

CONTRACT FOR PURCHASE OF SERVICES

Contract No. 2021-26

This Contract is entered into this _____ day of _____, 20____ by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Haddad Drugan LLC, a Washington State Limited Liability Company ("Contractor" or "Artist").

WHEREAS, City issued Request for Statement of Qualifications #2021-26 for Artistic Services for Downtown Connection Center, and Contractor was selected to provide artistic services through a competitive process;

WHEREAS, City and Contractor anticipate that the artistic services will be provided over a period of time, and pursuant to a series of mutually satisfactory agreements, and seek to enter into this initial contract for artistic services through Conceptual Design approval;

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

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

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

Downtown Connection Center Artistic Services (through Conceptual Design Approval)

and as more specifically described in the Scope of Work attached hereto as Exhibit A.

2. Compensation: In consideration for the Contractor's satisfactory performance, City shall make payment to the Contractor not to exceed Twenty Five Thousand Dollars and zero cents (\$25,000.00) which shall be all inclusive and payment in full for materials, labor, work, travel, taxes, insurance and any other expenses needed to complete the Services. Payments shall be paid in three installments, per Exhibit A. Artist will not be required to obtain a permit from Community Development Services to complete the work under this Contract.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated into this Contract by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. City Representative: The City Representative is Jana Weldon, Beautification, Arts & Sciences Project Administrator, or his/her designee. All communications to the City shall be through the City Representative. City Representative is responsible for bringing any request for a contract amendment or price adjustment to the attention of the City Buyer.
5. City Cooperation: The City will cooperate with Contractor by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for Contractor's performance of this Contract.
6. Contract Term: The Contract shall be effective as of the date signed by both parties and shall continue for a two (2) year term, unless sooner terminated. The services shall be completed per the schedule set forth in Exhibit A and any amendments.

7. Renewal: This Contract may be renewed for an additional two (2) year term by mutual written consent of the parties. The renewal must be in writing signed by both parties.
8. Termination: This Contract may be terminated pursuant to the Standard Terms and Conditions attached hereto.
9. Price Adjustment: Any price adjustment must be approved in advance by the parties in writing, and will be processed as a change order or contract amendment. The City Manager is authorized to approve a price adjustment of up to \$25,000 (total contract price not to exceed \$50,000).
10. 10. City Ownership of Document and Data: Any original documents prepared or collected by Contractor in performance of this Contract such as models, samples, reports, test plans, survey results, graphics, tables, charts, plans, maps, specifications, surveys, computations and other data shall be the property of City ("City's work product"); however, at Contractor's election Contractor may retain any original so long as Contractor provides City with an agreed upon duplicate or copy.
11. Intellectual Property Rights Warranty; City Ownership and Use of Artwork; Artist Ownership of Artwork Copyright and Commercial Use. The rights of the parties are set forth in *Exhibit A*
12. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, upon request Contractor shall immediately deliver to City copies of all of City's work product that have not previously been delivered and any other documents and data accumulated by Contractor in performance of this Contract, whether complete or in process.
13. Insurance: Contractor shall meet insurance requirements of the City, set forth in *Exhibit C*.
14. Notice: Any formal notice concerning this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Brian Eilerts
Senior Procurement Specialist
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 86001
Brian.Eilerts@flagstaffaz.gov

Jana Weldon
Beautification, Arts & Sciences Project
Administrator
211 W. Aspen Ave
Flagstaff, AZ 86001
Jana.Weldon@flagstaffaz.gov

To Contractor:

Laura Haddad
Haddad Drugan LLC
315 28th Avenue S.
Seattle, WA 98144
Laura@Haddad-Drugan.com

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

CONTRACTOR

Print name: _____

Title: _____

CITY OF FLAGSTAFF

Print name: _____

Title: _____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

EXHIBIT A

SCOPE OF WORK

A. SITE:

The City of Flagstaff is designing art and beautification projects at the New Mountain Line Downtown Connection Center (DCC), an expansion of the existing transit hub on Phoenix Ave, between Milton St and Beaver St, Flagstaff, AZ 86001. The existing site is the favored location but is subject to change at the time of this contract. Final site selection for the new DCC is anticipated in the Spring of 2021.



(Current Proposed Site Satellite View)

B. DESIGN:

Downtown Connection Center Vision

A new Downtown Connection Center (DCC) is identified in Mountain Line's 2020 Strategic Plan as the highest priority capital project in order to support public transit service within the community. Since 2009, Mountain Line has operated the existing DCC under an Intergovernmental Agreement (IGA) and licensing agreement with the City of Flagstaff for use of City owned parcels on Phoenix Avenue. Mountain Line, after receiving significant Federal Transit Authority grants is moving to develop a true, multi-modal, community asset in the heart of downtown. The Northern Arizona Intergovernmental Public Transportation Authority (NAIPTA) presented the project on April 21, 2020 to City Council.

Mountain Line's vision is to create an inviting and welcoming space for customers, with a focus on safety and sustainable design. The new DCC will provide necessities including restrooms, customer service, operations and dispatch spaces, and administrative offices. It will be a multimodal connection center and provide for long-term service expansion, regional transportation services, and be a hub of bikes and pedestrian activity.

Public Art and Beautification Elements or Projects

The Artist will work with a design team to identify and design public art and beautification elements or projects that integrate with the new Downtown Connection Center (DCC). The design team will include

but is not limited to the Artist, City staff, Northern Arizona Intergovernmental Public Transportation Authority (NAIPTA) staff, and the selected design engineer and contractor(s) for the new DCC.

For design of all beautification and public art elements, the artist must adhere to designated areas and measurements as specified by Beautification, Arts & Sciences staff and by Mountain Line Staff. Upon execution of the Contract, City shall provide to Artist drawings and information describing the existing Site, current design showing Site's future use as a transit hub, and noting any areas not appropriate for art elements.

