

**CONTRACT FOR  
ON-CALL PROFESSIONAL SERVICES**  
Contract No. 2022-01

This Contract is entered into this 2nd day of December 2022 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("Owner"), and Shepard-Wesnitzer Inc, a corporation, ("Firm").

WHEREAS, the Owner desires to receive and Firm is able to provide professional services;

NOW THEREFORE, in consideration for the mutual promises contained herein, the Owner and Firm (the "parties") agree as follows:

**SERVICES**

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

**ON-CALL PROFESSIONAL SERVICES: ENGINEERING**

and as more specifically described in the scope of work attached hereto as Exhibit A.

2. Schedule of Services: Firm shall perform all work per the schedule set forth in Exhibit A.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. Key Personnel/Subcontractors: Firm's Key Personnel, Subcontractors (if any), and contact information are designated in Exhibit A. Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The Owner Representative for the Contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

**OWNER RESPONSIBILITIES**

5. Owner Representative: The Owner Representative is Patrick Brown (City contact) or his/her designee. All communications to the Owner shall be through the Owner Representative. Owner Representative is responsible for bringing any request for a contract amendment or price adjustment to the attention of the City Buyer.
6. Owner Cooperation: The Owner will cooperate with Firm by placing at its disposal all available information concerning the Owner, the Owner's property, or the Project reasonably necessary for Firm's performance of the Contract.

**CONTRACT TERM**

7. Contract Term: The Contract shall be effective as of the date signed by both parties. Performance shall commence within ten (10) days from the Owner's issuance of the Notice to Proceed and shall be in force for an initial term of three (3) consecutive years.

8. Renewal: The Contract may be renewed for up to two (2) additional one (1) year terms by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the Owner.
9. Termination: The Contract may be terminated pursuant to the Standard Terms and Conditions attached hereto as Exhibit B.

#### PAYMENT

10. Compensation: Firm shall be paid for satisfactory performance of the work, in accordance with the Compensation Schedule attached hereto as part of Exhibit A.
11. Price Adjustment: If price adjustments are permitted (see Exhibit A), any price adjustment must be approved by the Owner in writing as a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds \$50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the Owner.

#### DATA AND RECORDS

12. City Ownership of Document and Data: Any original documents prepared or collected by Firm in performance of the Contract such as models, samples, reports, test plans, survey results, graphics, tables, charts, plans, maps, specifications, surveys, computations and other data shall be the property of Owner ("City's work product"), unless otherwise agreed by the parties in writing. Firm agrees that all materials prepared under the Contract are "works for hire" within the meaning of the copyright laws of the United States and hereby assigns to the Owner all rights and interests Firm may have in the materials it prepares under the Contract, including any right to derivative use of the material.
13. Re-Use: The Owner may use City's work product without further compensation to Firm; provided, however, the Owner's reuse without written verification or adaption by Firm for purposes other than contemplated herein is at the Owner's sole risk and without liability to Firm. Firm shall not engage in any conflict of interest nor appropriate any portion of City's work product for the benefit of Firm or any third parties without the Owner's prior written consent.
14. Delivery of Document and Data: Upon termination of the Contract in whole or part, or upon expiration if not previously terminated, Firm shall immediately deliver to the Owner copies all of City's work product and any other documents and data accumulated by Firm in performance of the Contract, whether complete or in process.

#### INSURANCE

15. Insurance: Firm shall meet insurance requirements of the Owner, set forth in Exhibit C.

MISCELLANEOUS

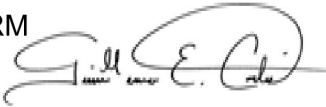
16. Notice: Any notice concerning the Contract shall be in writing and sent by certified mail and email as follows:

To the Owner:  
Patrick Brown  
Purchasing Director  
City of Flagstaff  
211 W Aspen Ave  
Flagstaff, AZ 86001  
[pbrown@flagstaffaz.gov](mailto:pbrown@flagstaffaz.gov)

To Firm:  
Guillermo Cortes  
Shepard – Wesnitzer Inc  
110 W Dale Ave  
Flagstaff, AZ 86001  
928.773.0354 ext. 217  
[gcortes@swiaz.com](mailto:gcortes@swiaz.com)

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

FIRM



Print name: Guillermo E. Cortes

Title: Vice President

CITY OF FLAGSTAFF



Shannon Anderson Digitally signed by Shannon Anderson  
Date: 2022.12.02 10:17:11 -07'00' FOR:

Print name: Greg Clifton

Title: City Manager

Attest:



Digitally signed by Stacy Saltzburg  
Date: 2022.12.02 10:29:01 -07'00'

City Clerk

Approved as to form:

Christina (Kinnear) Parry Digitally signed by Christina (Kinnear) Parry  
DN: cn=Christina (Kinnear) Parry, o=City of Flagstaff, ou=City  
Attorney's Office, email=christina.kinnear@flagstaffaz.gov, c=US  
Date: 2022.12.01 11:37:14 -07'00'

City Attorney's Office

Notice to Proceed issued: \_\_\_\_\_, 20\_\_\_\_

**EXHIBIT A  
SCOPE OF WORK**

## ENGINEERING

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

Firm agrees to perform any or all of the following services which will be specifically enumerated on individual Task Order amendments to this contract:

1.1 Produce Plans, Specifications and Cost Estimates: The Firm shall be required to prepare plans, specifications, and minimum of three cost estimates to accompany the following submittals: Basis of Design Report (BODR), Design Concept Report (DCR), and a Final Submittal with a Final Cost Estimate. The Firm shall be responsible for insuring that the final plans and specifications including complete Contract Documents, meet the requirements of the latest editions of all applicable City, State and Federal standards and codes including but not limited to:

- Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction
- Arizona Department of Transportation Construction Standards and Specifications
- City of Flagstaff Engineering Design and Construction Standards and Specifications
- American Association of State Highway and Transportation Officials, a policy on Geometric Design of Highways and Streets
- Federal Highway Administration
- United States Environmental Protection Agency
- Arizona Department of Environmental Quality Standards
- Arizona Department of Water Resources, Standards for Well Care
- United States Code of Federal Regulations as Published by the Office of the Federal Register
- Occupational Safety and Health Administration (OSHA)
- Arizona Department of Health and Safety (ADOSH)

The Firm shall be required to provide complete and approved biddable documents which include obtaining all required final approvals, including signatures, on the Construction Documents from: The City Engineer, the City Water Services Director and the City Public Works Director.

1.2 Conduct Public Meetings: It is City of Flagstaff policy to encourage public participation in the Capital Improvements Program and to have public meetings on major projects. The Firm may be asked to provide the services of a Public Information Firm; develop a Public Participation plan; and participate in and/or conduct public meetings.

1.3 Survey Work: Under the direct supervision of a Registered Land Surveyor, the Firm may be required to perform field surveys necessary and sufficient to accomplish the design of the project, including, but not limited to right-of-way surveys, location-topo surveys, and project bench mark surveys.

1.4 Hydrology and Hydraulics: The Firm may be required to perform a study of various drainage areas impacting the project and establish the requirements of the various watersheds with respect to stormwater runoff control. A comprehensive hydrologic and hydraulic report meeting all the requirements of the City of Flagstaff Stormwater Management Design Manual.

- 1.5 Geo-Technical Services: The Firm may be required to provide soil tests and reports, of sufficient detail and scope to enable the Firm to provide the recommendations and structural designs, as required for all portions of the project.
- 1.6 Non-Destructive Pot-holing: The Firm may be required to provide the services of a non-destructive pot-hole service to determine horizontal and vertical location of utility lines.
- 1.7 Cross Sections: Cross-sections may be required showing existing ground with proposed design, R/W limits, centerline elevations distance left and right, existing and proposed utilities, and drainage structures.
- 1.8 Structural Design: Required details may include, but not be limited to, retaining walls, box culverts and junction structures.
- 1.9 Right-of-Way Acquisition and Easements: Definition of the right-of-way and easement acquisitions necessary for the project may be required. Work may entail surveys, legal descriptions and property searches, and preparation of legal transfer documents. Sub-Firms with expertise in Real Property Appraisal and property negotiation and acquisition may be required.
- 1.10 Geometry: The Firm may be required to develop all horizontal and vertical alignments of street and curbs, pedestrian facilities, and other items as required.
- 1.11 Water, Sewer and Storm Drain Design: Water system improvements or extensions may be required. Sewer system improvements or extensions may be required. A drainage report and storm drainage improvements per the approved report may be required.
- 1.12 Utilities: The Firm may be required to provide design and construction details, or design assistance for any City-owned or franchise utilities/facilities in conflict with any proposed project improvements.
- 1.13 Traffic Engineering: The Firm may be required to provide any of the following: Traffic control and construction sequencing plans, signalization plans, signing and pavement marking plans and traffic capacity analysis.
- 1.14 Street Lights: The Firm may be required to coordinate the design of street lights with Arizona Public Service (APS) as a part of a project.
- 1.15 Landscaping: The Firm may be required to procure the services of a registered Landscape Architect for certain projects or portions thereof.
- 1.16 Environmental Services: The Firm may be required to perform studies and/or analysis in the fields of environmental due diligence, remediation & Brownfield redevelopment, storage tank engineering services, and compliance audits.
- 1.17 Solid Waste Landfill Engineering: The Firm may be required to provide landfill related services that include permitting, design, construction details or design assistance for any landfill project or utilities facilities in conflict with any proposed project improvements.
- 1.18 Graphic Presentations: The Firm may be required to provide aerial photos, digital photos topographic maps, Mylar reproductions, digital files, PowerPoint presentations and/or presentation or display boards for a project.

