



**AMES CONSTRUCTION**

**CITY OF FLAGSTAFF  
LONE TREE OVERPASS**

**PROJECT NUMBER: 03-19004**

**CONTRACT NO.: 2021-23**

***DESIGN-BUILD SERVICES AGREEMENT***

**Mayor**

*Paul Deasy*

**Council**

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Adam Shimoni  
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**City of Flagstaff, Arizona  
Purchasing Division**

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**CITY OF FLAGSTAFF  
LONE TREE OVERPASS PROJECT  
DESIGN-BUILD SERVICES AGREEMENT  
PROJECT NO. 03-19004  
CONTRACT NO. 2021-23**

**THIS AGREEMENT**, made and entered by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation, hereinafter designated the "CITY" and CONTRACTORS NAME, a(n) (*state*) corporation, hereinafter designated the "DESIGN-BUILDER."

**RECITALS**

- A. The City Manager of the City of Flagstaff, Arizona, is authorized and empowered by Article VIII, Section 2 of the City Charter to execute contracts for professional services and construction services.
- B. The City intends to construct the **City of Flagstaff Lone Tree Overpass** as more fully described in Exhibit A attached hereto, hereinafter referred to as the "Project".
- C. The Design-Builder has represented to the City its ability to design and construct the Project, and based on this representation the City has engaged [Contractor's Name], to design and construct the Project.

**AGREEMENT**

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the Design-Builder as follows:

**ARTICLE 1 - DEFINITIONS**

"Addenda" written or graphic instruments issued prior to the submittal of the GMP proposal(s), which clarify, correct or change the GMP proposal(s) requirements.

"Agreement" or "Contract" means this written document signed by the City and Design-Builder covering the design and construction of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract. This term shall also include the RSOQ, all Attachments and Exhibits, and all Appendices.

"Change Order" (Amendment) means a written instrument issued after execution of this Agreement signed by City and Design-Builder, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; the extent of the adjustment to the Contract Time(s) or modifications of other contract terms.

"City" (Owner) means the City of Flagstaff, a municipal corporation, with whom Design-Builder has entered into this Contract and for whom the services are to be provided pursuant to said Contract. Regulatory activities handled by the City of Flagstaff Community Development Department, Utilities Department or any other City Department are not subject to the responsibilities of the City under this Agreement.

“City’s Representative” means the person designated in section 8.4.1.2.

"City’s Senior Representative" means the person designated in section 8.4.1.1.

“Commissioning” means the process prescribed in section 2.21 for achieving, validating and documenting the performance of the total Project and its systems to meet the design needs and requirements of the City.

“Construction Documents” means the plans, specifications and drawings prepared by the Design-Build team and include documents as prescribed by section 2.8.

“Construction Drawings” means the detailed drawings, corrected for permit requirements, approved as part of the Construction Documents.

“Construction Fee” means the Design-Builder’s administrative costs, home office overhead, and profit.

“Contract Documents” means the following items and documents in descending order of precedence executed by the City and the Design-Builder: (i) all written modifications, amendments and Change Orders (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) Design-Builder’s GMP proposal, and (v) Design-Builder’s Statement of Qualifications.

“Contract Price” means the amount or amounts set forth in Article 5, subject to adjustment in accordance with this Agreement.

“Contract Time” means the period of time, as set forth in Article 4, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

“Cost of the Work” means the direct costs necessarily incurred by the Design-Builder in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees (if not paid for by City), materials testing, and related items. The Cost of the Work shall not include the Design-Builder’s Construction Fee, General Conditions Costs, or taxes.

“Critical Path” means the sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

“Day(s)” means calendar days unless otherwise specifically noted in the Contract Documents.

“Deliverables” means the work products prepared by the Design-Builder in performing the scope of work described in this Contract. Some of the major Deliverables to be prepared and provided by the Design-Builder during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP proposals, Subcontractor procurement plan, Statement of Proposed MBE/WBE Utilization as may be required or appropriate, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

“Design Services” means all professional services to be performed or procured by the Design-Builder to provide required Project design under this Agreement and any subsequent amendments.

“Design-Builder” means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract.

"Design-Builder's Contingency" means a fund to cover cost growth during the Project used at the discretion of the Design-Builder, usually for costs that result from Project circumstances. The amount of the Design-Builder's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the Design-Builder's Contingency is described in sections 5.3.3.4 and 5.3.3.6.

"Design-Builder's Senior Representative" means the person designated in section 8.4.2.1.

"Design-Builder's Representative" means the person designated in section 8.4.2.2.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ or are not reasonably inferable from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Completion" means the completion of the Project as prescribed in section 4.4.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"General Conditions Costs" includes, but is not limited to the following types of costs for the Design-Builder during the construction phase: (i) payroll costs for project manager or construction manager for work conducted at the Site; (ii) payroll costs for the superintendent and full-time general foremen; (iii) payroll costs for other management personnel resident and working at the Site; (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); (v) administrative office personnel; (vi) costs of offices and temporary facilities set up solely for this Project including office materials, office supplies, office equipment, and minor expenses; (vii) utilities, fuel, sanitary facilities and telephone services at the Site; (viii) costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs; (ix) costs of bond premiums; and (x) cost of consultants not in the direct employ of the Design-Builder or Subcontractors.

"Guaranteed Maximum Price" or "GMP" means the sum of the cost for design, permitting and maximum cost of the construction including the Design-Builder's Construction Fee, General Conditions Costs; sales tax, and Design-Builder's Contingency.

"GMP Plans and Specifications" means the plans and specifications upon which the Guaranteed Maximum Price proposal is based.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project, Site or Work.

"Notice to Proceed" or "NTP" means the directive issued by the City authorizing the Design-Builder to start Work.

"Owner's Contingency" means a fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City's directed changes or Differing Site Conditions, or as the City may otherwise elect. The amount of the Owner's Contingency will be set solely by the City and will be in addition to the Project costs included in the Design-Builder's GMP packages. Use and management of the Owner's Contingency is described in section 5.3.4.

"Payment Request" means the City form used by the Design-Builder to request payment for Work in accordance with Article 7.

"Performance Period" means the period of time allotted in the Contract Documents to complete the construction comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Schedule.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the construction.

“Project” means the Work to be completed in the execution of this Agreement and as amended and as described in the Recital above and in Exhibit A.

“Project Schedule” means a schedule as prescribed in section 2.4.

“Record Documents” means the documents created pursuant to section 2.19.

“Recovery Schedule” means a schedule created pursuant to section 2.4 generally, and section 2.4.5.9 specifically, which clearly and realistically identifies adjustments proposed to bring the Project back to the initial project Substantial Completion date.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the construction will be judged.

“Scheduled Substantial Completion Date” means the date on which the Work, or an agreed upon portion of the Work, is anticipated to be sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes.

“Schedule of Values (SOV)”, means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Project Schedule depending on if the Project Schedule is cost-loaded or not.

“Shop Drawings” means drawings, diagrams, schedules and other data specially prepared for the construction by the Design-Builder or a Subcontractor, Sub-subcontractor, manufacturer, Supplier or distributor to illustrate some portion of the construction.

“Site” means the land or premises on which the Project is located.

“Subcontractor” or “Subconsultant” means an individual or firm having a direct contract with the Design-Builder or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the Work for which the Design-Builder is responsible.

“Substantial Completion” means the established date when the Work or designated portion thereof is sufficiently complete, in accordance with the Contract Documents so that the City may occupy the Work, or designated portion thereof, for the use for which it is intended. This may include, but is not limited to: (i) Approval by the City or State Fire Marshall and/or other state or local authorities having jurisdiction over the Work or a portion thereof (Certificate of Occupancy); (ii) all systems in place, functional, and displayed to, and accepted by, the City or it’s representative; (iii) City operation and maintenance training complete; (iv) HVAC test and balance completed with reports provided to the Design Professional for review; (v) Operational and Maintenance manuals and final Project Record Documents delivered to the City or Design Professional for review, (vi) landscaping and site work complete; and (vii) final cleaning complete.

“Supplier” means a manufacturer, fabricator, supplier, distributor, material manager or vendor having a direct contract with Design-Builder or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by Design-Builder or any Subcontractor.

“Work” means all design, construction, and Commissioning services, including procuring and furnishing materials, equipment, services, and labor reasonably inferable from the Contract Documents

## **ARTICLE 2 – DESIGN-BUILDER’S SERVICES AND RESPONSIBILITIES**

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**2.0** The following sections prescribe the services and responsibilities required for the proper execution and completion of the Work by the Design-Builder. They are not organized in any specific order and may pertain to all phases of the Work.

### **2.1 General Services**

**2.1.1** Design-Builder shall, through personnel employed by Design-Builder, or procured from qualified Subconsultants or Subcontractors, perform all Work, and provide all material, equipment, tools and labor necessary to complete the Work described in and reasonably inferable from this Agreement.

**2.1.1.1** This Agreement shall be executed and signed by City and Design-Builder, stating their agreement to proceed with design in accordance with all codes, standards and requirements as adopted by ordinance or as may be referenced in Exhibit B – Scope of Services.

**2.1.1.2** An amendment to this Agreement may be executed and signed by City and Design-Builder, stating their agreement to a GMP, or multiple GMP’s, and to proceed with the completion of the design and construction of the Project.

**2.1.2** The City hereby acknowledges its acceptance of the key personnel of the design-build team as submitted by the Design-Builder in its statement of qualifications or as amended subsequently during the selection process. At any time hereafter that the Design-Builder desires to reassign or change key personnel while performing under this Agreement, the Design-Builder shall submit a request to reassign or change key personnel and the qualifications of the proposed new key personnel to the City for prior approval.

**2.1.3** The Design-Builder will maintain an adequate and competent staff of qualified persons, as may be determined by the City, throughout the performance of this Agreement. If the City objects, with reasonable cause, to any of the Design-Builder’s design professionals, the Design-Builder shall take prompt corrective action acceptable to the City and, if required, remove such persons from the Project and replace with new design professionals agreed to by the City.

**2.1.4** Design-Builder’s Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. Design-Builder’s Representative shall communicate regularly with City and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder’s Representative may be replaced as described in section 2.1.2.

**2.1.5** The parties will meet within seven (7) Days after execution of this Agreement to discuss issues affecting the administration of the Work, the Project Schedule, and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under this Agreement. The Notice to Proceed (NTP) date prescribed in section 4.1 will be established.

### **2.2 Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed design consultants, the necessary Design Services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. The Design-Builder’s design professionals shall seal with an Arizona registered professional seal all plans, works, and Deliverables prepared by them for this Agreement as required by state law.

**2.2.2** The Design-Builder understands and agrees that the City’s Senior City Representative or City

Representative, shall be the sole contacts for administering this Agreement. The Design-Builder is not precluded from discussing the Project, or its requirements with the tenants or other entities which will ultimately use the facility, but all specific directions to or requests of the Design-Builder must be authorized by the Senior City Representative or the City Representative.

### **2.3 Standard of Care for Design Professional Services and Corrections**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the services, which standards are to be set forth in an exhibit to this Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

**2.3.2** The Design-Builder shall be responsible for the completeness and accuracy of the plans, specifications, supporting data, and other work prepared or compiled under its obligation for this Project and shall correct, at its expense, all errors, omissions and negligent acts therein which may be discovered. Correction of errors, omissions and negligent acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design-Builder. The cost of the design necessary to correct those errors attributable to the Design-Builder shall not be reimbursable costs to the Design-Builder. Any damage incurred by the City as a result of additional construction cost caused by such errors, omissions or negligent acts shall not be reimbursed to the Design-Builder to the extent that such errors, omissions and negligent acts fall below the standard of care and skill that a registered professional in Arizona would exercise under similar conditions. The fact that the City has accepted or approved the Design-Builder's product shall in no way relieve the Design-Builder of any of its responsibilities.

