

**AGREEMENT FOR MATERIALS AND DELIVERY BETWEEN APACHE
JUNCTION WATER UTILITIES COMMUNITY FACILITIES DISTRICT
AND DANA KEPNER COMPANY, INC.**

PROJECT: # 2024-08

THIS AGREEMENT made and entered into by and between the APACHE JUNCTION WATER UTILITIES COMMUNITY FACILITIES DISTRICT (“District”), an Arizona municipal corporation, and DANA KEPNER COMPANY, INC., a Colorado limited liability company (“Contractor”), both of which hereinafter may be identified as the “Parties” collectively or as a “Party” individually.

RECITALS

A. District needs 4,500 radios, 2 towers, and related appurtenances and services for the Automated Meter Infrastructure.

B. Contractor asserts its willingness, ability and qualifications to provide the above-noted materials and delivery service (the “Work”) procured as Project No. 2024-08.

B. District and Contractor desire to set forth herein their respective responsibilities and the manner and terms upon which Contractor shall render such Work.

C. To the extent applicable, the District has complied with the public bidding requirements under Arizona Revised Statutes (“A.R.S.”) Title 34 and Apache Junction City Code Vol. I, Chapter 3, Administration, Article 3-7, Procurement Procedures.

D. The “Contract Documents” include this Agreement and all applicable bid solicitations and responses, including but not limited to any bond and insurance forms.

E. Insofar as procurement is concerned, District and Contractor agree to use the pricing terms of the City of San Luis Request for Proposal – BAN-2024-03, a copy which is on file with the District Director.

AGREEMENT

NOW, THEREFORE, District retains and Contractor agrees to provide the Work in accordance with the terms and conditions set forth as follows:

1. **PROJECT DESCRIPTION:** Contractor shall provide the materials and make delivery of such materials (the “Work”) in a good workmanlike manner, as more fully described in Project # 2024-08.

2. **PAYMENTS & COMPLETION:** The total amount payable by the District to the Contractor is an amount not to exceed One Million One Hundred Twenty-Three Thousand Four Hundred Fifty-Eight Dollars and Seventy-Seven Cents (\$1,123,458.77) (the "Contract Sum") for the Work. This Agreement will be operable for its full term at the rates quoted in the initial bid proposal, unless otherwise extended in writing by the District. Once District finds the Work acceptable under the Contract Documents, District shall promptly submit for processing a certificate for payment stating that, to the best of its knowledge, information and belief on the basis of its observation and inspection, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that partial payment or the entire balance due the Contractor is payable. Materials delivered to the District and installed by the District shall have a payment term of net 30 days.

3. **CONTRACT TERM:** The term of this agreement commences upon the effective date and continues for a one (1) year initial period. The Parties have the option to renew the Agreement for four (4) additional one year periods on mutually agreeable terms between Parties. If the Agreement is renewed, the total length of the Agreement shall not exceed five (5) years from the Agreement date. Price adjustments will only be reviewed during the Agreement renewal period and any such adjustment will be a determining factor for any renewal. This provision does not limit the liability of Contractor for actual damages sustained by District as a result of any breach of contract or warranty by Contractor. Extensions may be approved at times as the Parties mutually deem fit.

4. **LABOR AND MATERIALS:** Unless otherwise provided in the Contract Documents, Contractor shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, tools, machinery, and transportation, other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

5. **INSPECTIONS AND QUALITY OF WORK:** Contractor understands and agrees that inspection of the Work performed hereunder will occur by District. Contractor agrees that District will have the exclusive right to determine, in its sole discretion, whether the Work has been performed in accordance with the Contract Documents. Contractor further agrees to make such corrections to the Work as may be directed by District to conform to said Contract Documents.

6. **WARRANTY:** Contractor shall guarantee the Work against defective workmanship for a period of one (1) year from the date of its final acceptance under the contract, ordinary wear and tear and unusual abuse or neglect excepted. Any omission on the part of District to condemn defective Work at the time of inspection of the Work shall not be deemed an acceptance and

Contractor will be required to correct defective Work at any time before acceptance. Within one (1) year from the date of acceptance due to faults in workmanship, Contractor shall begin making the necessary repairs to the satisfaction of District within fourteen (14) calendar days of receipt of written notice from District. Such Work shall include the repair or replacement of other Work or materials damaged or affected by making the above repairs or corrective Work all at no additional cost to District. In the case of Work materials or equipment for which warranties are required by the special provisions of the Contract Documents, Contractor shall provide or secure from the appropriate subcontractor or supplier such warranties addressed to and in favor of District and deliver same to District prior to final acceptance of the Work. Delivery of such warranties shall not relieve Contractor from any obligation assumed under any other provision of the contract. The warranties and guarantees provided in this subsection shall be in addition to and not in limitation of any other warranties, guarantees or remedies required by law, and shall survive the expiration of this Agreement for the time period mentioned above. All warranties are offered and executed by manufacturer. Warranty information available upon request.

