales volume for these contracts is $1,207,982.66.	*
20	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	We currently have GSA contracts with entities from cities or counties from the following states: Florida, Texas, California, Georgia, South Carolina, Colorado, and Virginia. The annual sales volume for these contracts is $1,207,982.66.	*

Table 4: References/Testimonials

Line Item 21. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *	
City and County of Denver	Brad Salazar	720-865-3905	*
City of Sacramento	Mark Stevens	916-808-5869	*
City of Tallahassee	David Nichols	850.891.5238	*

Table 5: Top Five Government or Education Customers

Line Item 22. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
[Confidential]	Government	Florida - FL	Vehicle Gateways, Unpowered Asset Gateways, Environmental Monitors, Street Sweeper Tracking	$1.76M	$1.05M	*
[Confidential]	Government	Massachusetts - MA	Vehicle Gateways (VG34), Powered Asset Gateways (AG26), Dash Cams (CM32), Environmental Monitors (EM21), Snow Plow/Spreader Tracking	$2.78M	$1.66M	*
[Confidential]	Government	California - CA	Vehicle Gateways (VG34), Powered Asset Gateways (AG26), Unpowered Asset Gateways (AG46)	$2.78M	$1.66M	*
[Confidential]	Government	Colorado - CO	Vehicle Gateways (VG34), Powered Asset Gateways (AG26), Dash Cams (CM32), Environmental Monitors (EM21), Snow Plow/Spreader Tracking, Sweeper Tracking	$3.15M	$781K	*
[Confidential]	Government	Colorado - CO	Vehicle Gateways (VG34), Powered Asset Gateways (AG26), Dash Cams (CM32), Snow Plow/Spreader Tracking	$1.9M	$400K	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
23	Sales force.	Samsara is broken down into separate business units - Fleet, Industrial, and Connected Sites. On the Fleet side, we have 122 Account Development Representatives, 229 Account Executives, and 28 Regional Sales Managers. On the Industrial/Sites side, we have 9 Account Executives and 1 Regional Sales Manager.	*
24	Dealer network or other distribution methods.	Samsara has over 100 partners, referring to those who are qualified to resell our product, across all business units (fleet, industrial, connected sites). These partners are not employed by Samsara, nor are they required to submit a certain number of leads/generate a certain amount of revenue per quarter. Our most successful partners (i.e. CDW), fall under the "IT systems distributor" industry. We don't have a geographical hub for our partners- we have one in just about every state, distributed evenly across the US.	*
25	Service force.	As of January 2021, Samsara's Technical Support team has 82 team members located within the US, and 3 in the UK. Of the 82, 59 are full-time employees, and the remainder are contractors. In 2020, Samsara was extremely proud to achieve a less than 5 minute wait time to connect with a customer service representative. For the majority of the year, this was actually less than 1 minute.	*
26	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	Samsara provides its customers with 24/7 service via phone, email/case, and webchat. Response time capabilities (SLA's) and commitments can be found here: https://www.samsara.com/hosted-software-sla Contacting support can be found here: https://www.samsara.com/support/contact Training Webinars and Videos can be found here: https://www.samsara.com/support/training	*
27	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	Samsara is fully capable and willing to provide products and services to Sourcewell participating entities in the United States.	*
28	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	Samsara is fully capable and willing to provide products and services to Sourcewell participating entities in Canada.	*
29	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Samsara is well equipped to provide its services across all industries and sectors. Samsara has a global presence and there are no areas of the United States or Canada in which we would not be serving through the proposed contract.	*
30	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	Samsara is well equipped to provide its services across all industries and sectors. Samsara has a global presence and there are no sectors in which we would not be serving through the proposed contract. There are no existing contracts which would limit our ability to promote another contract.	*
31	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	There are no additional contract requirements or restrictions that would apply to participating entities in HI, AK, or US Territories.	*

Table 7: Marketing Plan

Line Item	Question	Response *	
32	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	Our strategies to promote new offerings typically include blog posts, development of sales assets, updates on social media, emails to customers, and press outreach as appropriate. We'd like to partner with Sourcewell to finalize the messaging, scope, and timing of joint marketing activities. Examples of materials from a recent promotion include the links below (also attached as a PDF to this submission): - Launched blog post: https://www.samsara.com/blog/samsara-and-edulog-announce-integrated-solution-for-student-transportation - Press Coverage: https://stnonline.com/industry-releases/samsara-and-edulog-announce-integrated-solution-for-student-transportation/ - Case Study: https://samsara.showpad.com/share/zBtWW5Dd7DDoA5Q2ZkHGr	*
33	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Samsara carefully monitors performance on our own domains, email, social media channels, and paid channels. We gather data across every stage of our customers' journey and establish internal benchmarks to ensure that we're optimizing and improving our performance. Examples of our approach include: - Search engine optimization; ensuring that webpages and written content include top-performing keywords relevant to our solutions - Website analytics; adjusting content and performance to minimize bounce rate & increase traffic - Social media; monitoring engagement with posts on LinkedIn, Facebook, and Twitter. Use of targeted ads to engage with prospects. - Email; we monitor delivery success rates, unsubscribe rates, open rates, and click rates to maximize messaging impact while minimizing reader fatigue	*
34	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	We are happy to work with Sourcewell to determine a mutually beneficial co-marketing plan. When it comes to integrating Sourcewell-awarded contracts into our sales process, there are two approaches: - If we are speaking with a client who is already on the Sourcewell membership list, we will be certain to promote our contract with that client. - If we are speaking with a client who does not yet procure through Sourcewell, we can provide collateral to our sales teams to educate those clients about Sourcewell. We are happy to share Sourcewell-provided resources about the benefits of purchasing through the cooperative.	*
35	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	We do have an online webstore, but as of now, its use is limited to our existing customers. The webstore can be used for replacement hardware, accessory and cable transactions for all customers. Only certain customers can utilize the webstore for additional net-net purchases. Our existing governmental and education customers can use our webstore in the same manner as above.	*

Table 8: Value-Added Attributes

Line Item	Question	Response *	

36	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	Samsara utilizes the Train the trainer approach, and in most deployments, we provide 6 deep drive instructor-led trainings in a virtual format covering the following topics:
		
		- Admin Dashboard Settings Training
		- Admin Dashboard Functionality Training
		  - Safety for Dash Cams Overview
		  - Admin Driver App
		  - Admin Fleet App
		  - Routes, Dispatching, and Workflow Overview
		  - Maintenance Overview
		
		We also have a library of On-demand training videos available 24/7 via the Samsara dashboard itself available to all the customers at no charge.
		
		With every deployment, each Samsara customer will always receive 24/7 customer support (phone, email/case, chat), on-demand access to the Samsara Training Center, and access to the online knowledge base.
		
		Service and Support Benefits such as Pre-Sale Pilot Management, Tailored ROI Analysis, Consultations, Setup & Configurations, Implementation Kick Offs, Plans, and Workshops, End-to-End Program Management, Business Reviews, Dedicated Technical Account Managers, and more are all offered and are based on overall annual spend. The abovementioned additional services are included for Samsara customers at no additional cost as their annual spend meets the required threshold.
			*

37	Describe any technological advances that your proposed products or services offer.	Samsara's mission is to increase the efficiency, safety, and sustainability of the operations that power our economy. Our complete portfolio of Internet of Things ("IoT") solutions combine hardware, software, and cloud to bring real-time visibility, analytics, and AI to operations. Today, over 20,000 customers around the world -- from state and local governments to schools and Fortune 500 enterprises -- use Samsara to simplify their operations, consolidate vendors, prevent accidents and increase overall safety, automate manual processes, and improve real-time visibility across multiple departments, sites, agencies, and more. Samsara's growing suite of solutions includes vehicle telematics, driver safety, mobile workflow and compliance, asset tracking, smart cameras, and industrial process controls - all in an integrated, open, real-time platform. Customer feedback is at the center of our product development process. In 2020 alone, Samsara launched more than 200 product updates to help customers adapt to new operational challenges. All of these new features and functionalities were pushed to our customers free of charge and over the air. This is a huge differentiator with Samsara; we do not try to nickel and dime our customers with increases in pricing when new features are rolled out. If our customers have the hardware that supports our new features, they simply get these free of charge and can choose to use or not use them at their leisure. For example, in late Winter 2020 (March), all of Samsara's customers who had previously purchased our Dashcams were automatically eligible to use a plethora of new A.I. features free of charge. All they had to do was turn on a toggle with a simple click in their dashboard and they could immediately access features like distracted driving detection (texting, smoking, eating, looking away from the road), tailgating, forward collision warnings, rolling through stop signs and red lights, seatbelt usage, mask-wearing policies, among other items. While many of our customers were already using these Dashcams (CM31 & CM32) for well over a year, they were ecstatic to be able to leverage all of our new features without paying additional yearly fees, and without needing to replace any hardware or do any additional work from on their end. This is what our customers come to expect over time with Samsara and is what we strive to deliver. The following link is also a part of Samsara's submission as a PDF document: https://www.samsara.com/blog/favorite-product-updates-2020	*

38	Describe any “green” initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	A core value of ours is building for the long term, and sustainability is a key part of that. We are committed to building best in class products that help our customers reduce their environmental footprint, and we have the same goal for our own business practices. Customer examples are annual reductions in fuel of over $40m per annum across our customer base due to eco-drive initiatives and reductions in idle times. We also have also made a big investment in capabilities to manage EV fleets and their unique challenges. Samsara has published an internal page for "green" initiatives. This page includes links for environmental groups to support/donate, various Earth Day projects/ideas, and other environmentally related topics. Furthermore, the Samsara recognition platform allows employees to accrue points and donate directly to agencies such as The Nature Conservancy and Greenpeace. In addition, Samsara offices in CA are Cal Green, SF6 and SJ1 are LEED certified, Samsara’s Workplace Design and Build Guidelines call for high-efficiency lighting and power systems, sustainable materials and locally-sourced materials when available.	*
39	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	Samsara is proud to be recognized as a leader in sustainability. In 2020, Samsara was honored by the Business Intelligence Group as a company that has made sustainability an integral part of its business practices. More can be read below and here - https://www.bintelligence.com/sustainability-awards The most precious asset all businesses share is our Earth. The efforts individuals and businesses make to sustain this vital resource is not only necessary, but it also makes good business sense. Seeking recognition for your Earth-friendly work is also smart business. We applaud you for taking the first step in setting your business apart from your competitors. The Sustainability Awards program provides the opportunity for your organization to receive global recognition by a panel of volunteer judges who themselves are leaders and experts in business. The Sustainability Awards will honor those who have made sustainability an integral part of their business practice. We welcome nominations from businesses of all sizes, locations and maturity. We offer increased exposure for the exemplary accomplishments of leaders, initiatives and organizations working to reduce the impact of their business on our environment.	*
40	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	Samsara does not hold these certifications.	*

41	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	Samsara is an integrated platform that improves safety and increases efficiency and sustainability for operationally complex businesses, governments, and other entities. We connect data points from sensors and cameras (all built in-house by Samsara) across our customer's operations (ie: fleet, worksites, and infrastructure) with AI-powered, secure, cloud-based software. Because Samsara is unique in having developed and built all of our hardware and software in-house, State and Local agencies, as well as schools and Universities, are choosing our platform because we help consolidate their vendors and move them to a simple, intuitive, powerful platform all in one pane of glass. This is true across the rest of our business units as well. What used to take perhaps 3 vendors (one for AVL/GPS, another for assets/maintenance, another for dashcams/safety) now can be done with one company at a best-in-class level across all products. In addition to our Fleet business, we're also helping our customers monitor their remote sites, wells, pumps, and other locations that can reduce the need for manual check-ins with our Industrial Gateways. We're constantly listening to what our customers are asking for, and have also since developed another product called Site Visibility which can quickly bring all of your existing camera streams directly into your Samsara Dashboard by utilizing the existing equipment which has already been paid for. For example, if a state, city, county, school district, university, or any organization already has security cameras installed throughout their operations today, there's a great chance they can pull in those camera streams directly into Samara without needing to replace any existing infrastructure - a true game-changer for any organization who wants to bring real-time visibility from their vehicles and sites into the same dashboard. We also can provide our own security cameras if needed if the system needs a full replacement. Because all camera streams can run through our platform, we can layer our A.I. on top of the stream within our Dashboard which unlocks alerts, notifications, people and movement detection, and much more. Curious to see who was the last person who walked through your facility with an orange shirt on? You can find this footage with just a few clicks and in a matter of seconds. Samsara is much more than just a GPS or AVL provider, it is a platform where our customers can start slow and grow into our products and services from whatever starting point they wish, at their own pace. Samsara is often chosen because our customers know we are a tech company, first and foremost, that can move quickly and take feedback seriously to make the overall product better based on real-world problems our customers are sharing with us.	*

Table 9: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
42	Do your warranties cover all products, parts, and labor?	Samsara Hardware Products that require a valid license to function shall come with a warranty that lasts for as long as you maintain a valid license for such Hardware. During the warranty period, Hardware exhibiting material defects will be replaced. More information on the Hardware warranty can be found here: https://www.samsara.com/support/hardware-warranty Labor is not included in the product warranty.	*
43	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	No.	*
44	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	No. If there is an issue with any of our products and it is covered under warranty, Samsara will overnight a new device to the customer and our products are extremely easy to install so the great majority of our customers will simply swap out the products themselves.	*
45	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	There are no geographic regions of the United States or Canada in which Samsara can send our certified installers, however, as previously mentioned the installation is not covered in the warranty, only the product itself is. Our products are designed to be extremely easy to install, everything being plug and play. If Samsara provides the initial installation, it is expected we will be training existing employees how to do what is typically a 10-minute simple process for installations or replacements. Very little vehicle or technical knowledge is needed to do the majority of our installations/replacements.	*
46	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	No. All products mentioned in this proposal are built by Samsara employees and this unique approach is a differentiator because we create and build all of our own hardware and software. We do not rely on other manufacturers' hardware as part of our offering. Because of this, Samsara is able to offer seamless, plug and play integration of all of our products which relays back to a simple, intuitive, dashboard where our customers have a true 360-degree view of their operations.	*
47	What are your proposed exchange and return programs and policies?	Samsara offers a no-questions-asked return policy up to 30 days post purchase as outlined in the Samsara Hardware Warranty & RMA Policy, found at https://www.samsara.com/support/hardware-warranty. During the hardware warranty period, devices exhibiting material defects will be replaced pursuant to the RMA process outlined in the Hardware Warranty & RMA Policy	*
48	Describe any service contract options for the items included in your proposal.	All product update releases are performed over the air without any interruption to our customers' service. Samsara's Hosted Software runs on a scalable and redundant cloud computing infrastructure used by the world's largest enterprises. Samsara's distributed software architecture spreads computation across multiple physical servers and replicates stored data across multiple physical storage devices. As a result, no single hardware failure can affect service availability and because of this we are pleased to offer our customers a 99.99% uptime SLA.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
49	What are your payment terms (e.g., net 10, net 30)?	Net 30	*
50	Describe any leasing or financing options available for use by educational or governmental entities.	Samsara can provide monthly, annual, or upfront payment options pending internal credit review of the participating entity.	*
51	Briefly describe your proposed order process. Include enough detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell participating entities' purchase orders.	Samsara will handle the complete order process from start to finish including quoting, processing, shipping, invoicing, product activation, implementation, and customer support. With each Samsara order from our customers, deliveries for our hardware are typically made within 3 business days of the signed quote or purchase order being received. In the past in order to procure Samsara via Sourcewell, Samsara has relied on 3rd party companies who have an existing relationship with Sourcewell. In the near term, there will still be some entities who continue to choose to use our 3rd party providers to procure Samsara (i.e. via CDW). However, if awarded, going forward we will be looking to sell Samsara directly off the Sourcewell contract versus leveraging 3rd party providers. The benefit of being able to purchase Samsara directly off the Sourcewell contract versus going through a 3rd party benefits the customer first and foremost because this will zero-out the reseller fees typically associated with procuring Samsara through a 3rd party. In this event, Samsara would be fully capable of providing quarterly sales to Sourcewell as described in the contract template because we would control access to this data rather than it going through our dealer network. In the event our dealer network processes a Samsara purchase order, the typical workflow for this is the end customer will cut a PO to the reseller dealer network and this would trigger a payment to Samsara from the reseller/dealer. Upon receipt, Samsara will release the shipment and provide tracking information to the appropriate point of contact. In this instance, the dealer network would process the Sourcewell participating entities' purchase orders.	*
52	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Yes, we accept P-card transactions through a secure checkout link that can be provided by an account manager, or via the Samsara online web store which our customers can access directly from their dashboard. All credit or debit cards used will automatically have a 3% processing fee attached to them, and this fee is only applicable to this payment method. Other payment methods such as check, wire, ACH transfers, will not incur any processing fees.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as desribed in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	

53	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Samsara offers line-item discounts on a case by case basis. Typical considerations when offering line-item discounts include overall size and scope of the project, ability to pay upfront in full versus annual or monthly, and a customers' openness to partner with Samsara on things like case studies, video testimonials, webinars, or being a reference to other similar entities. Please see attached for list pricing as well as the Sourcewell discounted price within the excel pricing document. Within the excel pricing document, we wanted to make it clear which line items represent a one-time cost or product replacement cost versus an annual recurring cost for licenses/software charges. Column J shows this designation, please let us know if you have further questions there. Samsara does not charge for hardware during an initial contract, and the hardware is covered under full warranty for the duration of the time a customer is actively paying for the software license associated with that hardware. In the event a piece of hardware would not be covered under warranty (i.e. a driver deliberately scratched the lens of a camera) we would use the one-time/replacement cost in order to have that hardware replaced. Our most up to date warranty information can be found at https://www.samsara.com/support/hardware-warranty	*
54	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	Samsara is offering a 5% discount to MSRP pricing for Sourcewell entities wishing to leverage their existing Sourcewell relationship to purchase Samsara. Please see the attached master price list for these prices. Note this is simply the starting point from a pricing perspective. Sourcewell entities would be eligible for deeper discounts depending on their total rollout, scope, and other items determined during the sales cycle.	*
55	Describe any quantity or volume discounts or rebate programs that you offer.	Quantity and volume discounts are given to our customers, on a case by case basis, and can be discussed in further detail as interested agencies begin to inquire what a Samsara deployment might look like in practice for their particular scope and delivery. Quantity and volume discounts would be discussed with an Account Executive or Regional Sales Manager during the purchasing process.	*
56	Propose a method of facilitating “sourced” products or related services, which may be referred to as “open market” items or “nonstandard options”. For example, you may supply such items “at cost” or “at cost plus a percentage,” or you may supply a quote for each such request.	Samsara offers a robust marketplace highlighting pre-built integrations that our customers can take advantage of at no additional cost from Samsara. In some instances, the partners listed on our marketplace may have their own fees associated with certain integrations, however, Samsara does not charge extra for an existing pre-built integration. In the event a customer wants to explore building a new integration, a quote will be supplied for each such request and cost shall be determined on a case by case basis. This also could be a custom success or support program that a customer might request above and beyond our typical implementation and success programs. Anything in this capacity would be reviewed by our respective teams in conjunction with the customer to determine the overall effort and cost needed to satisfy the request on a case by case basis. With regard to installations, the majority of Samsara's customers choose to self-install as our products are extremely easy to use and are plug and play right out of the box. An installation of a Vehicle Gateway and Dashcam could take as little as 10 minutes. In the event a customer requires an installation, Samsara has a network of certified installers who can be leveraged for these instances.	*

57	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	- Applicable taxes - Shipping & handling - Installation (if applicable) - Most Samsara customers perform their own installations as our products are designed to be "plug and play" right out of the box. For those customers who choose to not self-install, Samsara has a network of certified installers who will work with Samsara and the customer to scope out the project in its entirety and then provide a detailed implementation plan tailored to that particular install. No installation is the same and therefore the cost of installation will vary on a case-by-case basis. - Custom integrations not already covered at no additional cost: see samsara.com/marketplace	*
58	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Samsara uses FedEx Freight for shipping and this is a separate cost required to be paid by the customer in addition to the products and services purchased. The process is as follows: - Customer sends final vehicle and asset lineup to Samsara - Samsara Order Operations will retrieve the cost of shipping from FedEx Freight to be added to the quote based on the size and destination of the order. - All shipments are FOB origin, freight is pre-paid and added to the Customer's invoice.	*
59	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	Alaska, Hawaii, Canada, Mexico, and EMEA would follow the same process as listed in Table 11, Question 6, which is also listed below: - Customer sends final vehicle and asset lineup to Samsara - Samsara Order Operations will retrieve the cost of shipping from FedEx Freight to be added to the quote based on the size and destination of the order. - All shipments are FOB origin, freight is pre-paid and added to the Customer's invoice.	*
60	Describe any unique distribution and/or delivery methods or options offered in your proposal.	In line with Samsara's first-class customer support experience, our customers appreciate how we take feedback seriously and ensure quick resolution to potential issues that may arise. In the event a piece of hardware is not properly functioning, Samsara will overnight a replacement unit and send a free return shipping label for the malfunctioning unit. This is offered to all of our customers and their feedback is extremely positive for this, considering most did not receive this type of service with their previous vendors.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
61	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	Pricing provided in this submission represents a 5% discount to MSRP for what Samsara typically offers as its starting point with government, education, and non-profit organizations. Deeper discounts will be available to participating Sourcewell entities based on the size and scope of their desired rollout.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
62	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell.	If awarded a Contract, Samsara will leverage its business systems to track sales with Participating Entities under the Contract to satisfy quarterly reporting obligations and remittance of the administrative fee. Samsara has experience with such reporting for similar contracting vehicles (e.g., GSA).	*
63	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	Samsara agrees to pay Sourcewell a 2% administrative fee of total sales for facilitating, managing, and promoting the Sourcewell Contract in the event we are awarded a Contract.	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *	

64	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	Samsara is an integrated platform that improves safety and increases efficiency and sustainability for operationally complex businesses, governments, and other entities. We connect data points from sensors and cameras (all built in-house by Samsara) across our customer's operations (ie: fleet, worksites, and infrastructure) with AI-powered, secure, cloud-based software. Because Samsara is unique in having developed and built all of our hardware and software in-house, State and Local agencies, as well as schools and Universities, are choosing our platform because we help consolidate their vendors and move them to a simple, intuitive, powerful platform all in one pane of glass. This is true across the rest of our business units as well. What used to take perhaps 3 vendors (one for AVL/GPS, another for assets/maintenance, another for dashcams/safety) now can be done with one company at a best-in-class level across all products.
		
		In addition to our Fleet business, we're also helping our customers monitor their remote sites, wells, pumps, and other locations that can reduce the need for manual check-ins with our Industrial Gateways. We have also developed another product called Site Visibility which can quickly bring all of your existing camera streams directly into your Samsara Dashboard by utilizing the existing camera equipment which has already been paid for. For example, if a state, city, county, school district, university, or any organization already has security cameras installed throughout their operations today, there's a great chance they can pull in those camera streams directly into Samara without needing to replace any existing infrastructure - a true game-changer for any organization who wants to bring real-time visibility from their vehicles and sites into the same dashboard. We also can provide our own security cameras if the system needs a full replacement. Because all camera streams can run through our platform, we can layer our A.I. on top of the stream within our Dashboard which unlocks alerts, notifications, people & movement detection, and much more. Curious to see who was the last person who walked through your facility with an orange shirt on? You can find this footage with just a few clicks and in a matter of seconds. Samsara is much more than just a GPS or AVL provider, it is a platform where our customers can start slow and grow into our products and services from whatever starting point they wish and at their own pace. Samsara is often chosen because our customers know we are a tech company, first and foremost, that can move quickly and take feedback seriously to make the overall product better based on real-world problems our customers are sharing with us.
		
		Samsara's offerings within in this proposal include vehicle telematics (everything from AVL to preventative maintenance to vehicle inspections and more), driver safety, asset tracking, mobile workflow, remote site visibility, and industrial process controls. All products can be included in an integrated, open, real-time, cloud platform. Samsara is offering products and services that span the following (please see attached master product list and product specification sheets for detailed information on pricing and capabilities):
		
		Fleet
		- Telematics
		  - Real-time GPS Fleet Tracking
		  - Fuel & Maintenance
		  - Trailer Tracking	

- Reefer Monitoring
- Equipment (powered and unpowered) Tracking
- Electric Vehicles

- Safety and Cameras
  - A.I. Dashcams
  - Driver Safety Programs
  - Coaching Workflows
  - Safety Event Review
- Connected Driver
  - Driver Workflow
  - Custom Documents
  - Messaging
  - Routing & Dispatch
  - Compliance
  - Driver Vehicle Inspection Reports (DVIR)
- Platform & Partnerships
  - Single Vendor Platform - consolidate and simplify your operations and vendors into one platform
  - App Marketplace - pre-built integrations with Samsara and your 3rd party apps
  - Experts Marketplace - get help from our verified integration and implementation experts
  - OEM Telematics - integrations with industry-leading OEMs such as John Deere, Caterpillar, Ford, International, Volvo, Mack
- Industry-Specific Solutions
  - Transportation & Logistics
  - Food & Beverage
  - Construction
  - Higher Education
  - K-12 School Transportation
  - State & Local Government
  - Passenger Transit
  - Field Service Fleets

Infrastructure
- SCADA - Samsara offers a cloud-based full end to end SCADA solution and can also be run alongside existing systems to make previously inaccessible data more actionable.
  - HMI Dashboards for Equipment, Oilfield, Wastewater, and Water Operations
  - Alarms & Notifications
  - Reporting
  - Mobile Access from anywhere to prevent downtime
  - Custom KPIs
- Industrial IOT
  - Remote Monitoring
  - Condition Monitoring
  - Industrial Gateways - Samsara Industrial Gateways provide a direct link between your equipment and our cloud-based remote monitoring platform. This seamless integration of hardware and software gives you out-of-the-box visibility, so you can monitor and control industrial equipment in the most remote locations.

Site Visibility
- Samsara Site Visibility integrates with existing security cameras for easy installation. Simply plug in the Site Gateway to your network and set up the cloud VMS (video management software) in under 10 minutes. In a few clicks, you can detect and add existing IP camera streams into the Samsara Dashboard. Use these streams to create custom views, share footage, and gain on-the-go visibility from your phone.
- Our hybrid-cloud architecture revolutionizes traditional video monitoring, combining on-the-go visibility with a powerful on-premise gateway and ruggedized, high-definition cameras. If customers already have their own cameras, we can integrate with those too.
- Our Site Gateway allows customers to automatically turn their existing IP cameras into an advanced AI camera in a matter of minutes.
- Key Benefits Include:
  - Access from anywhere - Everything you'd want from a security camera system, plus secure and granular user access from any web browser or from the mobile application.
  - Security - Immediately respond to unusual activity (such as theft) and reduce the time spent investigating. Have & find evidence easily when you need it. Intuitive timeline navigation and enhanced search features streamline incident investigation, such as a theft or a worker injury.
  - Safety - Leverage intelligent detection and powerful search to identify workplace hazards. Catch & prevent incidents in the moment. Be immediately notified of unusual or unsafe activity through intelligent detection and alerting—no need to actively monitor your security cameras.
  - Efficiency - Identify process or operational inefficiencies with powerful AI insights

		and proactive alerts.	
65	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	Please see the bulleted items listed in Table 14A line item 64 for the main categories and subcategories of the products and services offered by Samsara.	*

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
66	Fleet management information systems	(•) Yes ( ) No	Samsara's platform is able to be used as an FMIS for our customers. For those customers who are already using an existing FMIS such as something like an Assetworks, Samsara can integrate with these systems to do things such as but not limited to: syncing Samsara Vehicle Gateway and Asset Gateway data like trip history, engine runtimes, fault code analysis and odometer data, automatically trigger work orders to be created based on vehicle inspection reports and maintenance data in Samsara, and service requests can be sent directly to technicians.	*
67	Fleet technology related hardware solutions	(•) Yes ( ) No	Samsara makes builds and designs all of its own hardware (vehicle and asset gateways, dashcams, sensors, security cameras, industrial gateways and monitors, accessories, and more) and also builds all of its own software. This gives Samsara a unique edge because our products and software are extremely easy to use, seamlessly integrated, and help our customers consolidate platforms and simplify their operations. Our hardware and software are both created in house by badged Samsara Engineering and Development team members.	*
68	Fleet related software solutions	(•) Yes ( ) No	Samsara makes builds and designs all of its own hardware (vehicle and asset gateways, dashcams, sensors, security cameras, industrial gateways and monitors, accessories, and more) and also builds all of its own software. This gives Samsara a unique edge because our products and software are extremely easy to use, seamlessly integrated, and help our customers consolidate platforms and simplify their operations. Our hardware and software are both created in house by badged Samsara Engineering and Development team members.	*
69	Telematics, fleet monitoring, asset tracking, and geofencing solutions	(•) Yes ( ) No	All items listed are covered by Samsara's offering.	*
70	Motor pool and fleet sharing solutions	(•) Yes ( ) No	Samsara has worked with various cities, counties, and agencies with regard to supporting fleet pooling services in certain capacities. By using the Samsara Driver App, employees can submit digital documents to report reasons for vehicle use, passengers, odometer readings, or any other information you want to capture including pictures, barcode scans, signatures, and document scans. There are numerous ways to understand who is driving which vehicle in real-time: 1) by logging into a vehicle via the Samsara Driver App, 2) if using Samsara Dash Cams (CM32) they will assign drivers automatically as soon as they start a vehicle, 3) with RFID ID card readers and RFID cards, and 4) with bluetooth keychain tokens.	*

71	Integrated video solutions	(•) Yes ( ) No	Fast Company's 2020 World Changing Ideas Awards were announced in April 2020, honoring the businesses, policies, projects, and concepts that are actively engaged and deeply committed to flattening the curve when it comes to the climate crisis, social injustice, or economic inequality. A panel of eminent judges selected winners and finalists from a pool of more than 3,000 entries across transportation, education, food, politics, technology, and more. Samsara's AI Dash Cam received an honorable mention in the AI and Data category for its critical role in protecting drivers. Additionally, specifically speaking about Samsara's integrated AI Dashcams, in September 2020 this product received two Gold Stevie 2020 International Business Awards for both the IoT Analytics Solution and the Hardware Solution of the Year. According to this year's Stevie® Award judges, Samsara's unified platform and customer-first approach differentiates the company from others in the market. Recent updates to the platform include advanced AI safety features, such as preventative in-cab alerts, and electric vehicle reporting capabilities. With Samsara, customers gain complete operational visibility, so they can save time, save money, and keep their workers safe. More than 3,800 nominations from organizations of all sizes and in virtually every industry were submitted this year for consideration in a wide range of categories. Stevie Award winners were determined by the average scores of more than 250 executives worldwide who participated in the judging process from July through early September. Samsara's dual-facing AI dash cam provides fleet managers with the information they need to protect their drivers and their fleet from incidents on the road. These cameras use embedded AI and real-time computing power to interpret road scenes and driver behavior to detect distraction, near collisions, tailgating, and traffic violations for even more visibility into safety incidents and risks. Simply put, these cameras save lives. In addition to Samsara's award-winning Dashcams, we also offer our customers a Site Visibility solution, which is a hybrid Video Monitoring Solution that allows our customers to bring their existing security camera streams directly into Samsara's dashboard and layer Samsara's AI on top of the streams. This makes any ordinary IP camera an immediate AI-powered smart camera with a slew of features that were not previously available without Samsara.

Table 15: Industry Specific Questions

Line Item	Question	Response *	
72	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	If awarded, internal metrics will be developed and tracked within Samsara's internal CRM. Metrics such as total opportunities created tagged with Sourcewell as a path to purchase, win rate, and the scope of rollout provided in closed won deals would be tracked. This would be further broken down by region and segment, all the way to the individual rep level. These data points combined with other items are crucial for Samsara's continued growth as we continue to add headcount and expand our Public Sector teams.	*
73	Describe your approach to data privacy in regard to your proposed solution(s).	At Samsara, all of our products are built from the ground up with privacy in mind. We firmly believe that your data belongs to you and that protecting it is one of our most important responsibilities. To that end, we hold data security and privacy to the highest standards and invest continuously in our infrastructure and processes to provide you with the most secure solutions in the industry. We're committed to being transparent about our security practices and helping you understand our approach. Our Global Approach to Privacy: Whether you operate in the United States or Europe, Samsara has you covered. We support compliance with GDPR and CCPA requirements, among others. * European Union: Samsara supports compliance with the GDPR. The EU General Data Protection Regulation (GDPR), effective 25 May 2018, is a regulation that strengthens data protection for all individuals in the European Union (EU). The GDPR places requirements on the way organizations and companies must collect, store, and process personal data. It also addresses the movement of such personal data outside the EU and stipulates the controls and safeguards which must be in place to do so. As a complete telematics solution, Samsara products must sometimes collect, store, and use an array of personal data, including video footage. When designing and improving our products and features, Samsara has carefully considered data protection in order to help ensure personal data is processed in accordance with its legal requirements. Data is therefore processed in a transparent way and is retained only as is necessary, with appropriate safeguards in place to secure and protect it.	

Under the GDPR, Samsara will serve as the data processor in our customer relationships in order to process personal data provided by the customer. Under our agreements, customers will always have the power and control over their data. Within our products, Samsara also provides certain functionality to help customers with their compliance with applicable legal requirements.

Samsara has always believed in the importance of securely and thoughtfully handling customer data and will continue to protect customer data in accordance with all applicable legal requirements, including the GDPR.

For more information about how Samsara supports compliance with the GDPR in your region, please contact your representative for access to our privacy white papers for the United Kingdom and Ireland, Netherlands, Germany, France, and Spain. If you do not have a representative, please contact sales@samsara.com or reach out through our website.

* California: Samsara supports compliance with the CCPA. The California Consumer Privacy Act of 2018 (CCPA) was enacted into law on June 28, 2018, and many of its provisions went into effect on January 1, 2020. The CCPA grants California residents certain rights with respect to their ability to know and access the personal information that businesses collect about them. Those rights include the right to say no to the sale of their personal information. However, please note that Samsara does not sell personal information. Our Privacy Policy [https://www.samsara.com/support/privacy] describes how Samsara may collect and use personal data consistent with other CCPA-related rights when we act as a “business” (as defined under the CCPA).

When we process personal information provided by our customers, Samsara acts as a “service provider” (as defined under the CCPA). In that capacity, we only process and transfer the personal information of our customers and our customers’ end-users for the purpose of performing our rights and obligations under our existing contract(s) with our customers and for no other commercial purpose.

How We Protect PrivacyProduct:

Samsara’s products are designed to help customers balance their business needs against privacy needs. Our hardware and software products include customizable control measures, features and tools to protect customer data.

Samsara’s commitment to privacy is reflected in our products’ features and your ability to customize many of our products to fit your specific needs and country-specific regulations. For example, Samsara dashcams enable strong privacy controls for customers to utilize, including:

Limited data captured and uploaded: Only video relating to safety events and video specifically requested by a customer is stored on the cloud / available in the dashboard;

Limited data retention: only 40 to 60 hours of recorded footage is available on any dashcam by default, with customizable data-retention features for footage sent to the cloud;

Restricted data access: Customers can set permissions so videos may be viewed only on a need-to-know basis (for example, a customer may restrict viewing permissions to safety managers);

Strong security: Samsara uses industry standard standards and protocols to protect data in transit (including TLS 1.2 and 256 AES encryption) and at rest (including FIPS 140-2 compliant encryption standards);

Physical lens caps: to cover either inward-facing lens only or inward- and outward-facing lenses.

EU data center: EU-customers’ data is stored in Ireland using Amazon AWS, which is rated as the leader in cloud security by research firm Forrester.

Policies and Safeguards:

Samsara is committed to transparency around how we hold and use personal data. Company-wide policies, contractual terms and other safeguards emphasize our responsibility to protect customer data and to stay compliant with the law.