### **2.4 Project Schedule**

**2.4.1** The Project Schedule shall be established within seven (7) Days of the NTP and, updated and maintained throughout the Work. An updated Project Schedule shall be part of any GMP amendment.

**2.4.2** The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents.

**2.4.3** An updated Project Schedule shall be submitted monthly to the City five (5) working Days prior to the Design-Builder's monthly Payment Request as prescribed in Article 7 of this Agreement.

**2.4.3.1** Design-Builder shall provide City with a monthly status report with each Project Schedule detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, and (iii) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price(s) and within the Contract Time(s).

**2.4.3.2** With each Project Schedule submitted, the Design-Builder shall include a transmittal letter including the following.

- Description of problem tasks (referenced to field instructions, requests for information (RFIs), change order or claim numbers) as appropriate.
- Current and anticipated delays not resolved by approved change order, including:
  - Cause of the delay
  - Corrective action and schedule adjustments to correct the delay
  - Known or potential impact of the delay on other activities, milestones, and the date of Substantial Completion
  - Changes in construction sequence
- Pending items and status thereof including but not limited to:



- Pending change orders
- Time extension requests
- Other items
- Substantial Completion date status:
  - If ahead of schedule, the number of Days ahead
  - If behind schedule, the number of Days behind
- Other Project or scheduling concerns

**2.4.1** City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the Design-Builder from compliance with the requirements of the Contract Documents or be construed as relieving the Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.4.1.1** Upon the City's request, the Design-Builder shall participate in the review of the Design-Builder's Project Schedule submissions. The City may request the participation of Subconsultants and/or Subcontractors in these reviews, as determined necessary by the City.

**2.4.5** The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the path of critical activities.

**2.4.5.1** The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates, and total Float times for all activities except critical activities. The CMP diagram shall be presented in a time scaled graphical format for the Project as a whole.

**2.4.5.2** The CPM diagram schedule shall indicate all relationships between activities.

**2.4.5.3** The activities making up the schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

**2.4.5.4** The CPM diagram construction schedule shall be based upon activities, which would coincide with the Schedule of Values.

**2.4.5.5** The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

**2.4.5.6** The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the Design-Builder's activities.

**2.4.5.7** The schedule shall include a Critical Path activity that reflects anticipated weather delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial Conditions prevailing in the locality of the Site. Weather data shall be based on the information set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.

**2.4.5.8** The Project Schedule shall consider the City's occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.

**2.4.5.9** In the event of significant delays, lags or changes in the planned sequence of activities, as determined by Owner, Contractor shall provide to Owner a Recovery Schedule indicating proposed rescheduling of activities to achieve completion of the Project by the Scheduled Substantial Completion Date.

**2.4.6** Float time shall be as prescribed below:

- 2.4.6.1** The total Float within the overall schedule, is not for the exclusive use of either the City or the Design-Builder, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.
- 2.4.6.2** The Design-Builder shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date, and then only if such extensions or damages are shown to be justified under the Contract Documents.
- 2.4.6.3** Since Float time within the construction schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., Critical Path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in a savings of time to the Design-Builder, etc.). In such an event, the Design-Builder shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

## **2.5 Cost Estimates**

- 2.5.1** The Project budget available for the Work will be communicated to the Design-Builder through separate correspondence. The Design-Builder is responsible for the delivery of the Project covered by the Contract Documents within the Project budget.
- 2.5.2** With each Project Schedule submittal pursuant section 2.4.3, the Design-Builder shall provide a detailed cost estimate and a written review of the documents.
- 2.5.2.1** If any estimate submitted to the City exceeds previously accepted estimates or the City's Project budget, the Design-Builder shall make at its sole expense appropriate recommendations on methods and materials to the City that it believes will bring the Project back into the Project budget.
- 2.5.2.2** In between these milestone estimates, the Design-Builder shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the Design-Builder to keep the City informed as to the major trend changes in costs relative to the City's budget.
- 2.5.3** If requested by the City, the Design-Builder shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

## **2.6 Not Used**

## **2.7 Construction Management Plan**

- 2.7.1** The Design-Builder will prepare a Construction Management Plan (CMP).
- 2.7.2** The CMP shall include:
- Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project,
  - Investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities,
  - Alternate strategies for fast-tracking and/or phasing the construction,
  - Goal compliance strategy,
  - The number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction,
  - Permitting strategy,
  - Safety and training programs,

- Construction quality control,
- Commissioning program,
- Cost estimate and basis of the model, and
- Matrix summarizing each Project Team member's responsibilities and roles.

**2.7.3** The Design-Builder shall add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of construction.

## **2.8 Design Services**

**2.8.1** Design-Builder shall provide all interim design submissions and Deliverables as prescribed in the Performance Standards Requirements provided by the City, and as shown on the Project Schedule.

**2.8.1.1** Within seven (7) Days after a scheduled submission, the Design-Builder and City shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or previously submitted design submissions.

**2.8.1.2** The Design-Builder, with each required submittal, shall submit and distribute ten, or as otherwise identified in the Performance Standards Requirements, hard copy sets of plans and specifications.

**2.8.1.3** Minutes of the meetings will be maintained by Design-Builder and provided within five Days following the design review meeting to all attendees for review.

**2.8.1.4** City shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's Owner approved Project Schedule.

**2.8.1.5** Design-Builder shall not cause the design to proceed until City approves the interim design submissions as prescribed in this section. If the Design-Builder allows the design to proceed without City approval, the cost of any resultant redesign is not a reimbursable cost.

**2.8.1.6** City's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Project. Neither City's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability to the City.

**2.8.2** The Project design must meet all applicable (i) Maricopa Association of Governments (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; (ii) the City of Flagstaff Supplements and Amendments to the latest revision of the MAG Uniform Standard Technical Specifications and Uniform Details and Drawings; (iii) the City of Flagstaff Engineering Design and Construction Standards and Specifications, latest edition, (iv) all City building standards; and (v) shall include any general provisions provided by the City.

**2.8.3** The Project design criteria and specifications shall be in accordance with all codes, standards and requirements as adopted by ordinance or as may be referenced in Exhibit C – Performance Standards Requirements. Variances from the standards and guidelines must be identified in writing by the Design-Builder and approved by the City. The Design Builder shall identify conflicts between the design standards and guidelines and the requirements in section 2.8.2 above or Legal Requirements and shall obtain concurrence with resolution of the conflict. The design standards and guidelines or approval of variances or resolution of conflicts shall not be deemed to transfer any design liability to the City.

**2.8.4** The Design-Builder shall not specify any construction materials known to be hazardous or potentially hazardous, including asbestos, lead or any derivative thereof unless specifically approved in writing by the City.

- 2.8.5** The Design-Builder shall coordinate with private, public and City utilities (i.e., Information Technology Department, Water Services Department) regarding standard utility issues and incorporate pertinent information in the plans.
- 2.8.6** The Design-Builder shall be responsible for scheduling, submitting to, obtaining approval and retrieving all required Construction Documents from the various required reviewing agencies.
- 2.8.7** Until such time as a GMP amendment has been executed, Design-Builder when requested by the City, will attend, make presentations, and participate as may be appropriate in public agency and/or community meetings relative to the Project. Design-Builder will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such meetings.
- 2.8.8** Design-Builder shall submit to the City, Construction Documents setting forth in detail drawings and specifications describing the requirements for construction.
- 2.8.8.1** The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting.
- 2.8.8.2** The Design-Builder shall provide the drawings in AutoCAD format compatible with City of Flagstaff Community Development Department CADD technology using City layering standards.
- 2.8.8.3** The drawing format will be a 24" x 36" sheet size unless otherwise authorized in writing by the City.
- 2.8.8.4** The parties shall have a design review meeting to discuss, and City shall review and approve, the Construction Documents in accordance with the procedures set forth this section.
- 2.8.8.5** Prior to commencement of construction, Design-Builder shall submit to the City the following.
- One set of approved Construction Drawings in AutoCAD format on electronic media (CD-ROM);
  - Five print sets of approved Construction Drawings and five half-size sets; and
  - Five sets of specifications.
- 2.8.9** To the extent not prohibited by Legal Requirements, Design-Builder may arrange for interim design submissions and Construction Documents for a portion of the construction to permit construction to proceed on that portion prior to completion of the Construction Documents for the entire construction.
- 2.9** **Not Used**
- 2.10** **Government Approvals and Permits**
- 2.10.1** Design-Builder shall obtain all necessary permits, approvals, and licenses required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project. **The Design-Builder is specifically reminded of the need to obtain the necessary environmental permits and/or file the necessary environmental notices.**
- 2.10.2** Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. This provision does not constitute an assumption by the City of any obligation of any kind for violation of said permit or notice requirements.
- 2.10.3** City shall be responsible for City of Flagstaff review and permit(s) fees for building and demolition permits. City will also pay review fees for grading and drainage, water, sewer, and landscaping. City shall also pay for utility fees for permanent services.

**2.10.4** Design-Builder shall be responsible for all other permits and review fees not specifically listed in section 2.10.3 above.

**2.10.5** Design-Builder is responsible for the cost of water meter(s), water and sewer taps and fire lines and taps, and all utility fees including incremental billings until Substantial Completion. Arrangements for construction water and associated fees are the Design-Builder's responsibility.

## **2.11 Subcontractor Selection**

**2.11.1** Subcontractors shall be selected by a combination of qualifications and price derived through competitive bidding.

**2.11.1.1** Design-Builder shall employ only Subcontractors who are duly licensed in Arizona and qualified to perform the Work per the requirements of the Contract Documents.

**2.11.2** The Design-Builder will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors selected pursuant to a qualifications based procedure, for each trade in the Project for approval by the City and solicit bids for the various construction categories. If there are not three qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, the Design-Builder may request approval by the City to submit less than three names. Without prior approval by the City, no change in the City-approved Subcontractors will be allowed.

**2.11.2.1** If the Design-Builder desires to self-perform certain portions of the construction, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The Design-Builder's bid will be evaluated in accordance with the process identified below. If after selection of a Subcontractor, events warrant and the City concurs, the Design-Builder may self perform construction without bidding or re-bidding.

**2.11.2.2** If the City objects to any nominated Subcontractor or to any nominated self-performed construction for good reason, the Design-Builder will nominate a substitute Subcontractor.

**2.11.2.3** The Design-Builder will distribute drawings and specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors.

**2.11.2.4** The Design-Builder shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the Design-Builder, in addition to bid price, shall consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor bids will be done with the City Representative in attendance to observe and witness the process. The Design-Builder will resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the cost of the construction.

**2.11.3** Upon completion of the Subcontractor selection process, the Design-Builder shall submit a summary report to the City of the entire Subcontractor selection process. The report will indicate, by bid process, all Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received and costs negotiated, and the selected Subcontractors for each category of Work.

**2.11.4** The selected Subcontractors will provide a Schedule of Values, which will be used to create the overall Project Schedule of Values.

