

**INDEPENDENT CONTRACTOR AGREEMENT (ICA)**  
**City of Flagstaff SRP Flowtography™ Equipment Installation and O&M Costs**  
**City of Flagstaff Contract No. 2016-1061**

This Independent Contractor Agreement (hereinafter “Agreement”) is made between *City of Flagstaff* with its principal address at 211 West Aspen Avenue, Flagstaff, Coconino County, Arizona (the “Client”) and the **SALT RIVER VALLEY WATER USERS ASSOCIATION** (the “Association”).

RECITALS

- A. The Client desires to obtain O&M services [for its existing 6 SRP Flowtography™ sites in the Upper Lake Mary Watershed.
- B. The Client desires to have installed 1 SRP Flowtography™ station and to obtain O&M services for the site at Newman Canyon in the Upper Lake Mary Watershed.
- C. The Client desires to have installed 1 SRP Flowtography™ station and to obtain O&M services for the site at Upper Lake Mary Dam.
- D. The Association agrees to perform these services for Client under the terms and conditions set forth in this Agreement.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, SRP and Client agree as follows:

SCOPE OF WORK

Client engages the Association to furnish the work described in **Schedule A**, attached hereto and by this reference incorporated herein. The Association agrees to furnish the work in accordance with Schedule A. Client is responsible for obtaining all necessary permits, which may include land access agreements and/or permits necessary to install and maintain the monitoring equipment.

COMPENSATION AND PAYMENT

Client agrees to pay the Association in accordance with the compensation and payment terms set forth in **Schedule B**. The Association agrees to accept such amounts as full payment for its work and to sign such waivers of lien, affidavits and receipts as Client shall request in order to acknowledge payment.

MATERIAL, SUPPLIES, EQUIPMENT AND TOOLS

The Association shall supply, at its own expense, all materials, supplies, equipment and tools required to accomplish the work agreed to be performed in accordance with this Agreement.

INDEPENDENT CONTRACTOR RELATIONSHIP

The Association is an independent contractor and is not an employee, servant, agent, partner or joint venturer of Client. Client shall determine the work to be done by the Association, but the Association shall determine the means by which it accomplishes the work specified by Client. Client is not responsible for withholding, and shall not withhold, FICA or taxes of any kind from any payments which it owes the Association. Neither the Association nor its employees shall be entitled to receive any benefits which employees of Client are entitled to receive and shall not be entitled to worker's

compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or Social Security on account of their work for Client.

#### EMPLOYEES OF CONTRACTOR

The Association shall be solely responsible for paying all FICA and other taxes, worker's compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing and other benefits for the Association and its employees, servants and agents.

#### INSURANCE

The Association is self-insured.

#### NON-WAIVER

The failure of either party to this Agreement to exercise any of its rights under this Agreement at any time does not constitute a breach of this Agreement and shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

#### CONFLICT OF INTEREST

The City may, by written notice to SRP, immediately cancel this Agreement without penalty or further obligation pursuant to A.R.S §38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the City of Flagstaff is an employee or agent of any other party in any capacity or a consultant to any other party to the Agreement with respect to the subject matter.

#### DOCUMENTATION AND RECORD KEEPING

The City and SRP will retain all records that are pertinent to the activities to be funded under this Agreement.

The City and SRP will retain all records pursuant to the City's and SRP's record retention policy. Records must be retained longer if any litigation, claim, or audit is stated before the expiration of the record retention period.

#### DISCLOSURE

The City and SRP understand that services performed under this Agreement are private and the use or disclosure of such information, when not directly connected with the administration of the City's or SRP's responsibilities with respect to services provided under this Agreement, is prohibited by Arizona State Law unless written consent is obtained from such person receiving service.

#### ACKNOWLEDGEMENT

Both parties shall acknowledge during the term of the Agreement the contribution of the City of Flagstaff, Utilities Division funds towards the Project, and SRP's services & technology, in all instances where the project is mentioned.

DATA/INFORMATION REQUEST

The City owns any data produced or purchased during the term of this Agreement and has the right's to obtain, reproduce, publish or otherwise use the data/Information or authorize others to receive, reproduce, publish or otherwise use the data/Information as provided by the City of Flagstaff (see TERM below). All data requests will transact directly between City of Flagstaff and SRP. Further distribution of the data will be conducted by City of Flagstaff. See **Schedule C** for terms and conditions.

NO AUTHORITY TO BIND CLIENT

Neither the Association nor Client has authority to enter into contracts on behalf of, or authority to bind the other party.