Privacy Policy: Samsara may collect personal data in support of its business. For more information about how Samsara may collect and use such personal data,

		please see our Privacy Policy. DPA: Under the GDPR, Samsara will serve as the data processor for our customers, who in turn act as the data controller. To learn more about how Samsara processes customer data as part of this controller-to-processor relationship and our customer contracts, please see our DPA here. Data Transfers: To comply with EU data protection legislation on international data transfer mechanisms, we self-certify under the EU-US Privacy Shield and the Swiss-US Privacy Shield as set by the U.S. Department of Commerce. These frameworks were developed to establish a way for companies to comply with data protection requirements when transferring personal data from the European Union, UK, and Switzerland to the United States. To the extent these frameworks are deemed invalid or no longer apply to Samsara, we agree to abide by and process your data in accordance with the European Commission approved Standard Contractual Clauses we include within our Data Protection Addendum to provide adequate protection for such personal data transfers. DPIA: The GDPR requires organizations to undertake a data protection impact assessment (DPIA) where using new technologies is likely to result in a high risk to individuals. Samsara can provide supporting materials to help demonstrate your compliance with carrying out such DPIAs where you believe they are required before using our products. Marketing Communications: Samsara collects personal data for marketing purposes only pursuant to GDPR and other applicable local laws. Marketing communications are easily opted out of at any time via this page or through the unsubscribe feature on our emails. Security: Protecting our customers' privacy and respecting confidential information is fundamental to our core values. Samsara products are built from the ground up with security and privacy in mind. As part of our commitment to privacy and security, we've adopted the highest standards and also conduct regular audits pursuant to the Service Organization Controls (SOC 2) reporting process to ensure our customers' data is safe and available. Security Practices: Samsara implements the highest industry standards for encryption, storage, privacy, network, and endpoint security. Audits: Samsara regularly conducts security audits to ensure our systems are properly safeguarded. For example, our SOC 2 reports include descriptions of our software infrastructure and the processes we have in place to keep our customers' data safe and available. We also engage independent entities to conduct application-, infrastructure-, and hardware-level penetration tests at least annually. Incident Response: We have implemented a data breach and incident response plan. In case of an incident involving your customer data, we will inform you per the terms of your agreement with us. Learn More: To learn more about Samsara's commitment to upholding the highest security standards, please visit www.samsara.com/security	

Exceptions to Terms, Conditions, or Specifications Form

Only those Proposer Exceptions to Terms, Conditions, or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.

Proposer's Affidavit

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.

2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.

3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.

4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor’s objectivity in performing the contract is, or might be, impaired.

5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.

6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.

7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.

8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.

9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.

10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.

11. Proposer its employees, agents, and subcontractors are not:

    a. Included on the “Specially Designated Nationals and Blocked Persons” list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: https://www.treasury.gov/ofac/downloads/sdnlist.pdf;

    b. Included on the government-wide exclusions lists in the United States System for Award Management found at: https://sam.gov/SAM/; or

c. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☑ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Adam Eltoukhy, General Counsel, Samsara Networks Inc.

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

○ **Yes** ◉ **No**

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "**I have reviewed this addendum"** below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_10_Fleet_Mgmt_Tech_RFP_020221 Tue January 26 2021 04:32 PM	☑	2
Addendum_9_Fleet_Mgmt_Tech_RFP_020221 Mon January 25 2021 05:09 PM	☑	2
Addendum_8_Fleet_Mgmt_Tech_RFP_020221 Wed January 20 2021 04:19 PM	☑	1
Addendum_7_Fleet_Mgmt_Tech_RFP_020221 Tue January 19 2021 12:21 PM	☑	1
Addendum_6_Fleet_Mgmt_Tech_RFP_020221 Mon January 18 2021 01:39 PM	☑	1
Addendum_5_Fleet_Mgmt_Tech_RFP_020221 Thu January 14 2021 01:16 PM	☑	2
Addendum 4_Fleet_Mgmt_Tech_RFP_020221 Thu January 14 2021 01:12 PM	☑	3
Addendum 3_Fleet_Mgmt_Tech_RFP_020221 Thu January 14 2021 01:05 PM	☑	1
Addendum 2_Fleet_Mgmt_Tech_RFP_020221 Fri January 8 2021 01:17 PM	☑	1
Addendum 1_Fleet_Mgmt_Tech_RFP_020221 Fri January 8 2021 01:17 PM	☑	1

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AMENDMENT #1
TO
CONTRACT # 020221-SAM

THIS AMENDMENT is effective upon the date of the last signature below by and between **Sourcewell** and **Samsara Inc.** (Vendor).

Sourcewell awarded a contract to Vendor to provide Fleet Management Technologies with Related Software Solutions to Sourcewell and its Participating Entities, effective April 1, 2021, through March 26, 2025 (Contract).

The parties agree that Section 6.B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM of the Contract is deleted in its entirety and replaced with the following:

> ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. In order to purchase from Vendor under this Contract, Participating Entity agrees that its purchase order shall be subject to Vendor's then-current Terms of Service at https://www.samsara.com/legal/public-sector-customers-platform-terms-of-service/. Additional terms and conditions to a purchase order or other required transaction documentation, in addition to such Terms of Service, may be negotiated between a Participating Entity and Vendor, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum, the terms of which will be worked out directly between the Participating Entity and the Vendor, but the Participating Entity agrees this Participating Addendum shall at least include such Terms of Service. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

Except as amended above, the Contract remains in full force and effect.

Sourcewell

DocuSigned by:
By: Jeremy Schwartz
C0FD2A139D06489...
Jeremy Schwartz, Director of Operations/CPO

Date: 9/16/2023 | 10:31 AM CDT

Approved:

DocuSigned by:
By: Chad Coauette
48BAF71B0894454...
Chad Coauette, Executive Director/CEO

Date: 9/16/2023 | 9:52 PM CDT

Samsara Inc.

DocuSigned by:
By: Adam Eltoukhy
CA0F91C94F054E4...
Adam Eltoukhy

Title: Executive Vice President, Chief Legal Officer

Date: 9/15/2023 | 11:50 AM PDT

Docusign Envelope ID: F53F70E0-5ED5-443B-B468-0C3066675E80

CONTRACT EXTENSION

Contract Number: 020221-SAM

Sourcewell 202 12th Street Northeast P.O. Box 219 Staples, MN 56479 (Sourcewell)	and	Samsara 1 De Haro St San Francisco, California 94103-5205 (Vendor)

have entered into Contract Number: 020221-SAM
for the procurement of: Fleet Management Technologies with Related Software Solutions

The Contract has an expiration date of 2025-03-26 , but the parties may extend the Contract by mutual consent.

Sourcewell and Vendor acknowledge that extending the Contract benefits the Vendor, Sourcewell and Sourcewell's Members. Vendor and Sourcewell agree to extend the Contract listed above for an additional period, with a new Contract expiration date of 2026-03-26 . All other terms and conditions of the Contract remain in full force and effect.

Sourcewell

DocuSigned by: Jeremy Schwartz C0ED2A139D06489...	DocuSigned by: Adam Eltouky CA0F91C94F054E4...
Authorized Signature	Authorized Signature
Jeremy Schwartz	Adam Eltouky
Name	Name
Chief Operating and Procurement Officer	EVP, Chief Legal Officer
Title	Title
8/3/2024 | 10:02 AM CDT	8/5/2024 | 9:48 AM PDT
Date	Date

Exhibit B.3 - Agency Contract Pricing Sheet

Product Name	Description	Product Code	Currency	List Price Currency	Discount	List Price (Monthly)	Discounted Price to Sourcewell (Monthly)	List Price (Annual)	List Price (converted) Currency	Discounted Price to Sourewell (Annual)	Annual Recurring Cost or One-Time/Replacement Cost
License for Asset Gateways	License for AG2-series gateways, includes support, software updates, hosted service, and cellular connectivity	LIC-AG2-ENT	0		15%	$19.00	$16.15	$228.00		$193.80	Annual Recurring Cost
Cargo Monitor License (ENT)	Wireless cargo sensor license for sensing the presence of cargo in an enclosed trailer or container.	LIC-CRGO-ENT	0		15%	$4.00	$3.40	$48.00		$40.80	Annual Recurring Cost
Door Monitor License (ENT)	License for wireless door sensor for swing and roll-up doors	LIC-DM11-ENT	0		15%	$4.00	$3.40	$48.00		$40.80	Annual Recurring Cost
License for Case SiteWatch integration	License subscription for integrating with Case construction SiteWatch Telematics system	LIC-OEM-CAS	0		15%	$12.00	$10.20	$144.00		$122.40	Annual Recurring Cost
License for Caterpillar VisionLink OEM	Software subscription for reading location and diagnostics from Caterpillar's VisionLink embedded telematics hardware, with no Samsara hardware necessary.	LIC-OEM-CAT	0		15%	$11.67	$9.92	$140.00		$119.00	Annual Recurring Cost
License for Site Camera Stream	Annual license for site camera stream	LIC-SC1	0		5%	$10.00	$9.50	$120.00		$114.00	Annual Recurring Cost
License for Samsara Dome Camera	Annual License for Samsara Dome Cameras	LIC-SC11	0		5%	$25.00	$23.75	$300.00		$285.00	Annual Recurring Cost
License for Samsara Bullet Camera	Annual License for Samsara Bullet Cameras	LIC-SC21	0		5%	$25.00	$23.75	$300.00		$285.00	Annual Recurring Cost
License 16TB Storage Expansion for SG1	Additional 16TB storage for SG1	LIC-SG-STRG16			5%	$41.67	$39.58	$500.00		$475.00	Annual Recurring Cost
License for Site Gateway	License for Site Gateway SG1-G	LIC-SG1-G	0		5%	$245.00	$232.75	$2,940.00		$2,793.00	Annual Recurring Cost
License for Site Gateway w/ Extended Storage	License for Site Gateway SG1-G32	LIC-SG1-G32			5%	$286.67	$272.33	$3,440.00		$3,268.00	Annual Recurring Cost
License for Site Gateway Lite	Annual License for Site Gateway Lite	LIC-SG1x	0		5%	$150.00	$142.50	$1,800.00		$1,710.00	Annual Recurring Cost
Cellular License for Site Camera Stream	Cellular license for SC-series cameras or 3rd party cameras	LIC-SC-CELL			5%	$10.00	$9.50	$120.00		$114.00	Annual Recurring Cost
WiFi Hotspot - 1GB Total Data	License for 1GB total WiFi data for VG-series vehicle gateway priced at $10/month	LIC-1GB-WIFI-DATA	0		15%	$10.00	$8.50	$120.00		$102.00	Annual Recurring Cost
WiFi Hotspot - 2GB Total Data	License for 2GB total WiFi data for VG-series vehicle gateway priced at $30/month	LIC-2GB-WIFI-DATA	0		15%	$30.00	$25.50	$360.00		$306.00	Annual Recurring Cost
License for powered Asset Trackers	Enterprise license for the AG46P powered asset tracker. This includes support, software updates, hosted service, and cellular connectivity.	LIC-AG4P-ENT	0		15%	$12.00	$10.20	$144.00		$122.40	Annual Recurring Cost
License for Unpowered Asset Trackers	License for AG4-series unpowered asset tracker (including the AG46) and powered asset tracker (including the AG46P). This includes support, software updates, hosted service, and cellular connectivity.	LIC-AG4-ENT	0		15%	$10.00	$8.50	$120.00		$102.00	Annual Recurring Cost
Camera Connector License	License for the Samsara Camera Connector (ACC-CM-ANLG). Provides the ability to connect analog camera feeds (up to 4) to our Cloud Dashboard for instant video retrieval and 360 degree camera review on events.	LIC-CM-ANLG	0		15%	$25.00	$21.25	$300.00		$255.00	Annual Recurring Cost

Product Name	Description	Product Code	Currency	List Price Currency	Discount	List Price (Monthly)	Discounted Price to Sourcewell (Monthly)	List Price (Annual)	List Price (converted) Currency	Discounted Price to Sourewell (Annual)	Annual Recurring Cost or One-Time/Replacement Cost
License for Environmental Monitors	12-month license for EM-series environmental monitors, includes support, software updates, and hosted cloud service	LIC-EM-ENT	0		15%	$8.00	$6.80	$96.00		$81.60	Annual Recurring Cost
Safety Event Review	Harsh event video review service (option for enterprise fleets with >500 vehicle)	LIC-SVC-CM-Review-ENT	0		15%	$5.00	$4.25	$60.00		$51.00	Annual Recurring Cost
License for Vehicle Gateways	License for VG-series gateways, includes support, software updates, hosted service, and cellular connectivity. The Vehicle Gateway provides live GPS tracking, FMCSA-registered ELD capabilities, engine diagnostics, a built-in WiFi hotspot, driver workflows, advanced analytics, customizable reports, and mobile app access for fleet admins and drivers.	LIC-VG-ENT	0		15%	$39.00	$33.15	$468.00		$397.80	Annual Recurring Cost
WiFi Hotspot - 500MB Additional Data, 12MO	500MB additional WiFi data for VG-series vehicle gateway (12MO)	LIC-WIFI-DATA	0		15%	$10.00	$8.50	$120.00		$102.00	Annual Recurring Cost
License for Ford OEM (Enterprise)	Software subscription for reading diagnostics from Ford embedded telematics with ELD capabilities.	LIC-OEM-FORD	0		15%	$39.00	$33.15	$468.00		$397.80	Annual Recurring Cost
License for industrial asset gateway (IG15)	License for industrial asset gateway (IG15) only	LIC-IG15-ENT	0		15%	$30.00	$25.50	$360.00		$306.00	Annual Recurring Cost
License for Vehicle Gateways - Public Sector Only, No WiFi, No ELD	Vehicle Gateway License without ELD and without WiFi that should be sold to Public Sector customers within a singled bundled price.	LIC-VG-PS			15%	$23.00	$19.55	$276.00		$234.60	Annual Recurring Cost
GM Onstar OEM data integration	OEM integration with General Motors (GM)	LIC-OEM-GM			15%	$39.00	$33.15	$468.00		$397.80	Annual Recurring Cost
License for John Deere VisionLink OEM	Software subscription for reading location and diagnostics from John Deere's JDLink embedded telematics hardware, with no Samsara hardware necessary.	LIC-OEM-JD			15%	$12.00	$10.20	$144.00		$122.40	Annual Recurring Cost
License for Komatsu Komtrax Integration	Software subscription for reading location and diagnostics from Komatsu's Komtrax embedded telematics hardware, with no Samsara hardware necessary.	LIC-OEM-KOM			15%	$12.00	$10.20	$144.00		$122.40	Annual Recurring Cost
License for Navistar Gateway Integration	Software subscription for reading diagnostics from Ford embedded telematics, with no Samsara hardware necessary.	LIC-OEM-NVI			15%	$39.00	$33.15	$468.00		$397.80	Annual Recurring Cost
License for Volvo Construction CareTrack Integration	License subscription for integrating with Volvo Construction's CareTrack Telematics system	LIC-OEM-VCT			15%	$12.00	$10.20	$144.00		$122.40	Annual Recurring Cost

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License for Vermeer Telematics integration	License subscription for integrating with Vermeer Telematics	LIC-OEM-VER			15%	$12.00	$10.20	$144.00		$122.40	Annual Recurring Cost
License for Dual-Facing Camera	License for dual-facing dash cam, includes support, software updates, and hosted cloud service Full HD video with Infrared LED for night vision Built-in audio speaker supports optional in-cab alerts for driver coaching. Advanced edge computing allows for live scene analysis and object detection. On-demand video available for up to 100 hours of drive time.	LIC-CM2-ENT			15%	$55.00	$46.75	$660.00		$561.00	Annual Recurring Cost
License for Forward-Facing Dash Camera	License for forward-facing dash cam, includes support, software updates, and hosted cloud service. Full HD video with low-light recording for night vision. Built-in audio speaker supports optional in-cab alerts for driver coaching. Advanced edge computing allows for live scene analysis and object detection. On-demand video available for up to 75 hours of drive time.	LIC-CM1-ENT			15%	$39.00	$33.15	$468.00		$397.80	Annual Recurring Cost
Live Streaming	Monthly Live Streaming License (10 hours of live streaming per camera per month)	LIC-CM-STRM			15%	$5.00	$4.25	$60.00		$51.00	Annual Recurring Cost
Camera Connector	Accessory to connect analog backup or side cameras	ACC-CM-ANLG			15%	$16.58	$14.10	$199.00		$169.15	One-Time/Replacement Cost
Camera Connector for Provision DVRs	--REQUIRED FOR PROVISION DVRs--Modified camera connector without inline isolator	ACC-CM-ANLG-M			15%	$16.58	$14.10	$199.00		$169.15	One-Time/Replacement Cost
Wireless Cargo Sensor	Wireless cargo sensor for sensing the presence of cargo in an enclosed trailer or container	ACC-CRGO	0		15%	$8.25	$7.01	$99.00		$84.15	One-Time/Replacement Cost
Wireless Door Monitor	Wireless door sensor for swing and roll-up doors	ACC-DM11	0		15%	$8.25	$7.01	$99.00		$84.15	One-Time/Replacement Cost
Worldwide 12V 4A AC/DC Power Supply	12V 4A AC/DC power supply with 100V-240V worldwide input voltage	ACC-4A12-WW	0		15%	$1.17	$0.99	$14.00		$11.90	One-Time/Replacement Cost
Auxiliary Input Hub	USB accessory to accommodate eight additional auxiliary inputs to the Vehicle Gateway	ACC-AUX	0		15%	$4.08	$3.47	$49.00		$41.65	One-Time/Replacement Cost

Product Name	Description	Product Code	Currency	List Price Currency	Discount	List Price (Monthly)	Discounted Price to Sourcewell (Monthly)	List Price (Annual)	List Price (converted) Currency	Discounted Price to Sourewell (Annual)	Annual Recurring Cost or One-Time/Replacement Cost
Samsara Panic Button	Vehicle Gateway panic/event button accessory. When pushed, the button immediately sends an alert to managers with captured video footage (for customers equipped with a Samsara AI dash cam). This accessory plugs directly into the Vehicle Gateway.	ACC-BPB	0		15%	$4.08	$3.47	$49.00		$41.65	One-Time/Replacement Cost
Privacy Button	EA version of the privacy button. The button currently hides the GPS coordinates and has no effect on the video. The button has an LED indicating the privacy mode status. It requires a VG to be mounted.	ACC-BPR	0		15%	$5.00	$4.25	$60.00		$51.00	One-Time/Replacement Cost
ID Card	Passenger ID Cards;	ACC-CARD	0		15%	$0.21	$0.18	$2.50		$2.13	One-Time/Replacement Cost
Engine Immobilizer	Remotely disable and enable engine.	ACC-EI	0		15%	$6.58	$5.60	$79.00		$67.15	One-Time/Replacement Cost
Driver ID Token	Wireless Driver ID token for use with a VG gateway to identify drivers in vehicles.	ACC-DRIVERID	0		15%	$0.83	$0.71	$9.99		$8.49	One-Time/Replacement Cost
ID Card Reader	ID Card Reader for use with VG34	ACC-IDRDR	0		15%	$16.58	$14.10	$199.00		$169.15	One-Time/Replacement Cost
Array Antenna w/ cellular, GPS	Array Antenna w/ cellular and passive GPS. Compatible with IG15 hardware.	ACC-AANT-CG	0		15%	$12.42	$10.55	$149.00		$126.65	One-Time/Replacement Cost
Wall adapter PSU and Cable	Wall Adapter PSU Plug to wire cable Din Rail Ziplock + Samsara brand label	ACC-IG-CWPS	0		15%	$12.42	$10.55	$149.00		$126.65	One-Time/Replacement Cost
CM inward camera-lens cover	CM32 lens cover, which blocks the inward-facing lense only	ACC-CM3-CVR1	0		15%	$0.83	$0.71	$10.00		$8.50	One-Time/Replacement Cost
CM3x Mounting Bracket	CM3x Mounting Bracket (incl. VHB Tape and set of mounting screws)	ACC-CM3-MNT	0		15%	$0.83	$0.71	$9.99		$8.49	One-Time/Replacement Cost
CM Dual-lens cover	CM31 and CM32 lens cover, which blocks both the forward and inward-facing lenses (for use in areas where cameras are forbidden)	ACC-CM3-CVR2	0		15%	$0.83	$0.71	$10.00		$8.50	One-Time/Replacement Cost
Vehicle IoT Gateway, model VG54, for use with FirstNet	Enhanced Vehicle IoT Gateway for use in North America, providing full support for the AT&T FirstNet Network. Requires CBL-VG-Cxx class cables.	HW-VG54-FN			15%	$10.75	$9.14	$129.00		$109.65	One-Time/Replacement Cost
Vehicle IoT Gateway, model VG54	Enhanced Vehicle IoT Gateway for use in North America. Requires CBL-VG-Cxx class cables.	HW-VG54-NA			15%	$14.92	$12.68	$179.00		$152.15	One-Time/Replacement Cost
Vehicle IoT Gateway, model VG54, for Heavy Duty Vehicles	Enhanced Vehicle IoT Gateway for use in North America, for Heavy Duty vehicles only. Requires CBL-VG-Cxx class cables.	HW-VG54-NAH	0		15%	$10.75	$9.14	$129.00		$109.65	One-Time/Replacement Cost

Product Name	Description	Product Code	Currency	List Price Currency	Discount	List Price (Monthly)	Discounted Price to Sourcewell (Monthly)	List Price (Annual)	List Price (converted) Currency	Discounted Price to Sourewell (Annual)	Annual Recurring Cost or One-Time/Replacement Cost
Site Camera Arm Mount	Arm mount accessory for site camera	ACC-SC-MNT-A1	0		5%	$11.92	$11.32	$143.00		$135.85	One-Time/Replacement Cost
Site Camera Junction Box Mount	Junction box mount accessory for site camera	ACC-SC-MNT-J1	0		5%	$4.75	$4.51	$57.00		$54.15	One-Time/Replacement Cost
Site Camera Pole Mount	Pole mount accessory for site camera	ACC-SC-MNT-P1	0		5%	$9.33	$8.87	$112.00		$106.40	One-Time/Replacement Cost
IG15 Industrial Asset Gateway	Samsara industrial asset gateway with external cellular and GPS antenna connections, battery backup, and ruggedized enclosure.	HW-IG15	0		15%	$25.00	$21.25	$300.00		$255.00	One-Time/Replacement Cost
IG15 Individual Antenna	Individual Antennas (w/ LTE and GPS)	ACC-IANT-CG						$149.00			
Forward-facing dash-camera, series 3.	Forward-facing AI Dash Cam	HW-CM31	0		15%	$24.92	$21.18	$299.00		$254.15	One-Time/Replacement Cost
Dual-facing dash-camera, series 3.	Dual-facing AI Dash Cam	HW-CM32	0		15%	$33.25	$28.26	$399.00		$339.15	One-Time/Replacement Cost
AG26 Gateway	Samsara powered asset gateway with cellular connectivity, real-time GPS location, and compatibility with wireless sensors and 3rd party integrations	HW-AG26	0		15%	$24.92	$21.18	$299.00		$254.15	One-Time/Replacement Cost
AG46 Unpowered Asset Tracker	Samsara pocket sized unpowered asset tracker with cellular connectivity, GPS logging and weatherproof, ruggedized enclosure	HW-AG46	0		15%	$8.25	$7.01	$99.00		$84.15	One-Time/Replacement Cost
AG46P Gateway	Samsara powered asset gateway for basic trailer tracking with cellular connectivity and real-time GPS location	HW-AG46P	0		15%	$12.42	$10.55	$149.00		$126.65	One-Time/Replacement Cost
Wireless Environmental Monitor	Samsara wireless environmental monitor for temperature and humidity	HW-EM21	0		15%	$8.25	$7.01	$99.00		$84.15	One-Time/Replacement Cost
Site Camera - Dome	Domed site camera - 5 megapixels	HW-SC11	0		5%	$58.33	$55.42	$700.00		$665.00	One-Time/Replacement Cost
Site Camera - Bullet - High Temperature	Bullet site camera - 5 megapixels - High Temperature	HW-SC21-HT	0		5%	$58.33	$55.42	$700.00		$665.00	One-Time/Replacement Cost
Site Camera - Bullet	Bullet site camera - 5 megapixels	HW-SC21	0		5%	$58.33	$55.42	$700.00		$665.00	One-Time/Replacement Cost
Site Gateway	AI network video recorder with support for up to 25 streams and 30 days of video storage.	HW-SG1-G	0		5%	$750.00	$712.50	$9,000.00		$8,550.00	One-Time/Replacement Cost
Site Gateway w/ Extended Storage	AI network video recorder with support for up to 25 streams and 32TB of storage	HW-SG1-G32			5%	$0.00	$0.00	$0.00		$0.00	One-Time/Replacement Cost
Site Gateway Lite	AI network video recorder with support for up to 8 streams and 30 days of video storage.	HW-SG1x	0		5%	$416.67	$395.83	$5,000.00		$4,750.00	One-Time/Replacement Cost
AG26 14-pin Caterpillar cable	This 14-pin caterpillar connector allows us to read engine diagnostics from caterpillar equipment with 14-pin port	CBL-AG-ACT14	0		15%	$4.08	$3.47	$49.00		$41.65	One-Time/Replacement Cost
AG26 CAT 9-pin cable	This 9-pin connector allows us to read engine diagnostics from caterpillar equipment with 9-pin port	CBL-AG-ACT9			15%	$4.08	$3.47	$49.00		$41.65	One-Time/Replacement Cost

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AG26 J1939 9-pin cable bundle	This 9-pin connector allows us to read engine diagnostics equipment with J1939 9-pin port	CBL-AG-A9PIN			15%	$4.08	$3.47	$49.00		$41.65	One-Time/Replacement Cost
AG26 AOPEN (open wire) Cable	An open wire cable used to connect across any powered equipment to pull engine diagnostics over CAN. This cable is the alternative to the A9PIN cable when the equipment does not have a common 9pin port. This cable can also be used with CAT equipment if the ACT9 and the ACT14 cables do not match the port in the equipment.	CBL-AG-AOPEN			15%	$4.08	$3.47	$49.00		$41.65	One-Time/Replacement Cost
AG26 APWR Cable	Connects AG to powered equipment enabling logs of engine hours with the ability to track power take off.	CBL-AG-APWR			15%	$4.08	$3.47	$49.00		$41.65	One-Time/Replacement Cost
AG26 ARTK (Thermo King) Cable	AG 7-way cable specifically for reefer control capabilities on select Thermo King and connects the AG to a TK reefer via an officially supported 3rd party access module designed by TK toallow consistent 3rd party access and control of the reefer unit.	CBL-AG-ARTK			15%	$8.25	$7.01	$99.00		$84.15	One-Time/Replacement Cost
AG26 ATPM cable	AG 7-way cable specifically for tire pressure monitoring (requires TPM integration)	CBL-AG-ATPM			15%	$8.25	$7.01	$99.00		$84.15	One-Time/Replacement Cost
AG24 7-Way Y-Cable for European Trailers	Asset Gateway Cable with 7-Way Y-Cable for power from European Dry Van Trailers	CBL-AG-AEPC	0		15%	$5.75	$4.89	$69.00		$58.65	One-Time/Replacement Cost
AG Carrier VT Reefer Cable	AG cable for Carrier Vector model reefers.	CBL-AG-ARCR-VT	0		15%	$8.25	$7.01	$99.00		$84.15	One-Time/Replacement Cost
AG Carrier X4 Reefer Cable	AG cable for Carrier X4 model reefers.	CBL-AG-ARCR-X4	0		15%	$8.25	$7.01	$99.00		$84.15	One-Time/Replacement Cost
VG54 Aux Cable	Breakout Cable for Auxiliary inputs on VG54	CBL-VG-CAUX			15%	$1.25	$1.06	$15.00		$12.75	One-Time/Replacement Cost
Enhanced VG Series FMS cable	Enhanced VG Series cable for connecting to FMS interfaces	CBL-VG-CFMS			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced VG Series Tachograph Cable - Heavy Goods Vehicles	Enhanced VG Series Tachograph Cable for Heavy Goods Vehicles	CBL-VG-CHGV			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced VG Series Isuzu cable	Enhanced VG Series Isuzu cable	CBL-VG-CIZU			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced VG Series J1708 (6-pin)	Enhanced VG Series J1708 (6-pin) cable	CBL-VG-CJ1708			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced VG Series J1939 or J1708 (9-pin)	Enhanced VG Series J1939 or J1708 (9-pin) cable.	CBL-VG-CJ1939			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced VG Series J1939 cable for Volvo/Mack OBDII connectors	Enhanced VG Series J1939 cable for 2013+ Volvo/Mack vehicles with OBDII connection	CBL-VG-CJ1939-VM			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced Universal OBD-Y2 Cable	Enhanced Universal OBD-Y2 Cable	CBL-VG-COBDII-Y0S			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost

Product Name	Description	Product Code	Currency	List Price Currency	Discount	List Price (Monthly)	Discounted Price to Sourcewell (Monthly)	List Price (Annual)	List Price (converted) Currency	Discounted Price to Sourewell (Annual)	Annual Recurring Cost or One-Time/Replacement Cost
Enhanced VG Series OBDII J1962 L-mount cable	Enhanced VG Series OBDII J1962 L-mount cable	CBL-VG-COBDII-Y1			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced VG Series OBDII J1962 L-mount cable for Ram Promaster and similar	Enhanced VG Series OBDII J1962 L-mount cable for use with vehicles which use secondary CAN on pins 1 and 9 (including Ram Promaster)	CBL-VG-COBDII-Y2			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced VG Series direct-wire non-diagnostic power cable	Enhanced VG Series direct-wire non-diagnostic power cable	CBL-VG-CPC			15%	$1.58	$1.35	$19.00		$16.15	One-Time/Replacement Cost
VG54 Wall Power Adapter	VG54 connector for use with ACC-2A12-WW power adapter (included) for powering a VG54 from a standard wall outlet. Also compatible with ACC-BDH and ACC-BDHE	CBL-VG-CPWR			15%	$0.50	$0.43	$6.00		$5.10	One-Time/Replacement Cost
VG Carrier Supra Reefer Cable	Cable to connect EU Carrier Supra families of reefers to a Vehicle Gateway via USB.	CBL-VG-CRCR-Y1			15%	$7.92	$6.73	$95.00		$80.75	One-Time/Replacement Cost
Enhanced VG Series RP1226 Cable	Enhanced VG Series RP1226 cable for use with 2019+ Peterbilt, Freightliner, Volvo, Mack or Kenworth vehicles equipped with an RP1226 port.	CBL-VG-CRP1226			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
OBDII J1962 plus CAN C cable for VG54	Cable with two connectors: one OBD connector and one CAN C connector for back of tachograph. Cable for VANs with tachograph	CBL-VG-CTDC-Y0			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced Tesla Model 3/Y 2019+ Cable	VG54 Cable for Tesla 3/Y	CBL-VG-CTSLA3-19			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced Tesla Model 3/Y 2019+ Cable	VG54 Cable for Tesla 3/Y	CBL-VG-CTSLA3Y-19			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced Tesla Model X/S 2016+ Cable	VG54 Cable for Tesla X/S 2016+	CBL-VG-CTSLAXS-16			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced Tesla Model X/S 2016+ Cable and Enhanced Tesla Model 3/Y 2017-18 Cable	VG54 Cable for Teslas (Enhanced Tesla Model X/S 2016+ Cable and Enhanced Tesla Model 3/Y 2017-18 Cable)	CBL-VG-CTSLAXS-18			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Enhanced Heavy Duty VG Series J1939 cable for year and model-specific PACCAR engines	Enhanced Heavy Duty VG Series J1939 cable for MX-13 and PX-9 engines from specific years	CBL-VG-HJ1939-PAC			15%	$3.25	$2.76	$39.00		$33.15	One-Time/Replacement Cost
Safety Pro	Safety Pro Front-Facing AI Dash Cam License	LIC-CM1-PRO	15%	$0.67	15%	$8.00	$6.80	$96.00	$81.60	$81.60	Annual Recurring Cost
Safety Pro	Safety Pro Dual-Facing AI Dash Cam License	LIC-CM2-PRO	15%	$0.83	15%	$10.00	$8.50	$120.00	$102.00	$102.00	Annual Recurring Cost
Platform Pro	Platform Pro License	LIC-PLTFM-PRO	15%	$0.42	15%	$5.00	$4.25	$60.00	$51.00	$51.00	Annual Recurring Cost
AT11 - Unpowered Asset Tracker	Asset Tracker for tracking smaller assets (tools, small equipment, etc) where due to size other asset trackers (AG51) may not be practical.	HW-AT11	15%	$0.14	15%	$1.67	$1.42	$20.00	$20.00	$20.00	One-Time/Replacement Cost

Product Name	Description	Product Code	Currency	List Price Currency	Discount	List Price (Monthly)	Discounted Price to Sourcewell (Monthly)	List Price (Annual)	List Price (converted) Currency	Discounted Price to Sourewell (Annual)	Annual Recurring Cost or One-Time/Replacement Cost
Asset Tag License	License for Asset Tag to easily manage and safeguard small, mission-critical tools and equipment with essential software features	LIC-AT-TAG	15%	$0.67	15%	$8.00	$6.80	$96.00	$96.00	$96.00	Annual Recurring Cost
License for Mobile Experience Management Add-on	Software subscription for remotely locating, accessing, updating, and managing mobile devices.	LIC-MEM-ENT	15%	$0.54	15%	$6.50	$5.53	$78.00	$66.30	$66.30	Annual Recurring Cost
License for Forms Essential	License for Forms Essential	LIC-FORMS-ESS	15%	$0.83	15%	$10.00	$8.50	$120.00	$102.00	$102.00	Annual Recurring Cost
License for Forms Premier	License for Forms Premier	LIC-FORMS-PREM	15%	$1.67	15%	$20.00	$17.00	$240.00	$204.00	$204.00	Annual Recurring Cost
Vehicle IoT Gateway, model VG54, for use with FirstNet	Enhanced Vehicle IoT Gateway for use in North America, providing full support for the AT&T FirstNet Network. Requires CBL-VG-Cxx class cables.	HW-VG54-FN	15%	$1.66	15%	$19.92	$16.93	$239.00	$203.15	$203.15	One-Time/Replacement Cost
License for VG55 FirstNet add-on	License for VG55 FirstNet add-on, including Telematics features for AT&T priority band 14 cellular data targeting approved primary and extended primary customers.	LIC-VG-FN-ADDON	15%	$0.42	15%	$5.00	$4.25	$60.00	$51.00	$51.00	Annual Recurring Cost
License for HD Camera Connector (1 camera)	License for the Samsara HD Camera Connector (1 camera) - HW-CM-AHD1	LIC-CM-AHD1	15%	$2.78	15%	$33.33	$28.33	$400.00	$340.00	$340.00	Annual Recurring Cost

Samsara Terms of Service
Last Updated: October 2024

Welcome to Samsara. Please read these Terms of Service carefully because they govern your use of our products and services. The Customer, together with Samsara Inc., are referred to as the "**Parties**".

1. Definitions.

1. "**Account**" means the accounts Customer creates, via the Hosted Software, to access Customer Data.

2. "**Affiliate**" means any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Customer.

3. "**Apps**" means software applications for smartphones and tablets distributed by Samsara through Google Play or through the Apple App Store and used to provide the Products.

4. "**Authorized User"** means Customer's employees, Affiliates, and/or contractors whom Customer authorizes to use the licensed Samsara Software strictly on its behalf.

5. "**Customer**" or "**you**" means the company or legal entity for which you are accepting these Terms and its Affiliates who enter into Order Forms (for each such Affiliate, solely with respect to Order Forms entered into by it and for so long as it remains a Customer Affiliate).

6. "**Customer Data**" means Customer-specific data captured by Customer's use of any installed Hardware, data submitted by, or on behalf of Customer (including from or through Non-Samsara Products) into Apps and Hosted Software, and the analysis, reports, and alerts generated by the Products containing such data. For the avoidance of doubt, Customer Data does not include any Samsara Software.

7. "**Documentation"** means any Product training, technical services, or documentation made available to Customer through the Samsara website or otherwise made available to Customer by Samsara.

8. "**Equipment**" means the vehicle, equipment, asset, building, structure, or item into which Hardware is installed.

9. "**Firmware**" means software embedded in or otherwise running on the Samsara Hardware.

10. "**Hardware**" means the hardware devices such as gateways, cameras, sensors, controllers, vision systems, and accessories, and any improvements, developments, modifications, patches, updates, and upgrades thereto that Samsara develops or provides.

11. **"Hardware Warranty and RMA Policy"** means the Hardware Warranty and RMA Policy set forth at https://www.samsara.com/support/hardware-warranty.

12. **"Hosted Software"** means Samsara's cloud-hosted software platform, including the interface accessed online.

13. "**Hosted Software SLA**" means the Hosted Software Service Level Agreement set forth at https://www.samsara.com/legal/hosted-software-sla.

14. "**License Expiration Date**" means (a) the later of (i) the original license termination date set forth in the applicable Order Form you entered into for the original purchase of Products or under which Products were originally made available to you ("**Initial Term**"), and (ii) the end of the then-active Renewal Term (as defined below); or (b) if applicable, for Purchase Orders issued by a Samsara reseller where the applicable purchase or procurement of Products is not also documented by a Quote, notwithstanding anything to the contrary in these Terms, the reseller agreement between such reseller and Samsara, or the applicable Purchase Order, three (3) years from the License Start Date.

15. **"License Start Date**" means (i) the day Samsara activates the applicable Samsara Software license by providing Customer a claim number and access to the Hosted Software (for clarity, if Hardware associated with a then-unactivated Samsara Software license is shipped to Customer under the applicable Order Form, such Samsara Software license will be activated on the day the Samsara Hardware ships); or (ii) notwithstanding the foregoing, if Customer is renewing the license term for a previously-activated Samsara Software license, the day that Samsara extends Customer's access to the Hosted Software for the renewal license term. For Purchase Orders issued by a Samsara reseller, the definition of License Start Date in this Section supersedes anything to the contrary in the reseller agreement between such reseller and Samsara and the applicable Purchase Order.