7. **TAXES:** Contractor shall pay all license, sales, transaction privilege, consumer, use and other similar taxes for the Work or portions thereof provided by Contractor which are legally enacted at the time bids are received whether or not yet effective or subsequently applicable due to acts of jurisdictions or bodies other than District.

8. **PERMITS & FEES:** Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits, government fees, licenses and inspections necessary for the proper execution and completion of Work which are customarily secured after execution of the contract, and which are legally required. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. City permits for this Work will be provided to Contractor at no cost. Contractor represents and warrants that any license necessary to perform the Work under this Agreement is current and valid. Contractor understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Contractor agrees to obtain a business license pursuant to Chapter 8 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement and after termination of this Agreement any time work is performed pursuant to the warranty provisions set forth in Section 6. Contractor also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege license and/or other licenses as may be required by the city code. Any activity by subcontractors within the corporate city limits will invoke the same licensing regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any and all applicable licenses. Further, Contractor agrees to pay all applicable

privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

9. **INDEPENDENT CONTRACTOR:** Contractor shall at all times during Contractor's performance of the Work retain Contractor's status as an independent contractor. Contractor's employees shall under no circumstances be considered or held to be employees or agents of District, and District shall have no obligation to pay or withhold state or federal taxes or provide workers compensation or unemployment insurance for or on behalf of them or Contractor. Contractor shall supervise and direct the delivery of the materials using its best skill and attention. Except as provided in this Agreement, Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work required by the Contract Documents. Contractor shall be responsible to District for the acts and omissions of its employees, subcontractors and their agents and employees and other persons providing any of the materials under any contract document.

10. **SUPERINTENDENT:** Contractor shall employ a competent project superintendent who shall be in attendance at the project site during the progress of the Work. The superintendent shall represent and be the community agent of Contractor and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. The superintendent shall be designated for each project and communicated to District before Work is performed.

11. **PROGRESS SCHEDULE:** Contractor shall, immediately after entering into this Agreement, generate an estimated progress schedule, which shall be maintained and updated during the Project. Work may progress during regular District business hours only if it is determined by District not to disturb normal operations.

12. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless District, its elected and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including reasonable attorney and expert witness fees, arising from, or alleged to have arisen from, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, Work or services of Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of this Agreement, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor or its subcontractors in the performance of the Work under this Agreement or any subcontract. Contractor's duty to defend, hold harmless and indemnify District, its special districts, elected and appointed officers, officials, agents, and employees shall arise in connection with any claim, damage, loss or expense

that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of Contractor, any tier of Contractor's subcontractor or any other person for whose acts, errors, mistakes, omissions, Work or services Contractor may be legally liable, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor or any tier of Contractor's subcontractors or any other person for whose acts, errors, mistakes, omissions, Work or services Contractor may be legally liable in the performance of the Work under this Agreement or subcontract. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph. The rights and obligations under this Section shall survive termination of this Agreement.

13. **SUBCONTRACTORS:** All subcontractors chosen by Contractor will be subject to District's approval. All subcontractors shall be identified by Contractor prior to award of contract. Contractor shall make no substitutions for any subcontractor, person or entity previously selected without the approval of City.

14. **APPLICABLE LAW AND VENUE:** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing Party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorney fees, necessary witness fees and court costs to be determined by the court in such action.

15. **INSURANCE:** Contractor, at its own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed in the State of Arizona with policies and forms satisfactory to District.

All insurance required herein shall be maintained in full force and effect until all Work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of District, constitute a material breach of this Agreement.

Contractor's insurance shall be primary insurance as respects the District, and any insurance or self-insurance maintained by District shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect District.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against District, its agents, officers, officials and employees for any claims arising out of Contractor's acts, errors, mistakes, omissions, or Work.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to District under such policies. Contractor shall be solely responsible for the deductible and/or self-retention and District, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

District reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. District shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, District's right to insist on strict fulfillment of Contractor's obligations under this Agreement.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Agreement, shall name District, its agents, officers, officials and employees as Additional Insureds.