NOTICES

Any notice given in connection with this Agreement shall be given in writing and delivered either by hand to the party or by certified mail, return receipt.

ENTIRE AGREEMENT

This is the entire Agreement between the parties with respect to the subject matter hereof and can only be supplemented, amended or revised in writing that is signed by each of the parties.

ASSIGNMENT

The Association may not assign any of its rights or duties under this Agreement without the prior written consent of Client.

TERM

This Agreement is effective **November 1, 2015** and shall continue in effect until cancelled by either party upon thirty (30) days written notice to the other party. In the event Client cancels, Client shall reimburse the Association for expenses incurred to the 30 day concluded date, or otherwise as mutually agreed to. A plan to convey any raw data, to transfer images, or data hosting web services will be evaluated within the 30 day time frame. SRP has no obligation beyond the 30 day notice to facilitate or retain the data, unless otherwise agreed to by the parties and recorded with signatures.

LAW

This Agreement shall be governed and construed in accordance with Arizona law and venue shall be in Maricopa County.

The parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CLIENT- CITY OF FLAGSTAFF

THE SALT RIVER VALLEY WATER  
USERS' ASSOCIATION

By \_\_\_\_\_  
JOSH COPLEY

By \_\_\_\_\_  
LEE W. ESTER

Its: City of Flagstaff Manager

Its: Manager, Water Measurement for SRP

ATTEST: CITY CLERK

By \_\_\_\_\_

APPROVED AS TO FORM: CITY ATTORNEY

By \_\_\_\_\_

## SCHEDULE A

## SCOPE OF WORK

**Equipment Installation and Operation and Maintenance Services –  
Effective November 1, 2015**

*Proposal for*

- 1) Upper Lake Mary Watershed equipped with SRP Flowtography™ Stations Proposal to Provide Equipment O&M Services.***
- 2) Proposal for 1 SRP Flowtography™ Station Installation and Equipment O&M Services at Newman Canyon.***
- 3) Proposal for 1 SRP Flowtography™ Station Installation and Equipment O&M Services at Upper Lake Mary Dam.***

**Stabilization Period:**

- 1) When new equipment is installed, a 30-day period of stabilization should be anticipated. During this period, the equipment will be evaluated for solar/battery performance, time lapse image collection, and ability to connect to the cellular network (in this case, Verizon with infrastructure located on Mormon Mountain).
- 2) Flowtography is designed to operate on the Verizon network. SRP is not responsible for the operation of the Verizon network or its performance, or the ability of the Flowtography equipment to suitably connect and transfer images via the Verizon network to the third party image hosting web service (Drone Command Hub). SRP is not responsible for loss or inability to connect to the Verizon cellular network, or for service issues at the Drone Command Hub web service.

**Equipment/Components:**

- 1) Equipment components and assurances of quality construction, including periods of stated warranty for specific integrated equipment will be subject to each manufacturer's warranty statement and terms. SRP does not directly warrant manufacturer-specific components. SRP costs to facilitate repairs due to manufacturers warranted items will be invoiced as required.
- 2) City of Flagstaff is responsible for any equipment damage, acts of vandalism, fire, damages from weather, or any other acts/consequences.
- 3) Equipment outages/ malfunctions/breakdowns can result in loss of image collection and subsequent record. SRP is not responsible for loss of image collection.
- 4) Inclement weather and extreme cold can affect the performance and operation of the Flowtography system. For example, snow covering a solar panel to the extent that it is unable to satisfactorily provide the electrical requirements necessary to sustain the operation of the system.
- 5) Performance of the Flowtography electronics, battery, and other components is subject to each manufacturer's operating temperature range for its products and equipment.

## SCHEDULE B

**COMPENSATION AND PAYMENT (Summary)****Equipment Installation and 9 Month Operation and Maintenance Costs**

<b>Proposal</b>	<b>New Hardware Costs</b>	<b>New Installation Costs</b>	<b>O&amp;M Costs for 9 months*</b>
1. <i>Upper Lake Mary Watershed equipped with SRP Flowtography™ Stations Proposal to Provide Equipment O&amp;M Services.</i>			\$35,010
2. <i>Proposal for 1 SRP Flowtography™ Station Installation and Equipment O&amp;M Services at Newman Canyon.</i>	\$3,512	\$4,234	\$6,473
3. <i>Proposal for 1 SRP Flowtography™ Station Installation and Equipment O&amp;M Services at Upper Lake Mary Dam.</i>	\$3,512	\$4,234	\$5,723
<b>Totals</b>	<b>\$7,024</b>	<b>\$8,468</b>	<b>\$47,206</b>

(applicable taxes not included)

**Ad hoc Data Summary Reports**

At the request of the City of Flagstaff, SRP can produce Annual, Seasonal or quarterly Reports (per contractual year – see Note below).