16. "**Malicious Code**" means code, files, scripts, agents, software or programs intended to do harm or allow for unauthorized access, including, for example, viruses, worms, time bombs, and Trojan horses.

17. "**Non-Samsara Products"** means any web-based, offline, or mobile applications, or other resources, users, data, systems, networks, products, services, vehicles, equipments, hardwares, or software functionality that is provided by Customer or a third party and that interoperates, integrates, and/or exchanges data with the Products.

18. "**Order Form**" means the applicable Quote or Purchase Order setting forth the purchase or procurement of Samsara Products and/or licenses thereto. By entering into an Order Form hereunder, a Customer Affiliate agrees to be bound by these Terms as if it were Customer, and Customer and the applicable Customer Affiliate are jointly and severally liable under such Order Form.

19. "**Pre-Launch Offerings**" means any Samsara hardware and/or software offerings and related documentation and accessories that are not generally available to Samsara customers and that may be in the alpha, beta, experimental, research, in development, prototyping, and/or testing phase.

20. "**Products**" means the Hardware and Services. For the avoidance of doubt, Products does not include any Non-Samsara Products.

21. "**Professional Services"** means the training, consulting, or other professional services that are provided by Samsara to Customer (i) as purchased separately by Customer pursuant to an Order Form, (ii) in Samsara's sole discretion, or (iii) as otherwise mutually agreed between the Parties.

22. **"Purchase Order"** means a purchase order or similar ordering document issued by Customer to Samsara and accepted by Samsara setting forth the purchase or procurement of Samsara Products and/or licenses thereto.

23. **"Quote"** means a quote issued by Samsara and executed by the Customer setting forth the purchase or procurement of Samsara Products and/or licenses thereto.

24. **"Refund"** means an amount refunded to the Customer (or in Samsara's sole discretion to any third party who paid Samsara for Customer's procurement of Products under the applicable Order Form, including a reseller, Lender, or other third party) pursuant to these Terms equal to (i) fees pre-paid to Samsara for the time remaining in an applicable license term prorated to the period of time between (a) the date of termination and (b) the License Expiration Date for the applicable Order Form, and (ii) fees paid to Samsara for the cost of purchased Hardware (if applicable). For the avoidance of doubt, a Refund may only be issued as expressly provided hereunder.

25. "**Samsara Software**" means the Apps, Firmware, and Hosted Software, and any improvements, developments, modifications, patches, updates, and upgrades thereto that Samsara develops or provides, and Support Services.

26. "**Samsara Software Systems**" means the Samsara Software and any networks, systems, products, services, or data of Samsara, its providers, its partners, its customers, or any other third party, integrated with or connected to such Samsara Software.

27. "**Services**" means the Samsara Software, Service Usage Data, and Professional Services.

28. "**Service Usage Data**" means any data that is derived from the user of the Products except that to the extent such data could directly or indirectly identify a natural person it shall be anonymized, de-identified, and/or aggregated such that it could no longer directly or indirectly identify such natural person.

29. "**Support Services**" means the customer support services described at www.samsara.com/support, and Documentation, but excluding any Professional Services.

30. "**Terms**" means these Terms of Service, together with any amendments or addenda that modify these Terms of Service.

2. Agreement to Terms. By clicking a box indicating your acceptance of these Terms, by executing an Order Form or other contract that references these Terms, by purchasing Products or otherwise entering into an Order Form or other contract with Samsara, a Samsara reseller, or any other entity or individual for the purchase of Products or under which Products are made available to you, or by otherwise accessing and/or using the Products, whichever is the earlier, you accept and agree to be bound by these Terms. If you do not agree to these Terms or you are not authorized to access and/or use the Products, you shall not access or use the Products. If you are accessing and/or using the Products on behalf of a company (such as your employer) or other legal entity that is our Customer, you agree to these Terms on behalf of such company or other legal entity, and you represent and warrant that you have the authority to bind such company or other legal entity to these Terms. If you have entered into a separate contract with Samsara with respect to your purchase of Products or under which Products are made available to you, to the extent there is a conflict between such separate contract with Samsara and these Terms, such separate contract with Samsara shall prevail. References to "you" and "your" in these Terms refer to that company or other legal entity, our Customer. You may not use the Products if you are our direct competitor, as determined in our sole discretion, except with our prior written consent.

3. Changes to Terms or Services. Samsara may modify the Terms at any time, in our sole discretion. If Samsara does so, Samsara will inform you by posting the modified Terms to the Services or our website or through other communications with you, our Customer. It is important that you review the Terms whenever Samsara modifies them because if you continue to use the Products after Samsara has posted or otherwise informed you of the modified Terms, you are indicating to Samsara that you agree to be bound by the modified Terms. If you do not agree to be bound by the modified Terms, then you must provide written objection within thirty (30) days of Samsara's modification notice and may continue to use the Products under the unmodified Agreement for the remaining term set forth in the applicable Order Form.

4. License. Subject to the terms and conditions specified in these Terms or an applicable Order Form, Samsara grants Customer a non-sublicensable, non-exclusive, non-transferable, limited and revocable license to use and access the Samsara Software (i) in accordance with the Documentation, (ii) for the number and type of Samsara Software licenses specified in the applicable Order Form and solely the functionality included therein, and (iii) starting from the applicable License Start Date until the License Expiration Date set forth in such Order Form or the earlier termination of such Order Form or these Terms. The Support Services and the Hosted Software SLA are included as part of the license grant and contingent upon a valid license. The Firmware license for each item of Hardware is contingent upon Customer purchasing and maintaining a valid license to the Samsara Software. For clarity, the license for Samsara Software that is provided in conjunction with a Hardware unit is only valid for use with that Hardware unit, unless the Hardware unit is replaced pursuant to the Hardware Warranty Policy and RMA Policy. Samsara reserves the right to audit Customer's usage of Samsara Software and to remove Customer's access to Samsara Software beyond the licensed scope ("Licensed Scope") (for example, the licensed feature scope or licensed user count, as applicable) at any time. If Customer would like to use Samsara Software beyond the Licensed Scope, Customer is required to purchase the applicable Samsara Software licenses and if applicable install the applicable Hardware that include such scope. If Samsara becomes aware that Customer is using Samsara Software beyond the Licensed Scope, Samsara reserves the right to charge Customer for the applicable Samsara Software licenses that include such Licensed Scope at the then-current list price, and Customer agrees to immediately pay such amounts. Further, during the applicable license term under an Order Form, Customer agrees that it cannot downgrade a Samsara Software license plan to a lower Samsara Software license plan (for example, downgrading from an "Enterprise" license to a "Premier" license).

5. License Restrictions. Customer agrees not to do or attempt to do any of the following without Samsara's express prior written consent: (i) resell, white label, or reproduce the Products or any individual element within the Samsara Software, Samsara's name, any Samsara trademark, logo or other proprietary information, or the layout and design of any part of the Product; (ii) access, tamper with, or use non-public areas of the Samsara Software Systems; (iii) gain unauthorized access to, interfere with, disable, or disrupt the integrity or security of the Samsara Software Systems; (iv) avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented to protect the Samsara Software Systems or enforce a contractual usage limit; (v) transfer, copy, modify, sublicense, lease, lend, rent or otherwise distribute the Samsara Software to any third party; (vi) decipher, decompile, disassemble or reverse engineer any aspect of the Products, in whole or in part; (vii) impersonate or misrepresent an affiliation with any person or entity; (viii) use or access the Products for any competitive purpose; (ix) perform benchmark testing on the Products; (x) use the Products to store or transmit Malicious Code; (xi) use the Products to store, publish, submit/receive, upload/download, post, use, copy, or otherwise produce, transmit, or distribute infringing, libelous, defamatory, harassing, threatening, or otherwise unlawful or tortious material; or to store, publish, submit/receive, upload/download, post, use, copy, or otherwise produce, transmit, or distribute material in violation of third-party privacy rights; (xii) violate any applicable law or regulation; (xiii) use the Products in a way that violates Samsara's Acceptable Use policy set forth in Section 21.2 or (xiv) authorize, permit, encourage, or enable any other individual or entity to do any of the foregoing. Samsara has the right to investigate violations of this Section or conduct that affects the Samsara Software Systems and immediately suspend or terminate any or all of Customer's access to the Samsara Software if it reasonably suspects or determines that Customer has violated this Section. Except to the extent legally prohibited from taking on indemnification obligations, Customer agrees to indemnify, defend, and hold harmless Samsara from and against all claims, actions, demands, and legal proceedings, and all liabilities, damages, demands, losses, claims, costs, fees (including legal fees), and expenses in connection with a violation of this Section 5 and any investigation related thereto. Samsara reserves the right to limit or restrict Product access in unsupported countries. Samsara may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

6. Hardware Installation and Equipment Maintenance. Customer is responsible for installation of the Hardware and ongoing maintenance of any Equipment, including but not limited to installation in accordance with any Equipment warranty. Depending on the Customer's intended use of the Products, Customer may require professional installation of the Hardware or ongoing professional maintenance of any Equipment. If Customer is unable to install the Hardware or to conduct such ongoing maintenance, or if Customer is uncertain that Customer has the requisite skills and understanding, Customer agrees to consult with a qualified installer or maintenance professional. Improper installation of the Hardware or maintenance of the Equipment can lead to damage of such Equipment or dangerous or life-threatening conditions, which can cause property damage, bodily injury, and/or death. Customer may notify Samsara if Customer did not order the correct Hardware cables for Hardware installation. For more information on Samsara's Cable Exchange Policy, please see the Cable Exchange Policy section of the Hardware Warranty and RMA Policy.

7. Product Updates.

7.1. General. Samsara continuously improves the Products, and may from time to time (i) update the Samsara Software and cause Firmware updates to be automatically installed onto Hardware; (ii) update the Apps; or (iii) upgrade Hardware to newer models. Samsara may change or discontinue all or any part of the Products, including changing, discontinuing, or removing features included in a Samsara Software license, at any time and without notice, at Samsara's sole discretion. If Samsara discontinues supporting the Hardware model and the associated Samsara Software that you have ordered from Samsara in accordance with these Terms prior to the applicable License Expiration Date without offering to replace them with an updated or comparable version or model, you may terminate the applicable Order Form with respect to the applicable Products and request a Refund for such Products. Updates or upgrades may include security or bug fixes, performance enhancements, or new functionality, and may be issued with or without prior notification to Customer. Customer hereby consents to such automatic updates.

7.2 Pre-Launch Offerings. From time to time, Samsara may in its sole discretion make Pre-Launch Offerings available to Customer for evaluation purposes. Should Customer opt to use Pre-Launch Offerings Customer agrees to: (i) enter into any additional terms required by Samsara for the applicable Pre-Launch Offerings; (ii) assume sole responsibility and all risk, and waive and release Samsara from any claims directly or indirectly arising from or related to the Pre-Launch Offerings; and (iii) except to the extent legally prohibited from taking on indemnification obligations, without limitation as to amount, defend, indemnify, and hold harmless Samsara from any third party claims directly or indirectly arising from or related to the Pre-Launch Offerings. PRE-LAUNCH OFFERINGS ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND. Customer acknowledges that Pre-Launch Offerings that may interact, interface, or integrate with third party products and/or services may not be validated or supported by such third parties and may interfere with the operations of or void warranties for such third party products and/or services. Samsara reserves the right to modify, terminate, or discontinue the Pre-Launch Offerings at any time in its sole discretion, for any reason, with or without notice, and without liability to Customer, and has no obligation to make any Pre-Launch Offerings generally available to Samsara customers. If Samsara decides in its sole discretion to make a Pre-Launch Offering generally available to Samsara customers as a new Product or part of an existing Product, Samsara may discontinue making such offering available to the Customer as a Pre-Launch Offering will be discontinued at that point in time. Customer acknowledges and agrees that any continued usage after such discontinuation date will require that the Customer purchase or have already purchased the applicable Product under an Order Form and pay any additional amounts owed for such purchase. Except as explicitly set forth otherwise in this Section 7.2, Pre-Launch Offerings are subject to the same terms and conditions as are applicable to a "Product" under these Terms.

7.3 Feedback. Customer agrees to use commercially reasonable efforts to provide feedback to Samsara regarding the Products upon request and agrees that Samsara shall have all rights, title, and interest in and to all comments, suggestions, and other feedback (collectively, "**Feedback**") provided by

Customer to Samsara related to the Products. Customer shall and hereby does irrevocably transfer and assign to Samsara all right, title, and interest it may have in such Feedback to Samsara, and Samsara hereby accepts such transfer.

8. Payment, Shipping, and Delivery.

8.1 Payment. Customer's payment and billing terms are set forth in the Order Form. Unless otherwise set forth in the applicable Order Form, (i) fees are payable by wire transfer; (ii) all transfers are subject to a processing fee up to 3%, subject to applicable law, unless the wire transfer is initiated by Samsara via ACH, in which case the processing fee will be waived; (iii) late payments are subject to a 1.5% per month late fee; and (iv) if license payments are delinquent by 30 days, Samsara may suspend the Service until late payments are remitted. Further, unless otherwise set forth herein or in the applicable Order Form, all payments made to Samsara under an Order Form are non-refundable. Samsara may submit Customer contact information and information related to the timeliness of Customer's payments to credit rating, credit reporting, or similar agencies. If Customer makes a payment without specifying to which invoice it applies, Samsara reserves the right to apply such payment to any outstanding Customer invoice(s). Customer is responsible for all payments of applicable taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"), however designated or incurred under these Terms. If Samsara has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Samsara will invoice Customer, and Customer shall reimburse Samsara for any taxes paid or payable on behalf of Customer. Unless required by applicable law, Samsara will not provide retroactive Tax refunds or credits to Customer. Subject to applicable legal requirements, any Tax refund or credits provided to Customer shall be at Samsara's sole discretion, and Samsara reserves the right to charge the Customer reasonable fees and costs associated with processing such Tax refund or credit.

8.2 Shipment and Delivery. All shipments are FOB (2010) Origin, Freight Prepaid, and Charged Back. Customer is solely responsible for confirming that each "Ship To" delivery address set forth in an Order Form is accurate and that any individual accepting delivery at that address is authorized to do so on Customer's behalf. Samsara may ship Hardware under an Order Form subject to a schedule as mutually agreed between the Parties or as determined by Samsara. If Hardware under an Order Form is shipped in multiple shipments, the Samsara Software license term associated with Hardware shipped after the initial shipment will be set to expire on the same date as the Samsara Software license term associated with Hardware shipped in the initial shipment. The total cost of the Samsara Software licenses associated with such Hardware shipped after the initial shipment will be pro-rated based on their actual license term, rounded up to the nearest month, as compared to the full Samsara Software license term under such Order Form. Certain payment amounts set forth in an Order Form assume that all Hardware under such Order Form is shipped at the same time and are subject to potential reduction by Samsara based on the actual schedule of Hardware shipment.

9. Accounts. Customer shall be solely responsible for administering and protecting Accounts. Customer agrees to provide access to the licensed Samsara Software only to Authorized Users, and to require such Authorized Users to keep Account login information, including user names and passwords, strictly confidential and not provide such Account login information to any unauthorized parties. Customer is solely responsible for monitoring and controlling access to the licensed Samsara Software and maintaining the confidentiality of Account login information and any provided API tokens. In the event that Customer or any Authorized User becomes aware that the security of any Account login information has been compromised, Customer shall immediately notify Samsara and de-activate such Account or change the Account's login information. Authorized Users may only use the licensed Samsara Software strictly on behalf of Customer and subject to the terms and conditions applicable to Customer herein. Customer is responsible and liable for any breach by an Authorized User of his or her obligations hereunder.

10. Customer Data.

10.1. Ownership and Usage. Customer Data is accessible via the licensed Samsara Software. Customer owns all Customer Data, and Samsara will keep Customer Data confidential. Customer hereby grants to Samsara a non-exclusive, transferable, sublicenseable, worldwide, royalty-free license to use, copy, modify, create derivative works based upon, display, and distribute Customer Data in connection with operating, supporting, improving, and providing the Products, including for anonymized and/or aggregated reporting and use. The foregoing right to use Customer Data shall survive the termination of these Terms, unless legally prohibited or Customer requests in writing upon termination that such use be limited to non-personally-identifiable data. Samsara will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Samsara will not share Customer Data without Customer consent, except when the release of data is compelled by law or permitted herein. Customer may export Customer Data at any time during the term of these Terms through the export features in the Samsara dashboard or via the Samsara API. Customer acknowledges that some information may not be exportable via the Samsara dashboard or the API. If the applicable Samsara Software license terminates or expires and Customer does not renew, the applicable Customer Data may be immediately deleted.

10.2. Customer Data Representation and Warranty. Customer represents and warrants that: (i) Customer will obtain all rights and provide any disclosures to or obtain any consents, approvals, authorizations and/or agreements from any employee or third party that are necessary for Samsara to collect, use, and share Customer Data in accordance with these Terms (ii) no Customer Data infringes upon or violates any individual or entity's intellectual property rights, privacy, publicity or other proprietary rights and (iii) Customer will adhere to all applicable state, federal and local laws and regulations in the conduct of its business in relation to Samsara and its receipt and use of the Products. EXCEPT TO THE EXTENT LEGALLY PROHIBITED FROM TAKING ON INDEMNIFICATION OBLIGATIONS, YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS SAMSARA AND, IF RELEVANT, ITS SUBPROCESSORS AGAINST ANY LIABILITIES, DAMAGES, DEMANDS, LOSSES, CLAIMS, COSTS, FEES (INCLUDING LEGAL FEES), AND EXPENSES IN CONNECTION WITH ANY THIRD-PARTY LEGAL OR REGULATORY PROCEEDING ARISING FROM ANY ACT OR OMISSION OF THE CUSTOMER IN RELATION TO CUSTOMER INSTRUCTIONS OR FROM THE CUSTOMER'S BREACH OF THIS SECTION 10.2.

10.3. Data Protection Addendum. The "**Data Protection Addendum**" at https://www.samsara.com/data-protection-addendum sets forth the Parties' agreement with respect to the terms governing any Processing of Personal Data by Samsara on the Customer's behalf pursuant to these Terms. The Data Protection Addendum forms part of these Terms and supersedes any prior agreements regarding Customer Personal Data. The terms "**Processing**", "**Personal Data**", and "**Customer Personal Data**" used in this Section are all defined in the Data Protection Addendum.

11. Confidentiality.

11.1. Confidential Information. "**Confidential Information**" means any technical, financial, or business information disclosed by one Party to the other Party that: (i) is marked or identified as "confidential" or "proprietary" at the time of such disclosure; or (ii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Samsara Confidential Information includes any information related to the Products, including the pricing and payment terms thereof, Pre-Launch Offerings, Samsara Software Systems, or Samsara customers or partners, and any data or information that Samsara provides to Customer in the course of providing the Products to Customer. Customer Confidential Information includes Customer Data and any data or information that Customer provides to Samsara for the purpose of evaluating, procuring, or configuring the Services (for example, makes and models of vehicles or equipment, vehicle routes, or similar information). Confidential Information excludes information that: (i) is now or hereafter becomes generally known or available to the public, through no breach of the receiving Party's confidentiality obligations; (ii)

was known, without restriction as to use or disclosure, by the receiving Party prior to receiving such information from the disclosing Party; (iii) is acquired by the receiving Party from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the receiving Party without use or knowledge of or reference to any Confidential Information of the disclosing Party.

11.2. Confidentiality Obligations. The receiving Party agrees: (i) to maintain the disclosing Party's Confidential Information in strict confidence; (ii) not to disclose such Confidential Information to any third parties (except for any Affiliates, employees, agents or third party service providers of receiving Party in performing under these Terms under reasonable confidentiality obligations, or except as authorized by disclosing Party); and (iii) not to use any such Confidential Information for any purpose except to perform under these Terms or as authorized by the disclosing Party. Notwithstanding anything to the contrary in these Terms, the receiving Party may disclose the disclosing Party's Confidential Information to the extent required by law or regulation, including any applicable public record request laws provided that, unless prohibited by applicable law or regulation, the receiving Party uses reasonable efforts to give the disclosing Party advance notice of such requirement and reasonably cooperates with the disclosing Party at the disclosing Party's expense in preventing, limiting, or protecting such disclosure.

12. Proprietary Rights.

12.1. Services. Samsara and its licensors exclusively own all right, title and interest in and to the Services, including all associated intellectual property rights. Customer acknowledges that the Services are protected by patent, copyright, trademark, and other laws of the United States and foreign countries. Customer agrees not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services. Customer shall and hereby does irrevocably transfer and assign to Samsara all right, title, and interest it may have in the Services to Samsara and Samsara hereby accepts such transfer. No ownership rights are being conveyed to Customer under these Terms. Except for the express rights granted herein, Samsara does not grant any other licenses or access rights, whether express or implied, to any other Samsara software, services, technology or intellectual property rights.

12.2. Firmware. The Firmware is licensed, not sold. Except in the case of a free trial and subject to the Product Trial Hardware Returns section of the Hardware Warranty and RMA Policy, Customer owns the physical title to the Hardware that Customer has purchased or has otherwise acquired in relation to an Order Form. Samsara and its licensors exclusively own all intellectual property rights in Hardware. Samsara further retains ownership of the Firmware, including all intellectual property rights therein. Customer acknowledges that the Firmware is protected by patent, copyright, trademark, and other laws of the United States and foreign countries. Samsara reserves all rights in the Firmware not expressly granted to Customer in these Terms. Customer acknowledges and agrees that portions of the Firmware, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Samsara and its licensors.

13. Connectivity Data Usage. A Samsara Software license only includes connectivity data to the extent such license SKU is identified as including connectivity data and sets forth the amount of connectivity data included. To the extent connectivity data is included in a Samsara Software license, connectivity between the applicable Hardware and the licensed Samsara Software does not count towards the included connectivity data cap. Samsara reserves the right to limit access to personal entertainment streaming services through the Hardware connectivity. Connectivity data usage above any included connectivity data may result in the reduction of connection speeds, the restriction of connectivity, the interruption of connectivity, or some combination thereof. Restriction or interruption of connectivity will not impact the function of hours of service logs. Customer may track any included connectivity data usage from the "Gateways" page within the "Settings" section of the Hosted Software dashboard.

14. Non-Samsara Products. The Products may contain links to or have the ability to integrate or interoperate with, import or export data to or from, provide access to, or be accessed by Non-Samsara Products (collectively, "Non-Samsara Product Integrations"). If Customer opts to use any Non-Samsara Product Integrations, including but not limited to with respect to the exchange of data between Products and Non-Samsara Products, Customer agrees to: (i) assume sole responsibility for and all risk arising from Customer's use of Non-Samsara Product Integrations and the content, functionality, or availability of any Non-Samsara Products, including waiving and releasing Samsara from any claims directly or indirectly related thereto; and (ii) except to the extent legally prohibited from taking on indemnification obligations, without limitation, defend, indemnify, and hold harmless Samsara from any third party claims directly or indirectly arising from or related to Customer's use of any Non-Samsara Product Integrations. SAMSARA PROVIDES NON-SAMSARA PRODUCT INTEGRATIONS "AS IS" WITHOUT WARRANTY OF ANY KIND AND ONLY AS A CONVENIENCE.

15. Publicity. Customer hereby grants Samsara permission to use the Customer name and logo on Samsara's website, press releases, customer lists, SEC filings, earnings calls, and investor and marketing materials to list Customer as a customer. However, Samsara will not use Customer's name, trademarks, or logos in any other way without Customer's prior consent. Customer agrees to abide by the terms of Samsara's Marks Usage Agreement available at https://www.samsara.com/resources/brand-assets/.

16. Term. The term of these Terms begins upon the date on which you accept these Terms, by clicking a box indicating your acceptance, by executing an Order Form or other contract that references these Terms, by purchasing Products or otherwise entering into an Order Form or other contract with Samsara, a Samsara reseller, or any other entity or individual for the purchase of Products or under which Products are made available to you, or by otherwise accessing and/or using the Products, whichever is the earliest, and shall continue until (i) the License Expiration Date for the last active Order Form or other contract you entered into for the purchase of Products or under which Products are made available to you, (ii) you are no longer authorized to access and/or use the Products, or (iii) these Terms are otherwise terminated earlier as provided hereunder, whichever is earliest.

16.1. Renewal. Unless you notify Samsara in writing of your intent to cancel auto-renewal of the applicable Order Form or other contract you entered into for the purchase of Products or under which Products are made available to you at least thirty (30) days prior to the License Expiration Date, at any time up to ninety (90) days after the License Expiration Date, Samsara may in its discretion renew your license term for the applicable or substantially equivalent Products, effective on the License Expiration Date, for a period of up to the greatest of the following: (i) one year, (ii) the same period as the immediately preceding license term, or, (iii) a shorter period to align license expiration dates with another of your active orders) (each such period, or any renewal license term of the applicable Products after the Initial Term, a "Renewal Term"). Subject to Samsara's renewal rights set forth in the foregoing sentence, you and Samsara may mutually agree to enter into a new Order Form to renew your license term upon the License Expiration Date, which new Order Form may include additional or different Products or license terms to the extent mutually agreed. If Samsara auto-renews your license term without Customer's execution of a new Order Form as described in the first sentence of this paragraph, your payment method will remain the same as indicated on the applicable original Order Form (e.g., monthly if you were allowed monthly payments, or yearly if you were allowed annual payments or upfront payment). If your license term is renewed after termination of the immediately preceding license term and Samsara in its sole discretion allows you to continue using the applicable Products during such interim period, these Terms shall apply to such use, and Samsara reserves the right (i) to charge you for such use at the renewal license pricing (and Customer agrees to immediately pay such amounts) and (ii) to have the License Start Date for the renewal license start the day after expiration of the immediately preceding license term. Please email renewals@samsara.com for any questions regarding automatic renewal.

16.2. Termination. Samsara may terminate these Terms, any Order Form, and your access to and use of the Samsara Software at its sole discretion, at any time upon notice to you. However, if Samsara so terminates for its convenience and not as otherwise set forth in these Terms or the applicable Order Form or due to your breach thereof, then Samsara will provide you with a Refund. Unless otherwise set forth herein or in the applicable Order Form, an Order Form, including any renewal Order Forms, cannot be terminated prior to the applicable License Expiration Date.

16.3. Termination for Non-Appropriation of Funds. As a public sector entity, Customer undergoes a fiscal budgeting appropriations process. The continuation of an Order Form one (1) year after the license start date and annually thereafter is contingent upon the appropriation of sufficient funds by Customer. If sufficient funds fail to be appropriated by Customer to provide for the continuation of the applicable Order Form for Customer's then-subsequent fiscal year, Customer may terminate such Order Form with prior written notice effective as of the later of the date of the beginning of such subsequent fiscal year and the end of the then-current annual license period. If Customer so terminates such Order Form, Samsara shall be entitled to payment of and for: a termination fee equal to the license fees associated with a sixty (60)-day period for all Products under such Order Form at the date of such termination; all amounts due as of the date of termination; deliverables in progress; liabilities, fees, or costs caused by such termination including for obligations that extend beyond the date of termination; and reasonable Order Form close-out costs.

16.4. Effect of Termination. Upon any termination or expiration of these Terms, the following Sections of these Terms will survive: 5 (License Restrictions), 7.2 (Pre-Launch Offerings), 7.3 (Feedback), 8 (Payment, Shipping, and Delivery), 10 (Customer Data), 11 (Confidentiality), 12 (Proprietary Rights), 16 (Term), 17 (Warranty Disclaimers), 18 (Limitation of Liability), 19 (Dispute Resolution), 20 (Governing Law), and 21 (General Terms). At the Customer's request, and subject to Samsara's data retention and backup policies, Samsara shall delete and remove any Customer Data on the Hosted Software.

17. Warranty Disclaimers. THE SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, SAMSARA EXPLICITLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. Samsara makes no warranty that the Services will meet Customer's requirements or be available on an uninterrupted, secure, or error-free basis. Samsara makes no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any analytics or Customer Data. For more information about the Samsara Hardware warranty, please visit https://www.samsara.com/support/hardware-warranty.

18. Limitation of Liability.

18.1. No Consequential Damages. NEITHER SAMSARA NOR CUSTOMER NOR ANY OTHER ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE PRODUCTS WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE PRODUCTS, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS LEGALLY PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY.

18.2. Cap. EXCEPT FOR (i) ANY EXPRESS INDEMNIFICATION OBLIGATION SET FORTH IN THESE TERMS, (ii) CUSTOMER'S BREACH OF SECTION 5 (LICENSE RESTRICTIONS), (iii) A BREACH OF SECTION 7.2

OR SECTION 10.2 BY CUSTOMER, AND (iv) CUSTOMER'S PAYMENT OBLIGATIONS UNDER AN ORDER FORM, IN NO EVENT WILL EITHER PARTY'S TOTAL AGGREGATE LIABILITY, INCLUDING TO THE OTHER PARTY AND ANY OF ITS AFFILIATES, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE PRODUCTS EXCEED THE AMOUNTS CUSTOMER HAS PAID TO SAMSARA HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE DAMAGE, OR IF CUSTOMER HAS NOT HAD ANY PAYMENT OBLIGATIONS TO SAMSARA (FOR EXAMPLE THROUGH A FREE TRIAL), ONE HUNDRED DOLLARS ($100).

18.3. THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SAMSARA AND CUSTOMER.

19. Dispute Resolution.

19.1. Arbitration. Unless Customer is legally prohibited by law from resolving disputes by arbitration, any dispute arising from or relating to these Terms or Customer's use of the Products that cannot be resolved by the Parties within a period of sixty (60) days after notice of a dispute has been given by one Party hereunder to the other, shall be finally and exclusively settled in one of the following venues at Samsara's election: (i) confidential arbitration in the JAMS location nearest to the county in which Customer has its principal place of business using the English language in accordance with the Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Services, Inc. ("**JAMS Rules**") then in effect, by one or more commercial arbitrator(s) with substantial experience in resolving complex commercial contract disputes; or (ii) the state or federal courts located in or nearest to the county in which the Customer has its principal place of business. If Samsara elects to arbitrate a dispute, the Parties agree that such arbitrator(s) shall have full authority to award preliminary and permanent injunctive relief, damages, and any other relief available in law, at equity, or otherwise pursuant to applicable law and that any emergency arbitrator(s) appointed in accordance with the JAMS Rules shall have authority to grant emergency relief in accordance with such rules.

19.2. Class Action Waiver. Any proceedings to arbitrate or resolve any dispute arising from or relating to these Terms or Customer's use of the Products in any forum will be conducted solely on an individual basis and not as a class action, consolidated action, private attorney general action, or other representative action. You expressly waive your right to file a class action, participate in a class action, or seek relief on a class basis. Unless Samsara agrees in writing otherwise, the arbitrator or other adjudicator will not consolidate more than one person or entity's claims.

20. Governing Law. These Terms and any action related thereto will be governed by the laws of the state in which Customer has its principal place of business without regard to its conflict of laws provisions. Subject to the agreement to arbitrate set forth herein, exclusive jurisdiction and venue for actions arising from or related to these Terms or Customer's use of the Products will be the state and federal courts located in or nearest to the county in which the Customer has its principal place of business and both Parties consent to the jurisdiction of such courts with respect to any such actions.

21. General Terms.

21.1. Miscellaneous. These Terms together with any applicable Order Form constitute the entire and exclusive understanding and agreement between Samsara and you regarding the Products and the subject matter hereof, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Samsara and you regarding the Products and the subject matter hereof. The Customer acknowledges and agrees that, in entering into this Agreement, it has not relied on, nor has it been induced to enter into this Agreement by, any representation, warranty, statement, or assurance made or given by or on behalf of Samsara, other than those expressly set forth in this Agreement. To the maximum extent permitted by applicable law, Customer further acknowledges and agrees that the only remedies available for

breach of any such express warranties or representations are those expressly provided for within this Agreement. For clarity, the Parties agree that any of Customer's click-through, hyperlinked, or similar boilerplate or standard terms and conditions, including those associated with Customer payment portals or onboarding of Samsara as a Customer vendor, are void and have no effect, notwithstanding anything to the contrary in such terms and conditions. If there is a conflict between the terms of an Order Form and these Terms, then the terms of the Order Form controls over these Terms; provided that, to the extent applicable, (a) if a purchase or procurement under a Purchase Order is also documented by a Quote, notwithstanding anything to the contrary in these Terms or the applicable Purchase Order, (i) to the extent there is a conflict between such Purchase Order and such Quote, the terms of the Quote shall prevail, and no additional terms included in such Purchase Order that are not included in such Quote shall apply; and (ii) Customer shall ensure such Purchase Order references, and reflects identical terms and conditions to, such Quote; and (b) for Purchase Orders issued by a Samsara reseller where the applicable purchase or procurement of Products is not also documented by a Quote, notwithstanding anything to the contrary in these Terms, the reseller agreement between such reseller and Samara, or the applicable Purchase Order, to the extent there is a conflict between such Purchase Order and such reseller agreement, the terms of the reseller agreement shall prevail, and no additional terms included in such Purchase Order that are not included in such reseller agreement shall apply. Any Purchase Order is solely for Customer's convenience in record keeping, and the existence of a Purchase Order or any delivery of Products to Customer following receipt of any Purchase Order shall not be deemed an acknowledgement of or agreement to any terms or conditions associated with any such Purchase Order or in any way be deemed to modify, alter, supersede or supplement the Agreement or the applicable Quote. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. You may not assign or transfer these Terms, by operation of law or otherwise, without Samsara's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Samsara may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the Parties, their successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity or Party Affiliate, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms. Customer shall have no right to bring any claims under these Terms against any Samsara Affiliate, employee, director, officer, or shareholder. Any notices or other communications provided by Samsara under these Terms, including those regarding modifications to these Terms, will be given: (i) via email; (ii) by posting to Samsara's website; or (iii) by posting to the Services. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted. Either Party's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of both Parties. Except as expressly set forth in these Terms, the exercise by either Party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

21.2. Acceptable Use. Customer may not, and may not allow any third-party including its Authorized Users to, (a) use the Products: (i) for any inappropriate, improper, discriminatory, illegal, or otherwise harmful purpose or (ii) to violate, or encourage the violation of, the rights of others which includes, without limitation, legal rights (e.g., intellectual property or proprietary rights) or human rights (i.e., the rights inherent to all human beings regardless of race, sex, nationality, ethnicity, language, religion, or any other status, including without limitation the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more), each as reasonably determined by Samsara; or (b) engage in abusive, harassing, threatening, offensive, stalking, or otherwise improper conduct towards any individual or entity, including but not limited to Samsara or its employees, agents, service providers, partners, or other customers. To report any potential misuse or violation, please email abuse@samsara.com or submit an anonymous concern via samsara-external.ethicspoint.com.

21.3. Export Restrictions. Customer shall not use the Products in violation of applicable export control or sanctions laws of the United States or any other applicable jurisdiction. Customer shall not use the Products if Customer is or is working on behalf of any restricted person or entity, including those listed on the U.S. Treasury Department's list of Specially Designated Nationals, the U.S. Department of Commerce Denied Person's List or Entity List, the State Department's Debarred list, or similar denied parties list without prior authorization by the U.S. Government. Customer shall not export, re-export, or transfer the Products if for use directly or indirectly in any prohibited activity described in Part 744 of the U.S. Export Administration Regulations, including certain nuclear, chemical or biological weapons, rocket systems or unmanned air vehicle end-uses.

21.4. Force Majeure. Samsara is not liable or responsible, nor shall be deemed to have defaulted under or breached these Terms, for any failure to perform or delay in performing its obligations under these Terms due to an event of force majeure. An event of force majeure is any event or circumstance beyond Samsara's reasonable control, such as war, hostilities, act of God, earthquake, flood, fire, or other natural disaster, strike or labor conditions, material shortage, epidemic, disease, government action, or failure of utilities, transportation facilities, or communication or electronic systems.

21.5. Financed Purchases and Other Payment Arrangements. If you are accessing the Products through a financing entity ("Lender"), the terms in this Section shall apply. Any obligation you may have to the Lender is absolute and unconditional, not subject to any setoff or counterclaim as between you and Lender, unless agreed to otherwise in the separate financing agreement ("Financing Agreement") you enter into with the Lender to finance your purchase of the Products. You acknowledge and agree that when you execute the Financing Agreement, the Lender is prepaying Samsara for the Products on your behalf and such prepayment is final and cannot be refunded by Samsara unless otherwise provided under these Terms. You accept the risk that any Products are not provided or are not satisfactory; provided this sentence does not affect your rights against Samsara as limited by these Terms, or Samsara's obligations to you under these Terms. If you choose to discontinue use of the Products for any reason, you will continue to be liable for any outstanding payment obligations specified in the Financing Agreement. If you have any claim against or dispute with Samsara, you may not take action by reason of such claims against Lender. If you are purchasing through a Lender, Samsara may terminate your access to the Products should you breach these Terms or the terms of the Financing Agreement. Any Refunds issued by Samsara under these Terms for Product purchases financed under a Financing Agreement may in Samsara's sole discretion be remitted to the Lender, and any impact such remittance may have on your remaining payment obligations to Lender is governed by the Financing Agreement. Subject to the other terms of this Section (Financed Purchases and Other Payment Arrangements), in the event Samsara consents, in its sole discretion, to granting Customer's request for payment under an Order Form to be made by a Customer Affiliate, Lender, or any other third party authorized by Customer to make purchases or payments on behalf of Customer ("Payment Arrangement"), Customer represents and warrants that (i) such Payment Arrangements are made for legitimate business purposes and are in compliance with all applicable laws, including but not limited to tax laws, and (ii) Customer remains directly liable for all obligations, including all payment obligations, under these Terms and such Order Form.

