

# SERVICE CONTRACT

**PROFESSIONAL SERVICE CONTRACT  
FOR  
JOB ORDER PROFESSIONAL CONTRACTING SERVICES:  
HORIZONTAL CONSTRUCTION  
Contract No.: 2020-100**

This Contract for the On-Call Professional Services (Contract) is made by and between the City of Flagstaff (Owner), an Arizona municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and Kinney Construction Services, Inc., an Arizona Corporation with offices at 121 E. Birch Ave., Flagstaff, AZ 86001 (Firm), effective as of the date written below.

## RECITALS

- A. The Owner desires to enter into this Contract in order to obtain services of a Firm for the On-Call Professional services [Service Name], as outlined in the Scope of Work/Specifications section of the RSOQ document; and
- B. Firm has available and offers to provide the personnel necessary to provide said services within the required time in accordance with the Scope of Services included in this Contract;

For the reasons recited above, and in consideration of the mutual covenants contained in this Contract, the Owner and Firm agree as follows:

## **1. SERVICES TO BE PERFORMED BY FIRM**

Firm agrees to perform the following services:

- 1.1 Firm agrees to provide the services as set forth in detail in Exhibit "A" attached and incorporated in this Contract. All of the terms and conditions set forth in this RSOQ pertaining to the services set forth in Attachment A, including all standard terms and conditions shall be incorporated in this Contract as if fully set forth herein.
- 1.2 Firm warrants that all materials, services or construction delivered under the Contract shall conform to the specifications of the Contract. The Owner's receipt or inspection of the materials, services, or construction specified shall not alter or affect the obligations of Firm or the rights of the Owner under the foregoing warranty.
- 1.3 All services, information, computer program elements, reports and other deliverables which may be created under the Contract are the sole property of the Owner and shall not be used or released by Firm or any other person except with prior written permission of the Owner.

## **2. COMPENSATION OF FIRM**

Firm agrees to provide all of the services set forth in Exhibit "A" for prices not to exceed the amounts set forth in the fee. Firm agrees that any specific scopes of work for individual Job Order Construction Contracts will have specific and mutually agreed upon fee schedules attached.

### **3. RIGHTS AND OBLIGATIONS OF FIRM**

**3.1 Independent Firm.** The parties agree that Firm performs specialized services and that Firm enters into this Contract with the Owner as an independent contractor. Nothing in this Contract shall be construed to constitute Firm or any of Firm's agents or employees as an agent, employee or representative of the Owner. As an independent contractor, Firm is solely responsible for all labor and expenses in connection with this Contract and for any and all damages arising out of Firm's performance under this Contract.

**3.2 Firm's Control of Work.** All services to be provided by Firm shall be performed as determined by the Owner in accordance with the Scope of Services set forth in Exhibit "A." Firm shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Contract. Firm shall be responsible for, and in full control of, the work of all such personnel.

**3.3 Reports to the Owner.** Although Firm is responsible for control and supervision of work performed under this Contract, the services provided shall be acceptable to the Owner and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Firm to the Owner and the right of the Owner, as set forth in the Scope of Services, and the right of the Owner to audit Firm's records.

**3.4 Compliance with All Laws.** Firm shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Contract. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in this Contract shall be deemed inserted, whether or not such provisions appear in this Contract.

### **4. NOTICE PROVISIONS**

**Notice.** Any notice concerning this Contract shall be in writing and sent by certified or registered mail as follows:

To the Owner's Authorized Representative

To Firm:

Matthew Luhman, CPP, CPPB  
Purchasing Manager  
City of Flagstaff  
211 W. Aspen  
Flagstaff, Arizona 86001  
mluhman@flagstaffaz.gov  
928.213.2278

Tim Kinney, CEO  
Kinney Construction Services, Inc.  
121 E. Birch Avenue  
Flagstaff, AZ 86001  
tk@kinneyconstruction.com  
928.779.2820

### **5. INDEMNIFICATION**

To the fullest extent permitted by law, Firm shall indemnify, defend, save and hold harmless the City of Flagstaff and its officers, officials, agents, and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) ("Claims") including claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Firm or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Firm to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Firm from and against any and all claims. It is agreed that Firm shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Firm shall waive all rights of subrogation against

the City of Flagstaff, its officers, officials, agents and employees for losses arising from the work performed by Firm for the City of Flagstaff.