## **2.12 General Construction Services**

**2.12.1** Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision,

labor, taxes, inspection, testing, start-up, material, equipment, machinery, arrangements for temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.12.2** The Design-Builder shall completely and totally construct the Project and install the material therein for the City, in a good and workmanlike and substantial manner. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Contract Documents as amended.

**2.12.3** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

### **2.13 Pre-construction Conference**

**2.13.1** After approval of Construction Documents and prior to the commencement of any construction, the City's Representative will schedule a pre-construction conference.

**2.13.2** The purpose of this conference is to establish a working relationship between the Design-Builder, utility firms, and various City agencies. The agenda will include critical elements of the construction schedule, submittal schedule, cost breakdown of major lump sum items, the level of Record Project Documents required, Payment Requests and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.

**2.13.3** The construction start date will be concurred with. After the meeting a Notice to Proceed letter will be issued confirming the construction start date, duration of the construction and if applicable the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion will be listed.

**2.13.4** The Design-Builder shall provide a Schedule of Values based on the categories used in the buy out of the construction, but not greater than the approved GMP, and identifying the construction contingency. The Schedule of Values will subdivide the construction into all items comprising the construction.

**2.13.5** Minimum attendance by the Design-Builder shall be the Design-Builder's Representative who is authorized to execute and sign documents on behalf of the firm, the Design-Builder's Design and Contractor Representatives, the job superintendent, and the Design-Builder's safety officer.

### **2.14 Supervision of Construction**

**2.14.1** Design-Builder or the Design-Builder's Representative shall at all times be present at the Site when construction activities are taking place.

**2.14.1.1** All elements of the construction, such as concrete work, pipe work, etc., shall be under the direct supervision of a foreman or his designated representative on the Site, who shall have the authority to take actions required to properly carry out that particular element of the construction.

**2.14.1.2** In the event of noncompliance of this section 2.14, the City may require the Design-Builder to stop or suspend the construction in whole or in part. Such suspension, due to the Design-Builder's noncompliance shall not be considered a basis for an increase in the Contract Price or extension of Contract Time.

**2.14.2** Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the Design-Builder's responsibility to ensure the Subcontractor employed for such Work is approved.

- 2.14.3** During construction the City may reasonably object to any Subcontractor and the Subcontractor shall be removed from the construction, provided that the Contract Price and/or Contract Time(s) may be adjusted to the extent that City's decision impacts Design-Builder's cost and/or time of performance.
- 2.14.4** Any person employed by the Design-Builder or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the construction by Design-Builder or Subcontractor employing such person, and shall not be employed again in any portion of construction without the written approval of the City. The Design-Builder or Subcontractor shall keep the City harmless from damages or claims, which may occur in the enforcement of this section.
- 2.14.5** Design-Builder shall be solely responsible to City for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.14.6** Design-Builder shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

## **2.15 Control of Construction Site**

- 2.15.1** Throughout all phases of construction, including suspension of Work, Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the construction, or a portion of the construction, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the construction or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.
- 2.15.2** Design-Builder shall take whatever steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the Arizona Department of Environmental Quality (ADEQ).
- 2.15.3** Design-Builder shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Design-Builder shall be responsible for the coordination of all Work to minimize disruption to building occupants and facilities.
- 2.15.4** In the event of abnormal weather conditions, such as windstorms, rainstorms, snowstorms, etc., the Design-Builder shall immediately inspect the work site and take all necessary actions to insure public access and safety are maintained, and that the Work in place and site conditions are protected from damage.
- 2.15.5** Only materials and equipment, which are to be used directly in the construction, shall be brought to and stored on the Site by the Design-Builder. When equipment is no longer required for the construction, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the Design-Builder.

## **2.16 Shop Drawings, Product Data and Samples**

- 2.16.1** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the construction for which submittals are required the way the Design-Builder proposes to conform to the information given and the design concept expressed in the Construction Documents.
- 2.16.2** The Design-Builder shall review, approve, verify, and submit to the City three copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Construction Documents in accordance with the approved construction schedule as prescribed in section 4.2 as to cause no delay in the Work or in the activities of the City or of separate contractors.
- 2.16.3** By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the construction and of the Construction Documents.
- 2.16.4** The Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents unless the Design-Builder has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation.
- 2.16.5** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

## **2.17 Quality Control, Testing and Inspection**

- 2.17.1** All materials used in the construction shall be new and unused, unless otherwise agreed to in writing by the parties, and shall meet all quality requirements of the Contract Documents.
- 2.17.2** All construction materials to be used on the construction or incorporated into the construction, equipment, plant, tools, appliances or methods to be used in the construction may be subject to the inspection and approval or rejection of the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.
- 2.17.3** The procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and tests shall be made in accordance with (i) Maricopa Association of Governments (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision, (ii) the City of Flagstaff Supplements and Amendments to the latest revision of the MAG Uniform Standard Technical Specifications and Uniform Details and Drawings, (iii) City of Flagstaff Engineering Design and Construction Standards and Specifications latest revision, and (iv) ASHTO and ASTM standards, latest revisions.
- 2.17.4** The City will select a pre-qualified City or independent testing laboratory and will pay for initial City acceptance testing.
- 2.17.4.1** When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and the cost of all tests, except the first test, will be paid for by the Design-Builder. Construction contingency cannot be utilized for the cost of re-testing.
- 2.17.4.2** When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.
- 2.17.5** The Design-Builder will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the Work and shall provide them access to the Work at all times.
- 2.17.6** At the option of the City, materials may be approved at the source of supply before delivery is



started.

**2.17.7** Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the Design-Builder, unless otherwise provided in the Contract Documents.

**2.17.8** Design-Builder's convenience and quality control testing and inspections shall be the sole responsibility of the Design-Builder and paid by the Design-Builder.

**2.18 Trade names and Substitutions.** Construction Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, may be substituted. Substitute or alternate items may be permitted, subject to the following:

**2.18.1** The substitution shall be submitted by Design-Builder in writing to the City.

**2.18.2** The Design-Builder shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

**2.18.3** The submittal shall state any required changes in the Construction Documents to adapt the design to the proposed substitution.

**2.18.4** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution. Substitutions will only be considered if they do not extend Contract Time.

**2.18.5** The Design-Builder if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

**2.18.6** The City will make the final decision and will notify the Design-Builder in writing as to whether the substitution has been accepted or rejected. If accepted, the Design-Builder will cause the Construction Documents to be revised as approved at the Design-Builder's cost.

**2.18.7** The Design-Builder shall continue to perform the construction in accordance with the Construction Documents unless the City accepts the substitution and there is no extension of Contract Time.

## **2.19 Project Record Documents**

**2.19.1** During the construction period, the Design-Builder shall maintain at the Site a set of blue-line or black-line prints of the Construction Drawings and Shop Drawings for Project Record Document purposes.

**2.19.1.1** The Design-Builder shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Drawings. The Design-Builder shall give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.

- Changes made by Change Order, Field Order, Report of Field Change, ASI or RFI.
- Details not on original Construction Drawings.

**2.19.1.2** The Design-Builder shall mark completely and accurately Project record drawing prints of Construction Drawings or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on Construction Drawings location.

**2.19.1.3** The Design-Builder shall mark Project record drawings sets with red erasable colored pencil.

**2.19.1.4** The Design-Builder shall note RFI Numbers, ASI Numbers and Change Order numbers, etc, as required to identify the source of the change to Construction Drawings.

**2.19.1.5** The Design-Builder shall as a condition of Substantial Completion, submit Project record drawing prints and Shop Drawings to the City or its representative for review and comment.

**2.19.2** Final Project record drawings: Upon receipt of the reviewed Project record drawings from the City, the Design-Builder shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:

**2.19.2.1** On electronic media: (i) a complete set of Project record drawings prepared in Autocad format compatible with City of Flagstaff Community Development Department CADD technology using City layering standards, each drawing shall be clearly marked with "As-Built Document;" (ii) a complete set of Project specifications in Microsoft Word format; and (iii) Shop Drawings in CADD or graphic file format.

**2.19.2.2** On hard copy media: (i) a complete set of reproducible mylars from the final AutoCAD drawings in the format compatible with City of Flagstaff Community Development Department CADD technology using City layering standards; and (ii) two edge bound blueline or blackline sets reproduced from these mylars.

**2.19.2.3** The original copy of the Project record drawings (redline mark-ups).

## **2.20 Project Safety**

**2.20.1** Design-Builder recognizes the importance of performing the construction in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the construction, including materials and equipment incorporated into the construction or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

**2.20.2** Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the construction.

**2.20.3** Design-Builder shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the construction. Unless otherwise required by the Contract Documents, Design-Builder's safety representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.

**2.20.4** The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.20.5** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.

**2.20.6** Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident

arising from the construction to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the construction.

- 2.20.7** Design-Builder's responsibility for safety under this section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the construction.

## **2.21 Commissioning**

- 2.21.1** The Design-Builder shall develop a Commissioning program, subject to the City's approval, as part of its CMP pursuant to section 2.7.
- 2.21.2** The Commissioning program shall include the roles and responsibilities of the City, tenants, and the Design-Builder.
- 2.21.3** The Design-Builder will provide a final Commissioning report indicating that the Project and all its systems and components are functioning as prescribed in the Contract Documents and training has been completed as required by the Contract Documents.

## **2.22 Design-Builder's Warranty**

- 2.22.1** Design-Builder warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.22.2** Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Project by persons other than Design-Builder and anyone for whose acts Design-Builder may be liable.
- 2.22.3** Design-Builder's warranty obligation shall be for one (1) year, except for such greater periods as may be required by the technical specifications.
- 2.22.4** Nothing in this warranty is intended to limit any manufacturer's warranty, or any other remedy at law available to the City, which provides City with greater warranty or other rights than set forth in this section or the Construction Documents.
- 2.22.5** Design-Builder will provide City with all manufacturers' warranties upon Substantial Completion.

## **2.23 Correction of Defective Construction**

- 2.23.1** Design-Builder agrees to correct any construction that is found to not be in conformance with the Construction Documents, including that part of the construction subject to section 2.22 hereof. A progress payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of construction not in accordance with the Construction Documents.
- 2.23.2** Design-Builder shall, within seven Days of receipt of written notice from City that the construction is not in conformance with the Construction Documents, take meaningful steps to commence correction of such nonconforming construction, including the correction, removal or replacement of the nonconforming construction and any damage caused to other parts of the construction affected by the nonconforming construction.

- 2.23.3** If Design-Builder fails to commence the necessary steps within such seven Day period, City, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that City will commence correction of such nonconforming construction with its own forces. If City does perform such corrective construction, Design-Builder shall be responsible for all reasonable costs incurred by City in performing such correction. Any such Work performed by the City as a result of the Design-Builder's failure to commence corrective action shall not impact, in any way, the remaining warranty of the affected construction.
- 2.23.4** If the nonconforming construction creates an emergency requiring an immediate response, the Design-Builder will respond and initiate corrections within twenty-four hours.
- 2.23.5** Sections 2.22 and/or 2.23 above shall not limit any rights or remedies the City may have regarding Design-Builder's obligations under the Contract Documents.