21.6. Contact Information**.** If you have any questions about these Terms or the Products, please contact Samsara at info@samsara.com.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Patrick O'Connor, Water Services Section Director - Field Operations

Date: 01/15/2025

Meeting Date: 01/21/2025

TITLE:

Consideration and Approval of Contract: First Amendment to the Contract for Purchase of Materials with Mountain States Pipe & Supply Co. in the amount of $549,587.27 for Itron Encoder Receiver Transmitters (ERT) Endpoints and related parts and supplies.

STAFF RECOMMENDED ACTION:

1. Approve the First Amendment to the Contract for Purchase of Materials with Mountain States Pipe & Supply Co. in the amount of $549,587.27 for Itron Encoder Receiver Transmitters Endpoints and related parts and supplies for a total contract amount of $749,587.27; and
2. Authorize the City Manager to execute all necessary documents.

Executive Summary:

The City currently has a Contract for Purchase of Materials with Mountain States Pipe & Supply Co. This First Amendment will be for the purchase of Itron Encoder Receiver Transmitters (ERT) Endpoints and related parts and supplies. The request is to increase the spending limit to accommodate FY2024-25's purchase of Itron ERTs and Endpoints associated with the Radio Read Program, Water Distribution and WIFA Grant funds available. ERT's are required with any newly installed water meter, whether for new development or for maintenance reasons or as an upgrade. These are part of the Automatic Meter Reading (AMR) network, allowing Management Services the ability to collect water meter reads, simply by driving by the water meter during their billing cycles.

Financial Impact:

The First Amendment will be funded by Radio Read Program in the amount of $549,587.27. The account number for the Radio Read Program is 202-08-370-3170-0-4461 with FY2024-25 total budget of $1,045,050.

Policy Impact:

None.

Previous Council Decision or Community Discussion:

The City Council approved the original Contract for Purchase of Materials on April 6, 2021.

Options and Alternatives to Recommended Action:

1. To approve the First Amendment with Mountain States Pipe & Supply Co; or
2. Not approve the First Amendment and direct staff to procure these necessary items from another source.

Background and History:

The City has been utilizing the Itron ERTs for many years. The Itron ERTs system reduces issues caused

when different types or manufacturers of meters are used. Mountain States Pipe & Supply Co. was procured through a Sole Source Justification.

Connection to PBB Priorities and Objectives:
High Performing Governance: Serve the public by providing high quality customer service.

Inclusive & Engaged Community: Proactively foster community representation and civic engagement by enhancing opportunities for public involvement, in line with best practices.

Sustainable and Innovative Infrastructure: Deliver outstanding services to residents through a healthy, well-maintained infrastructure system.

Connection to Regional Plan:
Water Resources:
- 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.

Connection to Carbon Neutrality Plan:
Priority One: Neighborhoods
(Community Resilience) CR-1 Ensure all mitigation actions improve Flagstaff's ability to adapt to the future.
(Equitable Systems) ES-2 Proactively engage community members on an ongoing basis.

Priority Three: Consumption
(Sustainable Consumption) SC-2 Encourage sustainable consumption.
(Water Security) WS-1 Improve water infrastructure and expand water reuse.
(Water Security) WS-3 Continue to support water conservation efforts across the Flagstaff community.

Connection to 10-Year Housing Plan:
None.

Attachments: First Amendment to MSPS Contract

FIRST AMENDMENT

CONTRACT FOR PURCHASE OF MATERIALS
Contract No. 2021-61

This First Amendment ("First Amendment") to the fully executed fully executed Contract for Purchase of Materials (Contract No. 2021-61) dated April 16, 2021 (the "Initial Contract") is made and entered into this ____ day of _____, 2025, by and between the City of Flagstaff, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and Mountain States Pipe and Supply Co., a Colorado S Corporation ("Contractor").

The Parties to the Initial Contract and other amendments, hereby agree to the following:

A. Paragraph 1 – "Scope of Work" is amended to include the proposal dated December 24, 2024, 1 page (attached hereto) for the purchase of additional materials described as OpenWay Riva Module Endpoints and accessories.

B. Paragraph 2 – "Compensation" is amended to include an additional amount of **five hundred forty-nine thousand five hundred eighty-seven dollars and twenty-seven cents ($549,587.27).**

C. The total contract price for the complete performance of work under the Initial Agreement and other amendments, as amended herein, shall be **seven hundred fifty thousand two hundred fifty dollars and twenty-seven cents ($749,587.27).**

D. All other provisions of the Initial Contract and other amendments shall remain unchanged in full force and effect.

IN WITNESS WHEREOF, this First Amendment will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

City of Flagstaff

By:_____
Greg Clifton, City Manager

Dated:_____

Attest:

_____
City Clerk

Mountain States Pipe and Supply, Co.

By:_____

Title:_____

Dated:_____

Approved as to form:

_____
City Attorney

Proposal

Mountain States Pipe and Supply Company
7765 Electronic Drive
Colorado Springs, Colorado 80922
1-800-777-7173
Paul Mobile Phone: 719.351.4120
Paul email: pcarroll@msps.com

Customer:	Patrick O'Connor City of Flagstaff Water Services Division Water Services Section Director – Field Operations O: 928-213-2444 | Cell: 928-699-6174 Email: poconnor@flagstaffaz.gov

Date: Tuesday, December 24, 2024

Qty	Description	Cost Each	Extension
4728	Itron 500W OpenWay Riva Water Pit Module No Programming and No Security Keys Customer Part # V98600 ERW-1601-004	$104.34	$493,307.70
4728	ITRON CFG-1601-002 ERT Rod/Wall Mounting Kits	$3.30	$15,602.40
	Sub-Total		$508,910.10
	Tax Rate 7.6%		$38,677.17
	Freight Estimate		$2,000.00
	Total		**$549,587.27**

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Sarah Langley, Public Affairs Director

Date: 01/15/2025

Meeting Date: 01/21/2025

TITLE:
Consideration and Approval: 2025 State and Federal Legislative Priorities

STAFF RECOMMENDED ACTION:

Review and approve the 2025 State and Federal Legislative Priorities.

Executive Summary:
On January 7, City staff and lobbyists received Council input and direction on the draft state and federal legislative priorities. This input has been incorporated and a final version of both the state and federal legislative priorities is attached for Council's review and approval.

Financial Impact:
None

Policy Impact:
None

Previous Council Decision or Community Discussion:
On January 7, the Flagstaff City Council gave staff input on the draft 2025 legislative priorities.

Options and Alternatives to Recommended Action:
Not approve the 2025 State and Federal Legislative Priorities.

Background and History:
None.

Connection to PBB Priorities and Objectives:
The 2025 federal and state legislative priorities are connected to the PBB Priorities and Objectives in many ways. The legislative priorities specifically support the PBB Priorities of Safe and Healthy Community, Inclusive and Engagement Community, Sustainability and Innovative Infrastructure, Robust and Resilient Economy, Livable Community, and Environmental Stewardship.

Connection to Regional Plan:
None.

Connection to Carbon Neutrality Plan:
The 2025 draft state and legislative priorities support the goals of the Carbon Neutrality Plan.

Connection to 10-Year Housing Plan:

The 2025 draft state and legislative priorities support the goals of the 10-Year Housing Plan.

Connection to Division Specific Plan:
None.

Attachments: Federal Priorities
State Priorities

CITY OF
FLAGSTAFF

DRAFT 2025 Federal Legislative Priorities

TRANSPORTATION & INFRASTRUCTURE

Rio de Flag Flood Control Project - Utilizing the $52 million in secured funding, support expedited award and completion of the project while working with the Army Corps, BNSF Railway and the Arizona Dept. of Transportation to ultimately remove more than half of the City's residents, as well as the downtown and NAU areas, from the flood plain and protect more than $1 billion in assets.

Red Gap Ranch Regional Pipeline Project – Advocate for the Northeastern Arizona Indian Water Rights Settlement Act (NAIWRSA) and for the Red Gap Regional Pipeline project that will assure a 100-year water supply for the City of Flagstaff while also providing important water quality and assurity for the surrounding tribal nations.

Infrastructure Investment and Jobs Act (IIJA) - Pursue competitive grants and formula funds from the IIJA to finance high-priority infrastructure projects within the City, while also working to reauthorize the important programs from the IIJA in the new surface transportation reauthorization bill.

Transportation - Advocate for projects, policies and legislation that strengthen multi-modal transportation systems and adopt a transformative transportation planning approach, in line with the City's Active Transportation Master Plan and the Carbon Neutrality Plan. Promote investments in clean transportation infrastructure, including public transit, electric vehicle charging, and bicycle/pedestrian infrastructure.

Water and Stormwater Infrastructure – Utilize funding dedicated by the IIJA and other legislation to complement and improve City water and stormwater infrastructure. Advocate for assistance to upgrade infrastructure to withstand catastrophic events such as flooding, storms, and forest fires.

Flagstaff Pulliam Airport – Advocate for funding for projects included in the Flagstaff Pulliam Airport five-year Capital Improvement Program, specifically the need for discretionary construction funding for the upcoming new Snow Removal Equipment (SRE) building.

ENVIRONMENT

Energy Independence - Support legislation and funding to scale up local renewable energy installations and energy sovereignty, focusing on education and job development. Invest in grid infrastructure to enhance energy storage and smart grid technology. Protect and expand renewable energy and energy efficiency tax credits for cities, schools, businesses, and residents.

Securing Arizona's Fair Share of Investments - Urge Congress to protect investments in Arizona's clean technology economy, including federal funding that supports workforce training and jobs in energy efficiency, renewable energy, and transportation electrification.

Forest Health – Utilize federal funding to support important regional projects to reduce wildfire risk to forested communities. Advocate for collaborative prescribed fire policies that both increase acres treated and support the development of a technically skilled workforce.

COMMUNITY INFRASTRUCTURE

Affordable Housing – Support legislation to create a middle-income housing tax credit. Promote direct funding for local governments to accelerate housing development, including CDBG, HOME, and the Housing Trust Fund. Promote full funding adjusted for inflation for Public Housing and capital funds, as well as the Section 8 Housing Choice Voucher Program and programs for veterans' housing. Remove income targeting requirements to establish a more streamlined and fair approach to housing eligible households, ensuring consistency regardless of variations in local and state minimum wages.

Fire and Flood Insurance –Advocate for affordable and accessible flood insurance policies for Flagstaff residents. Work to ensure that FEMA deems post-wildfire flooding during monsoon season as an emergency under the Public Assistance Program and Policy Guide (PAPPG). Support efforts to ensure affordable and accessible fire insurance coverage for Flagstaff residents. Promote policy action aligned with recommendations of the Wildland Fire Mitigation and Management Commission.

Rural Broadband – Utilize federal funding for rural broadband access and capacity to encourage and develop economic activity, including allowing for remote education, business attraction, revenue creation and the attraction of remote workers.

CITY OF
FLAGSTAFF

DRAFT 2025 State Legislative Priorities

GUIDING PRIORITIES

Preserve Local Control - Support legislation that preserves or enhances the City's ability to govern locally and oppose legislation that reduces or restricts the City's local authority.

State Shared Revenues - Protect (and recover) state shared revenues to municipalities and oppose new legislation seeking to divert shared revenues away from municipalities.

TRANSPORTATION & INFRASTRUCTURE

Transportation - Advocate for additional funding to plan, build, preserve, modernize, and expand transportation and infrastructure projects that impact northern Arizona and our tribal partners. Support investments in clean transportation infrastructure, including public transit, electric vehicle charging, and bicycle/pedestrian infrastructure.

Resilience and Preparedness - Advocate for assistance to upgrade infrastructure to withstand catastrophic events such as flooding, storms, and forest fires.

Flagstaff Pulliam Airport – Protect the State Aviation Fund (similar to HURF) and emphasize the need to use funds for airport maintenance and operations. Discourage transfers out of the fund for non-aviation expenditures.

COMMUNITY INFRASTRUCTURE

Affordable Housing - Support legislation and seek funding in support of affordable housing, including the renewal of the Arizona Department of Housing (ADOH), renewal of the State Affordable Housing Tax Credit program, and funding for the Arizona Housing Trust Fund. Join cities across the state in prioritizing the creation of housing units while retaining local control in areas related to housing development.

Short-Term Rentals - Work with stakeholders supporting legislation to allow for local regulations over investor-owned residential properties used as short-term rentals and ensure equity with the hotel industry.

Rural Broadband - Support and encourage continuing state efforts to increase rural broadband access and capacity to encourage and develop economic activity, including allowing for remote education, business attraction, revenue creation, and the attraction of remote workers.

Fire Insurance – Support state level efforts to ensure affordable and accessible fire insurance coverage for Flagstaff residents, including efforts to reduce wildfire risk in both the natural and built environments that are aligned with the AZ Dept. of Insurance and Financial Institutions Resiliency and Mitigation Council.

ENVIRONMENT

Forest Health - Advocate for state and federal investments in wildfire risk reduction-based forest management across all lands in northern Arizona, complementing municipal efforts to protect our region. Invest state funding in important regional forest health projects across all lands while also reducing wildfire risk to the built environment. Advocate for collaborative prescribed fire policies that both increase acres treated and support the development of a technically skilled workforce.

Arizona Corporation Commission - Urge the Arizona Corporation Commission to preserve energy efficiency programs and renewable energy credits to protect critical resources that benefit Arizona households, businesses, workers, and ratepayers. Develop and strengthen relationships with Arizona Corporation Commissioners to increase awareness of these programs' economic and workforce development benefits.

Environmental Funding and Partnership - Support state funding and partnership opportunities to expand open space, parks, natural areas, trails, and wildlife corridor initiatives across northern Arizona. Support the restoration of funding to the Arizona State Parks Heritage Fund grant program for historic preservation. Promote the City’s dark skies program and strengthen relationships with regional partners such as the Arizona Department of Transportation to increase understanding of the City’s dark skies goals.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Shannon Anderson, Senior Deputy City Manager

Co-Submitter: Bethany Hyde, Police Detective

Date: 01/15/2025

Meeting Date: 01/21/2025

TITLE:

Consideration and Approval of Grant Agreement: Approve the Grant Agreement with State of Arizona Department of Public Safety for the Anti-Trafficking Grant Award of $428,658.00.

STAFF RECOMMENDED ACTION:

Approve the acceptance of the grant from the State of Arizona Department of Public Safety Anti-Human Trafficking grant funds in the amount of $428,658.00 for FY2024-2025.

Executive Summary:

The City of Flagstaff and Northland Family Help Center partnered together to submit a grant application to obtain funding for specialized human trafficking investigations, operations, and victim services. The City of Flagstaff was awarded $428,658.00 in grant funds from the State of Arizona Department of Public Safety for Anti-Human Trafficking. These grant funds provide for law enforcement services and programs that reduce human trafficking within the state as allowed by HB2897. The funding will be used to reimburse for expenses related to personnel, overtime, training, law enforcement special operations, equipment, and victim services. The grant provides $22,967 for victim services to be provided by Northland Family Help Center. Northland Family Help Center will oversee a coordinated community response to identified victims of human trafficking. The Director of Human Trafficking Services will provide victim advocacy and service coordination during law enforcement operations. The remaining $405,691 provided to the Flagstaff Police Department will include, one (1) Human Trafficking Detective, training to learn best practices and emerging trends in human trafficking investigations, two (2) Northern Arizona multi-agency operations, four (4) enforcement operations, and equipment necessary to support the operations. The Flagstaff Police Department will report statistical activity and progress on a quarterly basis with the Arizona State Department of Public Safety as described in Addendum 1 of the Agreement.

Financial Impact:

Project Name: Anti-Human Trafficking Grant Agreement
Cost: $428,658
Account Number Budgeted: 001-04-062-6278-2-4305
FY2024-25 Budgeted Amount: $350,000; No match required
Grant Funded: Yes
Funding Source: Arizona State Department of Public Safety

Policy Impact:

There is no policy impact by accepting this Anti-Human Trafficking grant.

Previous Council Decision or Community Discussion:

None.

Options and Alternatives to Recommended Action:

1. Approve the acceptance of the grant agreement and funding; or
2. Decline the acceptance of the grant agreement and funding.

Connection to PBB Priorities and Objectives:
Safe & Healthy Community: Enhance community engagement and strengthen relationships between the community and public safety; Support social services, community partners, and housing opportunities; Provide public safety services with resources, staff, and training responsive to the communities needs

Inclusive & Engaged Community: Enhance the City's involvement in community, education, and regional partnerships to strengthen the level of public trust

Connection to Regional Plan:
Goal PF.3: Provide high-quality emergency response and public safety services including law enforcement, fire, medical, and ambulance transport service.

Connection to Carbon Neutrality Plan:
None.

Connection to 10-Year Housing Plan:
None.

Attachments: Grant Agreement
Presentation

DPS Contract #_____

AGREEMENT REGARDING
ANTI-HUMAN TRAFFICKING

This Agreement is entered into between the State of Arizona through the Department of Public Safety, hereinafter referred to as "DPS", and the City of Flagstaff through the Flagstaff Police Department, hereinafter referred to as "FPD".

The purpose of this Agreement shall be to enhance law enforcement services and programs that reduce human trafficking within the state as allowed in HB2897 through the cooperative efforts of the parties to this Agreement.

DPS is authorized and empowered to enter into this Agreement pursuant to A.R.S. §41-1713 B.3.

Now, in consideration of the mutual promises set forth herein, the parties to this Agreement hereby agree to the following terms and conditions:

I. PARTICIPATION

This agreement provides Fiscal Year 2025 (July 1, 2024, through June 30, 2025) Anti-Human Trafficking funding up to $428,658.00 for personnel, overtime, training, law enforcement special operations, equipment, and victim services.

Quarterly, the FPD will report statistical activity and progress for agreed upon performance measures. Additionally, ongoing information exchange and intelligence sharing will occur between FPD and DPS.

II. REIMBURSEMENT

DPS agrees to reimburse FPD for personnel and overtime up to a total cost of $162,790. Training classes, conference registrations and travel will be funded in an amount of up to $17,600. Software and equipment to assist in providing services to victims of human trafficking will be funded in the amount of $84,169. Funding for victim's services will be reimbursed in an amount up to $22,967. Reimbursement for one detective vehicle and one unmarked surveillance vehicle including upfitting, fuel and maintenance will be funded up to $141,131.50.

Evidence of expenditures shall be provided by June 30 or as soon as practicable, for the fiscal year just ended. Quarterly statistical reports shall be provided on the same schedule as the expenditure information.

III. NON-AVAILABILITY OF FUNDS

Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the Agreement, this Agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages because of termination under this paragraph.

IV. NON-DISCRIMINATION

The Parties shall comply with Executive Order 2023-001, which mandates that all persons, regardless of race, color, religion, sex, age national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

V. INDEMNIFICATION

Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, agents, employees, or volunteers.

VI. RECORDKEEPING

All records regarding the Agreement, including officers' time accounting logs, must be retained for five (5) years in compliance with A.R.S. §35-214, entitled Inspection and Audit of Contract Provisions.

VII. FEES

In no event shall either party charge the other for any administrative fees for any work performed pursuant to the Agreement.

VIII. ARBITRATION

The parties to this agreement agree to resolve all disputes arising out of or relating to this agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes.

IX. EFFECTIVE DATE/DURATION

The terms of this agreement shall become effective upon the date the last signature is obtained, shall be retroactive to July 1, 2024, and shall expire on June 30, 2025. If funds are not allocated to support this agreement, DPS will provide written notice to FPD notifying them of termination of funding and cancellation of the Agreement.

X. CANCELLATION

All parties are hereby put on notice that this Agreement is subject to cancellation by the Governor for conflicts of interest pursuant to A.R.S. §38-511.

XI. TERMINATION

Either party may terminate the Agreement for convenience or cause upon thirty (30) days written notice to the other party. Upon termination, DPS shall pay all outstanding amounts up through the time upon which the termination becomes effective. All property shall be returned to the owning party upon termination.

Any notice required to be given under the Agreement will be provided by mail to:

Phil L. Case, Budget Officer
Arizona Department of Public Safety
P. O. Box 6638, Mail Drop 1330
Phoenix, Arizona 85005-6638

Sean Connolly, Chief of Police
Flagstaff Police Department
911 E. Sawmill Road
Flagstaff, AZ 86001

XII. VALIDITY

This document contains the entire agreement between the parties and may not be modified, amended, altered or extended except through a written amendment signed by both parties. If any portion of this agreement is held to be invalid, the remaining provisions shall not be affected.

The parties hereto have caused this Agreement to be executed by the proper officers and officials.

STATE OF ARIZONA

By: _____ Date: _____
Jeffrey Glover, Colonel
Director

CITY OF FLAGSTAFF

By: _____ Date: _____
(Insert Authorized Rep)

ATTEST:

By: _____ Date: _____
(Remove if not necessary)

Anti-Human Trafficking Grant

January 21, 2025

TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

Background

- Policy assessment completed in December 2022
- Began CEASE Designation Training in April 2023
- Shared implemented recommendations with Council in June 2023
- Applied for Anti-Human Trafficking Grant in coordination with FIAT in September 2024
- Awarded Grant in December 2024
- Preparing for kick-off FIAT Training in 2025

Anti-Human Trafficking Grant

- Awarded by Arizona Department of Public Safety
- Law enforcement services and programs to reduce human trafficking within Arizona
- Supported by HB2897
- $428,658 for fiscal year 2025-2026
  - $22,967 to Northland Family Help Center
  - $405,691 to Flagstaff Police Department

Northland Family Help Center

- Provide victim services
- Coordinated community response to identify victims
- Victim advocacy and service coordination during law enforcement operations

Flagstaff Police Department

- Human Trafficking Detective
- Training on best practices and emerging trends
- Multi-agency operations
- Enforcement operations
- Equipment and personnel to support operations

Council Discussion

TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: CJ Perry, Information Technology Director

Date: 01/15/2025

Meeting Date: 01/21/2025

TITLE:

Consideration and Approval of Contracts: (1) Design Build Services Contract, (2) City Conduit Lease Agreement, (3) City Fiber Network Maintenance Agreement, and (4) Fiber License Agreement, all with Wecom, LLC.

STAFF RECOMMENDED ACTION:

1. Approve (1) Design Build Services Contract, (2) City Conduit Lease Agreement, (3) City Fiber Network Maintenance Agreement, and (4) Fiber License Agreement, all with Wecom, LLC.
2. Authorize the City Manager to execute the necessary documents.

Executive Summary:

Following a competitive solicitation that was issued in 2024, the City selected to work with Wecom, LLC ("Wecom"), a leading internet service provider, to construct a City fiber network. On September 3, 2024 the City Council approved a Design Build Services Contract with Wecom for initial design. The Design Build Services Contract was not executed, however, as negotiations continued regarding a series of agreements.

City staff is proposing that the City Council consider approval of the following contracts with Wecom:

1. Design Build Services Contract:

- Wecom will design and construct a combined aerial and underground fiber network for the City to support critical municipal operations and enhance public services (City Network).
- The City Network will connect our City Facilities, our traffic signals, our water infrastructure, and other Smart City infrastructure with fiber.
- City will pay Wecom $2 million (City's cost to construct would be significantly more).
- City will lease excess conduit and inner duct capacity to Wecom as partial consideration.
- City will offer a credit against the annual license fee for a Fiber License Agreement as partial consideration.

2. City Conduit Lease Agreement:

- City will lease excess conduit and inner duct capacity to Wecom for 20 years.

3. City Fiber Network Maintenance Agreement:

- Wecom will maintain the City Fiber Network for 20 years.
- Wecom will assist with utility location markings for the City Fiber Network.
- City will reimburse Wecom if fiber is damaged due to City's own actions.

4. Fiber License Agreement:

- City is issuing a license to Wecom for use of the public rights-of-way for 20 years.

- Wecom will have the right to construct and operate a fiber network within City public rights-of-way.
- Wecom will not be required to build out the entire City at a set schedule.
- Wecom will pay an annual license fee equal to 2% of gross revenues from providing internet services.
- Wecom will receive a credit against the annual license fee during the initial years of the license term.

Financial Impact:
Project Name: Fiber and Broadband
Direct Cost: $2,000,000
Account Number Budgeted: 001-09-402-6321-1-4407 and 001-01-014-0044-1-4407
Additional Financial Impact and Consideration:

- Reduced revenues from right of way license agreement. There will be no fees for the first 3 years. This will step up to 1.5% of gross revenues over the next 7 years. Finally, after year 10, it will step up to the full 2% of gross revenues.
    - There is a provision in the contract that, should micro-trenching be approved in our City Code prior to the community fiber build, Wecom would step immediately to the 2% of gross revenues.
- This agreement includes a 20-year emergency maintenance agreement where Wecom will fix broken City fiber at no charge to the City.
- Should the City attempt to build this network separately and at our own expense, we estimate it could cost as much as $20 million. There are significant savings to both Wecom and the City in sharing construction costs and collocating infrastructure in existing conduits.

Policy Impact:
None

Previous Council Decision or Community Discussion:
City Council has allocated ARPA funding and General Fund funding over the past several years for the specific purpose of bringing fiber and better broadband access to the community. This aligns with those goals.

On September 3, 2024 City Council approved award of a Design Build Services Contract to Wecom (which was not executed due to continued negotiations after such date).

Options and Alternatives to Recommended Action:
1. Approve Contracts as proposed.
2. Do not approve one or more of the Contracts as proposed, and direct staff to negotiate different terms.
3. Approve Fiber License Agreement only, but with no credit against the annual license fee, and direct staff to negotiate different terms for the other Contracts and/or a different credit against the annual license fee. Approving the Fiber License Agreement would allow Wecom to begin seeking permits to work in the public rights-of-way.

Background and History:
On January 27, 2024 and February 3, 2024, a Request for Statements of Qualifications (RSOQ) for Fiber Network Provider services was published in the Arizona Daily Sun and was posted on the Purchasing PlanetBids web site on January 15, 2024. On March 15, 2024, the City of Flagstaff received three Statements of Qualifications that were responsive to the requirements of the RSOQ for providing Fiber Network Provider services for this project. A selection committee of six members independently reviewed and evaluated those statements in accordance with the evaluative criteria established in the RSOQ. The evaluation committee consisted of City staff and local professionals. Based on numerical evaluation of the statements received, WeCom received the highest ranking and was deemed the most qualified among those submitting proposals to provide Fiber Network Provider services. The selection committee final scores were:
WeCom - 506
Allo - 411
Entry Point - 350

Connection to PBB Priorities and Objectives:
High Performance Governance
Sustainable and Innovative Infrastructure
Robust and Resilient Economy

Connection to Regional Plan:
While this project doesn't directly support the Regional Plan, it is needed for connectivity of much of the results of the Regional Plan being implemented.

Connection to Carbon Neutrality Plan:
Better internet would allow for more remote work capabilities, which can reduce miles driven.

Connection to 10-Year Housing Plan:
N/A

Attachments:
Council Presentation
Design Build Services Contract
Design Build Contract Att A Addtl Map
Design Build Contract Att A Traffic Signals Map
City Conduit Lease
City Fiber Network Maintenance Agreement
Fiber License Agreement
City of Flagstaff Locations



Wecom Fiber

Design/Build

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TEAM FLAGSTAFF

WE MAKE THE CITY BETTER

Wecom Fiber

Multiple Agreements

- Right of Way License Agreement

- City of Flagstaff Fiber Design/Build
  - Conduit Lease Agreement
  - Fiber Maintenance Agreement

Wecom Fiber

Right of Way License Agreement

- Standard form for use of our right of way for Fiber Internet

- Standard License Fee
  - 2% of gross revenues

Wecom Fiber

City of Flagstaff Fiber Design/Build

- Result of a competitive RSOQ
- Build a City Network for our Facilities, Traffic Signals and Infrastructure
- Synergies with a community fiber build

Wecom Fiber

City of Flagstaff Fiber Design/Build

- Financial Terms
  - $2,000,000 provided by the City
  - 20-year lease of excess City conduit
  - Reduced ROW license fee
    - No fee for first 3 years
    - 1.5% fee for next 7 years
    - 2% after that

Wecom Fiber

City of Flagstaff Fiber Design/Build

- What the City gets
  - City-owned fiber to all City Facilities except the Landfill
  - Wecom will provide emergency maintenance on City fiber

- Fiber to the home and business in our community

Wecom Fiber

Multiple Agreements

- Right of Way License Agreement

- City of Flagstaff Fiber Design/Build
  - Conduit Lease Agreement
  - Fiber Maintenance Agreement

WECOM LLC
FIBER NETWORK

PROJECT NUMBER: 2024-15

RSOQ NO.: 2024-125

DESIGN-BUILD SERVICES CONTRACT

Mayor
Becky Daggett

Council

Austin Aslan — *Lori Matthews*
Anthony Garcia — *David Spence*
Khara House — *Miranda Sweet*

City Manager
Greg Clifton

IT Director
CJ Perry

City Engineer
Paul Mood

Public Works Director
Scott Overton

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FIBER NETWORK

DESIGN-BUILD CONTRACT
PROJECT NO. 2024-125

CONTRACT NO. 2024-125

THIS AGREEMENT, made and entered by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation, hereinafter designated the "CITY" and Wecom LLC, a Delaware limited liability company, hereinafter designated the "DESIGN-BUILDER."

RECITALS

A. The City has authority to enter into this Contract pursuant to the Flagstaff City Charter, Article VIII, Sec. 2;

B. In January 2024 the City issued a Request for Statement of Qualifications ("RSOQ), Solicitation No. 2023-64/2024-125 for the design and construction of a Fiber Network for City use along with a network throughout the City for the benefit of the community, and offering $2 million in funding, use of excess capacity in existing City conduit, and other like kind contributions in exchange;

C. In March 2024, Wecom LLC submitted its response to the solicitation, consisting of its qualifications and a proposal, and the City has determined its response is the most advantageous for the City;

D. The parties desire to enter into this Contract with the understanding that the design of the Fiber Network for City use shall be completed first, and that the terms and conditions related to construction of the Fiber Network and service throughout the community are subject to further negotiation and must be approved as amendments to this Contract (Exhibit A and Exhibit B shall be updated as the Project moves forward).

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" means 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 said Contract. Regulatory activities handled by the City of Flagstaff Community Development Department, Utilities Department or any other City Department are not subject to the responsibilities of the City under this Agreement.

"City's Representative" means the person designated in section 8.4.1.2.

"City's Senior Representative" means the person designated in section 8.4.1.1.

"Commissioning" means the process prescribed in section 2.21 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 section 2.8.

"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 forth in Article 5, subject to adjustment in accordance with this Agreement.

"Contract Time" means the period of time, as set forth in Article 4, 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 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 products 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 sections 5.3.3.4 and 5.3.3.6.

"Design-Builder’s Senior Representative" means the person designated in section 8.4.2.1.

“Design-Builder’s Representative” means the person designated in section 8.4.2.2.

“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 section 4.4.

“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 section 5.3.4.

“Payment Request” means the City form used by the Design-Builder to request payment for Work in accordance with Article 7.

“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 section 2.4.

“Record Documents” means the documents created pursuant to section 2.19.

“Recovery Schedule” means a schedule created pursuant to section 2.4 generally, and section 2.4.5.9 specifically, 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, Subsubcontractor, 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

2.0 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.

2.1.1.1 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.

2.1.1.2 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.

2.1.2 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.

2.1.3 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.

2.1.4 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 section 2.1.2.

2.1.5 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 section 4.1 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 Article 7 of this Agreement.

2.4.3.1 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).

2.4.3.2 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

2.4.1 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.

2.4.1.1 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.

2.4.5 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.

2.4.5.1 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.

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

2.4.5.3 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.

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

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

2.4.5.6 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.

2.4.5.7 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.

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

2.4.5.9 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.

2.4.6 Float time shall be as prescribed below:

2.4.6.1 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.

2.4.6.2 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.

2.4.6.3 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.

2.5Cost 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, which is a fixed fee.

2.5.2 With each Project Schedule submittal pursuant section 2.4.3, the Design-Builder shall provide a detailed cost estimate and a written review of the documents ,to enable City understanding of costs and progress payments.

2.5.2.1 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.

2.5.2.2 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.

2.5.3 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.

2.8.1.1 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.

2.8.1.2 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.

2.8.1.3 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.

2.8.1.4 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.

2.8.1.5 Design-Builder shall not cause the design to proceed until City approves the interim design submissions as prescribed in this section. If the Design-Builder allows the design to proceed without City approval, the cost of any resultant redesign is not a reimbursable cost.

2.8.1.6 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.

2.8.2 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.

2.8.3 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 section 2.8.2 above 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.

2.8.4 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.

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

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

2.8.7 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.

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

2.8.8.1 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.

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

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

2.8.8.4 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 section.

2.8.8.5 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 on electronic media; and
- Five sets of specifications on electronic media.

2.8.9 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 section 2.10.3 above.

2.10.5 Design-Builder 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 selection (such competitive selection process may have occurred prior to the effective date of this Contract and may take into account regional work efficiencies). Design-Builder shall provide documentation to the City Procurement Director demonstrate that it has completed a competitive selection process.

2.11.1.1 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.

2.11.2 The Design-Builder will submit the names of qualified Subcontractors for approval by the City. Without prior approval by the City, no change in the City-approved Subcontractors will be allowed.

2.11.2.1 Reserved.

2.11.2.2 If the City objects to any Subcontractor the Design-Builder will nominate a substitute Subcontractor.

2.11.2.3The Design-Builder will distribute drawings and specifications, and when appropriate, conduct a prebid conference with Subcontractors.

2.11.2.4 Reserved.

2.11.3 Reserved.

2.11.4 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, 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. 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 Contractor 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 (which may be a high-level employee of the Subcontractor) shall at all times be present at the Site when construction activities are taking place.

2.14.1.1 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.

2.14.1.2 In the event of noncompliance of this section 2.14, 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.

2.14.2 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.

2.14.3 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.

2.14.4 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 section.

2.14.5 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.

2.14.6 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 to insure 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 section 4.2 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 City may require independent laboratory testing of materials, methods or other construction related items at its expense.

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.

2.19.1.1 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.

2.19.1.2 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.

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

2.19.1.4 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.

2.19.1.5 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.

2.19.2 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:

2.19.2.1 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.

2.19.2.2 On hard copy media: (i) a complete set of reproducible mylars 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.

2.19.2.3 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 section 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 section 2.7.

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 year, except for such greater periods as may be required by the technical specifications.

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 section 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 section 2.22 hereof. 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 Sections 2.22 and/or 2.23 above 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 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 section 8.4.1.2 shall be responsible for providing City-supplied information and approvals in a timely manner 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.

3.1.4 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; and

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.

3.3Field 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 section 2.17.

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.

3.3.2.1 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.

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

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

3.3.3 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.

3.5Project Management Services (if applicable to this Project)

3.5.1 The City at its own expense may contract separately with one or more technical consultants to provide project management assistance of the Project. The technical consultant's contract as well as the contract of any other firms hired by the City shall be furnished to the Design-Builder. The Design-Builder shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and technical consultant.

3.5.2 The technical consultant services**, if any,** will augment the City staffing resources to effectively

manage the objectives of the City and this Project with the goal of managing the key project communication, cost and time parameters. The City and the Design-Builder shall endeavor to communicate through the technical consultant.

3.5.3 The technical consultant may provide preprogramming and design standards.

3.5.4 The City may contract with the technical consultant to provide some or all of the following services during the performance of the construction:

3.5.4.1 Oversight of the construction.

3.5.4.2 Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed construction and to determine in general if the construction is being performed in accordance with the Construction Documents. The technical consultant will keep the City informed of progress of the construction, and will endeavor to guard the City against defects and deficiencies in the construction. The technical consultant may have authority to reject construction which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with section 2.17.

3.5.4.3 Review and recommend approval of the Design-Builder's Payment Requests.

3.5.4.4 Interpretations of matters concerning performance under and requirements of the Contract Documents on written request of the City. The technical consultant's response to such requests will be made with reasonable promptness and within any time limits agreed upon.