## **6. INSURANCE**

Firm and subcontractors shall procure and maintain insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Contract by the Firm, Firm's agents, representatives, employees or contractors until all of their obligations under this Contract have been discharged, including any warranty periods. The insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Owner does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Firm from liabilities that might arise out of this Contract, and Firm is free to purchase such additional insurance as Firm may determine is necessary.

**6.1. Minimum Scope and Limits of Insurance.** Firm shall provide coverage at least as broad and with limits not less than those stated below.

6.1.1. Commercial General Liability - Occurrence Form  
(Form CG 0001, ed. 10/93 or any replacement thereof)

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$500,000
Medical Expense (any one person)	Optional

6.1.2. Automobile Liability - Any Automobile or Owned, Hired and Non-owned Vehicles  
(Form CA 0001, ed. 12/93 or any replacement thereof)

Combined Single Limit Per Accident for Bodily Injury and Property Damage	\$1,000,000
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6.1.3. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000

6.1.4. Professional Liability \$1,000,000

**6.2 Self-insured Retention/Deductibles.** Any self-insured retentions and deductibles must be declared to and approved by the Owner. If not approved, the Owner may require that the insurer reduce or eliminate such self-insured retentions with respect to the City of Flagstaff, its officers, agents, employees, and volunteers.

**6.3. Other Insurance Requirements.** The policies shall contain, or be endorsed to contain, the following provisions:

6.3.1 Commercial General Liability and Automobile Liability Coverages. The City of Flagstaff, its officers, officials, agents and employees shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Contract and activities performed by or on behalf of the Firm, including products and completed operations of the Firm; and automobiles owned, leased, hired or borrowed by the Firm.

6.3.2 The Firm's insurance shall contain broad form contractual liability coverage.

6.3.3 The City of Flagstaff, its officers, officials, agents and employees volunteers shall be named as additional insureds to the full limits of liability purchased by the Firm even if those limits of liability are in excess of those required by this Contract.

6.3.4 The Firm's insurance coverage shall be primary insurance with respect to the City of Flagstaff, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Flagstaff, its officers, officials, agents and employees, shall be in excess of the coverage of the Firm's insurance and shall not contribute to it.

6.3.5 The Firm's insurance 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.

6.3.6 Coverage provided by the Firm shall not be limited to the liability assumed under the indemnification provisions of this Contract.

6.3.7 The policies shall contain a waiver of subrogation against the City of Flagstaff, its officers, officials, agents and employees for losses arising from work performed by Firm for the Owner.

**6.6 Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the Owner. When cancellation is for non-payment of premium, then at least ten (10) days' prior notice shall be given to the Owner. Notices required by this section shall be sent directly to Matthew Luhman, Purchasing Manager, City of Flagstaff, 211 W. Aspen Avenue, Flagstaff, Arizona 86001.

**6.7 Acceptability of Insurers.** Firm 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 Owner does not represent or warrant that the above required minimum insurer rating is sufficient to provide the Firm from potential insurer insolvency.

**6.8 Verification of Coverage.** The Firm shall furnish the Owner with certificates of insurance (ACORD form) as required by this 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.

6.8.1 The Owner must receive and approve all certificates of insurance before the Firm commences work. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Firm's and its subcontractors' obligations under this Contract have been met. The Firm's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.

6.8.2 All certificates of insurance shall be sent directly to Matthew Luhman, Purchasing Manager, City of Flagstaff, 211 W. Aspen Avenue, Flagstaff, Arizona 86001. The Owner's project/contract number and project description shall be noted on the certificates of insurance. The Owner reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The Owner shall not be obligated, however, to review any insurance policies or to advise Firm of any deficiencies in such policies and endorsements. The Owner's receipt of Firm's policies or endorsements shall not relieve Firm from, or be deemed a waiver of, the Owner's right to insist on strict fulfillment of Firm's obligations under this Contract.

**6.9 Subcontractors.** Firm's certificate(s) shall include all subcontractors as additional insureds under its policies, or Firm shall furnish to the Owner separate certificates and endorsements for each

subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

**6.10 Approval.** Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City of Flagstaff's Attorney's Office, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.