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## **ARTICLE 3 - CITY'S SERVICES AND RESPONSIBILITIES**

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### **3.1 Duty to Cooperate**

- 3.1.1** City shall, throughout the performance of Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.
- 3.1.2** City shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in the Project Schedule.
- 3.1.3** City's Representative as identified in section 8.4.1.2 shall be responsible for providing City-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. City's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.
- 3.1.4** Appropriate City staff will be available and will participate in required training as part of the Commissioning activities.
- 3.1.4** If requested by the Design-Builder, the City's Representative will provide assistance and guidance in obtaining necessary permits. Regulating agencies of the City, such as the Community Development Department and the Utilities Department, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

### **3.2 Furnishing of Services and Information**

- 3.2.1** The City will be responsible for the payment of the following:
- 3.2.1.1** City review and permit(s) fees for building and demolition permits.
- 3.2.1.2** City review fees for grading and drainage, water, sewer, and landscaping.
- 3.2.1.3** Utility fees for permanent services.
- 3.2.2** Unless expressly stated to the contrary in the Contract Documents, City will provide, at its own cost and expense, for Design-Builder's information, the following:
- 3.2.2.1** To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

- 3.2.2.2 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;
- 3.2.2.3 A legal description of the Site.
- 3.2.2.4 To the extent available, as-built record and/or historical drawings of any existing structures at the Site;
- 3.2.2.5 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including hazardous materials, in existence at the Site; and
- 3.2.2.6 To the extent available, geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- 3.2.3 City will provide all City standards and guidelines, supplementary conditions and special provisions that shall be included in the plans and specifications for the Project. These may include but are not limited to: disposal of surplus material, special security provisions, investigation of underground facilities, traffic controls and regulations, special quality control testing and termite treatment requirements.
- 3.2.4 City is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the construction. City is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

### **3.3 Field Inspections**

- 3.3.1 The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the Design-Builder. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an inspector from a City laboratory pursuant to section 2.17.
- 3.3.2 Through onsite observation of the Work in progress and field checks of materials and equipment, the inspector shall endeavor to provide protection against defects and deficiencies in the Work.
  - 3.3.2.1 The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
  - 3.3.2.2 The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as foremen for the Design-Builder.
  - 3.3.2.3 The inspector shall have the authority to reject Work or materials until any questions at issue can be decided by the City's Representative.
- 3.3.3 The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequence or procedures or for safety precautions or programs or responsibility for the Design-Builder's failure to perform the Work in accordance with Contract Documents.
- 3.4 **City's Separate Contractors.** City is responsible for all Work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

**3.5 Project Management Services (if applicable to this Project)**

- 3.5.1** The City may contract separately with one or more technical consultants to provide project management assistance of the Project. The technical consultant's contract as well as other firms hired by the City shall be furnished to the Design-Builder. The Design-Builder shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and technical consultant.
- 3.5.2** The technical consultant services will augment the City staffing resources to effectively manage the objectives of the City and this Project with the goal of managing the key project communication, cost and time parameters. The City and the Design-Builder shall endeavor to communicate through the technical consultant.
- 3.5.3** The technical consultant may provide preprogramming and design standards.
- 3.5.4** The City may contract with the technical consultant to provide some or all of the following services during the performance of the construction:
  - 3.5.4.1** Oversight of the construction.
  - 3.5.4.2** Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed construction and to determine in general if the construction is being performed in accordance with the Construction Documents. The technical consultant will keep the City informed of progress of the construction, and will endeavor to guard the City against defects and deficiencies in the construction. The technical consultant may have authority to reject construction which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with section 2.17.
  - 3.5.4.3** Review and recommend approval of the Design-Builder's Payment Requests.
  - 3.5.4.4** Interpretations of matters concerning performance under and requirements of the Contract Documents on written request of the City. The technical consultant's response to such requests will be made with reasonable promptness and within any time limits agreed upon.
  - 3.5.4.5** Analyze, recommend and assist in negotiations of Change Orders.
  - 3.5.4.6** Conduct inspections to determine Substantial Completion and Final Acceptance.
  - 3.5.4.7** Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the Design-Builder.
- 3.5.5** Commissioning Services. The technical consultant may supervise and/or participate in the Commissioning activities.

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**ARTICLE 4 – CONTRACT TIME**

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**4.1 Contract Time.**

- 4.1.1** Contract Time shall start with the Notice to Proceed (NTP) and end with Substantial Completion.
- 4.1.2** The City shall issue a NTP letter establishing the mutually agreed upon NTP date for this Agreement and design.
- 4.1.3** The Design-Builder shall provide a Project Schedule of the design activities within seven (7) Days after the NTP.

- 4.1.3.1** The Project Schedule shall provide fourteen (14) Days to be used by the City or its designee for reviews and approvals for any interim design submissions pursuant to section 2.8.
- 4.1.3.2** Failure on the part of the Design-Builder to adhere to the Project Schedule may be the basis for termination of this Agreement by the City.
- 4.1.4** Each GMP amendment to this Agreement will establish a separate construction NTP date Performance Period and Substantial Completion date for the entire Project. The Performance Period(s) for individual GMP's may be sequential or concurrent as established in the individual Notices To Proceed.
- 4.1.5** Design-Builder agrees that it will commence performance of the Work and achieve Performance Periods and the Contract Time.
- 4.1.6** All of the times set forth in this Article 4 or by amendments to this Agreement shall be subject to adjustment in accordance with Article 6.
- 4.2** **Construction Schedule.** Each approved GMP proposal shall include a Project Schedule as prescribed in section 2.4 with a CPM diagram construction schedule that will indicate the path of critical activities and establish the Performance Period encompassed by the GMP. The Design-Builder will maintain the construction schedule throughout the construction.
- 4.3** **Substantial Completion**
- 4.3.1** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1 and with the criteria set forth in the Notice to Proceed.
- 4.3.2** Prior to notifying the City in accordance with section 4.3.3 below, the Design-Builder shall inspect the construction and prepare and submit to the City a comprehensive list of items to be completed or corrected. The Design-Builder shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all construction in accordance with the Construction Documents.
- 4.3.3** Design-Builder shall notify City when it believes the construction, or a portion of the construction, is substantially complete.
- 4.3.4** Within five Days of City's receipt of Design-Builder's notice, City and Design-Builder will jointly inspect such construction to verify that it is substantially complete in accordance with the requirements of the Construction Documents.
- 4.3.5** If such construction is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the construction or portion thereof, (ii) the remaining items of construction that have to be completed within thirty Days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

- 4.3.6** City, at its option, may use a portion of the construction which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of construction addressing the items set forth in section 4.3.5 above, (ii) Design-Builder and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and Design-Builder agree that City's use or occupancy will not interfere with Design-Builder's completion of the remaining construction.
- 4.4** **Final Completion and Acceptance.** The Work, or identified portions of the Work must be finally complete within thirty Days from the date the Certificate of Substantial Completion is issued unless there is a written agreement of the parties that establishes another date for Final Completion. Upon receipt of written notice that the construction or identified portions of the Work is ready for final inspection and acceptance, City and Design-Builder will jointly inspect to verify that the remaining items of Work have been completed as set forth in section 4.3.5. The City will issue a Final Acceptance letter when the City finds the Work or identified portions of the Work to be finally complete.
- 4.5** **Liquidated Damages – Substantial Completion.** Design-Builder understands that if Substantial Completion is not attained within the Contract Time as may be adjusted, City will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained within the Contract Time as may be adjusted, Design-Builder shall pay the City (to be determined separately for each GMP) as liquidated damages, and not as a penalty, for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.
- 4.6** **Liquidated Damages – Final Completion.** Design-Builder understands that if Final Completion is not attained within the time allowed in section 4.4 above, as may be adjusted, the City will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not attained within the specified time as may be adjusted, Design-Builder shall pay the City (to be determined separately for each GMP) as liquidated damages, and not as a penalty, for each Day that Final Completion extends beyond the date for Final Completion as determined by the Agreement and further agrees that such amount is reasonable under the circumstances.

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## **ARTICLE 5 – CONTRACT PRICE**

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### **5.1 Contract Price.**

- 5.1.1** The Contract Price will be the amounts prescribed for design in section 5.2 below plus GMPs and Owner's Contingency.
- 5.1.2** The Contract Price is subject to adjustments made in accordance with Article 6 and by amendment.
- 5.1.2.1** GMP amendments are cumulative except for contingency. The amount of contingency for each GMP amendment will be negotiated separately.
- 5.1.2.2** If the GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP.
- 5.1.3** Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **5.2 Design**

- 5.2.1** The Design-Builder's fee for providing, through personnel employed by Design-Builder or procured



from qualified Subconsultants, Design Services and GMP preparation for the construction of the USGS Renovation and Additions Project. The Fee Schedules in Exhibit B shall determine the basis for payment depending on how and when the individual Sites become available. Any savings from the design shall revert to the City for use during construction.

**5.2.2** The contract fees for Design-Builder and Subconsultants are based upon the approved cost proposal dated January 12, 2021 attached hereto as Exhibit B.

### **5.3 GMP**

**5.3.1** At the end of the design phase or at a time determined by the City, the City will request the Design-Builder to provide a GMP or series of GMP's at the same or different times. The approved GMP(s) will be made part of this Agreement by amendment. The GMP(s) will include amounts for completion of design, if applicable, in the same format as prescribed above and a price for construction in accordance with section 5.3.3.

**5.3.2** The Design-Builder guarantees to bring the completion of the design and construction within the GMP or Design-Builder alone will be required to pay the difference between the actual cost and the GMP.

**5.3.2.1** Any savings of the Design-Builder's bid contingency used to buy out the construction at the conclusion of the selection of Subcontractors may be used during construction by the Owner as a construction contingency.

**5.3.2.2** Any savings realized during construction may be, at the City's sole discretion, incorporated into the construction of the Project to fund additional scope items or will be returned to the City upon the City's request.

**5.3.3** The GMP is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below.

**5.3.3.1** The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.

**5.3.3.2** The General Conditions Costs are firm fixed lump sum amount which will include bonds and insurance premiums based on the full Contract Price for construction.

**5.3.3.3** The Construction Fee is a firm fixed lump sum.

**5.3.3.4** Design-Builder's Contingency is an amount the Design-Builder may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. Design-Builder Contingency is assumed to be a direct Project cost so will receive all markups at the time of GMP submission.

**5.3.3.5** Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

**5.3.3.6** When the Design-Builder utilizes Design-Builder's Contingency funds, the Design-Builder shall make the appropriate changes to the Schedule of Values with the next regular progress Payment Request. The Design-Builder shall deduct the amount of Design-Builder's Contingency funds used from the Design-Builder's Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. If the Design-Builder's Contingency funds are used for a new line item that was not given with the original Schedule of Values, that will be so indicated.

**5.3.4** The Owner's Contingency is funds to be used at the sole discretion of the City to cover any increases in Project costs that result from City directed changes, Differing Site Conditions, or as the City may otherwise elect. Owner's Contingency will be added to the GMP amount provided by

the Design-Builder, the sum of which will be the full Contract Price for construction. Markups for Construction Fee and taxes will be applied by the Design-Builder at the time that Owner's Contingency is used.

**5.3.5** GMPs are cumulative except for Design-Builder's Contingency. The amount of Design-Builder Contingency for each GMP amendment will be negotiated separately and shall reflect the Design-Builder's risk from that point in the Project forward.

**5.4 GMP Proposal**

**5.4.1** When requested, the Design-Builder shall submit three (3) sets of the approved sealed design submittal to be used to establish the GMP.

**5.4.1.1** The Design-Builder shall sign and date the face of each document of each set used as the basis of the proposed GMP.

**5.4.1.2** The Design-Builder shall send two (2) sets of these documents to the City's Representative, while keeping one set for itself.

