

CONTRACT FOR PURCHASE OF MATERIALS/SERVICES

Contract No. 2016-23

This Contract is entered into this 6th day of June, 2016 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Veolia ES Technical Solutions, LLC ("Contractor").

WHEREAS, the City of Flagstaff desires to receive, and Contractor is able to provide materials and/or services;

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

1. Scope of Work: Contractor shall provide the materials and/or services generally described as follows:

Hazardous Waste Removal and Disposition for the City of Flagstaff

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

2. Compensation: In consideration for the Contractor's satisfactory performance, City shall pay Contractor the compensation described in Exhibit A. Any price adjustment must be approved in writing and approved by the parties. The City Manager or his designee (the Purchasing Director) may approve an adjustment if the Contract price is less than \$50,000; otherwise City Council approval is required.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated in this Contractor by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. Insurance: Contractor shall meet insurance requirements of the City, set forth in Exhibit C.
5. Contract Term: The Contract term is for a period of one (1) year, commencing on June 13, 2016 and continuing through June 12, 2017.
6. Renewal: This Contract may be renewed or extended for up to four (4) 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 City.
7. Notice. Any formal notice required under this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001
embrown@flagstaffaz.gov

To Contractor:

Veolia ES Technical Solutions LLC
5736 W. Jefferson St.
Phoenix, AZ 85043

8. 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.

CONTRACTOR

Print name:_____

Title:_____

CITY OF FLAGSTAFF

Print name:_____

Title:_____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

Notice to Proceed issued:_____, 20__

EXHIBIT A SCOPE OF WORK

The City of Flagstaff is seeking proposals for contract services from selected Contractors to provide for the safe, expeditious, and cost effective removal and disposition of hazardous waste; either household hazardous waste (HHW), and/or universal waste and/or conditionally exempt small quantity generator (CESQG) waste collected at the City's Hazardous Products Center (HPC) and/or other City facilities.

The intent of this Request for Proposals is to obtain qualified Contractor(s) to provide the City's HPC with the necessary transportation, treatment, recycling or disposition of hazardous wastes on an "as needed" basis for a one-year (1) period with the option to renew for up to four (4) additional one-year (1) periods.

MINIMUM REQUIREMENTS

Successful Contractor(s) must meet the following requirements:

- Be in the business of providing these services for at least three (3) years.
- Submit required permits and licenses to perform services required within this RFP.

BACKGROUND

The Contractor shall under the terms of this contract recycle, fuel blend, treat, incinerate or dispose of hazardous waste collected at the HPC. Incoming city generated and CESQG business waste is inventoried, segregated according to hazard classifications and is comingled with segregated HHW which requires disposition and/or recycling. The selected Contractor is to provide periodic services for good-faith price quote estimates for the characterization, packing, labeling, manifesting, transporting and disposition/recycling of the wastes. The Contractor shall not dispose of any treated or untreated hazardous waste, including exempt waste at or in any landfill, unless specific written authorization is obtained from the City of Flagstaff.

Attachment A provides Contractors with a listing of waste to be disposed or recycled. Payment for these services will be based upon the unit bid price set-forth in Attachment A on a time and materials basis, including Contractor mark-up. **The City makes no guarantee that any specific materials or quantities will be generated for any specific period.**

Attachment A includes hazardous waste requiring removal and disposition from the HPC or other city facilities. The Contractor may elect not to offer services on an item basis on Attachment A by stating "no bid" in the space provided on the attachments. Award of any Contract or Contracts under this RFP may be solely for the hazardous waste at the sole discretion of the City of Flagstaff.

The Contractor will provide all services stated herein. Services shall be in accordance with all relevant laws and regulations, including Federal Department of Transportation and Arizona Department of Transportation (ADOT), Environmental Protection Agency (EPA)/Resource Conservation Recovery Act (RCRA), Arizona Department of Environmental Quality (ADEQ), and Occupational Safety and Health Act (OSHA) regulations. The Contractor will assure that any facility used for the recycling, treatment, storage or disposition of wastes under its proposal and contract with the City has received all authorizations and permits necessary for the lawful performance of the activity conducted.