3.5.4.5 Analyze, recommend and assist in negotiations of Change Orders.

3.5.4.6 Conduct inspections to determine Substantial Completion and Final Acceptance.

3.5.4.7 Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the Design-Builder.

3.5.5 Commissioning Services**.** The technical consultant may supervise and/or participate in the Commissioning activities.

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 section 2.8.

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 Article 4 or by amendments to this Agreement shall be subject to adjustment in accordance with Article 6.

4.2 Construction Schedule. Each approved GMP proposal shall include a Project Schedule as prescribed in section 2.4 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 Article 1 and with the criteria set forth in the Notice to Proceed.

4.3.2 Prior to notifying the City in accordance with section 4.3.3 below, 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 section 4.3.5 above, (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 section 4.3.5. 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 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) 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. Liquidated damages are specified in MAG specifications and will only apply to construction schedules approved by a Contract amendment.

4.6 **Liquidated Damages – Final Completion.** Design-Builder understands that if Final Completion is not attained within the time allowed in section 4.4 above, 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 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. Liquidated damages are specified in MAG specifications and will only apply to construction schedules approved by a Contract amendment.

ARTICLE 5 – CONTRACT PRICE

5.1 Contract Price.

5.1.1 The Contract Price will be the amounts prescribed in section 5.2 below plus GMPs and Owner's Contingency.

5.1.2 The Contract Price is subject to adjustments made in accordance with Article 6 and by amendment.

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

5.1.2.2 If the GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

5.1.3 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 USGS Renovation and Additions 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 shall be based upon the approved cost proposals for each phase of the Project or amendment to this Contract and shall be attached hereto as Exhibit B.

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 section 5.3.3.

5.3.2 The Design-Builder guarantees to bring the completion of the design and construction within the GMP or Design-Builder alone will be required to pay the difference between the actual cost and the GMP.

5.3.2.1 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.

5.3.2.2 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.

5.3.3 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 sets of the approved sealed design submittal to be used to establish the GMP.

5.4.1.1 The Design-Builder shall sign and date the face of each document of each set used as the basis of

the proposed GMP.

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

5.4.2 The GMP proposal shall include:

5.4.2.1 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;

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

5.4.2.3 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;

5.4.2.4 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.

PROJECT GMP PROPOSAL SUMMARY SHEET

PROFESSIONAL SERVICES				
	Professional Services			$
	Reimbursables			
	Construction Administration			
			TOTAL PROFESSIONAL SERVICES	$
CONSTRUCTION				
	Cost of the Construction (Labor, Materials, Equipment, Warranty)			$
	Design-Builder's Contingency			
	Indirect Costs		RATE	AMOUNT
	General Conditions, Total		%	$
	Payment and Performance Bond	$	%	
	Insurance	$	%	
	Construction Fee (overhead & profit)		%	$
	Sales Taxes		%	$
			TOTAL CONSTRUCTION COST	$
			Owner's Contingency	$
			GRAND TOTAL	$2,000,000.00

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

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

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

5.4.2.8 A statement of proposed additional services, if any.

5.4.2.9 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 section only.

5.4.2.10 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 section 2.10. However, a detailed estimate of all anticipated direct costs for permits, fees, inspection and testing shall be attached to the GMP.

5.4.2.11 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.

5.4.2.12 A Project Schedule as prescribed in section 4.2 and establishing the Performance Period and the Scheduled Substantial Completion Date.

5.4.2.13 The updated CMP as prescribed in section 2.7.

5.4.2.14 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 section, 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 section, 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 may be reasonably extended by Change Order.

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

6.1.2.1 In the case of a continuing delay only one 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 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, 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 section, Design-Builder may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this section that are beyond the control of both Design-Builder and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

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 Article 6.

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 section 2.8 and 5.4, Design-Builder will be paid 100% of the amount for Design Services less the total of payments previously made, subject to section 7.1.1.

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 section 2.13.5, 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 **Fri**day.

7.2.3 At least five (5) working Day**s pr**ior to the date establ**ishe**d for a Payment Request, the Des**ign-**Builder shall submit an updated Project Schedule and meet with the City's Representative to review **th**e 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. 34607 such that payment will be made no later than fourteen Days after Payment Request is certified and approved. City shall review Payment Request and make recommendation of approval or denial within seven 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 section 7.3.2 below.

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 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 Article 8 hereof.

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 Department by calling (928)779-7685 x7267.

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 section 4.4.

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 regularly in accordance with the terms of the contract with its Subcontractors or Suppliers and in accordance with law.

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 section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this section 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 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 nonprevailing 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 Representatives

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 section 8.2.3:

CJ Perry, Chief Information Officer
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001

8.4.1.2 City designates the individual listed below as its City's Representative, which individual has the authority and responsibility set forth in section 8.2.2:

CJ Perry, Chief Information Officer
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001

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8.4.2 Design-Builder's Representatives

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 section 8.2.3:

Name, Title Paul Fleming CEO
Company Name Wecom LLC
Address 3028 E. Sunset Rd.
City, State, Zip Code Las Vegas, NV 89120

8.4.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in section 8.2.2:

Name, Title Clint Wiley COO
Company Name Wecom LLC
Address 3028 E Sunset Rd.
City, State, Zip Code Las Vegas NV 89120

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.

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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.

9.2.2.1 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.

9.2.2.2 The Design-Builder shall receive compensation for services performed to the date of such termination as set forth in section 9.2.5. The fee shall be paid in accordance with Article 7 of 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 Article 8.

9.2.2.3 Design-Builder shall not be entitled to anticipated profit or anticipated overhead. In no event shall the fee exceed that set forth in Article 5 of this Agreement or as amended.

9.2.2.4 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.

9.2.2.5 If City terminates this Agreement pursuant to this section 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 section 12.4 hereof.

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

9.2.3.1 Stop Work as specified in the notice.

9.2.3.2 Place no further subcontracts or orders.

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

9.2.3.4 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.

9.2.3.5 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.

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

9.2.5 The City shall pay Design-Builder the following.

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

9.2.5.2 The reasonable costs and expenses attributable to such termination.

9.2.5.3 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.

9.2.6 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 section 7.8.

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 sections 9.3.3 and 9.3.4 below.

9.3.3 Upon the occurrence of an event set forth in section 9.3.2 above, 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 section 9.3.3.2 above, 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 section 9.2.

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 <u>Professional Liability</u>

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.

Builders' Risk Insurance or Installation Floater shall be set forth in an amendment to this Agreement which calls for construction of the Project.

10.2.5 Builders' Risk Insurance or Installation Floater $_____
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 Contracts Division. 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:

- 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. Design-Builders' certificate(s) shall include all Subcontractors as additional insureds under its policies. All coverage's 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 Sections 11.1.2 and 11.1.3 above shall 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 section 11.1 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 Attorney's 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.

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.

ARTICLE 12 - GENERAL PROVISIONS

12.1Interpretation 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 Article 1. 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.

12.2Time 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.

12.3Mutual 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 Where Design-Builder Wecom is building a parallel network for both Wecom and the City Fiber Network, Design Builder shall retain ownership of all Work Products but City shall have a license to use and inspect the Work Product for its City Fiber Network. 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). In all locations where Design-Builder constructs City Fiber Network that is standalone, the Work Products 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 section 9.2.1. 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 Design-Builder shall retain the copyright in the plans and specifications for the parallel network. Design-Builder shall provide City with a complete set of the plans and specifications prepared under this Agreement for the City Fiber Network and these shall become personal 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, and City shall have a perpetual license to use such plans and specifications for its City Fiber Network purposes. City will not reuse the plans and

specifications for any other project 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 section 12.4.1 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 Many 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**
Patrick Brown, C.P.M. **Procurement Director** **211 W. Aspen Ave** **Flagstaff, AZ 86001**	**Wecom LLC** **Paul Fleming - CEO** **3028 E. Sunset Rd** **Las Vegas, NV 89120**
With a copy to: **City Attorney** **211 W. Aspen Ave** **Flagstaff, AZ 86001**	**Wecom General Counsel** **3028 E. Sunset Rd** **Las Vegas, NV 89120**

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 section 8.4 with a copy to:

Patrick Brown, C.P.M.
Procurement Director
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.

12.13Amendments. 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.

12.14Equal Opportunity/Affirmative Action

12.14.1 The Design-Builder shall comply with the provisions of this Agreement, including the requirements of Article 1-150 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, jobconsultant 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 Minorityowned or Womanowned business to reflect both the industry and community ethnic composition.

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.

12.15Compliance 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.

12.16Independent 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.

12.17City'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 Section 38511, Arizona Revised Statutes.

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 Design-Bulder and licensed for perpetual use 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;

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 section 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.

12.19 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 section, 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 section 8.4.1.1.

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 section 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. Section 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 may be granted in accordance with Article 6.

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 section 12.22, 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 section 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.

12.23.1 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 inquires 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.

12.23.2 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.

12.23.3 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.

12.23.4 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.

12.23.5 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.

12.24 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.

12.25 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.

12.26 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.

12.27 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.

12.28 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.

12.29 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
Attachment A – Additional Map, Traffic Signal Map, List of Connections (Excel Spreadsheet)

12.30 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.

12.31. No Boycott of Israel. Pursuant to A.R.S. §§ 35-393 and 35-393.01, the Parties certify that they are not currently engaged in and agree, for the duration of the agreement, not to engage in a boycott of Israel.

FIBERT NETWORK
DESIGN-BUILD CONTRACT
PROJECT NO. _____

CONTRACT NO. 2024-125

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their undersigned authorized representatives.

CITY OF FLAGSTAFF, ARIZONA, an Arizona Municipal Corporation	Wecom, LLC a Delaware limited liability company
By: _____ Mayor	By:_____
Date: _____	Date: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

PROJECT DESCRIPTION: DESIGN PHASE

Dated: January 21, 2025

1. **Project Phase**: Design of a Fiber Network for City.

2. **Project Description**: The design is generally described as follows:

   2.1 Construction Path

   Construction will generally follow the City's desired path for conduit listed on the below map in Section 3.2 as aerial and underground fiber in red and blue. While some minor deviation from these exact paths is anticipated, the overall intent of the plan, including loops for redundancy, is expected. Specific conduit placement or deviations may be approved by the City.

   City-owned Old Castle PolyCon 17X30 T15/T22 (or 30x48 T22) pull boxes (or similar) will be required at every intersection or street crossing in which the city needs to access the City-owned fiber network. Specific placement or deviations may be approved by the City Engineer.

   The Arizona Department of Transportation ("ADOT") owns and manages key roads that run through the City of Flagstaff: Highway 89A/Milton Road/E. Route 66, Highway 180. Interstate 40. Any network constructed within the ADOT public right-of-way will need to meet ADOT requirements. Design-Builder shall meet with ADOT and coordinate any ADOT desired connections to traffic signals or facilities at ADOT's expense.

   A portion of the City Fiber Network may cross BNSF property. Design-Builder shall meet with BNSF Railway Company ("BNSF") and at no cost to City coordinate with and obtain permissions from BNSF where paths cross BNSF property. Permissions shall list City as a separate licensee or grantee for a period of at least 20 years.

   A portion of the City Fiber Network may cross U.S. Forest Service ("USFS") land. Design-Builder shall meet with USFS real estate department and at no cost to City coordinate with and obtain permissions from USFS where paths cross USFS property. Permissions shall list City as a separate licensee or grantee for a period of at least 20 years.

   The design identifies portions of the paths that are aerial and underground.

   Design-Builder will keep records of all pole attachment agreements and provide to the City upon request. Design-Builder will coordinate with and at no cost to City obtain permissions from Arizona Public Service Company, Lumen, and/or other pole owners. Permissions shall list City as a separate licensee or grantee for a period of at least 20 years. .

   2.2 Connections

   Construction design provides for dark fiber connection to 34 points of interest and 45 traffic stoplights as listed on **Attachment A** and as further shown on the construction maps.

Construction design also provides for connection to existing City conduit as identified in the below map at Section 3.2. Design-Builder will test dark fiber strands and provide test results to the City.

2.3 City Fiber Network Specifications

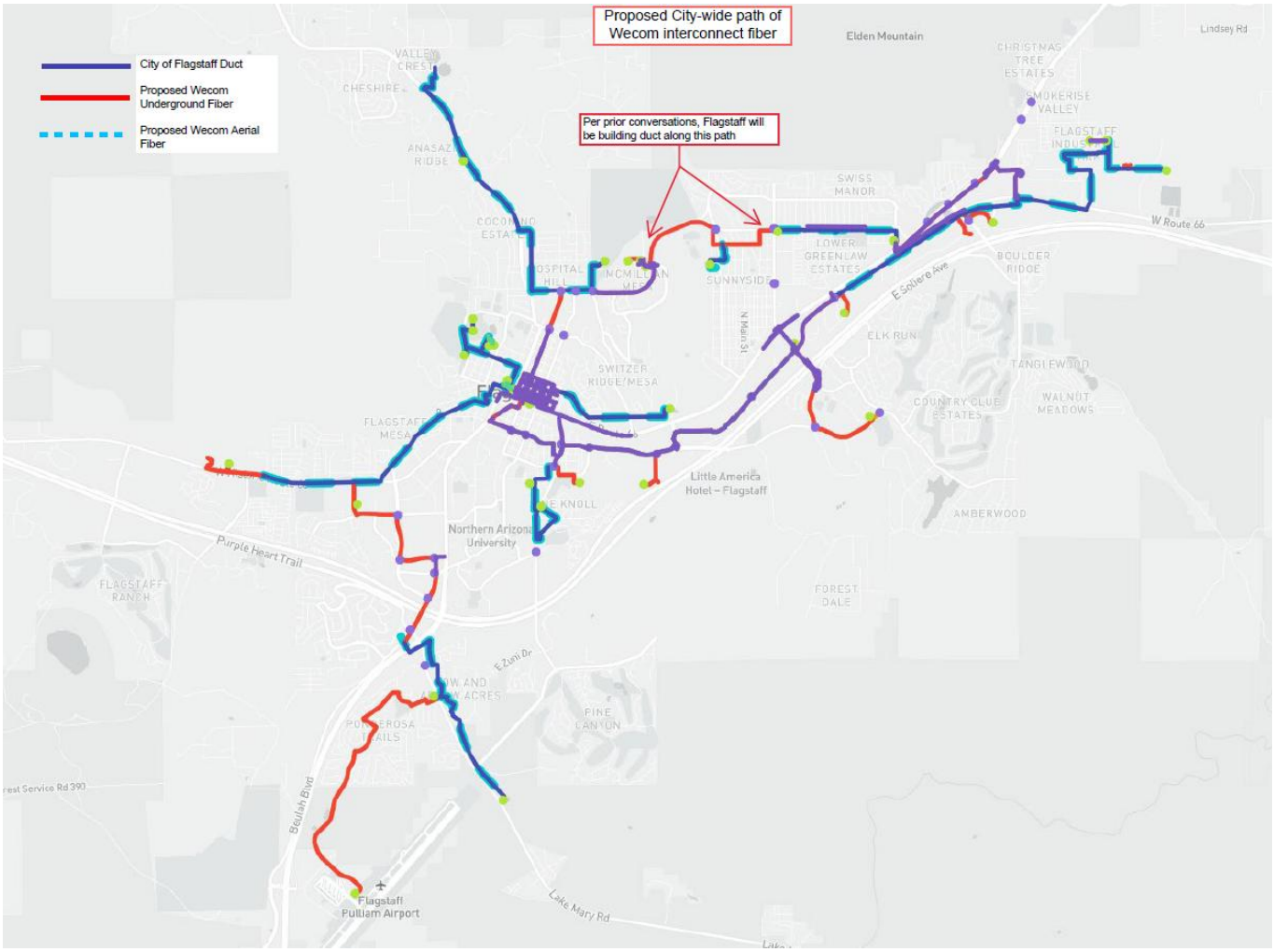
- Construction will provide for minimum Corning SST Ribbon Single Tube Gell Free 144F (144 count fiber) single mode strand bundles or similar (with city approval aerial sections can use 24 count fiber) and qty 2-of Duraline 1.25" or larger duct SDR 13.5 smoothwall. All major arteries of the municipal network will be constructed with qty 2 of 1.25" duct. Only approved fiber off shoots (approval will be requested during permitting) can be built with two 14-18 mm microduct via microtrenching.
    - Note: With City approval qty 1 – 2 inch duct can replace the qty 2 – 1.25" ducts
- City requires locator wires in innerducts for Blue Stake purposes.

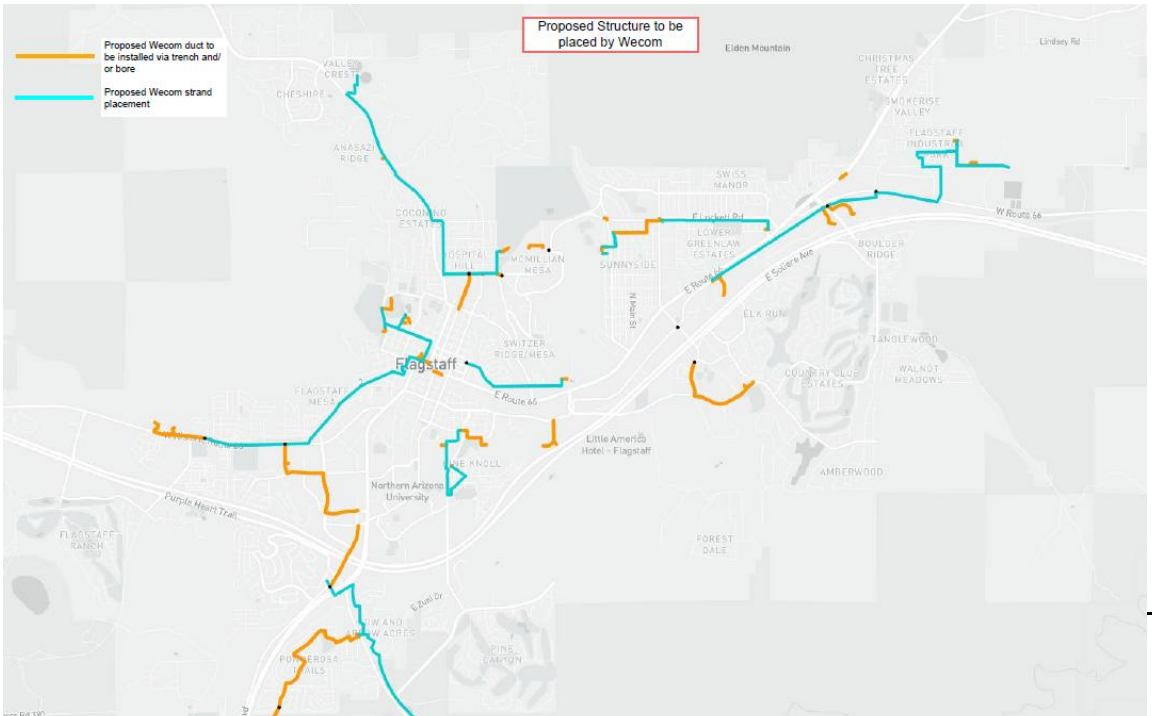
3. Design-Builder Construction Plan

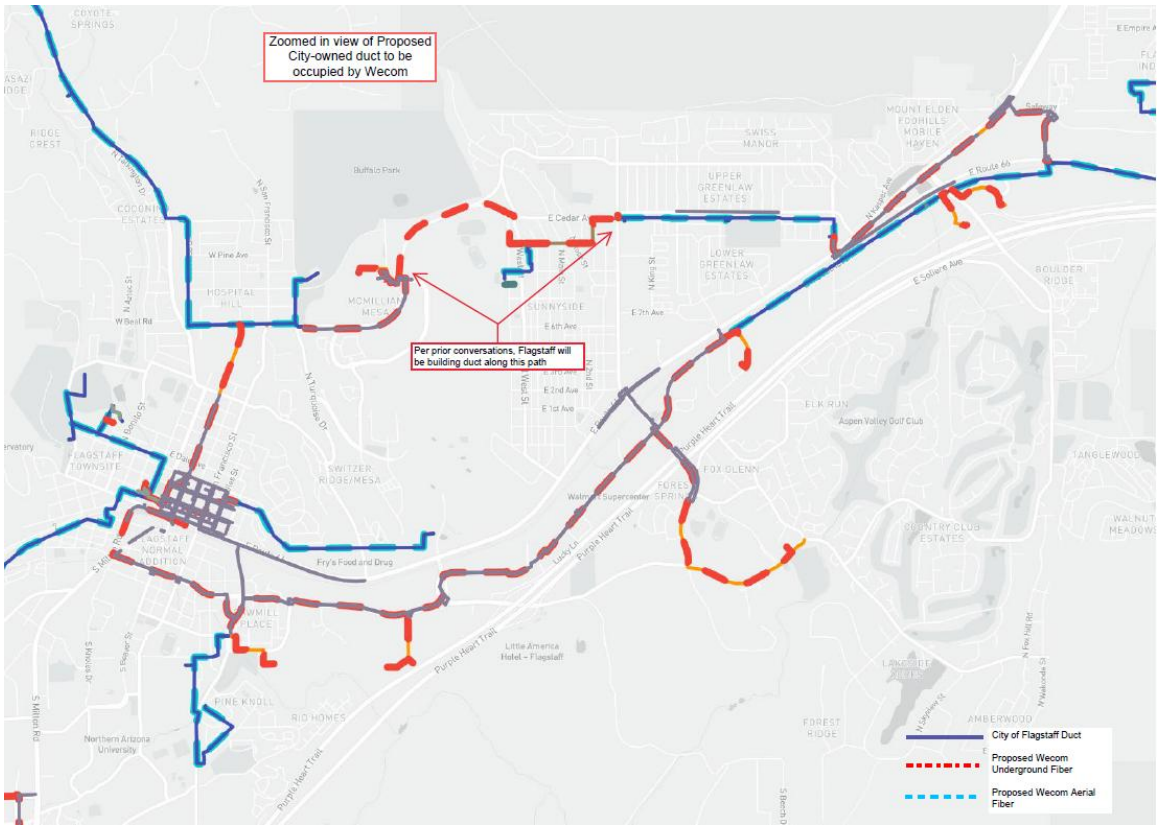
3.1 City Conduit/Fiber Model

- The City Fiber Network was designed with Design-Builder's Vetro planning software.
- New innerduct in the map below is (qty 3) 1.25" (minimum) HPDE SDR 13.5 d - one for Design-Builder and two for the City. All major arteries of the municipal network will be constructed with qty 2 of 1.25" duct. Only approved fiber off shoots (approval will be requested during permitting) can be built with two 14-18 mm microduct via microtrenching.
    - Note: With City approval qty 1 – 2 inch duct can replace the qty 2 – 1.25" ducts
- Old Castle PolyCon 17X30 T15/T22 (or 30x48 T22) pull boxes are placed at each corner, underground splice locations, and required pull boxes are placed along the new route.

3.2 Construction Maps


Proposed City-wide path of Wecom interconnect fiber
City of Flagstaff Duct
Proposed Wecom Underground Fiber
Proposed Wecom Aerial Fiber
Per prior conversations, Flagstaff will be building duct along this path
Elden Mountain
Lindsey Rd
W Route 66
E Sollere Ave
N Main St
Little America Hotel – Flagstaff
Northern Arizona University
Purple Heart Trail
E Zuni Dr
Beulah Blvd
Flagstaff Pullliam Airport
Lake Mary Rd


Proposed Structure to be placed by Wecom
Proposed Wecom duct to be installed via trench and/ or bore
Proposed Wecom strand placement
Elden Mountain
Lindsey Rd
W Route 66
E Sollere Ave
N Main St
Flagstaff
E Route 66
Little America Hotel – Flagstaff
Northern Arizona University
Purple Heart Trail
E Zuni Dr



3.3 Details on City-owned infrastructure

City shall own the following infrastructure:

- The conduit.
- The duct (innerduct) shall be minimum (2 quantity) 1.25” HPDE SDR 13.5, orange in color with tracer wire (or with approval a single 2-inch duct).
- One new innerduct will be installed for the City and the other innerduct shall be owned by the Design-Builder. Design Builder has planned minimum 1.25” innerduct.
- City owned fiber shall be Corning SST-Ribbon Single- Tube, Gel-Free, Armored Cable 144 F, single mode (OS2). (or similar). 24 count fiber on aerial sections can be used with City approval.
- The City owned fiber network will be dark, and will be lit by the City and City owned electronics (managed, purchased, and installed by the City).
- If City Code is updated to allow for microtrenching, City in its sole discretion may approve fiber off shoots (approval will be requested during permitting) and built with

two 14-18 mm microduct via microtrenching.

3.4 Attachments to this Exhibit A-1

- Attachment A - COF Traffic Signals Map – xls Address List

3.5 Shape Files

- Design-Builder to make shape files available to City.

3.6 Conduit and Cable lengths

All cable, strand, and conduit lengths are estimates and subject to change (lengths will be reconciled with final design).

- Design Builder use of City of Flagstaff owned Fiber = Not planned at this time. Design Builder will work with the City if this need changes, and if agreed upon, will be identified in a separate City Conduit Lease Agreement.
- Design Builder use of City of Flagstaff owned Conduit= Yes (both present and future planned City owned duct), as agreed upon and identified in a separate City Conduit Lease Agreement.
- Strand and aerial fiber to be placed for City Network ~101,708 linear ft - new construction by Design Builder.
- Duct with underground fiber placed by Design Builder for City Network ~ 54,060 linear ft- new construction by Design Builder.
- Underground fiber placed in City-owned duct for City Network ~ 47,648 linear ft- Design Builder will be placing fibers in the City-owned duct (both present and future planned City owned duct as shown on map).

EXHIBIT B
SCOPE OF SERVICES: CONSTRUCTION PHASE

Dated: January 21, 2025

1. **Project Description:** The project description for the construction phase.

2. **Deliverables for Construction Phase:**

- Design specifications for City Fiber Network (to include conduit, fiber, facilities, pull boxes, construction standards that meet Legal Requirements (see Definitions). Design to identify the general location of pull boxes, and City Fiber Network in public right-of-way (e.g. street crossings, middle/side/shoulder of road etc.). As-builts will be required at completion of construction.
- All initial construction documents and as built documentation will be submitted for

permitting and copies sent to the IT department and/or City Engineer for records.

- Manufacturer specifications and warranties for materials.
- Map showing all points of connection (34 points of interest and 45 traffic lights), and all points of connection to existing City conduit as approved by City.
- Fiber testing documentation will be provided to the City.
- Fiber splicing documentation / mapping will be provided to the City.
- Copies of all permits and pole usage agreements naming City as licensee or grantee will be kept by Design Builder. Copies shall be provided to City upon Design Builder's receipt of such documents, and in future years shall be provided to City upon request.
- Shape files for all City Owned network builds will be provided to the City.
- Construction plans to identify all underground locations, which may include boring and trenching locations, and aerial locations of the City Fiber Network.
- Construction plans to provide for phasing of construction in coordination with City Capital Improvement Projects (Buffalo Park Reclaimed Water Line, Butler-Fourth Improvements, Cedar-Fourth Street-Lockett Roundabout, First-Mile Last-Mile, and Lone Tree Overpass)

EXHIBIT B CONTRACT PRICE

City shall pay Design-Builder an amount not to exceed $2,000,00.00 (Two Million U.S. Dollars) in cash plus in-kind contributions in exchange for Design-Builder goods and services as detailed below for the Project services described in Exhibit A and Exhibit B.

As additional consideration for the Design-Build Contract services, City and Design-Builder are entering into the following separate agreements that provide for financial consideration and in-kind contributions:

Fiber License Agreement dated January 21, 2025 (including a credit against the license fee);
City Conduit Lease Agreement dated January 21, 2025;
City Fiber Network Maintenance Agreement dated January 21, 2025.

EXHIBIT C – PERFORMANCE STANDARDS REQUIREMENTS

To be included with this Agreement after initial programming session with client group and Design-Build team.

EXHIBIT D – MONTHLY ANTICIPATED ADVERSE WEATHER DAYS

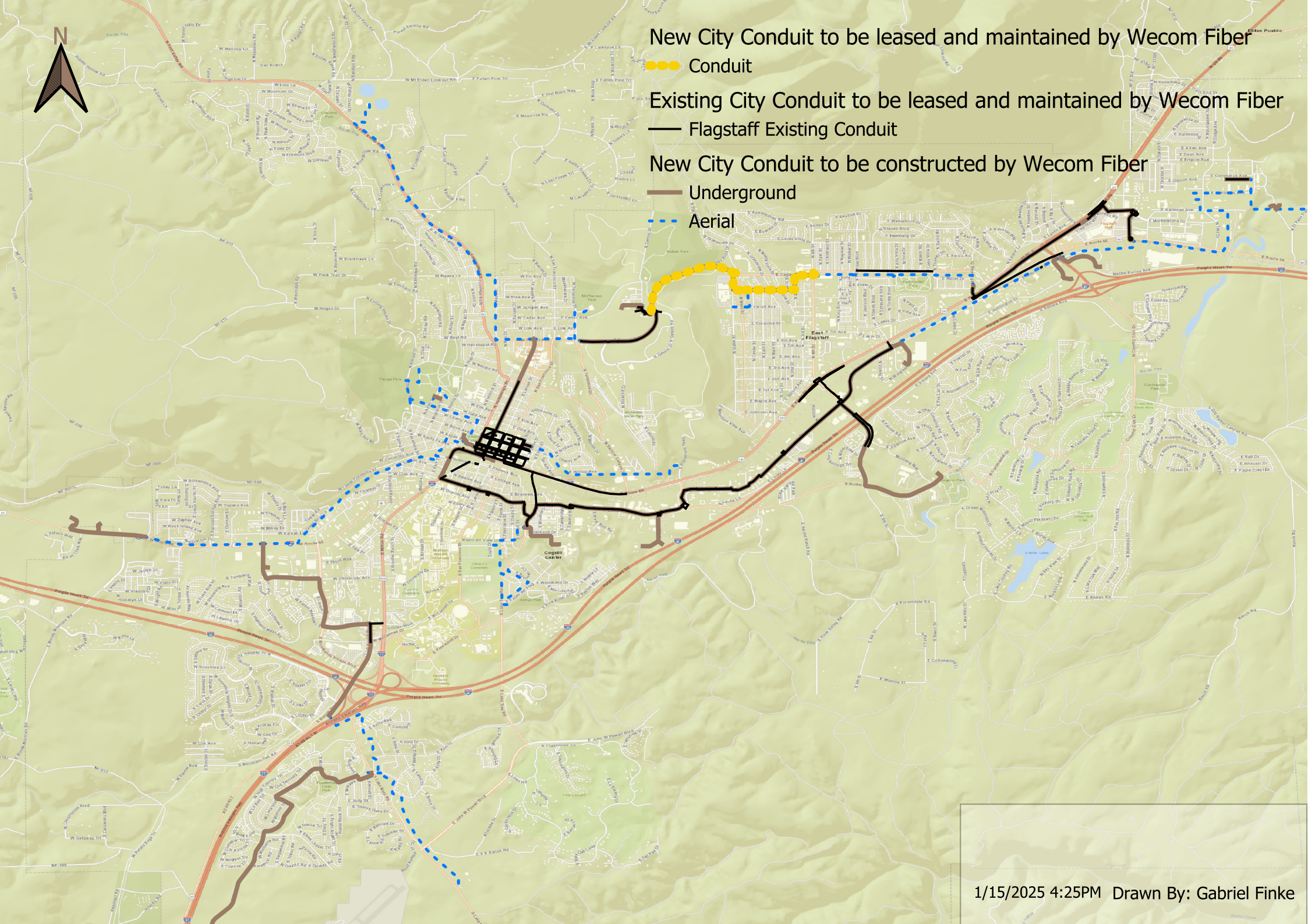
The Contractor will be entitled to a Contract Time extension if the actual adverse weather Days experienced during the Work exceed the anticipated adverse weather Days shown in Table 108.7. Table 108.7 as follows is the monthly schedule of adverse weather Days that shall be anticipated by the Contractor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

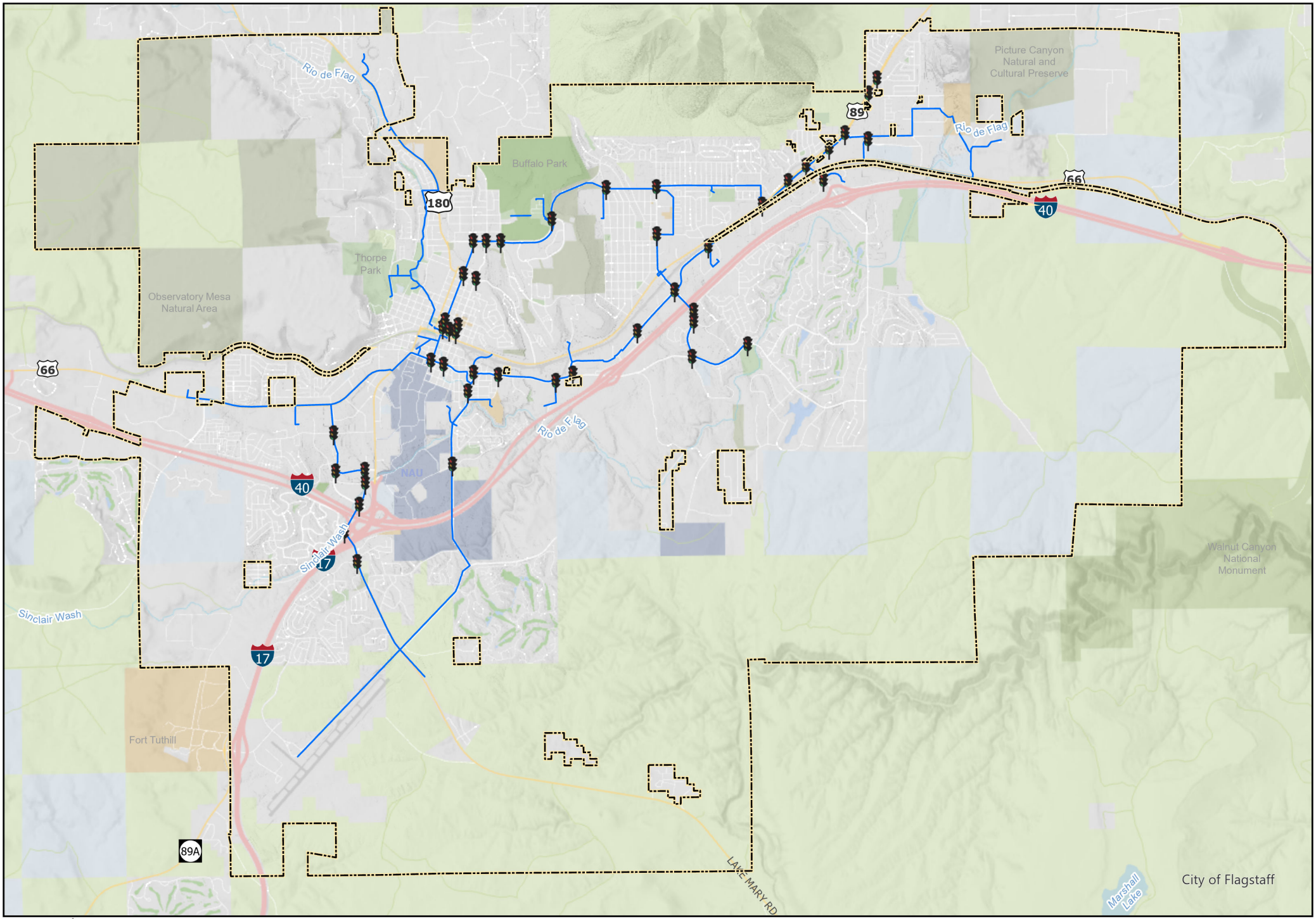
TABLE 108.7 – MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS

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 day**	**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.

ATTACHMENT A
ADDITIONAL MAP, TRAFFIC SIGNAL MAP, AND LIST OF CONNECTIONS (EXCEL SPREADSHEET)


N
New City Conduit to be leased and maintained by Wecom Fiber
Conduit
Existing City Conduit to be leased and maintained by Wecom Fiber
Flagstaff Existing Conduit
New City Conduit to be constructed by Wecom Fiber
Underground
Aerial
1/15/2025 4:25PM Drawn By: Gabriel Finke



COF Traffic Signals

City Boundary
Planning FiberLines
Traffic Signal

0 0.5 1 2 Miles

CONDUIT LEASE AGREEMENT

THIS CONDUIT LEASE AGREEMENT ("Lease") is entered into this 21st day of January 2025 by and between City of Flagstaff, an Arizona municipal corporation ("Lessor" or "City"), and Wecom LLC, a Delaware limited liability company, doing business as Wecom Fiber ("Lessee" or "Wecom").