## **7. DEFAULT AND TERMINATION**

**7.1 Events of Default Defined.** The following shall be Events of Default under this Contract:

7.1.1 Any material misrepresentation made by Firm to the Owner;

7.1.2 Any failure by Firm to perform its obligations under this Contract including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Contract due to a reason or circumstance within Firm's reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Firm's reasonable control;

7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the Owner;

7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the Owner as unsatisfactory or erroneous;

7.1.2.5 Discontinuance of the work for reasons not beyond Firm's reasonable control;

7.1.2.6 Unsatisfactory performance as judged by the Contract Administrator;

7.1.2.7 Failure to provide the Owner, upon request, with adequate assurance of future performance;

7.1.2.8 Failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance; and

7.1.2.9 Any other acts specifically stated in this Contract as constituting a default or a breach of this Contract.

## **7.2 Remedies.**

7.2.1 Upon the occurrence of any Event of Default, the Owner may declare Firm in default under this Contract. The Owner shall provide written notification of the Event of Default. If such Event of Default is not cured within seven (7) days of receipt of the notification, the Owner may invoke any or all of the following remedies:

7.2.1.1 The right to cancel this Contract as to any or all of the services yet to be performed;

7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;

7.2.1.3 The right to monetary damages;

7.2.1.4 The right to withhold all or any part of Firm's compensation under this Contract;

7.2.1.5 The right to deem Firm non-responsive in future contracts to be awarded by the Owner; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The Owner may elect not to declare an Event of Default or default under this Contract or to terminate this Contract upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the Owner, and that if the Owner allows Firm to continue to provide the Services despite the occurrence of one or more Events of Default, Firm shall in no way be relieved of any of its responsibilities or obligations under this Contract, nor shall the Owner be deemed to waive or relinquish any of its rights under this Contract.

7.2.3 In the Event of Default by the Firm, the Owner shall not be liable to Firm for any amount, and Firm may be liable to the Owner for any and all damages sustained by reason of the default which gave rise to the termination.

**7.3 Right to Offset.** Any costs, including but not limited to attorney's fees, costs of remediation, and costs of delay, incurred by the Owner due to default of Proposer, or due to the Owner's exercise any of the remedies available to it under this Contract, may be offset by use of any payment due for services completed before the default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Firm shall be liable for and shall remit promptly to the Owner the balance upon written demand from the Owner.

**7.4 Termination for Convenience.** The Owner reserves the right to terminate, with or without cause, this Contract upon ninety (90) days written notice. The Owner shall be responsible only for those standard items or services which have been delivered and accepted. If any items being purchased are truly unique and therefore not saleable or useable for any other application, the Owner shall reimburse Proposer for actual labor, material, and burden costs, plus a profit not to exceed 8%. Title to all materials, work in progress, and completed but undelivered goods, shall pass to the Owner after costs are claimed and allowed. Proposer shall submit detailed cost claims in an acceptable manner and shall permit the Owner to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

**7.5 Amendment of Contract.** This Agreement may not be modified or altered except in writing and signed by duly authorized representatives of the Parties.

## **8. GENERAL PROVISIONS**

**8.1 Headings.** The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Contract.

**8.2 Jurisdiction and Venue.** This Contract shall be administered and interpreted under the laws of the State of Arizona. Firm hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

**8.3 Attorney's Fees.** Subject to Section 8.11, if suit or action is initiated in connection with any controversy arising out of this Contract, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court, including an appellate court, may adjudge reasonable as attorney fees.

**8.4 Severability.** If any term or provision of this Contract shall be found by a court of competent jurisdiction to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, the remainder of this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

**8.5 Successors and Assigns.** No right or interest in the Contract shall be assigned by Firm without prior written permission of the Owner, and no delegation of any duty of Firm shall be made without prior written permission of the Owner. The Owner shall not unreasonably withhold approval and shall notify Firm of the Owner's position within fifteen (15) days of receipt of written notice by Firm. This Contract shall extend to and be binding upon the Firm, its successors and assigns, including any individual, company, partnership, or other entity with or into which the Firm shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the Firm shall sell its assets.

**8.6 Subcontracts.** No subcontract shall be entered into by Firm with any other party to furnish any service specified in this Contract without the advance written approval of the Owner. All subcontracts shall comply with Federal, State and local laws and regulations that are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth in the Contract which shall apply with equal force to the subcontract, as if the subcontractor were the Firm. Firm is responsible for contract performance whether or not subcontractors are used. The Owner shall not unreasonably withhold approval and shall notify Firm of the Owner's position within fifteen (15) days of receipt of written notice by Firm. Firm shall be responsible for executing the agreement with subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

**8.7 Conflict of Interest.** Firm covenants that Firm presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Contract. Firm further covenants that in the performance of this Contract, Firm shall not engage any employee or apprentice having any such interest. The parties agree that this Contract may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

**8.8 Authority to Contract.** Each party represents and warrants that it has full power and authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to authorize entering into this Contract.