1.19 Bid Phase Services: The Firm may be required to provide Bid Phase Services. Typical tasks include, but are not limited to: Answer all questions relative to plans, quantities and Special Provisions, attend and/or conduct the Pre-Bid conference issue any required addenda or make any necessary corrections to plans, typical sections, quantities, notes.

1.20 Post Bid Services: Post bid services may be required and may be authorized as basic or additional services based on negotiations for a particular project. Compensation may be made on a time and materials basis or a lump sum fee as negotiated. Typical tasks might include: Bid analysis and recommendations; provision of scope/quantity survey verification letters for Field Orders and/or Change Orders; Construction Management services, provision of clarification drawings, sketches or details to respond to field questions, submittals review and approval, production of As-Built drawings and project close-out assistance.

**Fee Schedule attached separately as *Exhibit A – Fee Schedule***

**2022 HOURLY RATES**  
**STANDARD RATE SCHEDULE**

Rates are subject to a 5% increase per year

E-5	ENGINEER 5 .....	\$210/HOUR
E-4	ENGINEER 4 .....	\$190/HOUR
E-3	ENGINEER 3 .....	\$160/HOUR
E-2	ENGINEER 2 .....	\$150/HOUR
E-1	ENGINEER 1 .....	\$140/HOUR
EIT-4	ENGINEER IN TRAINING .....	\$130/HOUR
EIT-3	ENGINEER IN TRAINING .....	\$125/HOUR
EIT-2	ENGINEER IN TRAINING .....	\$120/HOUR
EIT-1	ENGINEER IN TRAINING .....	\$115/HOUR
CADD-4	CADD DESIGNER .....	\$140/HOUR
CADD-3	CADD DESIGNER .....	\$130/HOUR
CADD-2	CADD DESIGNER .....	\$120/HOUR
CADD-1	CADD DESIGNER .....	\$105/HOUR
CAD-4	CAD DRAFTER .....	\$95/HOUR
CAD-3	CAD DRAFTER .....	\$85/HOUR
CAD-2	CAD DRAFTER .....	\$75/HOUR
CAD-1	CAD DRAFTER .....	\$70/HOUR
A-1	CLERICAL .....	\$70/HOUR
RLS	REGISTERED LAND SURVEYOR, PROJECT MANAGER .....	\$160/HOUR
RLSPC	REGISTERED LAND SURVEYOR, PARTY CHIEF .....	\$140/HOUR
LSIT	LAND SURVEYOR IN TRAINING, PARTY CHIEF .....	\$125/HOUR
NRL	NON-REGISTERED LAND SURVEYOR, PARTY CHIEF .....	\$110/HOUR
T-4	CONSTRUCTION INSPECTION TECHNICIAN .....	\$125/HOUR
T-3	PROJECT COORDINATOR .....	\$105/HOUR
INT -1	INTERN .....	\$65/HOUR
	MARKETING DIRECTOR .....	\$90/HOUR
	GIS COORDINATOR .....	\$105/HOUR
	INSTRUMENT PERSON .....	\$75/HOUR
	GPS RECEIVER .....	\$30/HOUR PER RECEIVER
	ROBOTIC TOTAL STATION .....	\$25/HOUR
	ARCHIVE FILE RESEARCH .....	\$65/HOUR, 1 HOUR MINIMUM

**OUTSIDE SERVICE** ..... COST + 10%

**PRINTS**

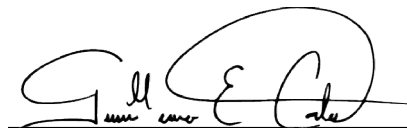
BOND .....	\$2.75EACH
VELLUMS .....	\$5.00EACH
MYLAR .....	\$6.00EACH

**PLOTS**

BOND .....	\$5.00EACH
VELLUM .....	\$10.00EACH
MYLAR .....	\$10.00EACH
COLOR PLOTS/BOND .....	\$15.00EACH
XEROX .....	\$.09EACH
CD'S .....	\$5.00EACH

FOR ANY AND ALL SERVICES RELATED TO LITIGATION OR OTHER LEGAL PROCEEDINGS TWO TIMES OUR STANDARD RATES

WORK OUTSIDE NORMAL BUSINESS HOURS WILL BE CHARGED AT 1½ TIMES HOURLY RATE.