1. The Contractor will be responsible for coordinating the loading of waste materials onto the Contractor's vehicles for transportation. This includes the securing of all materials onto pallets, if necessary, and loading onto Contractor's vehicles. To the extent allowed by law, the Contractor will assume all responsibility for transportation, storage and disposition of the waste collected from the time the waste comes under the control of the Contractor.
2. The Contractor will be required to provide Certificates of Recycling or Destruction for all materials and shipments related to the collection program or otherwise accepted pursuant to the contract contemplated herein. Such Certificate will detail the disposition method, date, time, location, manifest number, and provider of disposition services. The Contractor will provide to the City a list of the treatment, storage and disposition facilities (TSDF) it proposes to use, including the name, address and EPA certification or identification number of each such facility. In addition to submitting Certificates of Recycling or Destruction from the TSDF, the Contractor will also be required to submit Certificates of Recycling or Destruction from all final destination facilities.

Failure to provide Certificates of Recycling or Destruction from TSDF within 30 days of receiving the aforementioned waste from the HPC and/or other City facilities will result in invoice being held from processing of payment. **Certificates of Recycling or Destruction from final destination facilities are required**, however, payment will not be held for lack of receipt of this certificate as long as the Contractor provides the City with written indication that the materials have been received at their TSDF.

3. Contractor shall submit with their submittal verifiable information relating to any and all citations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions. The department or agency which could issue the citations include ADEQ, EPA or other state authority, but is not limited to, the following: RCRA; Toxic Substances Control Act (TSCA); OSHA; National Fire Protection Association (NFPA) Standards; Hazardous Materials Transportation Act; Comprehensive Environmental Response, Compensation and Liability Act; Uniform Fire Code; and the Emergency Planning and Community Right to Know Act. The City of Flagstaff reserves the right to disqualify a Contractor from further consideration if the City determines, in its sole discretion, that the compliance history of a Contractor indicates a lack of qualification to perform any part of the Scope of Work.
4. The Contractor will provide means for laboratory analysis on as needed basis for undetermined or unknown hazardous wastes as the City may require. The Contractor shall provide such basic profiling or fingerprint analysis as part of the contracted services. Contractor and the City Environmental Program Specialist will discuss if further tests are necessary.
5. The Contractor will prepare and provide to the City an itemized, detailed, good faith cost estimate including all labor, materials, equipment, services, supplies, and related costs for wastes not previously profiled which require disposition and/or recycling or associated with the services described herein. It is expected that contractors will base their costs and pricing on the estimates shown in Attachment A.
6. Subcontracting: The Contractor agrees not to assign or subcontract any of the work or obligations required under this agreement unless the Contractor first obtains the written consent from the City Procurement Office, which may be withheld for good cause.

Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City.

Contractors shall be fully responsible to the City for the acts and omissions of persons directly employed or of any subcontractor. Contractors shall be responsible for the safety of their employees when at the HPC and/or other City facilities. The City will not be held responsible for any injuries to any persons directly employed or subcontracted by the contractor.

7. The Contractor will provide and prepare manifests for off-site transportation and recycling, treatment or disposition of hazardous waste accepted and/or received at the HPC or at other city facilities. Manifests will identify the Contractor as a transporter only and not as a generator.
8. The Contractor will be responsible for proper and safe spill assessment, containment and clean-up of spills resulting from the packaging, loading and transportation of materials at the collection sites. The Contractor will also be responsible for all RCRA/TSCA Emergency Notifications resulting from these activities.
9. The Contractor will assess any potentially hazardous atmospheres/conditions or environments that may be present at the collection sites or that may be caused or involved in its loading of the hazardous waste accepted from the City, and will provide for the proper and safe response and remediation of any such hazardous atmospheres/conditions or environments.
10. The successful Contractor shall keep a technical representative available, at no additional cost or obligation to the City of Flagstaff. The technical representative shall establish contact with the City Environmental Program Specialist within 30 days of contract award.

The technical representative shall be required to assist the City in the following minimum respects:

- a. Provide profiling assistance, technical assistance, technical data and information and good-faith cost estimates, related to their services.
 - b. Coordination of schedules and services with the City Environmental Program Specialist.
 - c. Qualifying subcontractors and new or replacement staff positions.
 - d. Implementing all revisions to RCRA; TSCA; OSHA; NFPA; Hazardous Materials Transportation Act; Comprehensive Environmental Response, Compensation and Liability Act; Uniform Fire Code; the Emergency Planning and Community Right to Know Act; and county or city laws, regulations, statutes, ordinances, or related legislation.
 - e. Coordinate and provide necessary documentation
11. In all operations requiring the placement and movement of the Contractor's equipment, the Contractor, its personnel and subcontractors will observe and exercise all necessary caution and discretion so as to avoid injury to persons, damage to property of any and all kinds, and undue interference with the movement of the public or City personnel.