**8.9 Integration.** This Contract represents the entire understanding of Owner and Firm as to those matters contained in this Contract, and no prior oral or written understanding shall be of any force or effect with respect to those matters, except for documents comprising the RSOQ Package that have been incorporated into this Contract. This Contract may not be modified or altered except in writing signed by duly authorized representatives of the parties.

**8.10 Non-Appropriation.** If the City Council does not appropriate funds to continue this Contract and pay for charges under this Contract, the Owner may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the Owner's payment obligations. The Owner agrees to give written notice of termination to the Firm at least thirty (30) days prior to any termination for a lack of funds and will pay to the Firm all approved charges incurred prior to Firm's receipt of such notice, subject to the availability of funds appropriated and budgeted by the Owner to fund payments under this Contract.

**8.11 Non-Discrimination.** Firm shall not discriminate against any employee, or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 75-5 as modified by State Executive Order 99-4 or A.R.S. 41-1461 et. seq. The Firm shall be required to comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

**8.12 Compliance with Federal Immigration Laws and Regulations.** Firm hereby warrants to the Owner that the Firm and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to its employees and A.R.S. §23-214(A) (hereinafter "Firm Immigration Warranty").

8.12.1 A breach of the Firm Immigration Warranty shall constitute a material breach of this Contract and shall subject the Firm to penalties up to and including termination of this Contract at the sole discretion of the Owner.

8.12.2 The Owner retains the legal right to inspect the papers of any Firm or Subcontractor employee who works on this Contract to ensure that the Firm or Subcontractor is complying with the Firm Immigration Warranty. Firm agrees to assist the Owner in regard to any such inspections.

8.12.3 The Owner may, at its sole discretion, conduct random verification of the employment records of the Firm and any of Subcontractors to ensure compliance with Firm's Immigration Warranty. Firm agrees to assist the Owner in regard to any random verifications performed.

8.12.4 The provisions of this Article must be included in any contract the Firm enters into with any and all of its Subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

**8.13 Anti-Trust Violations.** The Owner maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Firm. Therefore, to the extent permitted by law, Firm hereby assigns to the Owner any and all claims for such overcharges as to the goods or services used to fulfill this Contract.

**8.14 Advertising.** Proposer shall not advertise or publish information concerning the Contract, without the prior written consent of the Owner.

**8.15 Inspection.** All material, services or construction are subject to final inspection and acceptance by the Owner. The Owner may, at reasonable times and at its expense, inspect the plant or place of business of Firm or its subcontractor(s) which is related to the performance of this Contract. This right of inspection and supervision shall include, but not be limited to the right of the Owner to audit Firm's records.

**8.16 No Third-Party Beneficiaries.** The parties acknowledge and agree that the terms, provisions, conditions, and obligations of this Contract are for the sole benefit of, and may be enforceable solely by, the Parties to this Contract, and none of the terms, provisions, conditions, and obligations of this Contract are for the benefit of, or may be enforced by, any person or entity not a party to this Contract.

**8.17 Assignment.** Firm shall not assign this Contract, in whole or in part, without the prior written consent of the Owner. No right or interest in this Contract shall be assigned, in whole or in part, by Firm without prior written permission of the Owner and no delegation of any duty of Firm shall be made without prior written permission of the Owner. The Owner shall not unreasonably withhold consent to such assignment. Firm agrees that any assignment agreement between Firm and the Assignee shall include and subject to the assignee to all obligations, terms and conditions of this Contract and that Firm shall also remain liable under all obligations, terms and conditions of this Contract.

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

**8.19 Records.** The Owner and its employees, agents, and authorized representatives shall have the right at all reasonable times and during all business hours to inspect and examine Firm's records related to this Contract. Firm shall retain all records related to this Contract for a period consistent with the Owner of Flagstaff's records retention policy. This record retention requirement shall remain in effect following termination of the Contract.

## **9. SPECIAL TERMS AND CONDITIONS**

**9.1 Job Order; Authorization to Proceed.** All proposed work under this Contract shall be performed pursuant to the issuance of individual Job Orders. Firm shall perform no work under this Contract until or unless a written Job Order has been issued by the Owner and executed by the Parties, which Job Order describes the specific services and the time of performance requested by the Owner. Firm shall respond to each Job Order issued by the Owner by submitting a written fee proposal and time required to complete the specific services requested in the Job Order. When the Job Order is agreed to and executed by both Parties, the Job Order shall constitute Firm's authorization to proceed with the requested services. All Firm invoices shall reference the Job Order number and shall contain an itemization of all hours and expenses per the Price Schedule.