The cost to produce the reports are as follows:

<b>Report Type</b>	<b>Cost per Report</b>	<b>Total Costs*</b>
1. <i>Annual Report (6 sites, no quarterly reports)</i>	\$12,000	\$12,000
2. <i>Seasonal Reporting (6 sites, no annual report, no quarterly report)</i> <i>Winter (Oct 1<sup>st</sup> to May 31<sup>st</sup>)</i> <i>Summer (June 1<sup>st</sup> to September 30<sup>th</sup>)</i>	\$10,000 \$6,000	\$16,000
3. <i>Quarterly Reports (6 sites, no annual report, no seasonal report)</i> <i>Annual Summary of Quarterly Reports</i>	\$5,000 \$4,000	\$20,000 \$4,000

\* (applicable taxes not included)

Reports will contain the following information:

- 1) Period of Record.
- 2) Stage Hydrograph for each site.
- 3) Flow Hydrograph for each site (Provisional Flow data calculated using derived flow equations)
- 4) Statement of what occurred at each site.
- 5) Service record of each site.
- 6) General observations and analysis/comments

Note: Reporting excludes Upper Lake Mary Dam and Newman Canyon sites. These sites are observational only (image collection - no data services or interpretation).

**Payment Terms**

All invoices will be accompanied by a brief description of equipment and/or services provided by site, date, and purpose. Compensation (price) in this Agreement is based upon fixed costs. Invoices are due and payable within 30 days. For each calendar month, or fraction thereof, that payment is late, the Client shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less.

**Equipment and Installation**

During the equipment implementation of the project, SRP will invoice in advance for 50% (\$7,746) of the total estimate. The funds will be used directly towards the purchase of equipment and preparing site infrastructure. The balance of the costs will be invoiced when the sites are completed (Equipment and Installation Costs Total \$15,492 for Newman Canyon and Upper Lake Mary Dam).

**O&M Recurring Costs - Invoicing**

At such time that the initial installations are complete, each site will enter into the operational and maintenance phase of the project. Invoicing for routine services will occur at regular intervals and will be submitted subsequent to scheduled (or unscheduled break fix service events initiated by City authorization).

SCHEDULE C

**City of Flagstaff Information\* Request**

**Current Contract Date Range** – Effective November 1, 2015 (*from Schedule A*)

**Date requested:** \_\_\_\_\_ **Date needed:** \_\_\_\_\_

**Person requesting the information:** \_\_\_\_\_

**Primary contact person:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**What specific information is being requested?**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Transfer method (FTP, floppy disk, USB stick, other):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Comments:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*Information is comprised of raw SRP Flowtography™ images or subsequent data developed from the post-processing of those images. Information eligibility is limited to that which was collected during periods of contracted service(s). *Engineering specifications, proprietary technology and other information, such as but not limited to, field surveys, predictive equations, etc are not eligible.*

By signing this page the person requesting the Information agrees to the following conditions:

- In no event shall SRP be liable for any damages whatsoever resulting from or related to any use of the Information, including, but not limited to, direct, indirect, special, incidental, consequential or exemplary damages whatsoever.
- City of Flagstaff further agrees to indemnify and forever hold harmless SRP from and against any claims, demands, lawsuits, actions and/or causes of action, whether in tort or contract, whether known or unknown, that may hereafter, or at any time, be made or brought against SRP by any person or entity arising out of or in any way connected to the Information disclosed subsequent to this request.
- The undersigned hereby agrees to the above terms and conditions and represents that he/she has the authority to execute this agreement on behalf of the City of Flagstaff.
- Information provided by SRP to City of Flagstaff will be distributed further at the discretion of City of Flagstaff.
- I agree to the SRP Information Request Fee Schedule as follows:
  - Any person requesting Information may be invoiced for SRP’s services at the following rate. Payment may be required before any information is released:
    - \$145 per hour, (half hour minimum)

Name (print): \_\_\_\_\_ for City of Flagstaff

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

<p>For SRP Use:</p> <p>Information request processed by: _____</p> <p>Labor hours: _____</p> <p>Information provided: _____</p> <p>Transfer Method: _____</p> <p>Date Transferred: _____</p> <p>Comments: _____</p>
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