12. The Contractor's personnel will, at a minimum, have the necessary training required by federal, state and local regulations for the safe and proper handling (which may include characterization/ "Haz Catting", packing, lab packing, labeling), manifesting and transportation of hazardous waste, including OSHA, RCRA and federal and state Department of Transportation requirements. Upon request of the City, the Contractor will provide written evidence of the same.
13. No disposition, treatment, or recycling of materials received from the City will occur without the prior approval of the City Environmental Program Specialist. Waste pick-ups will occur within two (2) weeks of being requested by the Environmental Program Specialist. Pick-ups shall occur within ninety days or less of each other to remain in compliance.
14. Service is deemed to commence when the Contractor arrives on site. Labor charges are only for actual hours worked on site and travel time between City of Flagstaff sites (if applicable).
15. Contractor will be required to provide secondary containment/storage containers and supplies for items packed on site at City facilities. The amount of secondary containment/storage containers and supplies will be determined at the time pick up is arranged. Pricing for storage containers and supplies are set forth in Exhibit A.

ATTACHMENT A
OFFER (FORM)

TO THE CITY OF FLAGSTAFF:

The undersigned Vendor hereby offers and agrees to furnish materials and/or services in compliance with the Solicitation, including the Addenda, and as described in this offer made to the City.



 Signature of Person Authorized to Sign Offer
 Susan Lampson

 Printed Name

Account Manager

 Title
 04/03/2016

 Date

Personnel Req	Cost/Hr	Total
Chemist	\$50.00/hour	\$50.00/hour
Technician	\$39.00/hour	\$39.00/hour
Driver	\$39.00/hour	\$39.00/hour
Other		

PERSONNEL COST SUB TOTAL \$ 128.00/hour

TRANSPORTATION CHARGE: \$ 600.00/trip

OTHER APPLICABLE CHARGES: \$ Energy & Security Surcharge 7% of
(Please provide specific descriptions/details) total invoice

TOTAL LABOR COSTS & OTHER CHARGES \$ 779.00

RFP #2016-23
**STORAGE CONTAINERS/SECONDARY CONTAINMENT
AND OTHER SUPPLIES**

As an option for the City, Contractors may provide costs for the following storage containers secondary containment and supplies for use by hazardous waste. The City will determine the amount of containers to be shipped to the HPC facility. The City may place orders for supplies at anytime during the term of the contract. The City of Flagstaff reserves the right to purchase storage containers/secondary containment and supplies from other sources.

MATERIALS	COST/UNIT	COST
<u>Storage Containers/Secondary Containment:</u>		
(a) C.Y.Gaylord Box with cap lid & pallet	each	\$ <u>11.00</u>
(b) 85/95-gallon, poly, overpack	each	\$ <u>11.00</u>
(c) 85-gallon, drum, metal overpack	each	\$ <u>11.00</u>
(d) 55-gallon drum, metal, Tight Head/Open	each	\$ <u>11.00</u>
(e) 55-gallon drum, poly, Tight Head/Open	each	\$ <u>11.00</u>
(f) 30-gallon drum, metal, Tight Head/Open	each	\$ <u>11.00</u>
(g) 30-gallon drum, poly, Tight Head/Open	each	\$ <u>11.00</u>
(h) 20-gallon drum, metal, Tight Head/Open	each	\$ <u>11.00</u>
(i) 20-gallon drum, poly, Tight Head/Open	each	\$ <u>11.00</u>
(j) 16-gallon drum, metal, Tight Head/Open	each	\$ <u>11.00</u>
(k) 16-gallon drum, poly, Tight Head/Open	each	\$ <u>11.00</u>
(l) 5-gallon pail with lid, poly	each	\$ <u>1.00</u>
(m) 5-gallon pail with lid, metal	each	\$ <u>1.00</u>

Expendable Materials:

(a) Poly drum liners	each	\$ <u>1.00</u>
(b) Vermiculite	bag	\$ <u>1.00</u>
(c) Labels and Manifests	each	\$ <u>1.00</u>
(d) Other	Contractor to attach a detail sheet	

Testing:

(a) Finger Print Analysis of Unknowns	each	\$ <u>25.00</u>
(b) Onsite "Hazcatting"	each	\$ <u>45.00/hour</u>
(c) Cylinder Analysis	each	\$ <u>case-by-case</u>
(d) Other	Contractor to attach a detail sheet	

ATTACHMENT A – FEE SCHEDULE (Cont'd.)