REQUIRED COVERAGE

Commercial General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement, which coverage will be at least as broad as that on Insurance Service Office, Inc. Policy Form No. CG 00011093, or the equivalent thereof.

Such policy shall contain a severability of interest provision and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20101185, or the equivalent thereof, and shall include coverage for Contractor's operations and products and completed operations.

If required by this Agreement, if Contractor sublets any part of the Work, services or operations, Contractor shall purchase and maintain, at all times during prosecution of the Work, services or operations under this Agreement, an Owner and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of Contractor's Work, service or operations under this Agreement. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues Contractor's Commercial General Liability insurance.

Automobile Liability

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of Contractor's Work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or the equivalent thereof). Such insurance shall include coverage for loading and off-loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

Workers' Compensation

Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the Work or services; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

By execution of this Agreement, Contractor certifies as follows:

"I am aware and understand the provisions of A.R.S. § 23-901 *et seq.* which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of this chapter, and I will comply

with such provisions before commencing the performance of the Work of this Agreement.”

If Contractor has no employees for whom workers’ compensation insurance is required, Contractor shall submit a declaration or affidavit to District so stating and covenanting to obtain such insurance if and when Contractor employs any employees subject to coverage.

In case any Work is subcontracted, Contractor will require subcontractors to provide Workers’ Compensation and Employer’s Liability insurance to at least the same extent as required of Contractor.

Certificates of Insurance

Prior to commencing Work or services under this Agreement, Contractor shall furnish District with Certificates of Insurance, or formal endorsements as required by the Agreement, issued by Contractor’s insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. The form of the certificates of insurance and endorsements shall be subject to the approval of the Apache Junction Water Utilities Community Facilities District Attorney’s Office, shall comply with the terms of this Agreement, and shall be issued and delivered to District Attorney, City of Apache Junction, 300 East Superstition Boulevard, Apache Junction, AZ 85119.

In the event any insurance policies required by this Agreement are written on a “claims made” basis, coverage shall extend for two (2) years past completion and acceptance of Contractor’s Work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Agreement, a renewal certificate must be sent to District thirty (30) calendar days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. Policies or certificates and completed forms of District’s Additional Insured Endorsement (or a substantially equivalent insurance company form acceptable to the District Attorney) evidencing the coverage required by this section shall be filed with the District and shall include the District as an additional insured. The policy or policies shall be in the usual form of a public liability insurance, but shall also include the following provision:

“Solely as respects Work done by or on behalf of the named insured for the Apache Junction Water Utilities Community Facilities District, it is agreed that the District and its officers and employees are added as additional insureds under this policy.”

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) calendar days' prior written notice to the District.

16. **CHANGE ORDERS:** A change order is a written order to Contractor, approved by the District representative, issued after execution of this Agreement authorizing a change in the Work or an adjustment in the agreement sum or the agreement time. A change order signed by Contractor indicates his agreement therewith. District may, without invalidating this Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the agreement sum, and this Agreement being adjusted accordingly. All such changes in the Work shall be authorized by change order and shall be performed under the applicable conditions of this Agreement. The District representative shall have authority to order minor changes in the Work not involving an adjustment in the Agreement sum or extension of the Agreement time and not inconsistent with the intent of this Agreement. All such changes shall be affected by written order and shall be binding upon District and Contractor.

17. **SUCCESSORS, ASSIGNMENT & DELEGATION:** District and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither Party to the contract shall assign the contract or sublet it as a whole or delegate the duties hereunder, without the written consent of the other, nor shall Contractor assign any monies due or to become due to or to become due to it without the previous written consent of District.

18. **WRITTEN NOTICE:** Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity, or to an office of the corporation for whom it was intended or if delivered at or sent registered or certified mail, return receipt requested, and first-class postage prepaid to the last business address known to them who gives the notice.

19. **CLAIMS FOR DAMAGES:** Should either Party to the contract suffer injury or damage to personal property because of any act or omission of the other Party or of their employees or agents for whose acts they are legally liable, claims shall be made in writing to such other parties within a reasonable time after the first observance of such injury or damages.

20. **PAYMENT & PERFORMANCE BONDS:** District shall have the right to require Contractor to furnish bonds covering the faithful performance of the contract and the payment of all obligations arising hereunder.

21. **SAFETY:** Contractor and/or its subcontractors shall be solely responsible for job safety at all times.

22. **RIGHTS & REMEDIES:** The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by District or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any action or failure to act constitute an approval of or an acquiescence to any breaches hereunder except as may be specifically agreed to in writing.