**5.4.2** The GMP proposal shall include:

**5.4.2.1** A list of the documents including the latest approved plans and design criteria, with latest issuance date including all Addenda thereto which were used in preparation of the GMP proposal;

**5.4.2.2** A list of allowances and a statement of their basis;

**5.4.2.3** A list of the clarifications and assumptions made by the Design-Builder in the preparation of the GMP proposal, to supplement the information contained in the documents;

**5.4.2.4** A summary of the GMP with a total for each of the components of the GMP as shown in the table below. On the table the percentages requested should be calculated as the percent of the "Total Construction Cost." The sub-amount shown under General Conditions should be included in the General Conditions amount.

**PROJECT GMP PROPOSAL SUMMARY SHEET**

<b>PROFESSIONAL SERVICES</b>			
	Professional Services		\$
	Reimbursables		
	Construction Administration		
<b>TOTAL PROFESSIONAL SERVICES</b>			<b>\$</b>
<b>CONSTRUCTION</b>			
	Cost of the Construction (Labor, Materials, Equipment, Warranty)		\$
	Design-Builder's Contingency		
	Indirect Costs	RATE	AMOUNT
	General Conditions, Total		% \$
	Payment and Performance Bond	\$	%
	Insurance	\$	%
	Construction Fee (overhead & profit)		% \$
	Sales Taxes		% \$
<b>TOTAL CONSTRUCTION COST</b>			<b>\$</b>
<b>Owner's Contingency</b>			<b>\$</b>

**GRAND TOTAL** \$

- 5.4.2.5** A spread sheet showing the basis for professional services, with hours and hourly costs for basic services and Subconsultant services indicating overhead and profit.
- 5.4.2.6** A list and estimated cost of reimbursables and other not-to exceed costs.
- 5.4.2.7** An itemized detail of any costs proposed to be included in the General Conditions.
- 5.4.2.8** A statement of proposed additional services, if any.
- 5.4.2.9** The GMP shall include in the Cost of the Work those taxes that are applicable at the time the GMP is executed. If, in accordance with the City's express written direction an exemption is claimed for taxes, the City agrees to indemnify, defend and hold Design-Builder harmless for any liability, penalty, interest, fine, tax assessment, attorney's fees or other expense or cost incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with the City's direction relative to the taxes as described in this section only.
- 5.4.2.10** The GMP shall exclude the actual costs of any jurisdictional or regulatory agency permit or fee as well as those for testing and inspection services that are to be paid per section 2.10. However, a detailed estimate of all anticipated direct costs for permits, fees, inspection and testing shall be attached to the GMP.
- 5.4.2.11** A Schedule of Values for the construction, with the costs organized by subcontract categories, allowances, contingency, General Conditions Costs, and the Design-Builder's construction phase fee.
- 5.4.2.12** A Project Schedule as prescribed in section 4.2 and establishing the Performance Period and the Scheduled Substantial Completion Date.
- 5.4.2.13** The updated CMP as prescribed in section 2.7.
- 5.4.2.14** The street or physical address of the Site of the Work for each GMP, phased GMP, or separate location at which Work, or a portion of the Work, will be performed shall be set forth in each GMP amendment.

## **5.5 GMP Approval**

- 5.5.1** The Design-Builder shall meet with the City to review the GMP proposal and the written statement of its basis. In the event that the City discovers any inconsistencies or inaccuracies in the information presented, the City shall promptly notify the Design-Builder, who shall make appropriate adjustments to the GMP proposal, its basis or both.
- 5.5.2** Upon receiving the GMP proposal from the Design-Builder, the City may submit the same documents that were used by Design-Builder in developing its GMP to an independent third party for review and verification. The third party shall develop an independent estimate and review the CPM schedule.
  - 5.5.2.1** If the Design-Builder's GMP proposal is greater than the independent third party estimate, the City may require the Design-Builder to reconfirm its proposal.
  - 5.5.2.2** The Design-Builder shall describe the differences between the two, and explain why its GMP reflects the scope of the Work and is correct.
- 5.5.3** If the City accepts the Design-Builder's GMP proposal and the GMP proposal is within the City's budget, the City may accept the Design-Builder's GMP proposal without comment. If the GMP

proposal exceeds the City's budget, the City must indicate in writing to the Design-Builder that the budget has been increased to fund the excess cost.

- 5.5.4** If the City accepts the Design-Builder's GMP, the City and the Design-Builder will execute an amendment to this Agreement for the GMP amending the Contract Price and establishing the Performance Period and the Contract Time.
- 5.5.5** The City shall authorize and cause the Design-Builder to revise the documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP proposal.
- 5.5.6** After final submission of the GMP the City may, at the City's sole discretion and for any or no reason, accept or reject the GMP. If the City rejects the Design-Builder's GMP, the City may terminate the Design-Builder's Contract. If the Contract is terminated pursuant to this section, the Design-Builder's compensation shall be limited to the direct cost of its completed Work and materials supplied as of the date of termination. Design-Builder shall not be entitled to any unearned or anticipated profit or overhead. If the Contract is terminated pursuant to this section, Design-Builder shall deliver to the City all drawings, plans, specifications, special provisions, estimates and other work entirely or partially completed, together with all unused materials supplied by the City.

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## **ARTICLE 6 – CHANGES TO CONTRACT PRICE AND TIME**

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### **6.1 Delays**

- 6.1.1** If Design-Builder is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or of those for whom Design-Builder is responsible, the Contract Times for performance may be reasonably extended by Change Order.
- 6.1.2** The Design-Builder shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work.
  - 6.1.2.1** In the case of a continuing delay only one (1) request is necessary.
  - 6.1.2.2** Written notice by the Design-Builder shall be provided to the City within thirty (30) Days of the commencement of the cause.
  - 6.1.2.3** If written notice is received by the City more than thirty (30) Days after commencement of the cause, the period of delay shall be deemed to commence thirty (30) Days prior to the giving of such notice.
- 6.1.3** By way of example, events that may entitle Design-Builder to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, hazardous conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.1.4** If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled Substantial Completion. All terms, conditions and definitions necessary for the application of this paragraph shall be as set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.
- 6.1.5** It is understood, however, that permitting the Design-Builder to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.

**6.1.6** In addition to Design-Builder's possible right to a time extension for those events set forth in this section, Design-Builder may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this section that are beyond the control of both Design-Builder and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

## **6.2 Differing Site Conditions**

**6.2.1** If Design-Builder encounters a Differing Site Condition, Design-Builder may be entitled to a Change Order to adjust the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are impacted by the Differing Site Condition.

**6.2.2** Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to City of such condition, which notice shall not be later than seven Days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

**6.3 Legal Requirements.** The Contract Price and/or Contract Time(s) shall be adjusted by Change Order to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of this Agreement negatively affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of this Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **6.4 City Requested Change in Work.**

**6.4.1** The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or desirable in the City's sole discretion.

**6.4.2** Such alterations and changes shall not invalidate this Agreement, and the Design-Builder agrees to perform the Work as altered, the same as if it has been a part of the original Contract.

**6.4.3** Upon receipt of a request for proposal for a change in Work, the Design-Builder shall prepare a proposal in significant detail, using the rates and markups established in the Contract Documents as a basis of the Contract Price adjustment. The Design-Builder's proposal shall include a detailed description of any schedule impact.

**6.4.4** City and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

**6.4.5** If City requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order may be issued to reimburse Design-Builder for reasonable costs incurred for estimating services and other services involved in the preparation of proposed revisions to the Contract Documents.

**6.5 Minor Changes.** The City may make minor changes in the Work that do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall immediately inform City, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

**6.6 Emergencies.** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time on account of emergency work shall be determined as provided in this Article 6.

**6.7 Force Majeure.** The parties acknowledge that there may be events that occur during the term of this Contract that are beyond the control of both the City and the Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God. These events may result in temporary delay or permanent shut down of the work that is the subject of this Contract, as set forth in Exhibit B. This may be caused by such things as stay-at-home orders, loss of labor force, supply chain delays, and other impediments to timely delivery of the Contract.

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

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

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## **ARTICLE 7- PROCEDURE FOR PAYMENT**

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### **7.1 Design Services**

**7.1.1** Design-Builder will be paid 100% of the amount earned for Design Services minus the value or cost arising from any deficiencies or defects in the Design Services.

**7.1.2** The Design-Builder shall pay all sums due to Subconsultants for services and reimbursable expenses within fourteen calendar Days after the Design-Builder has received payment for those services from the City.

**7.1.3** Requests for monthly payments by the Design-Builder shall be submitted on the City's "Payment Request" form and shall be accompanied by a design progress report, detailed invoices and receipts, if applicable. This submittal shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and the Subconsultants' actual requests for payment plus similar narrative and listing of their Work.

**7.1.4** After approved completion of design and GMP(s) for the total construction of the Project in accordance with section 2.8 and 5.4, Design-Builder will be paid 100% of the amount for Design Services less the total of payments previously made, subject to section 7.1.1.

**7.1.5** Payments for those services negotiated as a lump sum shall be made in accordance with the percentage of the services completed during the preceding month. Those services negotiated as a not-to-exceed fee shall be paid in accordance with the actual cost of the service expended during the preceding month.

**7.1.6** All Payment Requests shall be submitted to the City for review and approval.

**7.2 Request for Payment for Construction Services.** The Design-Builder agrees at its own cost and expense, to perform all construction, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in this Agreement.

**7.2.1** The Schedule of Values submitted as prescribed in section 2.13.5, subject to adjustment in accordance with this Agreement will serve as the basis for monthly progress payments made to Design-Builder throughout the construction.

- 7.2.2** Design-Builder shall submit to City's Representative the construction phase services "Payment Request" form no later than the **3rd** of the month to be paid on the **15th** check run, or by the **19th** of the month to be paid on the **30th** check run. If the 3rd or 19th falls on a Saturday or Sunday invoices are due on the preceding **Friday**.
- 7.2.3** At least five (5) working **Days** prior to the date established for a Payment Request, the **Design-Builder** shall submit an updated Project Schedule and meet with the City's Representative to review **the** progress of the construction, as it will be reflected on the Payment Request.
- 7.2.4** The Design-Builder Payment Request may request payment for equipment and materials not yet incorporated into the Project if construction progress is in reasonable conformance with the approved schedule.
- 7.2.4.1** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.
- 7.2.4.2** For materials and equipment stored off the Site, the City must approve the storage facility. The material and equipment must be stored within Coconino County or other sites as may be approved and be accessible for City's inspection. The Design-Builder must establish City title to such materials and equipment or otherwise protect the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.
- 7.2.4.3** All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.
- 7.2.5** The Payment Request shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and all construction will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the construction into the Project.

### **7.3 Progress Payment**

- 7.3.1** City shall make payment in accordance with A.R.S. § 34-607 such that payment will be made no later than fourteen (14) Days after Payment Request is certified and approved. City shall review Payment Request and make recommendation of approval or denial within seven (7) Days after City's receipt of each properly submitted and accurate Payment Request, but in each case less the total of payments previously made, and less amounts properly withheld under section 7.3.2 below.
- 7.3.2** City shall pay Design-Builder all amounts properly due. If City determines that Design-Builder is not entitled to all or part of the Payment Request, it will notify Design-Builder in writing at least seven (7) Days after the date the Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify City's concerns. Design-Builder and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 8 hereof.
- 7.3.3** Notwithstanding anything to the contrary in the Contract Documents, City shall pay Design-Builder all undisputed amounts in a Payment Request within the times required by the Agreement.