WHEREAS, the City of Flagstaff owns excess conduit and innerduct capacity in its public rights-of-way and public utility easements ("Public Highways") and within roads, rights of way, owned and/or maintained by the Arizona Department of Transportation ("ADOT Roads") and/or BNSF Railway Company ("BNSF ROWs"); and

WHEREAS, Wecom desires to lease excess conduit and innerduct capacity for its purposes; and

WHEREAS, City issued a competitive solicitation, Request for Solicitation No. 2023-64, for construction of a City fiber network, and Wecom was selected to provide this work; and

WHEREAS, City and Wecom are entering into a Fiber License Agreement dated January 21, 2025, to allow use of Public Highways, a Design Build Services Contract for design and construction of a City fiber network dated January 21, 2025, a City Fiber Maintenance Agreement dated January 21, 2025, for maintenance of City fiber, and this Conduit Lease Agreement dated January 21, 2025, for lease of City excess conduit and innerduct capacity.

NOW, therefore, the parties agree as follows:

1. LEASED FACILITIES.

City hereby leases to Lessee all excess conduit and innerduct, pull boxes, and vaults identified in Exhibit A ("the Facilities") subject to the terms and conditions of this Lease. A portion of the Facilities are not available for lease until after construction is completed, as noted in Exhibit A. If Lessee does not use a portion(s) of the Facilities for five (5) years from the Effective Date of this Lease, then, after written notice to Lessee, City may unilaterally remove such portion(s) from the Facilities available for lease and update Exhibit A. City may require relocation of Facilities as set forth in section 8 of this Lease, and upon relocation update Exhibit A. A copy of each updated Exhibit A will be attached to this Lease.

2. PERMISSIBLE USE.

Lessee shall use the Facilities solely for the purpose of installation, maintenance, repair, and replacement of fiber in the Facilities ("Fiber Improvements") for a fiber optic network. Lessee may sublease Fiber Improvements but shall not allow a sublessee to pull its own fiber through the Facilities.

3. SHARED USE

a. Shared Use. City and Lessee will use the Facilities on a shared, co-located basis. The parties will work in good faith to coordinate use of the Facilities. In the event of any conflict between Lessee use and City use, City shall have priority rights to use the Facilities.

b. Access. Each party shall have the right to unrestricted access to the Facilities for operation of its respective fiber network.

c. **Inspections.** Each party at its own expense shall have the right to inspect and test the Facilities upon at least twenty-four (24) hours' advance written notice to the other party, except in the case of an emergency in which case notice shall be provided as soon as possible.

d. **Interruptions.** Each party shall provide at least seventy-two (72) hours' notice of any repairs, maintenance, or other work that may interrupt functionality of the fiber networks located within the Facilities, except where such repairs or other work are necessitated by an emergency.

e. **Damages.** If either party in any way damages the Facilities, such party shall immediately notify the other party and at its own expense shall be responsible for restoring the Facilities to good or better condition as before for any and all damage in or to Facilities occasioned by the intentional or negligent acts, omissions, or fault of such party, its agents, or employees.

4. FIBER IMPROVEMENTS

a. **Permits and Authorizations.** Lessee at its expense shall obtain all permits, licenses, and authorizations required by the City Community Development Division, City Engineer, Fire Department, Water Services, Arizona Department of Transportation, BNSF Railway Company, or other applicable authority before commencing any Fiber Improvements.

b. **Supervision and Control.** Any physical work within the Facilities related to Fiber Improvements shall be under contract, supervision, and control of Lessee.

c. **Safeguarding Property.** Lessee shall be responsible for any damage to property of the City or adjacent property in performance of any work related to use of the Facilities and safeguard the worksite.

d. **Quality.** All Lessee work related to use of the Facilities shall be of good quality and free of defects and performed in a diligent and professional manner.

e. **Compliance with Laws; Construction Standards, Rules, and Regulations.** Lessee shall ensure that all Fiber Improvements in the Facilities are constructed to conform to all applicable statutes, ordinances, building codes, rules, and regulations of any governmental authority having jurisdiction. Lessee shall require in all contracts for construction that all contractors also comply with all applicable statutes, ordinances, codes, rules, and regulations. Lessee's construction work shall be subject to inspection by the City's Community Development Division and its authorized personnel during reasonable business hours.

f. **Insurance.** Lessee shall require its construction contractors to procure and maintain insurance for any construction and installation protecting both Lessee and City, as well as the construction contractors, with policy amounts and coverage as the City in each instance determines is appropriate and provide certificates of insurance naming the City as an additional insured before commencing Fiber Improvements.

g. **Cost of Improvements.** Lessee shall bear all costs of the construction of any and all Fiber Improvements.

h. **Liens.** Lessee shall not permit or suffer the placement of any lien on the Facilities, or on any fixture, addition, betterment, or improvement thereto, including but not limited to tax liens and liens arising out of any labor or materials supplied by or on behalf of Lessee or any of its

contractors or subcontractors, for the Facilities. Should any such lien be made or filed, Lessee shall bond against or discharge the lien within ten (10) days after written request by the City.

5. CONDITION OF LEASED FACILITIES.

The Facilities are leased in an "as is" condition. EXCEPT AS SET FORTH IN THIS AGREEMENT, CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE FACILITIES OR THE CAPABILITIES, CHARACTERISTICS, AVAILABILITY OR USE THEREOF, OR ANY SERVICES PERFORMED BY CITY OR ITS AGENTS IN CONNECTION THEREWITH. CITY SPECIFICALLY DISCLAIMS, AND LESSEE HEREBY WAIVES, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY ARISING FROM USAGE OF TRADE OR COURSE OF DEALING.

6. TERM OF LEASE.

The term of this Lease shall commence on January 21, 2025 (the "Effective Date"), and continue for a period of twenty (20) years, unless sooner terminated as provided for herein. The term of the Lease shall automatically terminate upon the expiration or termination of the separate City Fiber Network Maintenance Agreement.

7. CONSIDERATION FOR LEASED FACILITIES.

The Facilities are leased to Lessee as partial consideration for the services being provided by Wecom, LLC to City pursuant to the Design Build Services Contract and for the services being provided by Wecom, LLC pursuant to the City Fiber Network Maintenance Agreement.

8. RELOCATION OF LEASED FACILITIES.

Lessee shall bear the entire cost of timely relocating its Fiber Improvements located within Facilities, the relocation of which is necessitated by the construction of public improvements by or on behalf of the City or ADOT or BNSF Railway Company and relocation of the Facilities in which the Fiber Improvements are housed. If Lessee is required to relocate its Fiber Improvements due to the construction of a scheduled public improvement, the City shall provide Lessee with at least sixty (60) calendar days' notice before any required action of Lessee to relocate affected portions of the Fiber Improvements and shall cooperate with Lessee to identify a replacement and alternative location within the Public Highways or ADOT Roads or BNSF ROWs for the relocation of affected portions of the Fiber Improvements. In the event the parties are unable to identify a replacement and alternative location within the Public Highways or ADOT Roads or BNSF ROWs, Lessee at its own expense is responsible for relocating on private property. Lessee shall promptly remove the designated portions of the Fiber Improvements. Lessee, at its sole cost and expense, shall restore all public and private property damaged by Lessee's removal and relocation of the Fiber Improvements to a condition substantially comparable to the condition before removal and relocation of the Fiber Improvements. City will make reasonable efforts to design and construct projects pursuant to this section so as to minimize relocation expenses to Lessee and shall entertain a reasonable request to support existing Facilities in place. If Lessee fails to timely relocate as required herein, the Lessee shall reimburse City for the actual and reasonable direct damages and costs incurred by City as a result of such delays to the public improvement project.

9. ABANDONMENT OF LESSEE FIBER.

Upon termination or expiration of this Lease, Lessee at its expense shall either (i) enter into a new lease of Facilities, or (ii) transfer its own Fiber Improvements to another entity with a lease of the Facilities and provide evidence thereof to City, or (iii) abandon all or part of its Fiber Improvements in place. If Licensee desires to abandon its Fiber Improvements, Lessee first shall submit to the City instruments for transferring ownership to the City. Lessee must notify the AZ811 of such abandonment and shall record the abandonment consistent with Arizona Revised Statutes §§ 40-360.21 et seq. At the time of abandonment, Lessee shall have no further rights with respect to the abandoned Fiber Improvements, and Lessor shall have the authority to remove, reuse, or resell the abandoned Fiber Improvements.

10. LIMITATION OF LIABILITY.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIM OR CAUSE OF ACTION REQUESTING OR CLAIMING LOST PROFITS OR PUNITIVE DAMAGES (WHETHER OR NOT THE SAME ARE FORESEEABLE). ANY CLAIM OR CAUSE OF ACTION REQUESTING OR CLAIMING SUCH DAMAGES IS SPECIFICALLY WAIVED AND BARRED.

11. INDEMNIFICATION.

Lessee 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 Lessee, its officers, agents, employees, and subcontractors, in performing or failing to perform the responsibilities identified in the Lease. In the event any such action or claim is brought against the City, Lessee shall, if the City so elects, and upon tender by the City: (a) defend the same at Lessee'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 Lessee, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Lease. This indemnification shall survive termination or expiration of the Lease.

12. INSURANCE.

The City's insurance requirements attached hereto as Exhibit B are hereby incorporated into this Lease by reference.

13. ASSIGNMENT.

Lessee was selected for its special knowledge, skills, and expertise for construction of a City Network pursuant to the Design Build Contract, and in consideration for a separate City Fiber Network Maintenance Agreement. Lessee shall not assign this Lease, in whole or in part, without the City's prior written consent, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. City will not give its consent to assignment, unless the Fiber License Agreement, this City Conduit Lease Agreement, and the City Fiber Network Maintenance Agreement are all assigned to the same assignee. No assignment shall relieve Lessee (Assignor) from any of its obligations and liabilities under the Lease with respect to the City. The City Attorney shall have authority to consent to an assignment on behalf of the City.

14. RECORDS.

The City shall have the right to inspect and audit all Lessee books and records related to the Lease for up to five years after completion of the Lease.

15. COMPLETE AGREEMENT.

The Lease is intended to be the complete and final agreement of the parties.

16. AMENDMENTS.

The Lease may be amended by written agreement of the parties.

17. SEVERABILITY.

If any term or provision of the Lease 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 Lease shall remain in full force and effect.

18. NO WAIVER.

Both parties have the right to insist upon strict performance of the Lease, 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.

19. BINDING EFFECT.

The Lease shall be binding upon and inure to the benefit of the parties and their successors and assigns.

20. TERMINATION FOR DEFAULT.

Prior to terminating the Lease 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 Lease by written notice to Lessee, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition to the Lease remedies provided for herein.

21. REMEDIES.

In the event of a party's default, the other party may pursue all remedies available at law, except as provided for herein.

22. TERMINATION DUE TO INSOLVENCY.

If Lessee 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 Lessee under federal bankruptcy law or any state insolvency law, Lessee shall

immediately provide the City with a written notice thereof. The City may terminate the Lease, and Lessee is deemed in default, at any time if the Lessee 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 Lessee's ability to perform under the Lease.

23. CANCELLATION FOR GRATUITIES.

The City may cancel the Lease at any time, without penalty or further liability to Lessee, if City determines that Lessee 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 Lease.

24. 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 Lease, the City may cancel the Lease within three years after its execution, without penalty or further liability to Lessee.

25. THIRD-PARTY BENEFICIARIES.

The Lease is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.

26. GOVERNING LAW.

The Lease shall be construed in accordance with the laws of Arizona.

27. FORUM.

In the event of litigation relating to the Lease, any action at law or in equity shall be filed in Coconino County, Arizona.

28. ATTORNEYS' FEES.

If any action at law or in equity is necessary to enforce the terms of the Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees, and expenses.

29. NOTICES.

All notices given pursuant to the Lease shall be delivered at the addresses as specified below 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 five (5) days after being sent; or (c) sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.

If to the City:	If to Lessee:
City of Flagstaff IT Director 211 W. Aspen Avenue Flagstaff, AZ 86001	Wecom LLC General Counsel 3028 E. Sunset Rd., Las Vegas, NV 89120

With a copy to:
Grants and Contracts Administration
211 W. Aspen Avenue
Flagstaff, AZ 86001

With a copy to:
Chief Executive Officer
2332 Kingman Avenue
Kingman, AZ 86401

IN WITNESS WHEREOF, the Lessor and Lessee have caused this Lease to be executed.

LESSOR: CITY OF FLAGSTAFF

_____
By: Greg Clifton, City Manager

Attest:

_____
Stacy Saltzburg, City Clerk

Approved as to form:

_____
City Attorney

STATE OF ARIZONA)
)SS
County of Coconino)

On this _____ day of _____, 2025, before me, a Notary Public, personally appeared Greg Clifton whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and who acknowledged to have signed this instrument on behalf of the corporation.

_____
Notary Public

My Commission Expires:

_____

LESSEE: WECOM, LLC

By: _____

Print Name:

Title:

STATE OF)
)SS
County of)

On this _____ day of _____, 2025, before me, a Notary Public, personally appeared _____ whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and who acknowledged to have signed this instrument on behalf of the corporation.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A

LEASED FACILITIES

EXHIBIT B

STANDARD INSURANCE REQUIREMENTS

(Last Updated January 19, 2023)

*The term "Contractor" shall mean "Lessee."

1. **IN GENERAL:** Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with the Contract by Contractor, its agents, representatives, employees, and/or subcontractors.

2. **REQUIREMENT TO PROCURE AND MAINTAIN:** Each insurance policy required by the Contract shall be in effect at, or before, commencement of work under the Contract and shall remain in effect until all of Contractor's obligations under the Contract have been met, including any warranty periods. Contractor's failure to maintain the insurance policies as required by the Contract, or to provide timely evidence of renewal, will be considered a material breach of the Contract.

3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** The following insurance requirements are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. The City does not represent or warrant that the minimum limits set forth in the Contract are sufficient to protect Contractor from liabilities that might arise out of the Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

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

   a. Commercial General Liability - Occurrence Form

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

   b. Umbrella Coverage $2,000,000

   c. Automobile Liability

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

   d. Workers' Compensation and Employer's Liability

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

   e. Professional Liability $2,000,000

   f. Reserved.

4. **RESERVED.**

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 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.

CITY FIBER NETWORK MAINTENANCE AGREEMENT

This City Fiber Network Maintenance Agreement is entered into this 21st day of January, 2025 by and between the City of Flagstaff, an Arizona municipal corporation ("City" or "Owner"), and Wecom LLC, a Delaware limited liability company, doing business as "Wecom Fiber" ("Wecom" or "Contractor").

WHEREAS, the City owns a fiber network located in its public rights-of-way and public utility easements ("Public Highways") and within roads or rights-of-way owned and/or maintained by the Arizona Department of Transportation ("ADOT Roads") and/or BNSF Railway Company ("BNSF ROWs"); and

WHEREAS, Wecom is willing to maintain the City fiber network, which runs alongside Wecom's network; and

WHEREAS, City issued a competitive solicitation, Request for Solicitation No. 2023-64, for construction of a City fiber network, and Wecom was selected to provide this work; and

WHEREAS, City and Wecom are entering into a Fiber License Agreement dated January 21, 2025, to allow use of Public Highways, a Design Build Services Contract for design and construction of a City fiber network dated January 21, 2025, a Conduit Lease Agreement dated January 21, 2025, for lease of City excess conduit and innerduct capacity, and this City Fiber Maintenance Agreement for maintenance of City fiber dated January 21, 2025.

NOW, therefore, the parties agree as follows:

1. DEFINITIONS.

As used in this Agreement, terms are defined as follows:

"City Fiber Network" means the City-owned fiber network, provided by Contractor under the Design Build Services Contract and small additional link as described in Exhibit A.

"C*orrection*" means the correction of a Malfunction.

"Malfunction" means an interruption of a signal due to failure of the fiber of the City Fiber Network.

2. SERVICES.

a. Corrections. Contractor shall restore the City Fiber Network fiber to an operable and tested state within forty-eight (48) hours from the Wecom Network Operations Center becoming aware of a Malfunction; provided, however, if Contractor promptly commences and continues to diligently process the restoration work, City will agree to a reasonable time extension.

b. Utility Locating Services. Contractor shall perform all Arizona 811 utility locating services (Blue Stake) for the City Fiber Network and City Conduit (defined in that separate City Conduit Lease Agreement). Contractor will coordinate with City on appropriate procedure for utility locating services. Contractor's obligation hereunder shall

be limited to (i) the City Fiber Network provided by Contractor and described in Exhibit A, and (ii) the City Conduit Contractor used to install the City Fiber Network and/or any fiber installed and owned by Contractor.

c. **City Work on City Fiber Network.** City reserves the right to perform work on the City Fiber Network in the following situations: (i) Contractor has failed to correct a Malfunction in a timely manner; or (ii) City has offered to allow Contractor to perform work on the City Fiber Network that does not involve correction of a Malfunction and Contractor has declined to do such work at a competitive rate, as determined by at least three quotes obtained the City.

d. **Licenses and Permits.** Contractor at its expense shall maintain current federal, state, and local licenses, permits, and approvals required for performance of the Agreement and provide copies to City upon request.

e. **Compliance with Laws.** Contractor shall comply with all applicable federal, state, and local laws, regulations, standards, codes, and ordinances in performance of the Agreement.

f. **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.

g. **Control.** Contractor shall be responsible for the control of the work.

h. **Work Site.** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.

i. **Safeguarding Property.** Contractor shall be responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.

j. **Quality.** All work shall be of good quality and free of defects, performed in a diligent and professional manner.

k. **Subcontracting.** Contractor was selected for its special knowledge, skills, and expertise, and Contractor shall not subcontract the services/materials required in the Agreement, in whole or in part, unless the appointed subcontractor has industry expertise and Contractor remains fully responsible to City for satisfactory completion of subcontracted work. The City reserves the right to require the subcontractor to be replaced if the subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Agreement, including but not limited to the requirements that City be named as an additional insured and receive a waiver of subrogation on any contract with a subcontractor. Contractor is responsible for Agreement performance whether or not subcontractors are used.

3. ACTION PLAN.

a. Notice. Each party shall immediately notify the other party upon discovery of any Malfunction. City shall contact the Wecom Network Operations Center and open a ticket by telephone on +1 (928) 218 4373, or via email at noc@wecomfiber.com.

b. Immediate Response. Contractor shall promptly commence work upon becoming aware of a Malfunction.

c. Cooperation. The parties shall cooperate in good faith with each other in bringing any claim against a third party for recovery of damages or costs related to such third party's act or omission that causes or contributes to a Malfunction.

4. PARTS, MATERIALS, AND EQUIPMENT.

a. Stock. Contractor shall stock parts, materials, and test equipment in Flagstaff or surrounding areas where Contractor operates necessary to complete the Services in a timely manner.

b. 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 Agreement.

c. Manufacturer's Warranties. Contractor shall deliver all manufacturer's warranties to the City upon the City's acceptance of the materials.

d. 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.

5. PERSONNEL.

d. Training. Contractor personnel shall be qualified and trained to perform the Services in accordance with industry standards. All Contractor personnel will maintain current OSHA certification.

e. Point of Contact. Each party shall designate a project manager and principal point of contact, to include name, title, address, telephone number, and email address, for all Services under this Agreement by written notice to the other party. For outage situations, City shall contact the Wecom Network Operations Center by telephone on +1 (928) 218-4373, or via email at noc@wecomfiber.com.

6. REPORTING OF CORRECTIONS.

Contractor shall provide a report to City promptly following completion of a correction of a Malfunction showing:

a. Time, location, and cause of Malfunction;

b. Time when Malfunction was corrected;

c. Test results showing Malfunction was corrected, where applicable.

Upon receipt of such report, City may request Contractor to provide additional information that is reasonable and appropriate for ongoing operational concerns.

7. ACCEPTANCE.

After City's receipt of a report (above), City has five (5) days to complete any testing to confirm that the Malfunction was corrected and to notify Contractor of any nonconformities. In the event City does not notify Contractor of any nonconformities, City is deemed to have accepted the correction work. Materials and services failing to conform to the Agreement specifications may be rejected in whole or part. If rejected, Contractor is responsible for all associated costs arising from rejection.

8. CONSIDERATION.

a. In General. Contractor shall provide all Services at its own expense. Contractor acknowledges that Contractor is providing the Services under this Agreement as partial consideration for the City Conduit Lease Agreement and the Fiber License Agreement (specifically the credit against the License Fee). In addition, Contractor is providing Services under this Agreement because it is efficient for Contractor to maintain both its network and the City Fiber Network to avoid or minimize potential conflicts in repairs to the systems which run alongside each other.

b. City Reimbursements. Notwithstanding the foregoing subsection a, City shall reimburse Contractor for the Contractor's actual, reasonable costs of correcting a Malfunction which occurs when: (i) as a result of City accessing a pull box, only the City's fiber is damaged; (ii) as a result of City splicing fiber midway between pull boxes, only the City's fiber is damaged; (iii) if City damages Contractor's fiber as a result of accessing a pull box, splicing fiber midway between pull boxes, or any other action. In either of such instances, Contractor shall invoice City and include sufficient detail and documentation for City to confirm payment is due.

c. Invoices for City Reimbursements. 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. 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 incurred for the prior fiscal year.

9. TERM.

The term of this Agreement begins on January 21, 2025, and continues for a period of twenty (20) years, unless sooner terminated. The term of the Agreement shall automatically terminate upon the expiration or termination of the separate City Conduit Lease Agreement.

10. LIMITATION OF LIABILITY.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIM OR CAUSE OF ACTION REQUESTING OR CLAIMING LOST PROFITS OR PUNITIVE DAMAGES (WHETHER OR NOT THE SAME ARE FORESEEABLE). ANY CLAIM OR CAUSE OF ACTION REQUESTING OR CLAIMING SUCH DAMAGES IS SPECIFICALLY WAIVED AND BARRED.

11. 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 Agreement. 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 reasonable attorneys' fees, suffered or incurred by the City. The City shall promptly notify Contractor of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Agreement. This indemnification shall survive termination or expiration of the Agreement.

12. INSURANCE

The City's insurance requirements attached hereto as Exhibit B are hereby incorporated into this Agreement by reference.

13. ASSIGNMENT.

Contractor was selected for its special knowledge, skills, and expertise for construction of a City Network pursuant to the Design Build Services Contract, and in consideration for a separate City Fiber License Agreement (specifically the credit against the license fee set forth in Exhibit B of the Fiber License Agreement). Contractor shall not assign this Agreement, in whole or in part, without the City's prior written consent, which may not be unreasonably withheld. Any assignment without such consent shall be null and void. City will not give its consent to assignment, unless the City Fiber License Agreement, this City Fiber Network Maintenance Agreement, and the City Conduit Lease all are assigned to the same assignee. No assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Agreement with respect to the City. The City Attorney shall have authority to consent to an assignment on behalf of the City.

14. RECORDS.

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

15. COMPLETE AGREEMENT.

This Agreement is intended to be the complete and final agreement of the parties.

16. AMENDMENTS.

The Agreement may be amended by written agreement of the parties.

17. SEVERABILITY.

If any term or provision of the Agreement 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 Agreement shall remain in full force and effect.

18. NO WAIVER.

Both parties have the right to insist upon strict performance of the Agreement, 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.

19. BINDING EFFECT.

The Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

20.TERMINATION FOR DEFAULT.

Prior to terminating the Agreement 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 Agreement by written notice to the other, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition to the Agreement remedies provided for herein.

21. REMEDIES.

In the event of a party's default, the other party may pursue all remedies available at law, except as provided for herein.

22. 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 Agreement, 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 Agreement.

23. CANCELLATION FOR GRATUITIES.

The City may cancel the Agreement at any time, without penalty or further liability to Lessee,

if City determines that Lessee 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 Agreement.

24. 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 Agreement, the City may cancel the Agreement within three years after its execution, without penalty or further liability to Lessee.

25. THIRD-PARTY BENEFICIARIES.

The Agreement is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.

26. GOVERNING LAW.

The Agreement shall be construed in accordance with the laws of Arizona.

27. FORUM.

In the event of litigation relating to the Agreement, any action at law or in equity shall be filed in Coconino County, Arizona.

28. ATTORNEYS' FEES.

If any action at law or in equity is necessary to enforce the terms of the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees, and expenses.

29. NOTICES.

All notices given pursuant to the Agreement shall be delivered at the addresses as specified below 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 five (5) days after being sent; or (c) sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.

If to the City:	If to Lessee:
City of Flagstaff IT Director 211 W. Aspen Avenue Flagstaff, AZ 86001	Wecom LLC General Counsel 3028 E. Sunset Rd. Las Vegas, NV 89124
With a copy to: Grants and Contracts Administration 211 W. Aspen Avenue Flagstaff, AZ 86001	Wecom LLC 2332 Kingman Ave Kingman, AZ 86401

30. 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, or familial status and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In addition, any Contractor whose business is located within the Flagstaff City limits shall comply with the Flagstaff City Code, Chapter 14-02, *Civil Rights*, which also prohibits discrimination based on sexual orientation, or gender identity or expression.

31. 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 Agreement.

32. 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 Agreement and shall subject Contractor to penalties up to and including termination of the Agreement. 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 Agreement 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).

33. FORCE MAJEURE.

a. There may be events that occur during the term of the Agreement 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 Agreement.

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 Agreement completion date without any penalty to Contractor, and the extension will be in an amount of time equal to any

temporary dela caused by an Event. This provision of the Agreement supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

34. 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 Agreement 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 Agreement, will not engage in a boycott of Israel.

34. 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 Agreement terminates, except that if the contract termination date occurs before the end of the remedy period, the Agreement terminates on the Agreement termination date.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

CITY OF FLAGSTAFF

_____
By: Greg Clifton, City Manager

Attest:

_____
Stacy Saltzburg, City Clerk

Approved as to form:

_____
City Attorney

CONTRACTOR: WECOM LLC

By: _____

Print Name:

Title:

EXHIBIT A

CITY NETWORK

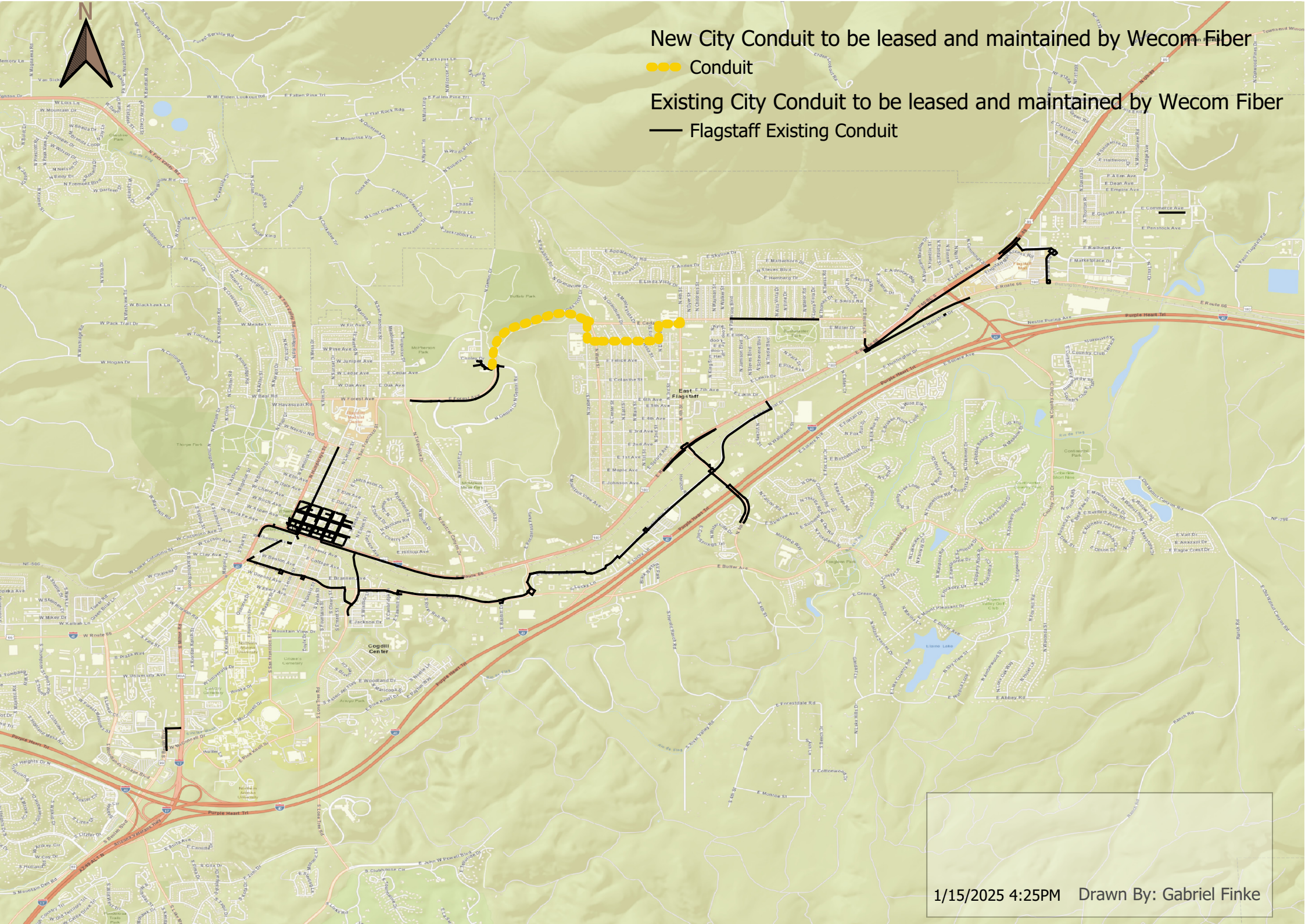

N
New City Conduit to be leased and maintained by Wecom Fiber
Conduit
Existing City Conduit to be leased and maintained by Wecom Fiber
Flagstaff Existing Conduit
East Flagstaff
Cogdill Center
1/15/2025 4:25PM
Drawn By: Gabriel Finke

EXHIBIT B

STANDARD INSURANCE REQUIREMENTS
(Last Updated January 19, 2023)

1. **IN GENERAL:** Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with the Contract by Contractor, its agents, representatives, employees, and/or subcontractors.

2. **REQUIREMENT TO PROCURE AND MAINTAIN:** Each insurance policy required by the Contract shall be in effect at, or before, commencement of work under the Contract and shall remain in effect until all of Contractor's obligations under the Contract have been met, including any warranty periods. Contractor's failure to maintain the insurance policies as required by the Contract, or to provide timely evidence of renewal, will be considered a material breach of the Contract.

3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** The following insurance requirements are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. The City does not represent or warrant that the minimum limits set forth in the Contract are sufficient to protect Contractor from liabilities that might arise out of the Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

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

   a. Commercial General Liability - Occurrence Form

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

   b. Umbrella Coverage $2,000,000

   c. Automobile Liability

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

   d. Workers' Compensation and Employer's Liability

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

   e. Professional Liability $2,000,000

   f. Reserved.

4. **RESERVED.**

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 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.

FIBER LICENSE AGREEMENT

This Fiber License Agreement (the "License Agreement" or "Agreement") is issued on January 21, 2025, by the City of Flagstaff, an Arizona municipal corporation (hereinafter called "Licensor" or "City"), to Wecom LLC, a Delaware limited liability company doing business as "Wecom Fiber" (hereinafter called "Licensee" or "Fiber Company"), for the installation, placement, operation, and maintenance of fiber optic network system in, on, under, above, upon, along, and across public rights-of-way, public utility easements, and City property within the City limits in order to provide broadband and high speed internet throughout the community.

WHEREAS, the City of Flagstaff has authority to issue this license pursuant to any authority conferred by state and federal law, the Flagstaff City Charter Article VIII, and Flagstaff City Code Chapter 8-13.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. Definitions of Terms.

Unless otherwise defined herein, the terms, phrases, words, and their derivatives found in this License Agreement shall have the meaning defined in Flagstaff City Code as amended from time to time. Unless the context requires otherwise, the term "including" shall mean "including but not limited to" or "including without limitation."

"**Cabinets**" means above ground enclosures placed within the Public Highway for the protection of active and passive equipment for the provision of service throughout the Communications Network.

"**Chambers**" means underground enclosures placed within the Public Highway facilitating access to the active and passive equipment for the provision of service throughout the Communications Network.

"**City Engineer**" means the City Engineer or the City Engineer's designee.

"**Communications Network**" means all parts of Licensee's fiber optic network under and above ground in the City, including the fiber optic cable and its component parts and appurtenances, and the other cables, wires, components, facilities, Cabinets, ducts, conduits, connectors, Chambers, manholes, manhole covers, pedestals, splitters, attachments, and other property, equipment, components, materials, apparatus, and appurtenances to the fiber optic network.

"**Customer**" means any person or entity receiving broadband internet services from Licensee over the Communications Network.

"**Effective Date**" means the date this License Agreement has been executed by both parties.

"**Force Majeure Event**" means labor strike, riot, war, earthquake, flood, hurricane, health crisis, pandemic, drought, tornado, unusually severe weather conditions, or other act of nature, labor disputes, governmental, administrative or judicial order, or other event that is beyond the Parties' reasonable control. Force Majeure Events include work delays caused by waiting for utility providers

to service or monitor their own utility infrastructure on which Licensee's fiber optic cable and/or equipment may be deployed (e.g., poles). Force Majeure Event also includes a third party's acts or omissions within the Public Highway which materially interferes with a Party's ability to perform its obligations under this Agreement.

"**Gross Revenue**" means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Licensee from its Customers located within the Use Area, including but not limited to charges for broadband internet service and late charges; installation, removal, connection, or reinstatement of equipment necessary for a Customer to receive broadband internet service; forfeited deposits; sale or rental of equipment to provide broadband internet service. Gross Revenue also includes all consideration from the lease or licensing of all or a portion of its Communications Network in the Use Area, unless Licensee is remitting a local transaction privilege license tax on such gross revenues.

"**Home**" means a residential single-family dwelling, or a residential single dwelling unit located within a Multiple Dwelling Unit, located within the Use Area.

"**Multiple Dwelling Unit**" means an apartment building or other building containing more than four (4) dwelling units located within the Use Area.

"**Party**" means either Licensor or Licensee, and "Parties" means both Licensor and Licensee.

"**Premises**" means a Home, Multiple Dwelling Unit, office, or other building located within the Use Area.

"**Public Highway**" or "**Highway**" means all roads, streets, and alleys and all other dedicated public rights-of-way and public utility easements of the City of Flagstaff.

"**Use Area**" means the legal boundaries of the City as of the Effective Date, and any additions or subtractions to the City legal boundaries, by annexation or other legal means.

SECTION 2. <u>License Granted</u>.

2.1 <u>License for Broadband and Internet</u>. Licensor hereby grants to Licensee a non-exclusive license to erect, construct, repair, maintain, replace, operate, lease, install, remove, reconstruct, and upgrade the Communications Network in, on, under, above, upon, along, and across the Public Highways within the Use Area, and to make the Communications Network available to Premises within the Use Area for the purpose of providing broadband internet and voice over internet protocol services, subject to the applicable provisions of this License Agreement, the City Charter, City Code, and any future amendments to the City Charter or City Code, together with all applicable laws and reasonable regulations of any regulatory agency having competent jurisdiction (the "License").

2.2 <u>License Term</u>. The License shall commence upon the Effective Date and continue for a period of twenty (20) years, unless sooner terminated as provided for herein.

2.3 <u>Subordinate or Prior Rights</u>. Any privilege claimed under this License by Licensee in any Public Highway shall be subordinate to any prior or subsequent occupancy or use by City and shall be subordinate to any prior lawful occupancy or use by any other entity, and shall be subordinate to any prior easements; provided, however, that nothing in this License shall extinguish or otherwise interfere with property rights established independently of this License Agreement.

2.4 Reservation of Rights. There is hereby reserved to City every right and power which is required to be herein reserved or provided by any ordinance, the Flagstaff City Code, or the Flagstaff City Charter, and Licensee, by its acceptance of this License Agreement, agrees to be bound thereby and to comply with any action or requirements of City in its exercise of such rights or powers, heretofore or hereafter enacted or established and exercised in its sole discretion, except those actions or requirements which have been found to be unlawful under state or federal law. Neither the granting of any License Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of City.

2.5 Lease or License for Use to Third-Party ROW Users. This License Agreement further authorizes Licensee in its ordinary course of business to lease to or contract with others for use of all or part of the Communications Network that have licenses or franchises with the City to use the Public Highways for their business purposes or are entitled to use the Public Highways pursuant to A.R.S. Section 9-582(E) (a "Third-Party ROW User"), provided that Licensee (i) promptly notifies the City Attorney in writing of the identity of the Third-Party ROW User upon entering into a lease or contract with such Third-Party ROW User; and (ii) provides the City Attorney with an annual report on or about February 1 annually that lists all such Third-Party ROW Users and the areas of use during the prior calendar year; and (iii) requires as part of a lease or contract with such Third-Party ROW User that: "You are required to separately apply for and obtain a City license or franchise for use of the Public Highway, unless the Flagstaff City Attorney confirms in writing that your company's activities are exempt from a licensing or franchising requirement"; and (iv) if Licensee intends to allow such Third-Party ROW User to self-perform any work on the Communications Network within the Public Highways that such Third-Party ROW User shall obtain a Right-of-Way Permit and indemnify the City as required in such permit; and (v) Licensee pays all applicable transaction privilege license tax on gross receipts from such lease or contract. It is the express intention of the City that all Third-Party ROW Users are required to obtain licenses or franchises to use the Public Highways for telecommunications, interstate telecommunications, fiber networks, cable television operations, universal video service, and/or any other services to the extent permissible under state and federal law.