23. **FORCE MAJEURE:** Neither District nor Contractor, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the obligations under this Agreement. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular Contractors, subcontractors, vendors or investors desired by Contractor in connection with the obligations under this Agreement. Contractor agrees that Contractor alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

24. **TERMINATION:**

A. **TERMINATION BY DISTRICT:** District shall be permitted to terminate this Agreement if in the discretion of its representative or his or her designee, believes Contractor has failed to meet the terms of this Agreement.

District shall provide Notice of Termination to Contractor by Certified U.S. Mail ten (10) calendar days before such termination takes effect.

B. TERMINATION BY CONTRACTOR: Contractor may terminate this Agreement if District fails to make payment as agreed upon in this document. Any other termination will be deemed a breach of contract by Contractor. Contractor shall provide Notice of Termination to District by Certified U.S. Mail ten (10) calendar days before such termination takes effect.

25. RECORDS: Records of Contractor's labor, payroll and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to District for inspection on request. Contractor shall maintain records for a period of at least two (2) years after termination of this Agreement and shall make such records available during that retention period for examination or audit by District personnel during regular business hours.

26. AMENDMENT: It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and that oral understandings or agreements not incorporated herein shall not be binding on the parties. The representatives of the Parties (signatory for Contractor noted below or his or her designee, and the District Manager, or his or her designee) shall be authorized to execute future amendments or extensions of this Agreement.

27. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Contractor and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Written and signed amendments shall automatically become part of the supporting documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

28. SEVERABILITY: District and Contractor each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring District to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise)

to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

29. TIME IS OF THE ESSENCE: Time is of the essence with respect to all provisions in this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

30. CONFLICT OF INTEREST: The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this contract.

31. PROHIBITION TO CONTRACT WITH CONTRACTORS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL: The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Contractors who engage in boycotts of the State of Israel. Should Contractor under this Agreement engage in any such boycott against the State of Israel, this Agreement shall be deemed automatically terminated by operation of law. Any such boycott is a material breach of contract.

32. CERTIFICATION PURSUANT TO A.R.S. § 35-394. In accordance with Arizona Revised Statutes § 35-394, Contractor hereby certifies and agrees that Contractor does not currently and shall not for the duration of this Agreement use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China, 2) any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and/or 3) any suppliers, contractors or subcontractors that use the forced labor or any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of this Agreement that Contractor is not in compliance with this Section, then Contractor shall notify the District within five (5) business days after becoming aware of such noncompliance. If Contractor does not provide the District with written certification that Contractor has remedied such noncompliance within one hundred eighty (180) days after notifying the District of such noncompliance, this Agreement shall terminate, except that if the Agreement termination date occurs before the end of such one hundred eighty (180) day remedy period, this Agreement shall terminate on such contract termination date.

33. COMPLIANCE WITH FEDERAL AND STATE LAWS: Contractor understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement.

As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and

A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor will verify the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. District at its option may terminate this Agreement after the third violation. Contractor shall not be deemed in material breach of this Agreement if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). District retains the legal right to inspect the papers of any Contractor or subcontractor employee who works under this Agreement to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

34. COOPERATIVE USE OF CONTRACT: Any contract resulting from this request for proposals may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the contracted vendor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement and regulations of the respective government agency.

35. SPECIAL CONDITIONS:

A. This project is being supported, in whole or in part, by federal award number 1505-0271 provided to Water Infrastructure Finance Authority of Arizona ("WIFA") by the U.S. Department of Treasury ("Treasury"), Water Conservation Grant Fund ("WCGF") Award/Contract number WC1-002-2023.

B. U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award terms and conditions.

1. Use of Funds.

a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the "Act"), Treasury's regulations implementing that

section, and guidance issued by Treasury regarding the foregoing.

b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capacity to ensure proper planning, management, and completion of such project.

2. Period of Performance. The period of performance for this award on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations. Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.

3. Reporting. Recipient agrees to comply with any reporting obligations by Treasury as they relate to this award.

4. Maintenance of and Access to Records

a. Recipient shall maintain records and the financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.

c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.

7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.

8. Conflict of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603 (f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

ii. Universal Identifier and System for Award Management (“SAM”), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25, is hereby incorporated by reference.

iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to C.F.R. Part 170 is hereby incorporated by reference.

iv. OMB Guidance to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, include a term or condition in all lower

tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ix. Generally applicable federal environmental laws and regulations.

x. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs of activities receiving federal financial assistance;

B. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status or disability;

C. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

D. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal assistance: and

E. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 126101 *et seq.*), which prohibit discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements. Treasury may impose additional conditions on the receipt of a subsequent award, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.