**9.2 Technical and Professional Requirements; Key Personnel.** Firm shall be professionally licensed and qualified in all pertinent disciplines for consulting services required under this Contract. It is essential that Firm provide adequately experienced personnel who are capable of, and devoted to, the successful accomplishment of all services performed under this Contract. Key personnel to be assigned to the project shall be identified in writing to the Owner by Firm at the time of Notice to Proceed. At a minimum the Firm shall identify for the Owner's written approval, the project manager who shall be empowered to act for the Firm in accordance with this Contract in all matters relating to the technical administration of services to be provided. Authorization for changes in key personnel must be requested in writing by the Firm.

**9.3 Subcontracts.** At the time subcontracted services are anticipated, the Firm shall notify the Owner of the nature of, and need for, such services and identify the proposed subcontracting contractor. The Firm must receive approval in writing from the Owner prior to utilization of any subcontractor other than the parties listed in this article. The Firm is authorized by the Owner to subcontract work having a cost which will not exceed 30 percent (30%) of the total amount of compensation due under this Contract. The Firm shall be responsible to the Owner for the actions of persons and contractors performing subcontract work.

### **9.4 Rights and Obligations of Firm**

9.4.1 Work Schedule: Upon receipt of an executed copy of a Job Order, the Firm shall prepare a work schedule. The work schedule shall include:

9.4.1.1. Events which will satisfy SECTION 1. Services to be performed by the Firm.

9.4.1.2 Date each event shall start and its duration.

9.4.1.3 Critical relationship of events.

9.4.1.4 Name(s) of the person(s) responsible for the project. The work schedule shall provide for the completion of SECTION I services not later than 365 calendar days from the written Notice-to-Proceed.

9.4.1.5 The schedule shall be updated periodically as necessary.

9.4.1.6 The Firm agrees to maintain adequate resources to provide the described services within the time provided in the agreed upon schedule. Failure to adhere to the schedule may result in termination of this contract.

**9.5 Maintenance of Documents.** Firm shall deliver to the Owner copies of reports, specifications and drawings prepared under the terms of this Contract. If drawings are prepared, the Owner will be provided with a set of full-size reproduces. Originals of design and study notes, calculations, correspondence and similar material will be filed by the Firm and made available to the Owner on Request. Copies will be furnished to the Owner by the Firm at cost. Except as otherwise provided herein, documents prepared under the terms of this

Contract will not be used by the Owner on other projects or extensions to this project except with the written agreement of the Firm.

**9.6 Alteration in Character of Work.** Whenever an alteration in the character of work results in a substantial change in the Planned Consulting Services, thereby materially increasing or decreasing the cost of the performance, the work will be performed in accordance with the contract and as directed; provided however, that before such work is started, a contract change order shall be approved and executed by the Owner and the Firm. Additions to, modifications, or deletions from the project provided herein may be made and the compensation to be paid to the Firm may be adjusted accordingly by mutual agreement of the Owner and Firm. It is distinctly understood and agreed that no claim for extra work done or materials furnished by the Firm will be allowed by the Owner except as provided herein, nor shall the Firm do any work, or furnish any materials not covered by this Contract unless such work is first ordered in writing.

9.6.1 Any such work or materials furnished by the Firm without such written order first being given shall be at his own risk, cost, and expense, and Firm hereby agrees that without such written order he will make no claim for compensation for such work or materials furnished.

**9.7 Completeness and Accuracy of Firm's Work.** The Firm shall be responsible for the completeness and accuracy of his survey work, plans, supporting data, and Special Provisions prepared or compiled under his obligation for this project and shall correct, at his expense, all errors or omissions therein which may be disclosed during the review of the plans.

9.7.1 All documents prepared by the design professional shall bear the stamp or seal of the design professional. All preparation of technical and related documents shall be completed in accordance with the prevailing Arizona law.

9.7.2 Correction of engineering errors or omissions disclosed and determined to exist by the Owner during the construction of the project shall be accomplished by the Firm. The cost of the design necessary to correct those errors attributable to the Firm and any expense incurred by the Owner as a result of additional construction costs caused by such engineering errors shall be chargeable to the Firm. The fact that the Owner has accepted or approved the Firm's work shall in no way relieve the Firm of any of his responsibilities. Should the Firm be contracted to perform construction inspection of the project, he shall be responsible for errors and omissions in construction inspection disclosed and determined to exist by the Owner during and subsequent to the construction of the project. Firm's duty in the construction inspection phase is to assure Owner that the project is constructed in conformity with detailed plans and specifications and the cost of design necessary to correct errors and omissions in inspection attributable to the Firm and any expense incurred by Owner as a result of additional construction costs caused by such errors shall be chargeable to the Firm. Acceptance or approval by Owner of Firm's work shall not relieve Firm of inspection responsibilities.