2.6 Rights Not Granted.

2.6.1 Multichannel Video System. This License does not grant Licensee the right to use the Public Highways for video service as defined by state law pursuant to System A.R.S. § 9-1401 et seq. Nothing herein shall be construed to prohibit Licensee from subleasing all or part of its Communications Network to a company with a universal video service license issued by the City.

2.6.2 Telecommunications. This License Agreement does not grant Licensee the right to use the Public Highways for Telecommunications as defined by state law pursuant to A.R.S. § 9-581 et seq. and Flagstaff City Code Chapter 3-07 as may be amended and which services would be regulated by the Arizona Corporation Commission. Nothing herein shall be construed to prohibit Licensee from subleasing all or part of its Communications Network to a company with a telecommunications license issued by the City.

SECTION 3. Design, Permitting, Construction, Maintenance, Relocation, and Conditions.

3.1 Design. Licensee shall design the Communications Network, including but not limited to the depth, width, and height of all equipment and other parts of the Communications Network, consistent with the City of Flagstaff's Engineering Design Standards and any other applicable

laws. Phases of construction and installation relating to traffic control, backfilling, compaction, and paving, as well as the location or relocation of the Communications Network shall be subject to reasonable regulation by the City Engineer. Nothing in this Agreement requires Licensee to build to all areas of the City, and Licensee retains discretion to determine the scope, location, and timing of the design and construction of the Communications Network.

3.2 Right-of-Way Permits Required. Prior to the installation, construction, maintenance, abandonment, replacement, extension, or relocation of any portion of the Communications Network authorized herein, Licensee or its contractor shall apply for and obtain from City a Right-of-Way Permit(s) pursuant to the Flagstaff City Code for such work on the Communications Network. City shall issue such permits to Licensee on such conditions as are lawful and reasonable to ensure compliance with the terms and conditions of this License Agreement.

3.3 Compliance with Laws. The Communications Network shall be designed, constructed, installed, operated, leased, repaired, replaced, and maintained in accordance with the applicable laws, codes, regulations, policies, and standards, whether mandated by the City, State of Arizona, or any other governmental entity with jurisdiction over the Public Highways and, at a minimum, consistent with the terms of this License Agreement. All work performed under this License Agreement shall be done in compliance with the Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("MAG") as amended, City amendments to MAG, City of Flagstaff's Engineering Design Standards, and Occupational Safety and Health Administration ("OSHA") regulations, all of which may be amended from time to time.

3.4 Materials Testing. Licensee at its expense shall retain a qualified independent testing company to test all materials that will be used to remediate City and third-party pavement, asphalt, and facilities, and which are subject to materials testing pursuant to City's Engineering Design Standards. Licensee shall submit test results to the City Engineer. The City at its own expense may separately retain a materials testing company for City quality control, and its determinations shall control in the event of any discrepancy between Licensee and City testing results.

3.5 Undergrounding. Licensee shall install its Communications Network underground, except for facilities may be collocated on existing utility poles with permission of the owner and above-ground Cabinets installed per specifications set forth in a City Right-of-Way permit.

3.6 Coordination with Utilities and Joint Trenching. The Licensee's installation of the Communications Network shall be in accordance with the City of Flagstaff's Engineering Design Standards and as set forth in a City Right-of-Way Permit. Licensee shall make good faith efforts to coordinate the installation and relocation of the Communications Network with utilities and other companies using the Public Highways to accommodate opportunities for common trench installations to limit pavement cuts. City may require Licensee to locate Licensee facilities in a common trench for a City capital improvement project, and in a common trench for a new subdivision. Before the start of construction or repair work (other than emergency repairs) within Public Highways or other City-controlled property (where allowed by separate agreement), plans showing the proposed location of facilities to be constructed in relation to the location of other known adjacent conduit and facilities shall be submitted to the City Engineer for its review and consideration. These plans shall be prepared and submitted in accordance with the City's process for securing a Right-of-Way Permit.

3.7 Inspections of Work. During construction, the City will inspect and test all work in

accordance with City of Flagstaff Engineering Design Standards. City's inspection shall not be construed to waive any nonconformity or noncompliance in the work.

3.8 Interference with Use of Public Highways. The Communications Network to be constructed, installed, operated, leased, repaired, replaced, maintained, upgraded, and removed under this License shall be so located as to interfere as little as reasonably possible with the traveling public, including but not limited to motor vehicles, bicycles, and pedestrians, and other authorized users within Public Highways.

3.9 Plans and Specifications. As part of the Right-of-Way Permitting process, Licensee shall submit its details, plans, and specifications for City review and consideration as a condition of installation, operation, maintenance, location, and attachment of any and all of the Communications Network. The proposed locations of Licensee's Communications Network shall be depicted on engineering drawings provided to City with the submittal of the plans and specifications during the permitting process. If Licensee desires to change the location of any part of the Communications Network, including any related facilities or equipment, from the location set forth in the initial Right-of-Way Permit, Licensee shall apply for a new permit prior to any relocation or construction and cross-reference the original permit number.

3.10 As Built Drawings. Licensee shall maintain as-built drawings of the Communications Network, and shall furnish electronic or hard copies, as requested by the City. Licensee shall cooperate with City to furnish such information in an electronic mapping format approved by the City Engineer and which may be updated periodically.

3.11 Utility Locate Requirements. Licensee shall comply with Arizona Revised Statutes §§ 40-360.21 et seq. by participating as a member of the Arizona 811 (or other appropriate organization selected by the City) with the necessary records and persons to provide the location and identity of Licensee's underground facilities upon receipt of a locate call or as promptly thereafter as possible, but in no event later than two (2) working days after receipt of a locate call. A copy of Licensee's membership in Arizona 811 shall be submitted to the City upon request.

3.12 Property Damage and Restoration. If Licensee damages, disturbs, or alters the surface or subsurface of any Public Highway or adjoining public property, or any public improvement, landscaping, or property of third parties, then Licensee shall promptly, at its own expense, and in a manner reasonably acceptable to the City, repair and restore the damage or disturbance to a condition substantially comparable to its prior state. In the event Licensee is unaware of the damage or unaware that the repair is unacceptable to the City, the City shall give Licensee notice and allow Licensee the opportunity to repair. If Licensee fails to complete such repair within a reasonable time or in a manner reasonably acceptable to the City, then the City may perform such repair, and Licensee shall pay all the actual, reasonable, and fully documented direct costs expended to complete the repair. City-owned fiber must be completely replaced to the nearest established splice point (e.g., cabinet, pole, pedestal, vault).

3.13 Emergencies. In the event of a public emergency, City shall have the right to sever, disrupt, or dig-up facilities of Licensee, after reasonable efforts have been made to reasonably avoid severing, disrupting, or digging up the facilities of Licensee. City shall, where reasonable, notify and work with Licensee in responding to the emergency.

3.14 Maintenance of Communications Network. Licensee shall be solely responsible for all

repairs, maintenance, and adjustments, and damage to the Communications Network, and City shall have no obligation to repair such damage—except where the damage is caused by the sole and exclusive actions of the City or its agent. Excluding relocations reasonably requested by the City and repairs or maintenance to the Communications Network, Licensee shall not relocate, materially modify, or materially alter the Communications Network components any time after issuance of the permit(s), except upon City's written approval, which approval will not be unreasonably withheld, delayed, or conditioned.

3.15 Relocation of Communications Network. Licensee shall bear the entire cost of timely relocating its Communications Network facilities located within Public Highways, the relocation of which is necessitated by the construction of public improvements by or on behalf of the City. If Licensee is required to relocate its Communications Network facilities due to the construction of a scheduled public improvement, the City shall provide Licensee with at least sixty (60) calendar days' notice before any required action of Licensee to relocate affected portions of the Communications Network and shall cooperate with Licensee to identify a replacement and alternative location within the Public Highways for the relocation of affected portions of the Communications Network. In the event the Parties are unable to identify a replacement and alternative location within the Public Highways, Licensee at its own expense is responsible for relocating on private property. Licensee shall promptly remove the designated portions of the Communications Network. Licensee, at its sole cost and expense, shall restore all public and private property damaged by Licensee's removal and relocation of the Communications Network to a condition substantially comparable to the condition before removal and relocation of the Communications Network. City will make reasonable efforts to design and construct projects pursuant to this section so as to minimize relocation expenses to Licensee and shall entertain a reasonable request to support existing facilities in place. If Licensee fails to timely relocate as required herein, the Licensee shall reimburse City for the actual and reasonable direct damages and costs incurred by City as a result of such delays to the public improvement project.

3.16 Local Agent. Licensee shall maintain a local agent within, or within one hundred (100) miles of, the Flagstaff city limits who is familiar with Licensee's facilities and who is responsible for satisfying the information needs of City and other public rights-of-way users. Licensee shall be available to staff employees of any City department having jurisdiction over Licensee's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Communications Network. Licensee will provide the City Engineer with emergency contacts before submitting for permits. The Licensee will inform City Engineer promptly of any changes to its agent's contact information.

3.17 Inspection of Business Records; Record Retention. City may examine the relevant business records of Licensee, at reasonable times and upon at least ten (10) days' prior written notice, to the extent reasonably necessary to ensure Licensee's compliance with this Agreement or applicable tax laws. Licensee will retain all business records relating to this Agreement at least six (6) years after expiration, termination, or revocation of this Agreement.

3.18 Data Deliverable. Within ninety (90) days after the installation of any segment of the Communications Network, the Licensee shall supply the City Engineer with electronic files showing the installed location of the fiber optic cable associated with the Communications Network in a format acceptable to the City. Licensee shall supply GIS data attributes and to a file transfer protocol (FTP) acceptable to the City. The City will use data for project coordination.

3.19 Construction Commencement. Licensee will use commercially reasonable efforts to commence construction within six (6) months after the Effective Date.

SECTION 4. License Fee; Credit.

4.1 License Fee. Licensee shall pay a license fee equal to two percent (2%) of monthly Gross Revenues ("the License Fee") on a monthly basis. In consideration for payment of the License Fee, Licensee shall not be required to pay Right-of-Way Permit fees. Nothing herein shall be construed to waive any applicable chip seal fees, pavement maintenance, pavement cut, or similar fees adopted by the City.

4.2 Credit for In-Kind Material or Services. If agreed upon by the Parties, Licensee may provide in-kind material or services to City in exchange for a credit against payment of the License Fee. Consistent with A.R.S. § 9-582(D), the valuation of any in-kind materials or services shall be set forth in Exhibit A to this License Agreement.

4.3 Pass Through. Licensee may pass through a pro-rata share of the cost of the License Fee to any Customer whose service is provided by the Communications Network by separately itemizing such cost on the Customer billing statement.

SECTION 5. Indemnification and Assumption of Risk.

5.1 Indemnification of City. In addition to the indemnity requirements set forth in Flagstaff City Code, Licensee shall defend, indemnify, and hold harmless City, its Mayor and Council members, officers, agents, employees, boards, and commissions (collectively, including City, "City Indemnitees") from and against all third-party claims, demands, damages, losses, and expenses of any nature (including an award of attorneys' fees), sustained by the City Indemnitees on account of any suit, judgment, execution, claim, or demand whatsoever arising out of or resulting from the acts or omissions of Licensee, its customers, officers, agents, employees, contractors, successors, or assigns (collectively, "Licensee and its Agents"), or the performance of work by Licensee and its Agents pursuant to this License or the installation, operation, or maintenance of the Communications Network, whether or not any act or omission complained of is authorized, allowed, or prohibited by this License (each, a "Claim"), except to the extent such Claim arises due to the sole and active negligence or willful misconduct of the City Indemnitees. The amount and type of insurance coverage requirements set forth in this License will not be construed as limiting the scope of the indemnity stated in this section. In the event of any Claim specified in this section, the City Indemnitees shall give reasonable, prompt notice to Licensee of such Claim. Failure of the City Indemnitees to timely give such notice to Licensee shall relieve Licensee of its indemnity obligations hereunder only to the extent Licensee is actually prejudiced or damaged by such failure. Licensee shall have reasonable control of the defense of any action or litigation of a Claim and all negotiations for the settlement or compromise of the same, except that Licensee may not make any non-monetary settlement or compromise without the City Indemnitees' consent, which consent shall not be unreasonably withheld or delayed. The City Indemnitees shall

cooperate with Licensee in the defense and settlement of any Claim at Licensee's expense. No City Indemnitee shall take any action to settle, to compromise, or otherwise to make any payment, admission, or statement to or for the benefit of any third-party claimant without Licensee's written consent.

5.2 Licensee Customers. For the avoidance of doubt, Licensee's Customers shall be considered third parties for purposes of Section 5.1, and the Parties acknowledge that Licensee shall indemnify City Indemnitees against any suit, judgment, execution, claim, or demand whatsoever from its Customers, so long as it is alleged to arise or result from the installation, operation, maintenance, repair, or condition of any facilities authorized under this Agreement including the Communications Network, the delivery of services over the Communications Network, or the condition of public or private property altered as a result of Licensee's activities.

5.3 Attorney General Investigation, Effect of Determination. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona and City and Licensee are not able (after good faith attempts) to modify the Agreement so as to resolve the violation with the Attorney General within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Agreement shall automatically terminate at midnight on the thirtieth (30th) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Licensee posts such bond; and provided further, that if the Arizona Supreme Court determines that this Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this Agreement and the Parties shall have no further rights, interests, or obligations under this License Agreement, or claim against the other Party for a breach of default under this License Agreement.

5.4 Statutory Authority, Effect of Lack Thereof. Licensee shall assume the risk of, and hereby relinquishes any claim of any kind whatsoever against City in connection with, any final, non-appealable order or determination by a court of competent jurisdiction that City lacked the statutory authority under Arizona law to issue this License. The Parties agree that if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order or determination that City did not have the authority to issue a License to Licensee under Arizona law, then this License shall be considered a revocable permit with a mutual right in either Party to terminate without cause upon giving sixty (60) days' notice to the other. In such an event, the requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this License except for conditions relating to the term of the License and right of termination. If this License shall be considered a revocable permit as provided herein, the Licensee acknowledges the authority of the City Council under Title 9 of the Flagstaff City Code to issue a revocable permit and the power to revoke as provided herein.

SECTION 6. Letter of Credit.

Licensee shall provide and maintain an irrevocable letter of credit in a form acceptable to the City Attorney of no less than One Hundred Thousand Dollars ($100,000.00) as security for the faithful performance by it of all the provisions of this License for the full term of the License plus an additional six (6) months thereafter. The letter of credit shall provide for sixty (60) days prior written notice to the City before cancellation or material alteration of the letter of credit. This Agreement may be revoked by City if Licensee fails to maintain the required letter of credit. Every five (5) years from and after the Effective Date of this Agreement, the letter of credit amount shall be increased by Five Thousand Dollars ($5,000.00). In the event City makes any draw upon the letter of credit, Licensee shall immediately restore the letter of credit to the amount required under this Agreement.

SECTION 7. Insurance.

7.1 General Requirements.

7.1.1 Licensee, at its own expense, shall carry and maintain insurance of the types and amounts required in this section with companies possessing a current AM Best, Inc. rating of A- or better and legally authorized to do business in the State of Arizona with policies and forms reasonably satisfactory to City.

7.1.2 All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement and may result in termination of this Agreement.

7.1.3 The failure to renew any of the insurance policies required pursuant to this Agreement prior to their expiration shall constitute a breach of this License Agreement.

7.1.4 All insurance policies, except Workers' Compensation, required by this Agreement shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, City, its agents, representatives, officers, directors, officials, and employees as additional insureds.

7.1.5 Licensee's insurance shall be primary insurance over any insurance available to the City and as to any claims resulting from this Agreement, it being the intention of the Parties that the insurance policies so effected shall protect both Parties and be primary coverage for any and all losses covered by the described insurance. The insurance provided by Licensee shall not require contribution from any other insurance or self-insurance maintained by the City or the City’s agents, representatives, officials, officers, directors, or employees.

7.1.6 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the Licensee's acts, errors, mistakes, omissions, work, or service.

7.1.7 The insurance policies may provide coverage requiring deductibles, but payment of such deductibles shall be assumed by and shall be the sole responsibility of the Licensee.

7.1.8 Licensee will provide City with notice of cancellation of any policy required above in accordance with policy provisions.

7.2 Proof of Insurance; Certificates of Insurance.

7.2.1 Prior to commencing work or services under this Agreement, Licensee shall furnish to City Certificates of Insurance issued by Licensee's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates of Insurance.

7.2.2 If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City within five (5) business days of the expiration date.

7.2.3 All Certificates of Insurance shall identify the policies in effect on behalf of the Licensee, their policy period(s), and limits of liability. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the Agreement documents. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.

7.2.4 City reserves the right to request and to review at a mutually agreeable location, within ten (10) working days, copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Licensee of any deficiencies in such policies and endorsements, and such receipt shall not relieve Licensee from, or be deemed a waiver of City's right to insist on, strict fulfillment of Licensee's obligations under this Agreement.

7.3 Required Coverage.

7.3.1 Such insurance shall protect Licensee from claims set forth below which may arise out of or result from the operations of Licensee under this Agreement and for which Licensee may be legally liable, whether such operations be by the Licensee or by a sub-consultant or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. Form CG00010413 or equivalent thereof including, but not limited to, severability of interest and waiver of subrogation clauses.

7.3.2 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Licensee's employees.

7.3.3 Claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom.

7.3.4 Claims involving contractual liability insurance applicable to the Licensee’s obligations of indemnification.

7.4 Commercial General Liability – Minimum Coverage Limits.

Any combination between general liability and excess general liability alone amounting to a minimum of $3,000,000.00 per occurrence and an aggregate of $6,000,000.00 in

coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc.'s (ISC) Additional Insured, Form B, CG 2010, or equivalent, and shall include coverage for Licensee's operations and products, and completed operations.

7.5 Worker's Compensation and Employer's Liability.

Licensee shall maintain Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee's employees engaged in the performance of the work or services; and Employer's Liability insurance of not less than $1,000,000 for each accident, $1,000,000 disease coverage for each employee, and $1,000,000 disease policy limit. In case any work is subcontracted, Licensee will require the subcontractor to provide Worker's Compensation and Employer's Liability to at least the same extent as required by Licensee.

7.6 Automobile Liability.

Licensee 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 any owned, hired, and non-owned vehicles assigned to or used in performance of the Licensee's work. Coverage shall be at least as broad as coverage code 1, "any auto" (Insurance Service Office, Inc. Policy Form CA 0011293, or equivalent).

SECTION 8. Abandonment of Facilities.

Upon termination or expiration of this Agreement, Licensee at its expense shall either (i) enter into a new license allowing the Communications Network to remain within the Public Highways, or (ii) transfer the Communications Network to another entity with a license to use the Public Highways and provide evidence thereof to City, or (iii) abandon all or part of its Communications Network in place subject to City's sole discretion and written approval. If Licensee desires to abandon all or part of its Communications Network, Licensee first shall submit to the City a proposal for abandonment and instruments for transferring ownership to the City. If abandonment is approved by City, Licensee must notify the Arizona 811 of such abandonment and shall record the abandonment consistent with Arizona Revised Statutes §§ 40-360.21 et seq.

SECTION 9. Assignment of License.

9.1 In General. Except as provided for in Section 9.2, neither Party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other Party, which shall not be unreasonably withheld, conditioned, or delayed. Licensor reserves the right to condition assignment or transfer of the License upon demonstration of the transferee or licensee's qualifications to perform all rights and obligations of the License, the City Conduit Lease Agreement dated January 21, 2025, the City Fiber Network Maintenance Agreement dated January 21, 2025, and upon condition that Licensee shall remain liable for all acts, omissions, or liabilities arising under such agreements prior to the date of such assignment or transfer.

9.2 Assignment to an Affiliate. Licensee shall have the right to assign this Agreement to an Affiliate without prior written consent of Licensor, provided that Licensee will remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this section, (a) "Affiliate" means any person that now or in the future, directly or indirectly controls, is controlled with

or by, or is under common control with Licensee; and (b) "control" means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other person, fifty percent (50%) or more ownership interest in said person, or the power to direct the management of such person.

SECTION 10. Nonexclusive License.

This License grant is not exclusive, and nothing herein contained shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm, or corporation to use the Public Highways.

SECTION 11. Revocation of License.

This License may be revoked by the Licensor prior to expiration of the then-current Term if any one of the following events occurs:

i. The Licensee fails to comply with the material terms and conditions of the License or applicable law and does not remedy or cure such failure to comply as provided by Section 12;

ii. The Licensee is or becomes insolvent or is a party to a voluntary bankruptcy, reorganization, or receivership case or proceeding, makes an assignment for the benefit of creditors, is subject to other actions by creditors that, in the reasonable, good faith opinion of the City, threaten the financial viability of Licensee as a going concern, or if there is any similar action that affects Licensee's capability to perform its obligations under this License; or

iii. The Licensee is the subject of a petition for involuntary bankruptcy not dismissed within sixty (60) days.

SECTION 12. Breach; Rights and Remedies; Termination.

12.1 Licensee Breach or Default. In the event the City believes that Licensee has not complied with or is otherwise in default of any material term of this Agreement, the City shall promptly notify Licensee in writing with specific details regarding the exact nature of the alleged noncompliance or default (a "City Breach Notice").

12.1.1 Licensee's Right to Cure or Respond. Licensee shall have forty-five (45) days from its receipt of a City Breach Notice (the "Initial Licensee Cure Period") to either:

i. respond to the City, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest, but in the event the Parties are unable to resolve such contest within thirty (30) days of Licensee's response, City may proceed to enforce any of the remedies set forth in Section 12.1.2 ; or

ii. cure an actual default or noncompliance; provided, however, in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the Initial Licensee Cure Period, then so long as Licensee initiates reasonable steps to remedy and continuously and diligently uses all reasonable efforts to cure such default or noncompliance promptly and notifies the City of the steps being taken and the projected

date that they will be completed, the Initial Licensee Cure Period shall be extended for a reasonable amount of time to permit such cure but not to exceed ninety (90) days from Licensee's receipt of a City Breach Notice (the "Extended Licensee Cure Period" and together with the Initial Licensee Cure Period, the "Licensee Cure Period"). If Licensee is unable to cure the default during the Initial Licensee Cure Period or Extended Licensee Cure Period (whichever is applicable), then City may proceed to enforce any of the remedies set forth in Section 12.1.2.

12.1.2 City Rights and Remedies. If Licensee fails to cure any actual noncompliance or default as provided in Section 12.1.1 within the applicable Cure Period, the City may take any or all of the following actions:

i. terminate this License;

ii. seek special action or other similar relief (whether characterized as mandamus, injunction, or otherwise), requiring Licensee to undertake and to fully and timely address or to enjoin any construction or activity undertaken by Licensee which is not in accordance with the terms of this Agreement;

iii. seek indemnity (including but not limited to filing an action for damages) arising under Licensee's indemnity or duty to hold harmless obligations set forth in Section 5, or seek damages for failure to restore property under Sections 3.3, 3.6, 3.12, or 3.15; or

iv. enforce its rights given under any bond or similar financial assurance given or provided by or for the benefit of Licensee or City pursuant to this Agreement.

Notwithstanding anything to the contrary in this Agreement, in no event shall the City be permitted to terminate this Agreement if the City has an uncured breach or default under this Agreement.

12.2 City Breach or Default. In the event Licensee believes that the City has not complied with or is otherwise in default of any material term of this License, Licensee shall promptly notify the City in writing with specific details regarding the exact nature of the alleged noncompliance or default (a "Licensee Breach Notice"). The failure to promptly provide such notice, however, shall not act as a waiver of any rights and remedies of Licensee hereunder unless and only to the extent that the City is materially prejudiced by such failure.

12.2.1 City's Right to Cure or Respond. The City shall have forty-five (45) days from its receipt of a Licensee Breach Notice (the "City Cure Period") to:

i. respond to Licensee, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest, but in the event the Parties are unable to resolve such contest within thirty (30) days of City's response, Licensee may proceed to enforce any of the remedies set forth in Section 12.2.2; or

ii. cure an actual default or noncompliance; provided, however, in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the City Cure Period, then so long as City initiates reasonable steps to remedy and continuously and diligently uses all reasonable efforts to cure such default or noncompliance promptly and notifies the Licensee of the steps being taken and the projected date that they will be completed, the City Cure Period shall be extended for a reasonable amount of time to permit

such cure but not to exceed ninety (90) days from City's receipt of a Licensee Breach Notice (the "Extended City Cure Period"). If City is unable to cure the default during the City Cure Period or Extended Licensee Cure Period (whichever is applicable), then Licensee may proceed to enforce any of the remedies set forth in Section 12.2.2.

12.2.2 Licensee Rights and Remedies. If the City fails to cure any actual noncompliance or default as provided in Section 12.2.1 within the applicable Cure Period, Licensee's sole and exclusive remedies shall be limited to any or all of the following, as applicable:

i. file a special action or seek other similar relief (whether characterized as mandamus, injunction, or otherwise), requiring City to undertake and to fully and timely perform its obligation under this Agreement;

ii. an action for damages for repairs to its Communications Network as set forth in Section 3.12 if applicable; and

iii. in the event of the breach of, noncompliance with, or default under any material term of this Agreement, terminate this Agreement and seek recovery of termination-related attorneys' fees.

12.2.3 Termination by Licensee. Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City. Notwithstanding anything to the contrary in this Agreement, in no event shall the Licensee be permitted to terminate this Agreement if the Licensee has an uncured material breach or default under this Agreement, and has received a City Breach Notice prior to seeking to terminate for convenience.

12.3 Limitation of Liabilities:

12.3.1 In General. The City and its officers, agents, elected or appointed officials, employees, departments, boards, and commissions shall not be liable to Licensee or to its affiliates, Customers, sublicensees, or contractors for any interference with or disruption in the operation of Licensee's Communications Network or the provision of services, or for any damages arising out of Licensee's use of the Public Highways.

12.3.2 Official Acts. The Licensee shall have no recourse whatsoever against the City's officers, elected or appointed officials, boards, commissions, agents, or employees for any loss, cost, expense, or damage arising out of any actions taken in their official capacities pursuant to this Agreement.

12.3.3 Damages. Except where explicitly permitted by the terms of this License Agreement, City and Licensee each waives its respective right to seek and recover consequential (including lost profits or harm to business), indirect, incidental, reliance, exemplary, special, beneficial, numerical, punitive, or similar damages from the other.

SECTION 13. Acceptance of License Authority.

The Licensee acknowledges and accepts the right of the City to issue a License, and Licensee agrees it shall not now or at any time hereafter challenge this right to issue the License in any way or

in any City, state, or federal court. The Licensee has reviewed the Licensor's ability to grant a License and accepts such a License as the City may now be legally able to grant.

SECTION 14. Severability.

14.1 If any section, paragraph, clause, phrase, or provision of this License Agreement shall be adjudged invalid or unconstitutional, or preempted by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, the same shall not affect the validity of this License as a whole or any part of the provisions of this License other than the part superseded or adjudged to be invalid or unconstitutional.

14.2 The Parties agree that this License is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, order, and ordinances. Accordingly, any provision of this License which conflicts with any such applicable law shall be invalid and unenforceable, whether occurring before or after execution of this License, it being the intention of the Parties: (i) to preserve their respective rights and remedies under all applicable laws; and (ii) that the execution of this License does not constitute a waiver of any rights or obligations by either Party under any applicable law. In the event that a provision is invalid and unenforceable, all other provisions shall remain in full force and effect. Both the City and Licensee expressly reserve all rights they may have under law to the maximum extent possible; neither the Licensor nor the Licensee shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this License.

SECTION 15. Notices.

All notices, requests, demands, claims, and other communications permitted or required to be given pursuant to this License must be in writing and shall be deemed duly given and received (i) if personally delivered, when so delivered; (ii) if mailed, five (5) calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below; (iii) if sent through an overnight delivery service in circumstances to which such service guarantees next day delivery, the day following being so sent.

If to the City:
Grants and Contracts Administration
211 W. Aspen Avenue
Flagstaff, Arizona 86001

With a copy to:
City Engineer
211 W. Aspen Avenue
Flagstaff, Arizona 86001

If to Licensee:
The Chief Executive Officer
Wecom LLC d/b/a Wecom Fiber
2332 Kingman Avenue
Kingman, Arizona 86401

With a copy to:
The General Counsel
Wecom LLC d/b/a Wecom Fiber
3028 E. Sunset Rd.,
Las Vegas, Nevada 89120

Either Party may from time to time designate any other address for this purpose by written notice to the other Party in the manner set forth above.

SECTION 16. Entire Agreement and Amendment.

This License Agreement constitutes the entire agreement of the Parties regarding the matters set forth herein and may be amended or modified only by a written instrument signed by an authorized representative of each Party.

SECTION 17. Governing Law; Arizona Legal Requirements.

This License will be governed by, enforced, and construed in accordance with the laws of the State of Arizona and applicable federal law, and any Party bringing a claim hereunder may bring such claim only in the Superior Court of Coconino County, Arizona, or the United States District Court for the District of Arizona, as applicable. The Parties hereby irrevocably designate these courts as the only courts of proper jurisdiction and venue for any actions or proceedings relating to this Agreement and waive any objections or defenses relating to jurisdiction with respect to such action or proceeding. Each Party consents to service of process under the statutes and rules applicable to the Superior Court of Coconino County, Arizona, and the United States District Court for the District of Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this License Agreement shall be Coconino County, Arizona. The Parties acknowledge the following Arizona statutes applicable to this Agreement and any terms required to be in this Agreement based on such statutes are deemed included herein: A.R.S. § 38- 511 (cancellation of political subdivision contracts); A.R.S. § 42-17106 (expenditures limited to budgeted purposes); A.R.S. § 35-393.01 (Israel boycott divestments); and A.R.S. § 38-504 (conflict of interest – prohibited acts).

SECTION 18. Attorneys' Fees.

The prevailing Party in any litigation arising out of this License Agreement shall be entitled to the recovery of its actual reasonable attorneys' fees, court costs, and other litigation-related costs and fees from the other Party.

SECTION 19. Force Majeure.

Except as otherwise expressly set forth in this License, the Parties will not be held in default under, or in breach or noncompliance with, the provisions of this License, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation, or revocation of this Agreement), where such noncompliance or alleged defaults occurred or were caused by any Force Majeure Event.

SECTION 20. Representations and Warranties.

20.1 Subject to the limitations set forth in Section 13 (Acceptance of License Authority) and this Section 20, the City represents and warrants to Licensee that, as of the date of the execution of this License Agreement, to the best of its knowledge: (a) it has full authority (including the authority required by any applicable law, ordinance, rule, or regulation) to enter into and perform this License Agreement and the execution, delivery, and performance of this License Agreement, and the consummation of the transactions contemplated hereby and thereby are within the right, power, and authority of the City and have been duly authorized by all necessary action on the part of City, (b) this

License Agreement has been duly executed and delivered by the City and it constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and by general principles of equity), and (c) the execution and delivery of this License Agreement by the City and its performance hereunder and thereunder does not violate any law, ordinance, rule, or regulation applicable to the City.

20.2 Licensee represents and warrants to the City that: (a) it has full authority to enter into and perform this Agreement and the execution, delivery, and performance of this Agreement, and the consummation of the transactions contemplated hereby and thereby are within the power and authority of Licensee and have been duly authorized by all necessary action on the part of Licensee, (b) this Agreement has been duly executed and delivered by Licensee and it constitutes a legal, valid and binding agreement of Licensee enforceable against Licensee in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and by general principles of equity), and (c) the execution and delivery of this Agreement by Licensee and its performance hereunder and thereunder will not violate any law, rule, or regulation applicable to Licensee.

20.3 OTHER THAN THE EXPLICIT REPRESENTATIONS AND WARRANTIES MADE BY LICENSEE TO CITY UNDER THIS AGREEMENT, LICENSEE MAKES NO REPRESENTATIONS OR WARRANTIES TO THE CITY OR ANY PERSON WITH RESPECT TO THE COMMUNICATIONS NETWORK(OR THE COMPONENTS THEREOF) AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT LICENSEE MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

SECTION 21. No Third-Party Beneficiaries.

This License Agreement is intended to be for the sole benefit of City and Licensee, and there shall be no third-party beneficiaries of this License or any provisions hereof. Nothing in this Agreement shall confer on any person or entity, other than City and Licensee, any rights, benefits, or remedies under or by reason of this License Agreement.

SECTION 22. No Rights to the Communications Network.

The City expressly agrees that, except as expressly set forth in this License Agreement, it does not claim any interest or estate of any kind in the Communications Network. Licensee shall, at all times, retain title to and ownership of the Communications Network and all future extensions of the Communications Network during the term of this License.

SECTION 23. Construction.

Each Party to this License Agreement has been represented by legal counsel in connection with preparation of this Agreement. Legal or equitable principles that might require the construction of this Agreement or any provision hereof against the Party drafting this Agreement shall not apply in any construction or interpretation of this Agreement and is expressly waived. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

SECTION 24. Waiver.

No provision of this Agreement may be waived unless such waiver is in writing and signed by the Party against whom the waiver is to be effective. No failure or delay by a Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

SECTION 25. Survival.

The rights and obligations of the Parties under Sections 5 (Indemnification and Assumption of Risk), 6 (Letter of Credit), 7 (Insurance), 8 (Abandonment of Facilities), 18 (Attorneys' Fees), 24 (Waiver), and any other obligations which reasonably should survive expiration or termination of this License Agreement shall remain in effect following termination or expiration.

SECTION 26. Severability.

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement (which other terms and provisions shall remain in full force and effect) or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

SECTION 27. Public Records.

Licensor is a political subdivision of the State of Arizona and is subject to Arizona Public Records Law, A.R.S. §§ 39-121 set seq. As such, records related to this License may be subject to disclosure.

SECTION 28. Obligations to Customers.

Licensee shall take commercially reasonable steps to protect personal financial information of Customers. Licensee shall not discriminate against any Customer in violation of any civil rights law or protected class. Licensee shall comply with all federal, state, and local laws and regulations related to customer service standards, if any.

SECTION 29. Counterparts.

This Agreement may be signed in any number of counterparts, each of which will be deemed an original, with the same effect as if the signatures were upon the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission (including PDF) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

In witness hereof, the Parties have caused this License to be executed.

LICENSEE: Wecom LLC, a Delaware limited liability company

By: _____

Its: _____

Date: _____

STATE OF)
)SS
County of)

On this_____day of_____, 2025, before me, a Notary Public, personally appeared _____whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and who acknowledged to have signed this instrument on behalf of the corporation.

_____Notary Public_____

My Commission Expires:

_____

CITY: **City of Flagstaff, an Arizona municipal corporation**

By: _____
Greg Clifton, City Manager

Date: _____

STATE OF ARIZONA)
)SS
County of Coconino)

On this_____day of_____, 2025, before me, a Notary Public, personally appeared City Manager whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and who acknowledged to have signed this instrument on behalf of the City of Flagstaff.

_____Notary Public_____

My Commission Expires:

_____

EXHIBIT A
Credit Against Annual License Fee – In-Kind Materials/Services

In partial consideration of the In-Kind Materials and Services provided by Licensee pursuant to the Design-Build Services Contract for design and construction of a City Network entered into by and between the parties dated January 21, 2025, and pursuant to the City Fiber Network Maintenance Agreement entered into by and between the parties dated January 21, 2025, for a period of 20 years, the License Fee shall be adjusted as follows:

Year 1- 3	No Annual License Fee
Year 4 - 10	1.5% of Gross Revenues
Year 11 - 20	2% of Gross Revenues

Provided, however, in the event the City amends the Flagstaff City Code within two (2) years from the Effective Date of this License Agreement to allow for use of micro-trenching within Residential Local Streets for installation of a fiber network, then the License Fee shall be reset at 2% of Gross Revenues from and after the effective date of such amendment to the Flagstaff City Code.

Residential Local Streets shall mean all streets not identified as arterial or collector streets in the City of Flagstaff Engineering Design Standards.