### **7.4 Retention on Progress Payments**

- 7.4.1** City will retain ten percent (10%) of the amount on each Payment Request provided, however, that when fifty percent (50%) of the construction has been completed by Design-Builder, upon request of the Design-Builder, City may reduce the amount retained to five percent (5%) from Design-Builder's subsequent Payment Requests, if the Design-Builder's performance of construction has been

satisfactory.

**7.4.2** In lieu of retention, the Design-Builder may provide as a substitute any of the following: an assignment of time certificates of deposit (CDs) from a bank licensed by Arizona; securities guaranteed by the United States; securities of the United States, the State of Arizona, Arizona counties, Arizona municipalities, or Arizona school districts; or shares of savings and loan institutions authorized to transact business in Arizona.

**7.4.2.1** CDs assigned to the City must be maintained at the City's single servicing bank, currently Wells Fargo, Arizona, in the form of time deposit receipt accounts.

**7.4.2.2** Securities deposited in lieu of retention must be deposited into a separate account with a financial institution within the state of Arizona.

**7.4.2.3** CDs and Securities shall be assigned exclusively for the benefit of the City of Flagstaff pursuant to the City's form of escrow agreement. Escrow agreement forms may be obtained from the Management Services Department by calling (928)779-7685 x7267.

**7.5** **Substantial Completion.** Upon Substantial Completion of the entire construction or, if applicable, any portion of the construction, City shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount up to two and one half times (2.5) the reasonable value of all remaining, deficient or incomplete items of construction as noted in the Certificate of Substantial Completion.

## **7.6 Final Payment**

**7.6.1** After receipt of a final Payment Request from Design-Builder, City shall make final payment within 60 Days after the receipt by the City, provided that a Final Acceptance Letter has been issued by the City in accordance with section 4.4.

**7.6.2** At the time of submission of its final Payment Request, Design-Builder shall provide the following information:

**7.6.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the construction which will in any way affect City's interests.

**7.6.2.2** A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment, and

**7.6.2.3** Consent of Design-Builder's surety, if any, to final payment.

## **7.7 Payments To Subcontractors or Suppliers**

**7.7.1** Design-Builder shall pay its Subcontractors or Suppliers within seven Days of receipt of each progress payment from the City. The Design-Builder shall pay for the amount of construction performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the Design-Builder shall result in a corresponding reduction to Subcontractors or Suppliers who have performed satisfactory work. Design-Builder shall pay Subcontractors or Suppliers the reduced retention within fourteen Days of the payment of the reduction of the retention to the Design-Builder. No contract between Design-Builder and its Subcontractors and Suppliers may materially alter the rights of any Subcontractor or Supplier to receive prompt payment and retention reduction as provided herein.

**7.7.2** If the Design-Builder fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and Design-Builder agrees that the City may take such



actions:

- 7.7.2.1 To hold the Design-Builder in default under this Agreement;
- 7.7.2.2 Withhold future payments including retention until proper payment has been made to Subcontractors or Suppliers in accordance with these provisions;
- 7.7.2.3 Reject all future offers to perform work for the City from the Design-Builder for a period not to exceed one year from Substantial Completion date of this Project.
- 7.7.2.4 Terminate this Agreement.
- 7.7.3 If Design-Builder's payment to a Subcontractor or Supplier is in dispute, it shall act in compliance with A.R.S. § 32-1129.02 and related statutes as amended, and shall further hold the City harmless from any ensuing damages, claims or costs.
- 7.7.4 Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this section or of any of the terms or provisions thereof.
- 7.7.5 Design-Builder shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.
- 7.8 Record Keeping and Finance Controls
  - 7.8.1 Records of the Design-Builder's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and Design-Builder shall be kept on a generally recognized accounting basis and shall be available for up to three (3) years following Final Completion of the Project.
  - 7.8.2 The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the Design-Builder's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.
  - 7.8.3 The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the Design-Builder's records, the audit discloses the Design-Builder has provided false, misleading, or inaccurate cost and pricing data.
  - 7.8.4 The Design-Builder shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
  - 7.8.5 The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

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## **ARTICLE 8- CLAIMS AND DISPUTES**

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- 8.1 **Requests for Contract Adjustments and Relief.**
  - 8.1.1 If either Design-Builder or City believes that it is entitled to relief against the other for any event arising out of or related to the Work, such party shall provide written notice to the other party of the basis for its claim for relief.

- 8.1.2 Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- 8.1.3 In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one Days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 8.1.4 Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

## 8.2 Dispute Avoidance and Resolution

- 8.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
  - 8.2.2 Design-Builder and City will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and City's Representative.
  - 8.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and City's Representative, Design-Builder's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) Days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
  - 8.2.4 Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court and Arizona law shall apply and control. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.
- 8.3 **Duty to Continue Performance.** Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and City shall continue to satisfy its payment obligations to Design-Builder pending the final resolution of any dispute or disagreement between Design-Builder and City.

## 8.4 Representatives of the Parties

### 8.4.1 City's Representatives

- 8.4.1.1 City designates the individual listed below as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under section 8.2.3:

**Christine Cameron, Project Manager**  
**City of Flagstaff**  
**211 W. Aspen Ave.**  
**Flagstaff, AZ 86001**

- 8.4.1.2 City designates the individual listed below as its City's Representative, which individual has the authority and responsibility set forth in section 8.2.2:

**Christine Cameron, Project Manager  
City of Flagstaff  
211 W. Aspen Ave.  
Flagstaff, AZ 86001**

**8.4.2** Design-Builder's Representatives

**8.4.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under section 8.2.3:

**Scott Jones  
Ames Construction  
8333 East Hartford Drive  
Scottsdale, AZ 85255**

**8.4.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in section 8.2.2:

**Scott Jones  
Ames Construction  
8333 East Hartford Drive  
Scottsdale, AZ 85255**

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## **ARTICLE 9 – SUSPENSION AND TERMINATION**

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**9.1 City's Right to Stop Work**

**9.1.1** City may, at its discretion and without cause, order Design-Builder in writing to stop and suspend the Work. Immediately after receiving such notice, the Design-Builder shall discontinue advancing the Work specified under this Agreement

**9.1.2** Such suspension shall not exceed one hundred eighty (180) consecutive Days during the duration of the Project.

**9.1.3** Design-Builder may seek an adjustment of the Contract Price and Time, if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

**9.2 Termination for Convenience.**

**9.2.1** Upon receipt of written notice to Design-Builder, City may, at its discretion and without cause, elect to terminate this Agreement. If the City suspends the Work for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.

**9.2.2** Upon such termination during Design Services, the Design-Builder shall deliver to the City all drawings, plans, specifications, special provisions, estimates and other Work entirely or partially completed, together with all unused materials supplied by the City.

**9.2.2.1** The Design-Builder shall estimate the value of the Work it has completed and submit its appraisal to the City for evaluation. The City shall have the right to inspect the Subconsultant's Work to appraise the Work completed.

**9.2.2.2** The Design-Builder shall receive compensation for services performed to the date of such termination as set forth in section 9.2.5 The fee shall be paid in accordance with Article 7 of this Agreement, and shall be an amount mutually agreed upon by the Design-Builder and the City. If

there is no mutual agreement, the final determination shall be made in accordance with Article 8.

**9.2.2.3** Design-Builder shall not be entitled to anticipated profit or anticipated overhead. In no event shall the fee exceed that set forth in Article 5 of this Agreement or as amended.

**9.2.2.4** The City shall make the final payment within sixty Days after the Design-Builder has delivered the last of the partially completed items and the final fee has been agreed upon.

**9.2.2.5** If City terminates this Agreement pursuant to this section and proceeds to design and construct the Project through its employees, agents or third parties, City's rights to use the work product shall be as set forth in section 12.4 hereof.

**9.2.3** Upon such termination during construction services, the Design-Builder shall proceed with the following obligations:

**9.2.3.1** Stop Work as specified in the notice.

**9.2.3.2** Place no further subcontracts or orders.

**9.2.3.3** Terminate all subcontracts to the extent they relate to the Work terminated.

**9.2.3.4** Assign to the City all right, title and interest of the Design-Builder under the subcontracts terminated, in which case the City shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

**9.2.3.5** Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the Design-Builder and which the City has or may acquire an interest.

**9.2.4** The Design-Builder shall submit complete termination inventory schedules no later than sixty (60) Days from the date of the notice of termination.

**9.2.5** The City shall pay Design-Builder the following.

**9.2.5.1** The direct value of its completed Work and materials supplied as of the date of termination.

**9.2.5.2** The reasonable costs and expenses attributable to such termination.

**9.2.5.3** Design-Builder shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead. If it appears the Design-Builder would have sustained a loss on the entire Work had the Project been completed, the Design-Builder shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.

**9.2.6** The Design-Builder shall maintain all records and documents for three years after final settlement. These records shall be maintained and subject to auditing as prescribed in section 7.8.

### **9.3 City's Right to Perform and Terminate for Cause**

**9.3.1** If the City provides the Design-Builder with a written order to correct deficiencies to provide adequate maintenance of traffic, adequate cleanup, adequate dust control, or to repair damage resulting from abnormal weather conditions, and the Design-Builder fails to comply in a time frame specified, the City may have Work accomplished by other sources at the Design-Builder's expense.

**9.3.2** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work are completed by the Contract Time, as such

times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in sections 9.3.3 and 9.3.4 below.

- 9.3.3** Upon the occurrence of an event set forth in section 9.3.2 above, City may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) Days of Design-Builder's receipt of such notice.
- 9.3.3.1** If Design-Builder fails to cure, or reasonably commence to cure, such problem within such seven (7) Day period, then City may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) Day period.
- 9.3.3.2** If Design-Builder, within such second seven (7) Day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.
- 9.3.4** Upon declaring the Agreement terminated pursuant to section 9.3.3.2 above, City may enter upon the Site and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.3.5** In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the Design-Builder will only be entitled to be paid for Work performed and accepted by the City prior to its default.
- 9.3.6** If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the re-procurement and defense of claims arising from Design-Builder's default.
- 9.3.7** If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of section 9.2.

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## **ARTICLE 10 – INSURANCE AND BONDS**

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### **10.1 Insurance Requirements**

- 10.1.1** Design-Builder and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the Design-Builder, his agents, representatives, employees or Subcontractors.
- 10.1.2** The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- 10.1.3** The City in no way warrants that the minimum limits contained herein are sufficient to protect the Design-Builder from liabilities that might arise out of the performance of the Work under this Agreement by the Design-Builder, his agents, representatives, employees, or subcontractors. Design-Builder is free to purchase such additional insurance as may be determined necessary.

### **10.2 Minimum Scope And Limits Of Insurance.** Design-Builder shall provide coverage with limits of

liability not less than those stated below:

**10.2.1 Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

• General Aggregate/for this Project	\$2,000,000/\$1,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000

The policy shall be endorsed to include the following additional insured language: "**The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Design-Builder**".

**10.2.2 Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.**

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include the following additional insured language: "**The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Design-Builder, including automobiles owned, leased, hired or borrowed by the Design-Builder**".

**10.2.3 Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease – Policy Limit	\$500,000

**10.2.4 Professional Liability**

Each Claim	\$1,000,000
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**10.2.4.1** The required professional liability coverage must cover Work done or to be done or on the behalf of the Design-Builder.

**10.2.4.2** In the event that professional liability insurance required by this Agreement is written on a "claims made" basis, coverage shall be maintained for two years past completion and acceptance of the Work or services required by this Contract.