11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of state or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.

a. Any funds paid to Recipient, (1) in excess of the amount which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient, shall constitute a debt to the federal government.

b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.

b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a

federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

b. The list of persons and entities reference in the paragraph above includes the following:

i. A member of Congress or a representative of a committee of Congress;

ii. An Inspector General;

iii. The Government Accountability Office;

iv. A Treasury employee responsible for contract or grant oversight or management;

v. An authorized official of the Department of Justice or other law enforcement agency;

vi. A court or grand jury; or

vii. A management official or other employee of Recipient, contractor or subcontractor who has the responsibility to investigate, discover or address misconduct. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 F.R. 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 F.R. 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contactors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized representative as of this ____ day of _____, 20__.

CONTRACTOR:

DANA KEPNER COMPANY, INC.

By: _____
Its: _____

DISTRICT:

**WATER UTILITIES COMMUNITY
FACILITIES DISTRICT, an Arizona
municipal corporation**

By: Walter "Chip" Wilson
Its: Chairman

ATTEST:

**Jennifer Pena
Deputy District Clerk**

APPROVED AS TO FORM:

**R. Joel Stern
District Attorney**

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing was subscribed and sworn to before me this _____
day of _____, 20____, by _____ as _____ of
Dana Kepner Company, Inc. a Colorado limited liability company.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing was subscribed and sworn to before me this _____
day of _____, 20____, by Walter "Chip" Wilson as Board Chair of Water
Utilities Community Facilities District, an Arizona municipal corporation.

Notary Public

My Commission Expires:

EXHIBIT A

Equipment Description	Units	Unit Cost	Total Cost
Sensus M400 Base Station, 2-Way, Water Only	2	\$33,500.00	\$67,000.00
Sensus Base Station Installationat Prepared Site (Estimate)	2	\$22,000.00	\$44,000.00
FlexNet Network Deployment Project Management	1	\$10,000.00	\$10,000.00
RNI SAAS Setup Fee, One Time	1	\$7,957.00	\$7,957.00
Sensus Analytics Setup Fee, One Time	1	\$4,500.00	\$4,500.00
RNI Core Education, Onsite Training, One Day	1	\$5,000.00	\$5,000.00
Sensus Analytics Onsite Training Fee, One Day	1	\$5,000.00	\$5,000.00
Sensus Analytics Basic Integration, Sensus	1	\$6,875.00	\$6,875.00
Annual RNI SAAS Fee, Appox 6000 Services, Year 1	1	\$14,004.00	\$14,004.00
Sensus Analytics Enhanced SAAS, Approx 6000 Services, Year	1	\$11,532.00	\$11,532.00
Sensus M400 Base Station Protection Plan, Annual Fee per Base Station	3	\$1,963.59	\$5,890.77
520M MXU, 1 Port, TC Hourly Read, Leak Det	4300	\$219.00	\$941,700.00
Equipment Total			\$1,123,458.77

Equipment Description	Units	Unit Cost
iPerl (Static Meters)		
5/8"x3/4" iPerl, 2-Wire 6' TR/PL	1	\$197.00
5/8"x3/4" iPerl, 2-Wire 25' TR/PL	1	\$197.00
3/4" Short iPerl, 2-Wire 6' TR/PL	1	\$194.00
3/4" Short iPerl, 2-Wire 25' TR/PL	1	\$197.00
1" iPerl, 2-Wire 6' TR/PL	1	\$308.00
1" iPerl, 2-Wire 25' TR/PL	1	\$311.00
5/8"x3/4" iPerl, 2-Wire 6' TR/PL, Brass	1	\$235.00
3/4" Short iPerl, 2-Wire 6' TR/PL, Brass	1	\$235.00
3/4" Short iPerl, 2-Wire 25' TR/PL, Brass	1	\$239.00
1" iPerl, 2-Wire 6' TR/PL, Brass	1	\$318.00
1" iPerl, 2-Wire 25' TR/PL, Brass	1	\$322.00
ally (Remote Shut-off & Pressure Meters)		
5/8"x3/4", Shutoff & Sensors, 2-Wire 6' TR/PL	1	\$576.00
3/4" Short ally, Shutoff & Sensors, 2-Wire 6' TR/PL	1	\$576.00
1" ally, Shutoff & Sensors, 2-Wire 6' TR/PL	1	\$663.00
R2 Omni (Residential Turbine Meters)		
1.5" Omni R2, TR/PL	1	\$806.00
2" Omni R2, TR/PL	1	\$1,127.00
2" Omni R2, TR/PL, 10" LL	1	\$982.00
H2 Omni (Hydrant Meters)		
3" Omni H2, TR/PL	1	\$2,234.00