**9.8 General Responsibilities and Obligations of Firm.** The Firm is employed to render a professional service only, and any payments made to him are compensation solely for such services as he may render and recommendations he may make in carrying out the work. The Firm shall follow the practice of the profession to make findings, opinion, factual presentations, and to offer professional advice and recommendations. To the fullest extent permitted by law, the Firm shall defend, indemnify and hold harmless the City of Flagstaff, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Firm, its employees, agents, or any tier of subcontractors in the performance of this Contract. The Firm's duty to defend, hold harmless and indemnify the City of Flagstaff, its agents, representatives, officers, directors, officials and employees shall arise in connection with the claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Firm or any tier

of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Firm may be legally liable.

9.8.1 The amount and type of insurance coverage requirements set forth herein (Section, 7. Insurance) will in no way be construed as limiting the scope of the indemnity in this paragraph.

9.8.2 In performing construction management services, Firm shall act as agent of the Owner. The Firm's review or supervision of work prepared or performed by other individuals or contractors employed by the Owner shall not relieve those individuals or contractors of complete responsibility for the adequacy of their work.

9.8.3 It is understood that any resident consulting or inspection provided by the Firm is for the purpose of determining compliance with the technical provisions of the project specifications and does not constitute any form of guarantee or assurance with respect to the performance of a contractor. The Firm does not assume responsibility for methods or appliances used by a contractor, for safety of construction work, or for compliance by contractors with laws and regulations.

9.8.4 The Firm agrees to notify the owner of any potential unsafe conditions observed at a construction site while performing resident consulting services. It is understood that the resident Firm will perform the aforesaid services only as incidental to the agreed consulting services and only while at the site; no duty to inspect for unsafe conditions is accepted by the resident Firm.

**9.9 Cooperative Use Of Contract.** This Contract resulting from the RSOQ may be extended for use by the members of the Flagstaff Alliance for the Second Century. An Intergovernmental Agreement (IGA) has been executed between the City of Flagstaff, Coconino County Community College District, Northern Arizona University, Coconino County and Flagstaff Unified School District. The Contract may also be extended to other municipalities and government agencies of the state. Any such usage by other municipalities and government agencies must be in accordance with the ordinance, charter and/or rules and regulations of the respective political entity. Any public agencies not identified within this Contract who wish to cooperatively use the contract are subject to the approval of Vendor.

The City of Flagstaff is also a member of S.A.V.E. (Strategic Alliance for Volume Expenditures), which consists of numerous municipalities, counties, universities, colleges, schools and other Arizona State agencies. These cooperatives are achieved through Intergovernmental Agreements (IGA) in accordance with provisions allowed by A.R.S. §11-952 and §41-2632. The IGAs permit purchases of material, equipment and services from Vendors at the prices, terms and conditions contained in contracts originated between any and all of these agencies and the Vendor(s) contract, as awarded.

## **10. DURATION**

This Contract shall become effective on and from the date it is executed by the Parties and shall continue for a period of **three (3) consecutive years**, unless sooner terminated as provided in this Contract. The Owner reserves the right to unilaterally extend the period of the Contract for up to four (4) additional ninety (90) day term extensions beyond the stated termination date. The Contract may be renewed in writing for a supplemental period of up to **two (2) additional one-year terms, at the discretion of the Owner**. The City Council authorizes the City of Flagstaff Purchasing Director to administratively renew and extend this Contract for the additional terms specified in this paragraph. Any additional renewals or extensions, other than those specified in this paragraph, must be approved by the City Council.

## **11. FORCE MAJEURE**

The parties acknowledge that there may be events that occur during the term of this Contract that are beyond the control of both the City and the Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God. These events may result in temporary delay or permanent shut down of the work

that is the subject of this Contract, as set forth in Exhibit A. This may be caused by such things as stay-at-home orders, loss of labor force, supply chain delays, and other impediments to timely delivery of the Contract.

The parties agree that there will be no claims arising from a temporary delay or permanent shut down caused by the events described above and that the City will pay no additional costs incurred as a result of such events.