Type	Agency	Address	GlobalID	Location
Point of Interest	COF	4500 S LAKE MARY RD	{61828B39-ABB0-427E-BAEA-B28BB6BCEDE8}	Lake Mary Water Plant
Point of Interest	COF	300 W ASPEN AVE	{FC7CC5D4-74F6-44FE-B6B4-DB5D5A0624DD}	Main Library
Point of Interest	Wildcat Water Plant	2800 N El Paso Flagstaff Rd		Wildcat Water Plant
Point of Interest	COF	3877 S LAKE MARY RD	{61AD5E86-F96F-4E86-991A-22477C9B30A8}	Fire Station 6
Point of Interest	COF	6200 S PULLIAM DR	{60F4FEC8-BCC5-4664-B740-A90893621E90}	Airport
Point of Interest	COF	4500 E NESTLE PURINA AVE	{4A4C5E96-E1CF-4EBE-A3EB-BAE54DE685B4}	Fire Station 3
Point of Interest	COF	1050 S SAN FRANCISCO ST	{32FA8ACE-1470-42E9-8687-39B23BA2D3D1}	Cemetery
Point of Interest	COF	4100 E BUTLER AVE	{0DBCE185-8958-4F5F-B541-95A2FB0D92CF}	Fire Station 4
Point of Interest	COF	1650 N TURQUOISE DR	{E2B885F9-0197-4262-9A50-18AE73C8C509}	Jay Lively Ice Rink
Point of Interest	COF	2323 N WALGREENS ST	{7DB36791-E9D6-43F8-B909-A0C9904CBE48}	Water Services/Housing
Point of Interest	COF	101 W CHERRY AVE	{8C4CF149-944B-49B2-93E2-D4E1D95FB5A6}	New Court House
Point of Interest	COF	1 S BRANNEN CIR	{A8F3A576-FAA2-464E-A295-1739D69ACD43}	Brannen Homes
Point of Interest	COF	3000 N FOURTH ST STE 5	{226F2066-C396-4948-B24E-D141E26ABBDF}	East Side Library
Point of Interest	COF	2403 N IZABEL ST	{CC785543-DEE8-481F-804B-BCAFCF9B63F4}	Flag Rec Center
Point of Interest	COF	2225 N GEMINI DR	{6D982930-7D2B-4128-972D-97B5FEFD4B3B}	Business Incubator
Point of Interest	COF	2201 N GEMINI RD	{8BD22BD5-B329-4251-95F6-C5382256F118}	Business Accelerator
Point of Interest	COF	2225 N GEMINI DR	{5AB651AD-A80E-4DF3-BEE5-F93F3C11A396}	McMillan Mesa Microwave Tower
Point of Interest	COF	1702 N FOURTH ST	{8C40D5A6-5632-4E92-B90A-C36F1027C2B6}	Aquaplex
Point of Interest	COF	3481 N FANNING DR	{6677C806-B911-4CAD-8845-D2D0C7FCCCAA}	Flag Housing Authority
Point of Interest	COF	1972 S THOMPSON ST	{FDFD952E-372C-4094-9710-FCD742FDC514}	Fire Station 1
Point of Interest	COF	2525 N FORT VALLEY RD	{11E5A049-77E3-438E-BE9C-EF45B2E51043}	Fire Station 5
Point of Interest	COF	3200 W ROUTE 66	{13F129C5-17AC-4619-AAE8-9FAF2EAF2CCD}	Public Works Yard
Point of Interest	COF	245 N THORPE RD	{4AA3CA45-DE34-4DE8-B499-CD29CF0D5295}	Adult Center
Point of Interest	COF	1701 E PONDEROSA PKWY	{B1B8E76F-413E-4D45-81D9-0002BF53A4B7}	Fire Station 2
Point of Interest	Rio De Flag Water Plant	600 S Babbitt Dr		Rio De Flag Water Plant
Point of Interest	COF	5401 E COMMERCE AVE	{C4987697-97ED-4468-AF57-230064D37D11}	East Side Utility Shop
Point of Interest	COF	911 E SAWMILL RD	{74E8BA9F-7733-4DD5-9CEF-43D622820EAB}	LEAF City
Point of Interest	COF	2201 N GEMINI RD	{A7C2F971-1A3B-477B-AFE8-AC5127BF2343}	Business Accelerator
Point of Interest	COF	600 N THORPE RD	{593BBEEF-6C0A-4281-9756-7698A5DD729F}	Parks Building
Point of Interest	COF	560 N THORPE RD	{EA7FED31-E2B0-4C97-BC6E-F23987C3DD2C}	Thorpe
Point of Interest	COF	419 N MOGOLLON ST	{D8D681D3-D4C6-41E0-99B4-8359229ABCD5}	Sustainability
Point of Interest	COF	419 N MOGOLLON ST	{055E760F-FA1F-4B13-B56D-C66ED444FBE4}	Old Fleet Building
Point of Interest	COF	5477 E COMMERCE AVE	{E8216449-1E88-411D-A918-320F0E2E39AB}	PD Warehouse
Point of Interest	COF	211 W ASPEN AVE	{C3E75F01-9B94-4BFE-99F7-14584DB2543F}	City Hall
Point of Interest	COF	1 E ROUTE 66	{9CCC4CFA-DDA8-4FBD-8D5D-9EC31A3184CA}	Visitor Center
Traffic Signal	COF		{9849569A-2F32-43F8-9503-C1AD40702B86}	Smokerise/89 Traffic Signal
Traffic Signal	COF		{16333ED7-CDF1-4806-91F2-B5C40CB3A30C}	
Traffic Signal	COF		{A520B07E-2744-4DCA-86E2-BDC9B638F77D}	
Traffic Signal	COF		{FCB77214-7124-43AF-9B85-4334FD24B3FD}	
Traffic Signal	COF		{314034E3-AC2B-4369-8ACE-390839C47FFB}	Traffic Signal Columbus/Beaver
Traffic Signal	COF		{E533C06C-C0A1-431A-A816-8F5C8A13C97E}	
Traffic Signal	COF		{4C99A851-8463-4F13-9FAA-8EDA1F03A01D}	
Traffic Signal	COF		{76C26D69-4669-4360-81CC-575213732C1A}	
Traffic Signal	COF		{B2D1133A-01D7-4E38-96E7-43C63D2364DE}	
Traffic Signal	COF		{652538C6-E3F8-4D1A-8B0E-880E8006115C}	
Traffic Signal	COF		{241BD9F2-66EC-40EB-8571-D7A8154B3CDB}	Marketplace/Mall Traffic Signal
Traffic Signal	COF		{8EC8147E-355E-4F91-A531-09BDC4E4C17D}	
Traffic Signal	COF		{8B24F60F-BFD0-477C-84D6-6FBCF591B1FD}	
Traffic Signal	COF		{ACB0FAA4-C0F9-435D-9346-91C914CF6B05}	
Traffic Signal	COF		{EB402F07-3E2F-43CA-8B16-19AC6C18C499}	Marketplace/89 Traffic Signal
Traffic Signal	COF		{D8339A49-75CD-46B9-857B-86030182CCDD}	
Traffic Signal	COF		{76C29542-344E-4F47-B18C-AC131A43FBF1}	
Traffic Signal	COF		{C575BF65-18B6-4190-93CC-E76AE84A9FDF}	
Traffic Signal	COF		{531D3F66-1C54-46B7-8D6B-A6BDE5E033F1}	
Traffic Signal	COF		{DA2E5880-2614-4C1D-8987-8FE7374C9C67}	
Traffic Signal	COF		{B4C7DC8F-4378-494E-8047-E28E532DE378}	
Traffic Signal	COF		{E4CD8160-A77C-4435-BF76-319013A155AA}	
Traffic Signal	COF		{0AC0E4B1-6E96-4D7D-BE12-2D58D6A1B067}	
Traffic Signal	COF		{6C896393-AA99-4B24-8835-1E49CF02EC21}	
Traffic Signal	COF		{FCBBE990-DDC6-402D-8AAA-22E579B56D38}	
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Traffic Signal	COF		{988EA308-083F-4AB7-8E02-F25FE9DB8559}	
Traffic Signal	COF		{8B12EB57-D74D-4653-A8CB-6F25671E475B}	66/89 Traffic Signal
Traffic Signal	COF		{AE3067CE-EE21-4AAF-9E1F-483A62CB97F5}	Country Club/89 Traffic Signal
Traffic Signal	COF		{10E13247-0035-4F7B-9C33-573B2B0C7827}	Nestle/Country Club Traffic Signal
Traffic Signal	COF		{660721E8-00FA-4C16-AE40-A57CDF7C8C20}	
Traffic Signal	COF		{FE54C911-C0D3-4B79-A197-00ABAF6CDCD8}	Fanning/89 Traffic Signal
Traffic Signal	COF		{DECA4E30-E83B-4398-9C5D-FFDD032143EF}	
Traffic Signal	COF		{2E255272-2AD0-43DF-A1B5-D02D63F1D193}	Empire/89 Traffic Signal
Traffic Signal	COF		{80190B77-0727-46FF-B4F7-A1217255A503}	
Traffic Signal	COF		{4351301E-DB0C-4D7F-AA46-37F61092B935}	
Traffic Signal	COF		{98EC0427-8A27-4F09-86E6-DEE229CF0ABE}	
Traffic Signal	COF		{2064FD23-4B4E-4EC3-B4B2-4C476017139E}	
Traffic Signal	COF		{68E3583A-CCB7-45DD-B292-FA7512F92365}	Cummings/89 Traffic Signal

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Mac McNamara, Water Services Section Director

Co-Submitter: Lee Williams

Date: 01/15/2025

Meeting Date: 01/21/2025

TITLE:

Consideration and Approval of Grant Agreement: Approve the Grant Agreement with the Department of Emergency Management and Military Affairs (DEMA) for the Rio de Flag Water Reclamation Plant Backup Generators.

STAFF RECOMMENDED ACTION:

1. Approve the Grant Agreement with DEMA for the Hazard Mitigation Grant Program (HMGP) for Rio de Flag Water Reclamation Plant Backup Generators (HMGP DR-4524-16-11R) for $450,000.00 (90% State Share), with a $50,000.00 (10% local match) requirement; and
2. Authorize the City Manager to execute all necessary documents.

Executive Summary:

Executive Summary

HMGP for Rio de Flag Water Reclamation Plant Backup Generators (HMGP DR-4524-16-11R) for a total award amount of $450,000.00 with a $50,000 local match requirement.

Financial Impact:

Financial Impact:

The Grant Agreement is for a HMGP for Rio de Flag Water Reclamation Plant Backup Generators (HMGP DR-4524-16-11R) for a total award amount of $450,000.00 with a $50,000 local match requirement. The total budget for this grant funded project is $455,600 in account number 410-08-375-3529-3-4405. This is Pre-Construction and Design Phase #1 of a 4 phase grant award. Once the City has demonstrated completion of Phase #1 DEMA will release the remaining funds to construct ($5,190,000.00).

Policy Impact:

Policy Impact:

This accepts the DEMA Grant Agreement which will fund the engineering, design and geotechnical assessment needed before construction begins.

Previous Council Decision or Community Discussion:

No.

Options and Alternatives to Recommended Action:

Options and Alternatives:

1. Accept the Grant Agreement which will provide funding to complete the engineering, design and

geotechnical assessment needed to construct backup power at the RDF WRP
2. Do not accept the Grant Agreement and the DEMA funds will be returned. Alternative sources of funding will be needed to be identified to complete this project.

Background and History:
Background/History:
RDFWRP has two primary power feeds running from APS into the facility. This allows for redundancy in case of power failure in the primary feed. These feeds are operated by APS on a manual switchgear; therefore, if power is lost, the facility must wait for APS to switch to the other feed. If both feeds go offline, then the facility is out of commission. Any significant loss of voltage into the plant could lead to the death of integral microorganisms and equipment failure at RDFWRP. Flow is then redirected to WCHWRP, overwhelming their facility and potentially putting operations out of compliance and threatening environmental and public health. The local match portion will be coming from the Prop 441 bond which is underfunded. With this grant, work can be completed with minimal value engineering.

Wildfire is another imminent risk in northern Arizona, potentially impacting power supply from APS. Nearly every year, power supplies were threatened across the state due to fire risk. Flooding, wind, and storms can also threaten power supply. These risks have been exponentially increasing over the past decade.

In order to mitigate these potential hazards, a minimum of four transfer switches and two to three backup generators will be required. Automatic switches will be implemented so RDFWRP can be transferred to backup generators until power is restored. These upgrades ensure adequate voltage is maintained at RDFWRP and that plant operation can continue in the event of a power failure.

Connection to PBB Priorities and Objectives:
- Livable Community
- High Performing Governance
- Safe and Healthy Community
- Sustainable and Innovative Infrastructure

Connection to Regional Plan:
N/A

Connection to Carbon Neutrality Plan:
N/A

Connection to 10-Year Housing Plan:
N/A

Connection to Division Specific Plan:
This project supports Water Services Utilities Integrated Master Plan by creating a more resilient wastewater reclamation facility.

Attachments: Subrecipient Agreement

SUBRECIPIENT AGREEMENT BETWEEN

City of Flagstaff

AND

The Arizona Department of Emergency and Military Affairs
FOR

Hazard Mitigation Grants Program – HMGP DR-4524-16-11R

WHEREAS, A.R.S. 26-306(B)(1) and 26-312 charges the Arizona Department of Emergency and Military Affairs (DEMA) with the responsibility of administering funds.

THEREFORE, it is agreed that DEMA shall provide funding to the City of Flagstaff ("Subrecipient") under Catalogue of Federal Domestic Assistance (CFDA) # 97.039 under the terms of this Subrecipient Agreement (Agreement).

1. **PURPOSE OF AGREEMENT** - The purpose of this Agreement is to specify the rights and responsibilities of DEMA in administering the distribution of Hazard Mitigation Assistance Grant (HMA) funds to Subrecipient, and to specify the rights and responsibilities of Subrecipient as the recipient of these funds.

2. **TERM OF AGREEMENT** - This Agreement shall become effective on October 25, 2024 and shall terminate on May 25, 2025. The rights and responsibilities of DEMA and Subrecipient as described herein will survive termination of this agreement.

3. **DESCRIPTION OF SERVICES, SUPPLIES AND EQUIPMENT** - Subrecipient shall use the funds provided under this Agreement solely for the purposes for which these funds have been provided, as documented by the Subrecipient's grant application as approved by the Federal Emergency Management Agency (FEMA) and DEMA, a copy of which is attached as Exhibit.

    a. The HMGP program covers eligible costs from October 25, 2024 and shall terminate on May 25, 2025 (the "Agreement Period"). The funds awarded in the grant agreement shall only be used to cover allowable costs that are incurred during the Agreement Period. Allowable costs are defined in the 2015 Hazard Mitigation Assistance Guidance, 2 CFR Part 200, and by this Agreement.
    b. Finance & Administration - Subrecipient shall provide DEMA with complete documentation of all expenditures of funds provided under this Agreement as soon as such documentation becomes available to Subrecipient. Subrecipient shall provide all necessary financial and managerial resources to meet the terms and conditions of receiving funds under this Agreement. DEMA does not manage or take responsibility for the Subrecipient's projects, and monitors projects (with regard to program eligibility and other requirements) only in order to protect the State's interests.
        i. The HMGP program has a 10% cost match (cash or in kind) requirement, pursuant to sections 203(h) (42 USC 5133(h)) and 404(a) (42 USC 5170c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. No. 93-288), as amended, (42 U.S.C. 5121 et seq.).

ii. Federal funds cannot exceed 90% of eligible costs. Unless otherwise authorized by law, federal funds cannot be matched with other federal funds. All funds received by Subrecipient through DEMA under this Agreement are agreed to be federal matching funds; Subrecipient shall be solely responsible for providing the other 10% (cash or in-kind) in order to obtain these federal matching funds.

iii. The Federal Emergency Management Agency (FEMA) administers cost matching requirements in accordance with 2 CFR. 200.306, and Subrecipient contributions must meet the standards of 2 CFR. 200.306 and all other applicable federal law.

4. **MANNER OF FINANCING** - DEMA shall:
   a. Provide up to $**450,000.00** to the Subrecipient for 90% of the costs expended for approved services, supplies and equipment, as referenced as in the 2015 Hazard Mitigation Assistance Guidance and 2 CFR Part 200. Subrecipient will use the funds provided by DEMA and the matching contribution made by the Subrecipient to acquire the services, supplies and equipment identified in Part 3, DESCRIPTION OF SERVICES, SUPPLIES, AND EQUIPMENT, of this Agreement.
   b. Payment made by DEMA to Subrecipient shall be on a reimbursement basis only and is conditioned upon receipt of proof of payment or other form of contribution, consisting of applicable, accurate and complete documentation, as determined by DEMA in its sole discretion. A listing of acceptable documentation is attached as Exhibit 4(b).

5. **FISCAL RESPONSBILITY** - For any funds received under this Agreement for which expenditure is disallowed by an audit exemption or otherwise by DEMA, the State, or Federal government, Subrecipient shall reimburse said funds to DEMA immediately.

6. **FINANCIAL AUDIT/PROGRAMATIC MONITORING** - Subrecipient shall comply with A.R.S. 35-214 and 35-215.
   a. Pursuant to 2 CFR. 200.501, if Subrecipient expends $1,000,000 or more from all federal funding sources during the fiscal year, Subrecipient shall submit an organization-wide financial and compliance audit report per Subpart F of 2 CFR. Part
   200. Failure to comply with any requirements imposed as a result of an audit will suspend the release of federal funds by DEMA to Subrecipient until Subrecipient has met all such requirements.
   b. Subrecipient will be monitored periodically by DEMA, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring may involve aspects of the work involved under this Agreement including but not limited to the review and analysis of financial, programmatic, equipment, performance and administrative issues relative to each program, and may identify areas where technical assistance and other support may be needed. Subrecipient shall participate in and cooperate with all such monitoring by DEMA, and shall provide access to all personnel, documents, and other records as may be requested from time to time by DEMA. Subrecipient also shall comply with all requests of DEMA that DEMA deems necessary to assure the parties' compliance with their obligations under this Agreement, including but not limited to circumstances in

which DEMA is required or requested to provide information or records to FEMA or to any state or federal auditor; in such event, Subrecipient shall cooperate with DEMA and shall provide DEMA with all information and records necessary for DEMA to comply with any such request or requirement.

7. **APPLICABLE LAWS AND REGULATIONS** - Subrecipient must comply with all applicable Arizona and Federal law, whether or not specifically cited or referenced in this Agreement, and including but not limited to, as applicable, (1) 2 CFR. 200.0 through 200.345 (general provisions and requirements); (2) 200.400 through 200.475 (cost principles); (3) 200.500 through 200.521 (audit requirements); (4) the Appendices to 2 CFR. Part 200; and (5) 2 CFR. 3002.10. Subrecipient also must comply with all applicable Indian, Tribal, and local laws, implementing regulations, and Executive Orders.

8. **OTHER APPLICABLE REQUIRED STANDARDS** - In addition to complying with all applicable Federal and Arizona statutes and regulations, Subrecipient shall:
    a. Comply with the NOFO;
    b. Large equipment purchases must be identified and explained. Federal property management standards for equipment must be complied with. See 2 CFR 200.33; 2 CFR 200.48; 2 CFR 200.89; and 2 CFR 200.313. See https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl;
    c. Prepare, retain, and be prepared to produce for examination by DEMA and/or FEMA, all records of all activities relating to this Agreement, to the extent necessary to comply with the requirements set forth in 2 CFR Chapter II, Subpart F (2 CFR 200.500 *et seq.*) and OMB Circular A-133, available at https://www.whitehouse.gov/omb/information-for-agencies/circulars/#numerical;
    d. Comply with all applicable Federal, State, and Local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws including but not limited to: the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*); the National Historic Preservation Act (NHPA; 54 U.S.C. 300101 *et seq.*, and 305501 *et seq.*); the Endangered Species Act (ESA; 7 U.S.C. 136 *et seq.*; and 16 U.S.C. 1531 et seq.), and Executive Orders on Floodplains (11988; see https://www.fema.gov/executive-order-11988-floodplain-management), Wetlands (11990; see https://www.fema.gov/executive-order-11990-protection-wetlands-1977) and Environmental Justice for Low Income & Minority Populations (12898; see https://www.fema.gov/executive-order-12898-environmental-justice-low-income-minority-populations-1994). Subrecipient shall not undertake any project having the potential to impact EHP resources without express prior written approval obtained through DEMA. Subrecipient must comply with all conditions placed on the project as the result of the EHP review. Any subsequent change to the project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, Subrecipient must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Subrecipient must immediately cease construction in that area and notify DEMA and the appropriate State Historic Preservation Office. Procurement and construction activities shall not be initiated prior to the full EHP review being completed by FEMA Office of Environmental and Historic Preservation.
    e. Mitigation activities must adhere to all relevant statutes, regulations, and requirements,

including:

i. Sections 203 (42 USC 5133; Pre-Disaster Hazard Mitigation ("PDM")) and 404(a) (42 USC 5170c(a); Hazard Mitigation Grant Program ("HMGP")) of the Stafford Act;
ii. Section 4104c (Flood Mitigation Assistance) of the National Flood Insurance Act of 1968 (42 USC 4104c);
iii. Section 322 of the Stafford Act (Mitigation Planning; 42 USC 5165);
iv. Section 324 of the Stafford Act (Management Costs; 42 USC 5165b);
v. The National Historic Preservation Act, 54 U.S.C. 300101 *et seq.*;
vi. The National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*;
vii. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 *et seq.*, implemented through 49 CFR Part 24, 49 CFR 24.1 *et seq.*;
viii. Floodplain Management and Protection of Wetlands (44 CFR Part 9, 44 CFR 9.1 *et seq.*), implementing and enforcing Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands;
ix. The Coastal Barriers Resources Act, 16 USC 3501 *et seq.*, and 44 CFR Part 206, Subpart J, 44 CFR 206.340 *et seq.*);
x. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards "Super Circular," currently located at https://www.cottoncpa.com/wp-content/uploads/2016/07/OMB-Super-Circular-Doc.pdf;
xi. OMB Circular A-110;
xii. Floodplain Management (44 CFR Part 60, 44 CFR 60.1 *et seq.*);
xiii. Flood Mitigation Grants (44 CFR Part 79, 44 CFR 79.1 *et seq.*);
xiv. Property Acquisition and Relocation for Open Space (44 CFR Part 80, 44 CFR 80.1 *et seq.*);
xv. Hazard Mitigation Planning (44 CFR Part 201, 44 CFR 201.1 *et seq.*);
xvi. Hazard Mitigation Grant Program (44 CFR Part 206, Subpart N, 44 CFR 206.430 *et seq.*);
xvii. Management Costs (44 CFR Part 207, 44 CFR 207.1 *et seq.*);
xviii. OMB Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs;
xix. Audits of States, Local Governments, and Non-Profit Organizations (2 CFR Part 200, 2 CFR 200.0 *et seq.*); and
xx. Federal Acquisition Regulations (FAR) Subpart 31.2, Contracts with Commercial Organizations, 48 CFR 31.201 *et seq.*

9. **CONTRACTORS/SUBCONTRACTORS** - Subrecipient may enter into written subcontract(s) for performance of certain of its functions under this Agreement in accordance with terms established under Arizona and Federal law. Subrecipient agrees and understands that no subcontract that Subrecipient enters into with respect to performance under this Agreement shall in any way relieve Subrecipient of any responsibilities for performance of its duties. Subrecipient shall give DEMA immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against Subrecipient by any subcontractor or vendor with respect to any work on any project funded in whole or in part under this Agreement.

10. **PERSONNEL AND TRAVEL COSTS** - All grant funds expended for personnel, travel, lodging, and per diem must be consistent with the Subrecipient's policies and procedures and the State of Arizona Accounting Manual (SAAM; see https://gao.az.gov/publications/saam); must be applied uniformly to both federally financed and other activities of the Subrecipient; and will be reimbursed at the most restrictive allowability and rates. At no time will Subrecipient's reimbursement(s) exceed the State rate established by the Arizona Department of Administration in the SAAM.

11. **PROCUREMENT** - Subrecipient shall comply with all of its own procurement rules/policies, all Federal procurement rules/policies (including but not limited to those outlined in this section VII of this Agreement), and all Arizona procurement code provisions and rules. The intent is that all procurement contracts be awarded competitively, and the Subrecipient shall not enter into any noncompetitive (sole or single source) procurement unless express prior written approval is granted by DEMA.

12. **NONSUPPLANTING AGREEMENT** - Subrecipient shall not use funds obtained under this Agreement to supplant State or Local funds or other resources that would otherwise have been made available for any program/project funded in whole or in part under this Agreement.

13. **COMPLIANCE WITH STATE AND FEDERAL LAWS REGARDING IMMIGRATION**-
    a. Subrecipient warrants its compliance with all State and Federal immigration laws and regulations relating to its employees and to employees of any contractor or subcontractor retained through Subrecipient to provide goods or services related to this Agreement, including but not limited to A.R.S. 23-214 and 41-4401.
    b. A breach of a warranty by Subrecipient regarding compliance with State or Federal immigration laws or regulations shall be deemed a material breach of this Agreement by Subrecipient and may result in action by DEMA up to and including termination of this Agreement.
    c. DEMA retains the legal right to inspect the papers of any Subrecipient employee who works on the Agreement, and those of any employee of any contractor or subcontractor retained through Subrecipient to provide goods or services related to this Agreement, to ensure that Subrecipient is complying with the warranty under paragraph (a) above.

14. **PROPERTY CONTROL** - Effective control and accountability must be maintained by Subrecipient for all equipment and supplies acquired by Subrecipient under this Agreement. Subrecipient must adequately safeguard all such property and must assure that it is used for authorized purposes as described in the 2015 Hazard Mitigation Assistance Guidance, the grant application as approved, and the CFR. Subrecipient shall exercise caution in the use, maintenance, protection and preservation of such property.
    a. Equipment acquired by Subrecipient with funds obtained in whole or in part under this Agreement shall be used by Subrecipient in the program or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by funds obtained in whole or in part under this Agreement. Theft, destruction, or loss of such property shall be reported to DEMA immediately.
    b. Nonexpendable Property is personal property that is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable,

with an expected service life of two years or more; and that has a unit cost of more than $500. (48 CFR 752.245-70(a)(3)).

c. Capital Assets are any tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include: (a) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and (b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). (2 CFR 200.12).

d. A Property Control Form shall be maintained for the entire scope of the program or project for which property was acquired through the end of its useful life and/or disposition. All Nonexpendable Property and Capital Assets must be included on the Property Control Form. Subrecipient shall provide DEMA a copy of the Property Control Form at the end of period of performance or no more than ninety (90) calendar days after the end of the Agreement. The Property Control Form shall be updated, and a copy provided to DEMA no more than forty-five (45) calendar days after equipment disposition. Subrecipient agrees to be subject to equipment monitoring and auditing by state or federal authorized representatives to verify information.

e. A physical inventory of the Nonexpendable Property and Capital Assets must be taken, and the results reconciled with the Property Control Form at least once every two years.

15. **DEBARMENT CERTIFICATION** - Subrecipient is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180. 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 or activities. The Subrecipient is required to complete and return the provided Contractor Debarment and Suspension Form, attached as Exhibit 15(a), to demonstrate due diligence in following this requirement.

16. **FUNDS MANAGEMENT** - Subrecipient must maintain funds received under this Agreement in a separate account and cannot mix these funds with funds from other sources. Subrecipient must manage funds according to applicable Federal regulations for administrative requirements, costs principles, and audits (2 CFR 200.302). Subrecipient must maintain adequate business systems to comply with Federal requirements.

17. **REPORTING REQUIREMENTS** - Regular reports by Subrecipient shall include:
    a. Programmatic Reports- Subrecipient shall provide quarterly programmatic reports to DEMA on the 15th day of the quarter in which the report is due. So that the report contains such information as deemed necessary by DEMA, Subrecipient shall use and fully complete the Mitigation Grant Programs Quarterly Report template, a copy of which is attached as Exhibit 17(a).
        i. If a project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report must be marked as “final.” Quarterly programmatic reports shall be submitted to DEMA until the entire scope of the Grant is completed.

ii. Upon request of DEMA, Subrecipient must provide to DEMA any information necessary to meet any state or federal reporting requirements.
iii. Quarterly Programmatic reports are due:

Quarter	Period	Due
1	July 1 – September 30	October 15
2	October 1 – December 31	January 15
3	January 1- March 31	April 15
4	April 1 – June 30	July 15

b. Financial Reimbursements - Subrecipient shall provide DEMA with quarterly requests for reimbursement. Requests for reimbursements shall be submitted with the Request for Payment provided by DEMA, a copy of which is attached as Exhibit 17(b).
   i. Subrecipient shall submit to DEMA a final request for reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than thirty (30) calendar days after the completion of all work funded in whole or in part by the Agreement. Requests for reimbursement received by DEMA later than the thirty (30) days will not be paid. The final reimbursement request as submitted shall be marked “final” by Subrecipient.
   ii. DEMA requires that all requests for reimbursement be submitted electronically to the State Hazard Mitigation Officer or via U.S. mail (United States Postal Service), FedEx, UPS, or another established private delivery service.
   iii. DEMA reserves the right to request and/or require any supporting documentation and/or information DEMA believes necessary in order to process requests for reimbursements. Subrecipient shall promptly provide DEMA with all such documents and/or information.
   iv. All reports shall be submitted by Subrecipient to the DEMA contact person as described in Part 44, NOTICES, of this Agreement.

18. **ASSIGNMENT AND DELEGATION** - Subrecipient may not assign any rights hereunder without the express, prior written agreement of both parties.

19. **AMENDMENTS** - Any change in this Agreement including but not limited to the Description of Services and budget described herein, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by and between the duly authorized representatives of Subrecipient and DEMA.
    a. Any such amendment shall specify:
       i. an effective date;
       ii. increases or decreases in the amount of Subrecipient’s compensation if applicable;

iii. be titled as an “Amendment,”
iv. Subrecipient expressly and explicitly understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

20. **AGREEMENT RENEWAL** - This Agreement shall not bind nor purport to bind DEMA for any contractual commitment in excess of the original Agreement period, which may not be changed except by a writing signed by all parties hereto in conformity with Part 19, AMENDMENTS.

21. **RIGHT TO ASSURANCE** - If DEMA in good faith has reason to believe that Subrecipient does not intend to or is unable to perform or continue performing under this Agreement, DEMA may demand in writing that Subrecipient give a written assurance of intent and ability to perform. If Subrecipient fails to provide written assurance within the number of days specified in the demand, DEMA at its option may terminate this Agreement.

22. **CANCELLATION FOR CONFLICT OF INTEREST** - DEMA may, by written notice to Subrecipient, immediately cancel this Agreement without penalty or further obligation pursuant to ARS 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State or its subdivisions (unit of Local Government) is an employee or agent of any other party in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when the parties to the Agreement receive written notice from DEMA, unless the notice specifies a later time. If and only if Subrecipient is an agency of the State or a political subdivision of the State, then this Part 22 shall apply so that either DEMA or Applicant may cancel this Agreement for conflict of interest pursuant to the provisions of this part.

23. **THIRD PARTY ANTITRUST VIOLATIONS** - Subrecipient hereby assigns to the State of Arizona any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to Subrecipient toward fulfillment of this Agreement.

24. **AVAILABILITY OF FUNDS** - Every payment obligation of DEMA under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations under A.R.S. 35-154. If the funds are not allocated and available for the continuance of this Agreement, DEMA may terminate this Agreement at the end of the period for which funds are available. No liability shall accrue to DEMA in the event this provision is exercised, and DEMA shall not be obligated or liable for any future payments or for any damages as a result of termination under this Part 24, including purchases and/or contracts entered into by Subrecipient in the execution of this Agreement. If and only if Applicant is an agency of the State or a political subdivision of the State, then this Part 24 shall apply so that either DEMA or Subrecipient may cancel this Agreement for lack of availability of funds pursuant to the provisions of this part.

25. **FORCE MAJEURE** - If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor

disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will be excused for the period of the delay.

26. **PARTIAL INVALIDITY** - Any term or provision of this Agreement that is hereafter declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.

27. **ARBITRATION** - In the event of any dispute arising under this Agreement, written notice of the dispute must be provided to the other party within thirty (30) calendar days of the events giving the rise to the dispute. Any claim made by or against the State or any of its political subdivisions (including but not limited to DEMA) relating to this Agreement shall be resolved through the administrative claims process. In the event ARS 12-1518 applies, the parties shall proceed with arbitration as provided in that statute. The parties agree that proper venue for any litigation shall be in Maricopa County, Arizona.

28. **GOVERNING LAW AND CONTRACT INTERPRETATION**
    a. This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.
    b. This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document.
    c. Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.

29. **ENTIRE AGREEMENT** - This Agreement and its Exhibits constitute the entire Agreement between the parties hereto pertaining to the subject matter hereof and may not be changed or added to except by a writing signed by all parties hereto in conformity with Part 19, AMENDMENTS, of this Agreement. All prior and contemporaneous agreements, representations, and understandings of the parties, oral, written, pertaining to the subject matter hereof, are hereby superseded or merged herein.

30. **RESTRICTIONS ON LOBBYING** - Subrecipient shall not use funds made available to it under this Agreement to pay for, influence, or seek to influence any officer or employee of a State or Federal government.

31. **LICENSING** - Subrecipient, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.

32. **NON-DISCRIMINATION** - Subrecipient shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including the Americans with Disabilities Act (42 USC 12101 *et seq.*), ARS Title 41, Chapter 9, Article 4 (ARS 41-1461 *et seq.*), and Arizona Executive Order 2009-09.

33. **SECTARIAN REQUESTS** - Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction in violation of the United States or Arizona Constitutions.

34. **ADVERTISING AND PROMOTION OF AGREEMENT** - Subrecipient shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of DEMA.

35. **CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS** - Any television public service announcement that is produced or funded in whole or in part by Subrecipient shall include closed captioning of the verbal content of such announcement.

36. **INDEMNIFICATION** - To the extent permitted by law, each party (as indemnitor) agrees to indemnify, defend and hold harmless the other party (as indemnitee) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as claims) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, and are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

37. **TERMINATION** –
    a. All parties reserve the right to terminate the Agreement in whole or in part due to the failure of Subrecipient or DEMA to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits or to make satisfactory progress in performing the Agreement. The party wishing to terminate this Agreement shall provide the other party with a written thirty (30) day advance notice of the termination and the reasons for it.
    b. If Subrecipient chooses to terminate this Agreement before the grant deliverables have been met, then DEMA reserves the right to collect from Subrecipient all funds distributed by DEMA under this Agreement to Subrecipient.
    c. DEMA may, upon termination of this Agreement, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Agreement. Subrecipient shall be liable to DEMA for any excess costs incurred by DEMA in procuring materials or services in substitution for those due from Subrecipient.

38. **CONTINUATION OF PERFORMANCE THROUGH TERMINATION** - Subrecipient shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

39. **COUNTERPARTS** - This Agreement may be executed in any number of counterparts, copies, or duplicate originals. Each such counterpart, copy, or duplicate original shall be deemed an original, and collectively they shall constitute one Agreement.

40. **AUTHORITY TO EXECUTE THIS AGREEMENT** - Each individual executing this Agreement on behalf of Subrecipient represents and warrants that he or she is duly authorized to execute this Agreement.

41. **SPECIAL CONDITIONS** - Subject to 2 CFR 200.315, title to any intangible property (see 2 CFR 200.59) developed, purchased, or otherwise acquired with funds or other resources obtained by Subrecipient in whole or in part under this Agreement vests upon acquisition in the Subrecipient. Subrecipient acknowledges that U.S. Department of Homeland Security - Federal Emergency Management Agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. Subrecipient hereby further agrees that DEMA shall have a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use the work for its purposes, and to authorize others to do so. Upon acquisition, Subrecipient shall promptly inform DEMA in writing of any rights in any intangible property acquired by Subrecipient under this Agreement.

42. **RECORD RETENTION** - The Subrecipient agrees to comply with the record-keeping requirements and other requirements of A.R.S. 35-214 and 35-215. All records shall be subject to inspection and audit by the State of Arizona at reasonable times.

43. **ADDITIONAL TERMS AND CONDITIONS** - The Subrecipient agrees to comply with the additional Terms and Conditions as described in Exhibit 43 – 2018 Standard Mitigation Grant Program (HMGP) Conditions.

44. **NOTICES** - Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement shall be in writing be delivered in person or shall be sent to the respective parties at the following addresses:

Arizona Department of Emergency and Military Affairs
Division of Emergency Management
5636 E. McDowell Road
Phoenix, AZ 85008

City of Flagstaff
211 W Aspen Ave
Flagstaff, AZ 86001

Subrecipient shall address all programmatic questions and reimbursement notices relative to this Agreement to the appropriate DEMA staff contact:

State Hazard Mitigation Officer

Destiny Colorado

mitigation@azdema.gov

(602) 464-6499

Grant Project Specialist

Maryanne Curfman

mitigation@azdema.gov

(602) 464-6309

IN WITNESS WHEREOF
The parties hereto agree to execute this Agreement.

FOR AND BEHALF OF

City of Flagstaff

FOR AND BEHALF OF

Arizona Dept of Emergency & Military Affairs Division of Emergency Management

Authorized Signature

Name & Title

Date

Date