T2 Omni (C/I Turbine Meters)		
1.5" Omni T2, TR/PL	1	\$1,173.00
2" Omni T2, TR/PL	1	\$1,391.00
2" Omni T2, TR/PL, 10" LL	1	\$1,199.00
3" Omni T2, TR/PL	1	\$1,733.00
4" Omni T2, TR/PL	1	\$3,374.00
6" Omni T2, TR/PL	1	\$6,074.00
8" Omni T2, TR/PL	1	\$10,307.00
10" Omni T2, TR/PL	1	\$13,438.00
C2 Omni (Compound Spec C/I Turbine Meters)		
1.5" Omni C2, TR/PL	1	\$1,713.00
2" Omni C2, TR/PL	1	\$1,977.00
3" Omni C2, TR/PL	1	\$2,504.00
4" Omni C2, TR/PL	1	\$4,349.00
6" Omni C2, TR/PL	1	\$7,511.00
8" Omni C2, TR/PL	1	\$12,133.00
10" Omni C2, TR/PL	1	\$15,656.00
Cordonel (Ultrasonic C&I Meters)		
1.5" Cordonel, TR/PL	1	\$2,603.00
2" Cordonel, TR/PL	1	\$2,924.00
3" Cordonel, TR/PL	1	\$3,478.00
4" Cordonel, TR/PL	1	\$5,506.00
F2 Omni (UL/FM Turbine Meters)		
4" Omni F2, Compact Length, TR/PL	1	\$9,654.00
6" Omni F2, Compact Length, TR/PL	1	\$12,848.00
8" Omni F2, Compact Length, TR/PL	1	\$20,389.00
10" Omni F2, Compact Length, TR/PL	1	\$27,513.00
T2 Omni+ Meter Chambers		
1.5" Omni+ T2, TR/PL, Chamber Complete	1	\$828.00
2" Omni+ T2, TR/PL, Chamber Complete	1	\$852.00
3" Omni+ T2, TR/PL, Chamber Complete	1	\$1,229.00
4" Omni+ T2, TR/PL, Chamber Complete	1	\$1,253.00
6" Omni+ T2, TR/PL, Chamber Complete	1	\$2,327.00
8" Omni+ T2, TR/PL, Chamber Complete	1	\$3,011.00
10" Omni+ T2, TR/PL, Chamber Complete	1	\$3,011.00
C2 Omni+ Meter Chambers		
1.5" Omni+ C2, TR/PL, Chamber Complete	1	\$1,176.00
2" Omni+ C2, TR/PL, Chamber Complete	1	\$1,200.00
3" Omni+ C2, TR/PL, Chamber Complete	1	\$1,718.00
4" Omni+ C2, TR/PL, Chamber Complete	1	\$1,742.00
6" Omni+ C2, TR/PL, Chamber Complete	1	\$3,339.00
8" Omni+ C2, TR/PL, Chamber Complete	1	\$3,565.00
10" Omni+ C2, TR/PL, Chamber Complete	1	\$3,565.00

H2 Omni+ Meter Chambers		
3" Omni+ H2, TR/PL, Chamber Complete	1	\$1,343.00
V2 Omni+ Meter Chambers		
3" Omni+ V2, TR/PL, Chamber Complete	1	\$1,988.00
520M (SmartPoints)		
512M-PLS, Single Port, Wired	1	\$215.00
520M, Single Port, TouchCouple	1	\$219.00
520M, Dual Port, TouchCouple	1	\$291.00
520M, Single Port, Wired	1	\$231.00
520M, Dual Port, Wired	1	\$303.00
522M, Single Port, Itron Connector	1	\$291.00
Smart Gateway & Kits		
Smart Gateway, Pipe/Wall-Mount	1	\$461.00
Multi-Cable Gland Kit	1	\$52.00
Pressure Sensor Kit / Less Bushing	1	\$782.00
Pressure Sensor Kit, 1" Test Port	1	\$831.00
Pressure Sensor Kit, 1.5" Test Port	1	\$867.00
Pressure Sensor Kit, 2" Test Port	1	\$951.00
Remote Door Indicator Kit	1	\$41.00
Remote Rollup & Personnel Door Indicator Kit	1	\$98.00
Submersible Level Kit for Water	1	\$2,012.00
Submersible Level Kit for Wastewater	1	\$3,391.00