**10.2.4.3** Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**10.2.5 Builders' Risk Insurance or Installation Floater** to be determined at time of GMP

In an amount equal to the initial Agreement amount plus additional coverage equal to Agreement amount for all subsequent Change Orders.

**10.2.5.1** The City of Flagstaff, the Design-Builder, Subcontractors, design professional and design professional's consultant and any others with an insurable interest in the Work shall be **Named Insureds** on the policy.

**10.2.5.2** Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for soft costs, flood and earth movement.**

**10.2.5.3** Policy shall be maintained until whichever of the following shall first occur: (i) final payment has

been made; or, (ii) until no person or entity, other than the City of Flagstaff, has an insurable interest in the property required to be covered.

- 10.2.5.4** Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.
- 10.2.5.5** Policy must provide coverage from the time any covered property becomes the responsibility of the Design-Builder, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off Site.
- 10.2.5.6** Policy shall contain a **waiver of subrogation** against the City of Flagstaff.
- 10.2.5.7** Design-Builder is responsible for the payment of all policy deductibles.
- 10.3** **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:
  - 10.3.1** The City, its officers, officials, agents, employees and volunteers shall be additional insured to the full limits of liability purchased by the Design-Builder even if those limits of liability are in excess of those required by this Agreement.
  - 10.3.2** The Design-Builder's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
  - 10.3.3** Coverage provided by the Design-Builder shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
  - 10.3.4** The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, and employees for losses arising from Work performed by the Design-Builder and Subcontractors for the City.
- 10.4** **Notice Of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) Days prior written notice has been given to the City. Such notice shall be sent directly to the City Senior Representative and shall be sent by certified mail, return receipt requested.
- 10.5** **Acceptability Of Insurers.** Insurance is to be placed with insurers duly licensed companies in the state of Arizona and with an "A.M. Best" rating of not less than A-,7, or as approved by the City and licensed in the State of Arizona with policies and forms satisfactory to the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Design-Builder from potential insurer insolvency.
- 10.6** **Verification Of Coverage**
  - 10.6.1** Design-Builder shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
  - 10.6.2** All certificates and endorsements are to be received and approved by the City before Work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

- 10.6.3** All certificates required by this Agreement shall be sent directly to City's Procurement Section. **The City project/contract number and project description shall be noted on the certificate of insurance.** The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.
- 10.6.4** If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the Design-Builder or Subcontractors, as the case may be, must:
- Submit a current insurance certificate (dated within 15 Days of the Payment Request submittal) with each form. The Payment Request will be rejected if the insurance certificate is not submitted with the Payment Request.
- 10.7** **Subcontractors.** Design-Builders' certificate(s) shall include all Subcontractors as additional insureds under its policies. All coverage's for Subcontractors shall be subject to the minimum requirements identified above.
- 10.8** **Approval.** Any modification or variation from the insurance requirements in this Contract shall be made by the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- 10.9** **Bonds and Other Performance Security.**
- 10.9.1** Prior to execution of this Agreement and/or amendment to this Agreement for any Work that includes construction, the Design-Builder must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the construction set forth in the GMP.
- 10.9.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of this Agreement.
- 10.9.3** The bonds shall be made payable and acceptable to the City of Flagstaff.
- 10.9.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
- 10.9.4.1** If one Power of Attorney is submitted, it shall be for twice the total GMP amount.
- 10.9.4.2** If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.
- 10.9.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- 10.9.6** All bonds submitted for this Project shall be provided by a company which has been rated "A-, 7, or better" by the A.M. Best Company.



## **ARTICLE 11 - INDEMNIFICATION**

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### **11.1 Intellectual Property**

- 11.1.1** The Design-Builder shall pay all royalties and license fees associated with its performance of services herewith.
- 11.1.2** The Design-Builder shall defend any action or proceeding brought against City based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. City shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify, defend and hold harmless City from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against City or Design-Builder in any such action or proceeding. Design-Builder agrees to keep City informed of all developments in the defense of such actions.
- 11.1.3** If City is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.
- 11.1.4** Sections 11.1.2 and 11.1.3 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer required by City and not offered or recommended by Design-Builder to City and to which Design-Builder has objected in writing or (ii) arising from modifications to the Work by City or its agents after acceptance of the Work
- 11.1.5** The obligations set forth in this section 11.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

### **11.2 General Indemnification.**

- 11.2.1** The Design-Builder hereby agrees to indemnify, defend and hold harmless the City, any of its departments, agencies, officers, or employees from all damages, claims or liabilities and expenses (including reasonable Attorneys' fees) arising out of or resulting in any way from the performance of professional services for the City in the Design-Builder's capacity as a Design-Builder, and caused by any error, omission, or negligent act of the Design-Builder or any person employed by it or anyone for whose acts the Design-Builder is legally liable. In consideration of the award of this Contract, the Design-Builder agrees to waive all rights of subrogation against the City, its officers, agents and employees for losses arising from the Work performed by the Design-Builder for the City.
- 11.2.2** The Design-Builder agrees to indemnify, defend and save harmless the City of Flagstaff, its officers, agents and employees, and any jurisdiction or agency issuing permits for any Work included in the Project, their officers, agents and employees, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the Work done in fulfillment of the terms of this Agreement or on account of any act, claim or amount arising or recovered under workmen's compensation law or arising out of the failure of the Design-Builder to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the Design-Builder will be responsible for primary loss investigation, defense and judgment costs where this Agreement of indemnity applies. In consideration of the award of this Agreement, the Design-Builder agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the Work performed by the Design-Builder for the City.

## **ARTICLE 12 - GENERAL PROVISIONS**

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### **12.1 Interpretation and Intent**

**12.1.1** The Contract Documents form the entire Agreement between City and Design-Builder and by incorporation herein are as fully binding on the parties as it repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

**12.1.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

**12.1.3** In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1. In the event conflicts occur between the drawings and specifications, the Design-Builder is deemed to have estimated the more expensive method unless he has asked for and receive a written decision from the City determining which method or material will be required.

**12.2 Time is of the Essence.** City and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**12.3 Mutual Obligations.** City and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

### **12.4 Work Product.**

**12.4.1** All Work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes or CD's, and other related documents which are prepared or procured in the performance of this Agreement (collectively referred to as documents) are to be and remain the property of the City and are to be delivered to the City before the final payment is made to the Design-Builder or pursuant to section 9.2.1. In the event these documents are altered, modified or adapted without the written consent of the Design-Builder or the Subconsultants, which consent the Design-Builder or the Subconsultants shall not unreasonably withhold, the City agrees to hold the Design-Builder and the Subconsultants harmless to the extent permitted by law from any liability arising out of the City's alteration, modification or adaptation of the documents.

**12.4.2** City acknowledges Design-Builder's plans and specification as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become property of the City upon completion and approval of the Construction Documents and payment in full of all monies then due to Design-Builder for services, or upon termination of this Agreement at an earlier time and upon City payment of any pro rata amount due Design-Builder for Design Services at the time of such termination. Design-Builder shall not use the drawings and specifications, therefore, for any purpose not related to the Project without City's consent. City will not reuse, for matters unrelated to the Work any phase of the Work as set forth in the Scope of Work in Exhibit A and its subsequent usage, or make any modification to the plans and specifications without the prior written authorization of the Design-Builder. City agrees to hold the Design-Builder harmless, to the extent permitted by law, from any liability arising out of the City's modification or alteration of the Construction Documents without the written authorization of Design-Builder. The City specifically reserves the right to use or reuse any design concept, feature, or aspect of the Work incorporated into the plans and specifications in any subsequent City project. The City specifically reserves the

right to use or reuse any design concept or aspect of the Work incorporated into the plans and specifications to complete the Project in the event that the City and Design-Builder are unable, after good faith efforts, to execute a GMP. Design-Builder shall incorporate such use rights into any agreement with a Subcontractor or consultant, and shall indemnify the City from any claims from such for copyright or patent infringement.

- 12.4.3** With this Agreement, the Design-Builder and its Subconsultants hereby grant a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the documents, works or Deliverables developed or created as a result of the Project and this Agreement and to which Design-Builder and its Subconsultants may retain rights. This license also includes the making of derivative works. In the event that the derivative works require the City to alter or modify the documents, then the provisions of section 12.4.1 apply.
- 12.5 Assignment.** Design-Builder shall not, without the written consent of the City, assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents. Notwithstanding the City's consent to assignment, Contractor as Assignor, and the Assignee shall both remain liable under all rights, obligations, terms and conditions of the contract.
- 12.6 Successorship.** Design-Builder and City intend that the provisions of the Contract Documents are binding upon the parties and their successors and assigns.
- 12.7 Third Party Beneficiary.** Nothing under this Agreement shall be construed to give any rights or benefits in the Agreement to anyone other than the City and the Design-Builder, their successors and assigns, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and the Design-Builder and not for the benefit of any other party.
- 12.8 Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, Coconino County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.
- 12.9 Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 12.10 No Waiver.** The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.
- 12.11 Headings.** The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 12.12 Notice.**
- 12.12.1** Many notices or demands required to be given, pursuant to the terms of the Agreement, may be given to the other party in writing, delivered in person, sent by facsimile transmission, emailed, deposited in the United States mail, postage prepaid, or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the parties may substitute by written notice, given in the manner prescribed in this paragraph. However, notices of termination, notices of default, and any notice regarding warranties shall be sent via registered or certified mail, return receipt requested, at the addresses set forth below **and** to legal counsel for the party to whom the notice is being given.

**If to City:**

**Patrick Brown, C.P.M., CPPB  
Purchasing Director  
211 W. Aspen Ave  
Flagstaff, AZ. 86001**

**If to Contractor**

**Scott Jones  
Ames Construction  
8333 E. Hartford Drive  
Scottsdale, AZ 85255**

or to such other place and with such other copies as either party may designate as to itself by written notice to the other party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

- 12.12.2 Notices Related to Payment, Securities-In-Lieu, Bonds.** Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, or payment bonds shall be in writing and shall be delivered in person or by courier or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business Days after the Day mailed by certified mail, to the parties listed in section 8.4 with a copy to:

**Patrick Brown, C.P.M., CPPB  
Purchasing Director  
211 W. Aspen Ave  
Flagstaff, AZ. 86001**

or to such other place and with such other copies as either party may designate as to itself by written notice to the other party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

- 12.13 Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

**12.14 Equal Opportunity/Affirmative Action**

- 12.14.1** The Design-Builder shall comply with the provisions of this Agreement, including the requirements of Article 1-150 of the City of Flagstaff Employee Handbook of Regulations pertaining to discrimination and accepting applications or hiring employees. The Design-Builder shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The Design-Builder will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. The Design-Builder further agrees that this clause will be incorporated in all subcontracts, job-consultant contracts of this Contract entered into by the Design-Builder.

- 12.14.2** The City of Flagstaff extends to each individual, firm, vendor, Supplier, contractor, and Subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of Disadvantaged and/or Minority-owned or Woman-owned business to reflect both the industry and community ethnic composition.

The following two paragraphs apply to the Design-Builder named herein and shall appear in all

contracts between the Design-Builder and any and all Subcontractors who are employed on this Project. The Design-Builder further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract.

"Any Party (Subcontractor), in performing under this Contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship."

The Design-Builder further agrees that the above two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract.

**12.15 Compliance with Federal Laws.** Design-Builder understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989 to it. The Design-Builder agrees to comply with these laws in performing this Agreement and to permit the City to verify such compliance.