*Where U=Undetermined or Unknown, CYB=Cubic Yard Box/Bin and UNIT=Size of gallon container unless otherwise stated

Materials	UNIT	ESTIMATED NUMBER OF CONTAINERS PER YEAR	UNIT PRICE	Disposal/Treatment/ Recycling Method	Disposal/Treatment/ Recycling Facility and Location	Facility EPA ID #
31) Biodiesel by-product waste	5/16/30/55	U/U/U/U	\$105.00/55 gal \$94.00/30 gal \$74.00/16 gal \$55.00/5 gal	Fuels Blend	Veolia Henderson, CO	COD980591184
32) Spent cooking oil	5/16/30/55	U/U/U/U	\$105.00/55 gal \$94.00/30 gal \$74.00/16 gal \$55.00/5 gal	Fuels Blend	Veolia Henderson, CO	COD980591184
33) Lab Packs for Corrosives, Toxics and Oxidizers, Solids and Liquids	5/16/30/55	10/5/10/15	\$225.00/55 gal \$172.50/30 gal \$141.00/16 gal \$68.00/5 gal	Incineration	Veolia Port Arthur, TX	TXD000838896
34) Lab Packs for Self-Heating Solids, Inorganic and Organic	5/16	U/U	\$405.00/16 gal \$135.00/5 gal	Incineration	Veolia Sauget, IL	ILD098642424
35) Lab Packs for Organic Peroxide-type D and Hydrogen Peroxide-35%	5/16	U/U	\$405.00/16 gal \$135.00/5 gal	Incineration	Veolia Sauget, IL	ILD098642424

ATTACHMENT A – FEE SCHEDULE (Cont'd.)

*Where U=Undetermined or Unknown, CYB=Cubic Yard Box/Bin and UNIT=Size of gallon container unless otherwise stated

Materials	UNIT	ESTIMATED NUMBER OF CONTAINERS PER YEAR	UNIT PRICE	Disposal/Treatment/ Recycling Method	Disposal/Treatment/ Recycling Facility and Location	Facility EPA ID #
21) Butane Lighters	2/5	U/U	\$203.00/2-5 gal	Recycle	All Safe, Inc Wyoming, MN	MNR982428344
22) MAPP GAS	5	2	\$145.00/5 gal	Recycle	All Safe, Inc Wyoming, MN	MNR982428344
23) Flammable and Non-Flammable Gases, N.O.S.	Sm./Med./Lg. cylinders/5	U/U/U/4	small-\$130.00 med-\$375.00 Lrg-\$650.00	Incineration	Veolia Port Arthur, TX	TXD000838896
24) Elemental Mercury Mercury Containing Articles	Pound 5	3	\$30.00/lb. \$325.00/5 gal	Retort Retort	Veolia Phoenix, AZ	AZ0000337360
25) 1.5 volt Alkaline and Insulated 6/7.5/9/45 volt Alkaline Batteries	5/30/55	75/U/U	\$.69/lb 30-55 gal \$100.00/5 gal	Recycle	Veolia Phoenix, AZ	AZ0000337360
26) Ballasts, PCB	55	2	\$635.00/55 gal	Incineration	Veolia Port Arthur, TX	TXD000838896
27) Ballasts, Non-PCB	55	2	\$275.00/55 gal	Incineration	Veolia Port Arthur, TX	TXD000838896
28) Lithium Batteries	2/5/30/55	18/U/U/2	\$4.47/lb Li-Ion \$3.95/lb.	Recycle	Veolia Phoenix, AZ	AZ0000337360
29) Water Reactive Solids, N.O.S.	5	U	\$135.00/5 gal	Incineration	Veolia Sauget, IL	ILD098642424
30) RCRA Empty Drums	16/30/55	U/U/U	\$35.00/55 gal \$29.00/55 gal \$20.00/5 gal	Recycle	Veolia Henderson, CO	COD980591184

ATTACHMENT A – FEE SCHEDULE (Cont'd.)