The parties agree to act in good faith to extend the Contract completion date without any penalty to the Contractor and that the extension will be in an amount of time equal to any temporary delay. This term supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

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

**City of Flagstaff**

Greg Clifton

2021.01.28 17:32:26 -07'00'

City Manager

**Firm**

  
Kinney Construction Services, Inc.  
Tim Kinney, CEO

Attest:

**Stacy Saltzburg**

Digitally signed by Stacy Saltzburg  
DN: cn=Stacy Saltzburg, o=City of Flagstaff, ou=City  
Clerk, email=stacy.saltzburg@flagstaffaz.gov, c=US  
Date: 2021.01.29 10:23:02 -07'00'

City Clerk

Approved as to form:

ChristinaA.  
Parry for

Digitally signed by  
ChristinaA. Parry for  
Date: 2021.01.26 07:27:32  
-07'00'

City Attorney

Date of Execution: January 29, 2021

# EXHIBIT A

## Scope of Work

### GENERAL

A Job Order Contract (JOC) is an indefinite quantity contract pursuant to which the Firm will perform an ongoing series of individual projects (Job Orders) at different locations, often simultaneously, throughout the City of Flagstaff.

Once the successful Firms are selected, a Scope of Work for each Job Order discipline may be provided by the Owner to a number of Firms to solicit competitive price proposals.

The maximum cost per Job Order is \$1,000,000. The annual cap per Firm is \$5,000,000.

Construction services covered by the JOC will include, but are not limited to the following:

- Provide preconstruction services;
- Serve as the general contractor during construction;
- Coordinate and manage subcontractors during construction;
- Coordinate with all utilities;
- Attend public meetings and issue notifications (when required);
- Arrange for procurement of materials and equipment;
- Schedule and manage site operations;
- Continue use of a collaborative process;
- Provide quality controls;
- Bond and insure the construction;
- Comply with all federal, state and local permitting requirements;
- Acquire all applicable permits
- Maintain a safe work site for all project participants;
- Commissioning;
- Prepare and turn over record drawings (when required);
- Provide operations and maintenance manuals (when required).

## SCOPE OVERVIEW

The Owner is in need of general contracting (vertical, horizontal, water/wastewater plant, landfill, construction services for minor and major construction projects, maintenance, renovations, repairs, additions, demolition, re-constructions and alteration services to the Owner's facilities and civil infrastructure. The Firm will be required to furnish all materials, equipment and personnel necessary to manage and accomplish each project.

All work performed by the Firm shall meet all applicable federal, state and local codes and the Firm shall be required to obtain all required permits and inspections.

For all of Owner's projects, the following order of precedence shall govern:

1. Special Provisions
2. Construction Plans and Addenda
3. General Provisions and MAG Revisions
4. CoF Engineering Standards and Specs
5. MAG Standards and Specifications
6. ADOT Standards and Specifications
7. FHWA Manual of Uniform Traffic Control Devices

The Firm may be required to attend a scoping meeting for each project and be prepared to discuss the following topics:

- The general scope of the work.
- Applicable designs or sets of plans that guide the project
- Methods and alternatives for accomplishing the work and value engineering.
- Access to the site and protocol for admission / access.
- Hours of construction operation.
- Staging area.
- Specific quality requirements for equipment and material.
- Requirements for catalog cuts, technical data, samples, shop drawings and incidental design.
- The presence of hazardous materials.
- Temporary services and shutoffs.
- Safety issues / concerns and procedures.
- Construction duration.
- Date on which price proposal is due.

When a particular project is offered to the Firm, the Firm shall provide a written price proposal for a specific scope of work including a complete list of quantities and prices of parts and materials to be utilized, total labor cost to be broken down by trade, hours for each trade, hourly cost per trade, total dollar cost and Project Schedule and Subcontractor List. The project price proposal shall be all-inclusive with any cost overruns to be absorbed by the Firm unless change orders are pre-approved by the Owner. Price proposal shall follow the pricing format sample in *Attachment D Sample Proposal Format* of the attached Sample JOC Construction Contract (*Attachment C*).

By executing a price proposal, the Firm represents that the Firm has visited the project site(s) and become familiar with the construction documents and the local conditions under which the work is to be performed. The Owner does not undertake to represent or warrant the site or local conditions.

The Owner reserves the right to reject the Firm's selection of subcontractors on individual projects. Failure to include the subcontractor list in the price proposal submitted for each project shall be cause for rejection of the price proposal as non-responsive.