Guillermo E. Cortes  
Vice President

July 11, 2022

## EXHIBIT B

### STANDARD TERMS AND CONDITIONS

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

#### IN GENERAL

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

#### MATERIALS

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

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

## **PAYMENT**

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

invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.

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

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

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

## **SERVICES**

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

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

### **INSPECTION. RECORDS. ADMINISTRATION**

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

### **INDEMNIFICATION**

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

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

### **CONTRACT CHANGES**

- 40. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 41. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the Parties.
- 42. AMENDMENTS:** The Contract may be amended by written agreement of the Parties.
- 43. SEVERABILITY:** If any term or provision of the Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted and the remainder of the Contract shall remain in full force and effect.
- 44. NO WAIVER:** Both Parties have the right insist upon strict performance of the Contract, and the prior failure of a Party to insist upon strict performance, or a delay in any exercise of any

right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.

45. **ASSIGNMENT:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. Any assignment without such consent shall be null and void. No assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to the City. The Purchasing Director shall have authority to consent to an assignment on behalf of the City.
46. **BINDING EFFECT:** The Contract shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

### **EMPLOYEES AND SUBCONTRACTORS**

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

## **DEFAULT AND TERMINATION**

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

**59. CANCELLATION FOR CONFLICT OF INTEREST:** Pursuant to A.R.S. § 38-511, if the City identifies a conflict of interest in the award or performance of the Contract, the City may cancel the Contract within three years after its execution, without penalty or further liability to Contractor.

**MISCELLANEOUS**

**60. COOPERATIVE PURCHASE CONTRACTS:** Presuming that Contractor agreed to such during the procurement process, Contractor will enter into cooperative purchase arrangements, as sanctioned by state and federal law, to allow Contractor to sell materials and services to any member of a cooperative group under the same pricing, terms and conditions of the contract awarded to the Contractor by the public procurement unit, following a competitive procurement process.

**61. ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with the City without the prior written consent of the City.

**62. NOTICES:** All notices given pursuant to the Contract shall be delivered at the addresses as specified in the Contract or updated by Notice to the other Party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four days after being sent; or (c) sent by overnight courier, with receipt deemed effective two days after being sent. Notice may be sent by email as a secondary form of notice.

**63. THIRD PARTY BENEFICIARIES:** The Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.

**64. GOVERNING LAW:** The Contract shall be construed in accordance with the laws of Arizona.

**65. FORUM:** In the event of litigation relating to the Contract, any action at law or in equity shall be filed in Coconino County, Arizona.

**66. ATTORNEYS' FEES:** If any action at law or in equity is necessary to enforce the terms of the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.

**67. FORCE MAJUERE:**

a. There may be events that occur during the term of the Contract that are beyond the control of both the City and Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God ("Events"). These Events may result in a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of the Contract.

b. There shall be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the Events and the City shall not pay additional costs incurred by Contractor as a result of such Events.

- c. The Parties shall act in good faith to extend the Contract completion date without any penalty to Contractor and that the extension will be in an amount of time equal to any temporary delay. This provision of the Contract supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.
  
- 68. NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no cents (\$100,000), the Party shall certify that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.
  
- 69. CHANGES TO CONTRACT:** The Contract shall not be modified within the first year after Contract award where: (a) an amendment may result in a competitive advantage that was not made available to other proposers/bidders; or (b) requests for changes may delay commencement of performance.

**EXHIBIT C**

**STANDARD INSURANCE REQUIREMENTS**

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

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

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

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability

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

d. Workers' Compensation and Employer's Liability

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

e. Professional Liability \$2,000,000

f. Network Security and Privacy Liability

Per claim	\$2,000,000
Annual Aggregate	\$2,000,000

4. **NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall maintain the requisite insurance requirements covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, including but not limited to, consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the City. The insurance policy shall include coverage for third-party claims. The insurance policy shall contain an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided.
5. **SELF-INSURED RETENTION:** Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that Contractor reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and/or subcontractors. Contractor shall be solely responsible for any self-insured retention amounts. The City at its option may require Contractor to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.
6. **OTHER INSURANCE REQUIREMENTS:** The insurance policies shall contain, or be endorsed to contain, the following provisions:
- a. **Additional Insured:** In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents, employees, and/or subcontractors shall be named and endorsed as additional insureds with respect to liability arising out of the Contract and activities performed by or on behalf of Contractor, including products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
  - b. **Broad Form:** Contractor's insurance policy shall contain broad form contractual liability coverage.
  - c. **Primary Insurance:** Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and/or subcontractors. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and/or subcontractors shall be in excess of the coverage of Contractor's insurance and shall not contribute to it.
  - d. **Each Insured:** Contractor's insurance policies shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. **Not Limited:** Coverage provided by Contractor shall not be limited to the liability assumed under the indemnification provisions of the Contract.

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