*Where U=Undetermined or Unknown, CYB=Cubic Yard Box/Bin and UNIT=Size of gallon container unless otherwise stated

Materials	UNIT	ESTIMATED NUMBER OF CONTAINERS PER YEAR	UNIT PRICE	Disposal/Treatment/ Recycling Method	Disposal/Treatment/ Recycling Facility and Location	Facility EPA ID #
11) Toxic Solids	CYB	10	\$400.00/cyb	Solid Fuel	Green America Hannibal, MO	MOD054018288
12) Non-Regulated Liquids	55	28	\$140.00/55 gal	Incineration	Veolia Port Arthur, TX	TXD000838896
13) Non-Regulated Solids	5/16/30/55	U/U/U/U	\$135.00/55 gal \$65.00/30 gal \$55.00/5-16 gal	Waste-to-Energy	Wasatch Integrated Energy Layton, UT	Not Required
14) Printing Ink Toner	5/16/30/55	U/3/3/U	\$135.00/55 gal \$65.00/30 gal \$55.00/5-16 gal	Waste-to-Energy	Wasatch Integrated Energy Layton, UT	Not Required
15) Corrosive Liquids, N.O.S-Inorganic and Organic	5/16/30/55	10/4/10/15	\$165.00/55 gal \$142.50/30 gal \$117.00/16 gal \$68.00/5 gal	Incineration	Veolia Port Arthur, TX	TXD000838896
16) Corrosive Solids	5/16/30	U/U/U	\$142.50/30 gal \$117.00/16 gal \$68.00/5 gal	Incineration	Veolia Port Arthur, TX	TXD000838896
17) Oxidizing Liquids, N.O.S.	5/16/30/55	U/U/U/U	\$225.00/55 gal \$172.50/30 gal \$141.00/16 gal \$80.00/5 gal	Incineration	Veolia Sauget, IL	ILD098642424
18) Oxidizing Solids	5/16/30	U/U/U	\$172.50/30 gal \$141.00/16 gal \$80.00/5 gal	Incineration	Veolia Sauget, IL	ILD098642424
19) Aerosols	CYB	6	\$430.00/cyb	Fuels Blend	Veolia Henderson, CO	COD980591184
20) Flammable Gas- Propane and/or Butane/Isobutane cylinders	30/55	1/4	\$265.00/55 gal \$225.00/30 gal	Recycle	All Safe, Inc Wyoming, MN	MNR982428344

ATTACHMENT A – FEE SCHEDULE

*Where U=Undetermined or Unknown, CYB=Cubic Yard Box/Bin and UNIT=Size of gallon container unless otherwise stated

Materials	UNIT	ESTIMATED NUMBER OF CONTAINERS PER YEAR	UNIT PRICE	Disposal/Treatment/ Recycling Method	Disposal/Treatment/ Recycling Facility and Location	Facility EPA ID #
1) Flammable Liquids	55	25	\$69.00	Fuels Blend	Veolia Henderson, CO	COD980591184
2) Flammable Solids, N.O.S.	5/16/30/55	U/U/U/U	\$225.00/55 gal \$172.50/30 gal \$142.00/16 gal \$68.00/5 gal	Solid Fuels	Veolia Henderson, CO	COD980591184
3) Paint/Paint Related Materials (alkyld paints, adhesives, tars, resins, epoxies, glues...)	CYB	32	\$425.00/cyb	Fuels Blend	Veolia Henderson, CO	COD980591184
4) Waste Paint Related Material/Debris	55	U	\$225.00/55 gal	Solid Fuels	Veolia Henderson, CO	COD980591184
5) Latex Paint Sludge/Waste Latex Paint	55	U	\$135.00/55 gal	Recycle	GDB International Nashville, IL	ILR000159681
6) Absorbent with oil	5/55	U/U	\$375.00/55 gal \$190.00/5 gal \$105.00/55 gal	Incineration RCRA Stabilization/Landfill alt.	Veolia Port Arthur, TX US Ecology, Grand View, ID	TXD000838896 IDD073114654
7) Petroleum Contaminated Soil (PCS)	5/16/30/55	U/U/U/U	\$375.00/55 gal \$325.00/30 gal \$245.00/16 gal \$190.00/5 gal	Incineration \$105/55 gal RCRA Stabilization and RCRA LF Alternative	Veolia Port Arthur, TX US Ecology, Grand View, ID	TXD000838896 IDD073114654
8) Petroleum Sludge/Debris	2/5/16/30	U/U/U/U	\$64.00/30 gal \$55.00/2-16 gal	Solid Fuels	Veolia Henderson, CO	COD980591184
9) Grease	5/16/30	U/U/U	\$146.00/30 gal \$120.00/16 gal \$68.00/5 gal	Fuels Blend	Veolia Henderson, CO	COD980591184
10) Toxic/Flamm Liquids	5/16/30/55	5/U/U/32	\$210.00/55 gal \$172.50/30 gal \$141.00/16 gal \$68.00/5 gal	Fuels Blend	Veolia Henderson, CO	COD980591184