The Owner reserves the right to request Job Order proposals from more than one JOC Firm for competitive

purposes. Pricing may be determined by **R.S. Means™ Cost data or Open Book Pricing** consisting of Firm's subcontractor price quotes that are shared with and approved by the Owner. The Owner reserves the right to determine the pricing method on a project by project basis.

A separate Purchase Order must be issued for each Job Order before the commencement of any work by the Firm. A Purchase Order will reference the detailed Scope of Work and amount of compensation.

Payment and performance bonds are required for ALL projects for the full amount of the project. The Owner, at its sole discretion, may waive this requirement for small projects.

Within seventy-two (72) hours of the announcement of the project award, Firm shall tender a performance and payment bond for the Owner to review. This bond shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this State as issued by the Director of Insurance pursuant to ARS § Title 20, Chapter 2, Article 1. The bond shall conform to the requirements of ARS § Title 20, Chapter 6, Article 8; shall name the City of Flagstaff, a political subdivision of the State of Arizona, as the beneficiary/insured; if as a performance bond shall specifically assure the full and final completion of the scope of work entered into herein, and if as a payment bond shall be in an amount not less than the contract price for the full scope of work contracted for herein. The surety shall be a reputable company as determined by the Owner, and the bond shall otherwise be satisfactory in its scope and content as determined by the Owner in his/her sole and absolute judgment.

In the event the Firm fails to provide to the Owner with the certificate and proof of bond assurance within seventy-two (72) hours of the announcement of the project award then the Owner reserves the right to unilaterally rescind the Firm's award of this project.

In the event the Firm provides to the Owner the certificate and proof of bond assurance and the Owner determines that the certificate and/or assurance is inadequate in any regard, then the Owner reserves the right to unilaterally rescind the Firm's award of this project. The Owner's judgment as to the adequacy of the certificate and the assurance is absolute and final but must be exercised not later than the date and time when the Owner issues to the Firm the Notice to Proceed with the project. The Owner waives any objection to the Owner's adequacy determination if made after the Notice to Proceed is issued unless it is later determined by the Owner that the tender of proof required herein was made by the Firm, its agents, employees or persons acting on Firm's behalf, in a manner that is fraudulent or in a manner that demonstrates a negligent misrepresentation of material facts, as determined by the Owner's sole and absolute judgment.

The Firm shall commence work on the date set forth in the Notice to Proceed. Time being of the essence of this Contract, the Firm shall therefore prosecute the work diligently, using such means and methods of construction as will assure final completion within the time specified in the written price proposal.

The Firm shall supervise and direct the work, using the best skill and attention and shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract.

The Firm shall keep on the site, during the performance of all work, a competent superintendent who is fluent in English and any necessary assistants, all satisfactory to the Owner. The superintendent shall represent the Firm and have authority to act for the Firm. The Firm or qualified representative shall attend meetings with the Owner, at a frequency as determined by the Owner, for the purpose of coordinating or expediting the work.

**Safety**. During the construction process, the Firm shall comply with all applicable federal, state and County health and safety laws and regulations including, but not limited to all applicable "OSHA Standards for the Construction Industry" shall be followed, including, but not limited to, 29 CFR Part 1926, Subpart P – Excavations. All construction equipment and materials shall be safely fenced off from public access during the entirety of the project. Knowing and following OSHA Safety Standards is the Firm's responsibility. The Owner may stop construction on a project until safety concerns have been corrected.

During construction the Firm shall supply the work area (job site) with a minimum of one portable chemical toilet, or more as necessary or directed by the Owner for larger projects.

The Firm shall keep the premises free from accumulations of waste material or rubbish caused by their employees or work. At the completion of the work the Firm shall remove all the rubbish from the site and all tools, scaffolding and surplus materials.

To determine the date of final completion of a particular project, final inspection of the work by the Owner shall be made within five (5) working days after receipt of the Firm's written request. The work will be deemed finally complete as of the date of such inspection if, upon such inspection, the Owner determines that the Firm has achieved final completion. However, if such inspection, in the sole opinion of the Owner, reveals items of work still to be performed, the Firm shall promptly perform them and then request a re-inspection.

## HORIZONTAL CONSTRUCTION

### **SERVICES TO BE PERFORMED BY FIRM**

Firm agrees to perform any or all (but not limited to) the following services which will be specifically enumerated on individual JOC Construction Contracts and Purchase Orders as amendments to this contract:

- Roadway Grading, Paving and Patching
- Water, Sewer and drainage
- Curbs and Sidewalks
- Excavating
- Repairs
- Striping
- Concrete work
- Sign placement
- Electrical & Lighting
- Landscaping
- Demolition