**12.16 Independent Contractor.** The Design-Builder is and shall be an independent contractor. Any provisions in this Agreement that may appear to give the City the right to direct the Design-Builder as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the Design-Builder shall follow the wishes of the City as to the results of the Work only.

**12.17 City's Right Of Cancellation.** All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Flagstaff pursuant to the provisions of A.R.S. § 38-511.

**12.18 Data Confidentiality**

**12.18.1** As used in this Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the Design-Builder in the performance of this Agreement.

**12.18.2** The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Design-Builder in connection with the Design-Builder's performance of this Agreement is confidential and proprietary information belonging to the City.

**12.18.3** The Design-Builder shall not divulge data to any third party without prior written consent of the City. The Design-Builder shall not use the data for any purposes except to perform the services required under this Agreement. These prohibitions shall not apply to the following data provided the Design-Builder has first given the required notice to the City:

**12.18.3.1** Data which was known to the Design-Builder prior to its performance under this Agreement unless such data was acquired in connection with Work performed for the City;

**12.18.3.2** Data which was acquired by the Design-Builder in its performance under this Agreement and which was disclosed to the Design-Builder by a third party, who to the best of the Design-Builder's knowledge and belief, had the legal right to make such disclosure and the Design-Builder is not otherwise required to hold such data in confidence; or

**12.18.3.3** Data, which is required to be disclosed by virtue of law, regulation, or court order to which the Design-Builder is subject.

**12.18.4** In the event the Design-Builder is required or requested to disclose data to a third party, or any other information to which the Design-Builder became privy as a result of any other contract with the City, the Design-Builder shall first notify the City as set forth in this section of the request or demand for the data. The Design-Builder shall give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

**12.18.5** Unless prohibited by law, within ten (10) Days after completion of services for a third party on real or personal property owned or leased by the City, the Design-Builder shall promptly deliver, as set forth in this section, a copy of all data to the City. All data shall continue to be subject to the confidentiality agreements of this Agreement.

**12.18.6** The Design-Builder assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the Design-Builder, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section shall be deemed to cause irreparable harm that justifies injunctive relief in court.

## **12.19 Conflict Of Interest**

**12.19.1** To evaluate and avoid potential conflicts of interest, the Design-Builder shall provide written notice to the City, as set forth in this section, of any work or services performed by the Design-Builder for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice shall be given seven (7) business Days prior to commencement of the Project by the Design-Builder for a third party, or seven (7) business Days prior to an adverse action as defined below. Written notice and disclosure shall be sent to the City Senior Representative identified in section 8.4.1.1.

**12.19.2** Actions that are considered to be adverse to the City under this Agreement include but are not limited to:

**12.19.2.1** Using data as defined in this Agreement acquired in connection with this Agreement to assist a third party in pursuing administrative or judicial action against the City;

**12.19.2.2** Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and

**12.19.2.3** Using data to produce income for the Design-Builder or its employees independently of performing the services under this Agreement, without the prior written consent of the City.

**12.19.3** The Design-Builder represents that except for those persons, entities and projects identified to the City, the services to be performed by the Design-Builder under this Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

**12.19.4** The Design-Builder's failure to provide a written notice and disclosure of the information as set forth in this section shall constitute a material breach of this Agreement.

**12.19.5** This Contract is subject to the conflict of interest provisions of A.R.S. § 38-511.

**12.20 Legal Requirements.** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

## **12.21 Confidentiality of Plans and Specifications**

**12.21.1** Any plans or specifications the Design-Builder generates regarding this Project are for official use only. They may not be shared with others except as required to fulfill the obligations of the Design-Builder's contract with the City.

**12.21.2** All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the Design-Builder shall include the following language: "These plans are official use only and may not be shared with others except as required to fulfill the obligations of the Design-Builder's contract with the City of Flagstaff."

## **12.22 Hazardous Materials**

**12.22.1** Unless included in the Work, if the Design-Builder encounters onsite or as material to be incorporated in the Work any material which it reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by public health laws, it shall immediately stop work and report the condition to the City.

**12.22.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by public health laws, the Design-Builder shall not resume work in the affected area until the material has been abated or rendered harmless. The Design-Builder and the City may agree, in writing, to continue work in non-affected areas onsite.

**12.22.3** An extension of Contract Time may be granted in accordance with Article 6.

**12.22.4** The Design-Builder will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

**12.22.5** Notwithstanding the preceding provisions of this section 12.22, the City is not responsible for hazardous conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless the City and City's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those hazardous conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

**12.23 Design-Builder and Subcontractor Employee Security Inquiries.** The parties acknowledge that security measures required in this section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, Design-Builder shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

**12.23.1 Security Inquiries.** Design-Builder acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). Design-Builder shall perform all such security inquiries and shall make the results available to City for all employees considered for performing Work (including supervision and oversight) under this Agreement. City may make further security inquiries. Whether or not further security inquiries are made by City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by Design-Builder for performing Work under this Agreement. Employees rejected by City for performing services under this Agreement may still be engaged by Design-Builder for other Work not involving the City of Flagstaff. An employee rejected for work under this Agreement shall not be proposed to perform Work under other City contracts or engagements without City's prior approval.

**12.23.2 Criteria for Evaluating Security Inquiries.** Once formally adopted by City, criteria for excluding an individual from performing Work under this Agreement shall be communicated by City to Design-Builder and used by Design-Builder as a factor in making its decision. Prior to such adoption, Design-Builder shall use its best judgment in making its decision using, among other criteria,

applicable law, administrative regulations of federal, state and local agencies concerned with Work performed under this Agreement, specific local concerns that deal with the specific Work and Work location(s) of the project, and standards used by City in evaluating its own personnel.

- 12.23.3 Additional City Rights Regarding Security Inquiries.** In addition to the foregoing, City reserves the right to: (i) have an employee/prospective employee of Design-Builder be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (ii) act on newly acquired information whether or not such information should have been previously discovered; (iii) unilaterally change its standards and criteria relative to the acceptability of Design-Builder 's employees and/or prospective employees; and, (iv) object, at any time and for any reason, to an employee of Design-Builder performing Work (including supervision and oversight) under this Agreement.
- 12.23.4 Terms of This Provision Applicable to all of Design-Builder 's Contracts and Subcontracts.** Design-Builder shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for Work performed under this Agreement, including supervision and oversight.
- 12.23.5 Materiality of Security Inquiry Provisions.** The Security Inquiry provisions of this Agreement, as set forth above, are material to City 's entry into this Agreement and any breach thereof by Design-Builder may, at City 's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject Design-Builder to liability for its breach of contract.
- 12.24 Computer Systems.** Design-Builder shall warrant fault free performance in the processing of date and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work. Fault free performance shall include the manipulation of data when dates are in the 20<sup>th</sup> or 21<sup>st</sup> centuries and shall be transparent to the user. Failure to comply with "Year 2000" requirements shall be considered a breach of contract.
- 12.25 Traffic Control.** Design-Builder will comply with all provisions of the latest version of the Manual on Uniform Traffic Control Devices and any other traffic control provisions as may be provided in the technical specifications.
- 12.26 Covenant Against Contingent Fees.** The Design-Builder warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Flagstaff has any interest, financially, or otherwise, in the Design-Builder's firm, or the firms of Design-Builder's Design Consultant, or Design-Builder's other consultants or Subcontractors. For breach or violation of this warrant, the City of Flagstaff shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 12.27 Fair Treatment of Workers.** The Design-Builder shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having jurisdiction or authority, which in any way affects the conduct of Work. The Design-Builder shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes but is not limited to laws and regulations ensuring fair and equal treatment for all employees against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The Design-Builder shall protect, defend and indemnify the City and its representatives against any claim or liability arising from or based on the violation of such, whether by itself or its employees.
- 12.28** All Work performed shall conform to all applicable City of Flagstaff codes, ordinances and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and those in Exhibit "A", the provisions in this Agreement shall prevail.



**12.29** The following exhibits are included in this Agreement:

- Exhibit A – Project Description
- Exhibit B – Scope of Services
- Exhibit C – Performance Standards Requirements
- Exhibit D – Monthly Anticipated Adverse Weather Days

**12.30 Compliance with Federal Immigration Laws and Regulations.** Proposer warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A. Proposer acknowledges that pursuant to A.R.S. § 41-4401 a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the City retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

**12.31. No Boycott of Israel.** Pursuant to A.R.S. §§ 35-393 and 35-393.01, the Parties certify that they are not currently engaged in and agree, for the duration of the agreement, not to engage in a boycott of Israel.

**SAMPLE DESIGN-BUILD CONTRACT  
PROJECT NO. 03-19004**

**CONTRACT NO. 2021-23**

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

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

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract on \_\_\_\_\_.

CITY OF FLAGSTAFF, ARIZONA,  
an Arizona Municipal Corporation  
Greg Clifton, City Manager

AMES CONSTRUCTION  
8333 E. Hartford Drive  
Scottsdale, AZ 85255

By: \_\_\_\_\_  
Greg Clifton  
City Manager

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## **EXHIBIT A – PROJECT DESCRIPTION**

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**Complete Design-Build Services including project design, agency/public coordination, budget control/value engineering, and construction services for the Lone Tree Overpass Project.**

The City is planning to design and construct a bridge overpass in central Flagstaff . The location of the Project will be an extension of existing Lone Tree Road, from Butler Avenue to Route 66. An alternatives concept study was completed in 2010 and is included in this solicitation. The proposed alignment, Alternative 3 – South Alignment with Shoo-fly, will serve as the general basis of design.

A portion of the Lone Tree Corridor from Sawmill Road to Butler Avenue will also be included in this effort for design and construction. The 2006 Lone Tree Corridor Study is included.

## **EXHIBIT B – SCOPE AND FEE OF SERVICES**

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SEE ATTACHED AS SEPARATE DOCUMENT

## **EXHIBIT C – PERFORMANCE STANDARDS REQUIREMENTS**

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To be included with this Agreement after initial programming session with client group and Design-Build team.

## EXHIBIT D – MONTHLY ANTICIPATED ADVERSE WEATHER DAYS

The Contractor will be entitled to a Contract Time extension if the actual adverse weather Days experienced during the Work exceed the anticipated adverse weather Days shown in Table 108.7. Table 108.7 as follows is the monthly schedule of adverse weather Days that shall be anticipated by the Contractor in scheduling the Work:

**TABLE 108.7 – MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS**

MONTH	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE
MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS	<b>7 days</b>	<b>7 days</b>	<b>8 days</b>	<b>6 days</b>	<b>4 days</b>	<b>3 days</b>
AVERAGE MONTHLY PRECIPITATION	1.98"	1.96"	2.05"	1.84"	0.68"	0.51"
MONTHLY DAILY HIGH TEMPERATURE ≤32° F	5 days	3 days	2 days	0 days	0 days	0 days
MONTH	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS	<b>12 day</b>	<b>11 days</b>	<b>7 days</b>	<b>5 days</b>	<b>5 days</b>	<b>6 days</b>
AVERAGE MONTHLY PRECIPITATION	2.78"	2.68"	1.82"	1.52"	1.49"	1.90"
MONTHLY DAILY HIGH TEMPERATURE ≤ 32° F	0 days	0 days	0 days	0 days	1 day	5 days

The above schedule of anticipated adverse weather days establishes the base line for the project’s monthly weather impacts, based on historical records, as recorded by the National Weather Service at Pulliam Airport, for precipitation in excess of 0.01 inch and daily high temperatures below 32° Fahrenheit.