**EXHIBIT B
STANDARD TERMS AND CONDITIONS**

IN GENERAL

1. **NOTICE TO PROCEED:** Contractor shall not commence performance until after City has issued a Notice to Proceed.
2. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.
3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.
4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive and the City reserves the right to contract with others for materials or services.
5. **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

6. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
7. **QUALITY:** Contractor warrants that all materials supplied under this 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. 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.
8. **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.
9. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to City upon City's acceptance of the materials.
10. **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.
11. **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.

12. **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.
13. **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.
14. **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.
15. **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.
16. **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

17. **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 were shipped or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
18. **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, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
19. **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 this 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.

20. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
21. **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 City.
22. **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 City.
23. **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 City or fees and charges owed to City under this Contract.
24. **OFAC:** No City payments may be made to any person in violation of Office of Foreign Assets Control regulations, 31 C.F.R. Part 501.

SERVICES

25. **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.
26. **CONTROL:** Contractor shall be responsible for the control of the work.
27. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
28. **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.
29. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
30. **ACCEPTANCE:** If work is rejected by the City 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.
31. **WARRANTY:** Contractor warrants all work for a period of one (1) 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

32. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.
33. **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.
34. **PUBLIC RECORDS:** This 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.
35. **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, INSURANCE

36. **GENERAL INDEMNIFICATION:** Contractor shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney’s fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents of Contractor or damages to any property arising or alleged to have arisen out of the negligent performance of the Contract, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the Contract. This indemnification clause shall not apply, if a different indemnification clause is included in the City’s Specific Terms and Conditions.
37. **INSURANCE:** Contractor shall maintain all insurance coverage required by the City, including public liability and worker’s compensation.
38. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for 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 this Contract. Contractor shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the City against any and all expenses, losses, royalties, profits and damages, attorneys fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

39. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.

40. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
41. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.
42. **SEVERABILITY:** If any term or provision of this 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 this Contract shall remain in full force and effect.
43. **NO WAIVER:** Each party has 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.
44. **ASSIGNMENT:** This Contract may be assigned by Contractor with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to City. The Purchasing Director shall have authority to consent to an assignment on behalf of City.
45. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

46. **SUBCONTRACTING:** Contractor may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if 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.
47. **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 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.
48. **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 personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.
49. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole

discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor 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

- 50. TERMINATION FOR DEFAULT:** Prior to terminating this 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 Contract remedies provided for herein.
- 51. CITY REMEDIES:** In the event of Contractor's default, 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. 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.
- 52. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 53. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 54. TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of this 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, this 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 this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by 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 this 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 this Contract, City will pay Contractor for satisfactory performance up until the effective date of termination. 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 this 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 ("Gratuities") in connection with award or performance of the Contract.
59. **CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

60. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.
61. **NOTICES:** All notices given pursuant to this 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 (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.
62. **THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
63. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
64. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
65. **ATTORNEYS FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys fees, costs, professional fees and expenses.

**EXHIBIT C
INSURANCE**

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 this Contract by the Contractor, its agents, representatives, employees or contractors.
2. Requirement to Procure and Maintain. 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 Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor'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.
3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

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

b. Umbrella Coverage \$2,000,000

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

d. Workers' Compensation and Employer's Liability

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

[OPTION: e. Professional Liability \$2,000,000]

4. Self-Insured Retention. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers. Contractor shall be solely responsible for any self-insured retention amounts. 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.

5. Other Insurance Requirements. The 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 and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.
 - b. Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.
 - c. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Contractor's insurance and shall not contribute to it.
 - d. Each Insured. The Contractor'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.
 - e. Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
 - f. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.
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 unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:
- Attention: Eileen Brown, Senior Procurement Specialist
Contract No. 2016-23
Purchasing Department
City of Flagstaff,
211 W. Aspen Avenue
Flagstaff, Arizona 86001.
7. 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 the Contractor from potential insurer insolvency.
8. Certificates of Insurance. The Contractor shall furnish the City 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. The City project/contract number and project description shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Contractor commences work.

9. 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 this Contract at any time. 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 this Contract.

10. Modifications. Any modification or variation from the insurance requirements in this 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.