It is an essential element of the Artist's services to coordinate with the City as well as Mountain Line and any project contractors and other persons who may be involved with the development of the Site and Artwork design.

Direction for the public art and beautification is to successfully contextualize art and beautification projects; to create an opportunity for local emerging artists; to amplify the programming to the greatest extent possible; to design artwork that identifies represents an ideal transportation hub – active, connected, welcoming.

The Artist will complete design development for public art and beautification projects for the DCC project through conceptual plan approval. Design development includes Preliminary Conceptual Design (30% design), incorporation of revisions from responses to those designs from Planning and Zoning review, public comment forums, and Beautification and Public Art Commission review to achieve Conceptual Plan approval (60% design). While in the process of conceiving the Preliminary Conceptual Design, Artist will share work in progress with City to ensure that conceptual direction meets project intentions.

Design Costs and Preliminary Budgets

Artist will prepare preliminary budgets with good faith estimates for each of the art and beautification elements for consideration both at the Preliminary Conceptual Design stage (30% design) and Conceptual Plan approval (60% design). City (Mountain Line) shall provide estimate of costs associated site preparations required for artwork installation such as removal of existing improvements or vegetation and environmental remediation; and features that are not unique to the art and beautification elements such as concrete work, standard seating and handrails.

Design Development does not require preparation of engineering or construction documents; however, the preliminary budgets shall include good faith estimates of all costs for completion of the art and beautification projects.

Artist shall identify and design public art and beautification projects for the DCC project that can be completed within the planned funding limits. Currently the Beautification, Arts & Sciences 5-yr plan has \$245,000 Beautification funds for the Downtown Connection Center next fiscal year (2021-2022) and \$225,000 the following year (2022-2023). This planned funding is subject to change based on recession planning or changes in the local bed, board and beverage or BBB ta) revenues. City is responsible for promptly notifying Artist of any changes in planned funding limits. Artist shall complete any additional services necessary to bring the public art and beautification projects scoping within the planned funding limits prior to Conceptual Plan completion and will be relied upon by Mountain Line to inform its decisions for future contracts to implement approved public art and beautification elements or projects. If funding for the public art and beautification elements significantly changes after Artist has completed Preliminary Conceptual Design or Conceptual Plan approval, Artist will be paid for the additional redesign services requested by City pursuant to a change order and appropriate price adjustment.

Preliminary Conceptual Design (30%) Deliverables

Preliminary Conceptual Design deliverables shall include representations of the Artwork's appearance, dimensions, color, material, finishes, and location(s) on the Site. The Artist will create appropriate visuals to convey his/her design(s) for all City and Mountain Line approvals, including either a three-dimensional maquette or computer model from which to render visual representations. Artist shall also note which elements may be subject to change as the design develops.

Conceptual Plan (60%) Deliverables

Conceptual Plan deliverables shall include modifications and developments to the Preliminary Conceptual Design as directed by the City, input from stakeholders and design team, and as determined to be necessary by Artists to enhance aesthetics and be achievable structurally and within the assumed project budget; as well as drawings describing anticipated fabrication methods, weight and methods of attachment; written or verbal description to design team of site preparations (e.g., surface preparation, foundations, electrical requirements, etc.) that need to be performed and/or provided by City to support artwork; description of an opportunity and budget for local emerging artists; and preliminary description of anticipated maintenance requirements.

Public Outreach

The Artist, in coordination with City Beautification, Arts & Sciences staff and with Mountain Line staff, will conduct public outreach prior to commencing design. All public outreach will meet City standards for COVID-19.

The Artist will conduct at least one in-person site visit at the time designated by City Beautification, Arts & Sciences staff. The site visit will meet City standards for COVID-19.

Following completion of Preliminary Conceptual Design, the Artist, in coordination with Beautification, Arts & Sciences staff, will conduct a virtual public meeting or public outreach to present and receive feedback on his/her design concept from the community. Any meeting or outreach will meet City standards for COVID-19.

C. DESIGN MODIFICATIONS:

The City's right to approve or reject the Artist's conceptual design(s) will be at the City's sole discretion. If the City determines that the proposed conceptual design(s) requires modifications, the Artist will be required to submit revisions to design proposal(s) within a reasonable period of time specified by the City. Artist at its own expense will complete minor revisions. Following acceptance of Preliminary Conceptual Design, significant changes to design as requested by City will be considered additional work and a change order will be issued for the additional services with appropriate price adjustment..

If site changes after Contractor has completed any design work, a change order will be issued for redesign services with appropriate price adjustment.

Artist and City acknowledge that City's approval of Preliminary Conceptual Design (30%) deliverables is a requirement prior to commencement of work to develop Conceptual Plan (60%) and that approval of Conceptual Plan deliverables is a requirement prior to commencement of artwork engineering and fabrication. If City does not approve a design, either party may terminate this Contract for convenience, and City will pay Artist for all work completed.

D. PAYMENT SCHEDULE:

1. Initial payment - **\$5,000 (20%)** – Shall be paid upon the Artists' participation in the public outreach for the project estimated to be completed by **February 28, 2021**.
2. Progress payment - **\$12,500 (50%)** – Shall be paid upon submittal of conceptual designs with designated visuals, estimated to be completed by **May 31, 2021**.
3. Final payment - **\$7,500 (30%)** – Shall be paid upon completion of design development (as defined in Section B), estimated to be completed by **October 31, 2021**.

E. NOTICE AND CORRECTION OF DEFICIENCIES:

If at any time the City determines that the Artist's services do not conform to the scope of services under this Agreement, the City reserves the right to notify the Contractor in writing of the deficiencies and that the City intends to withhold the next payment within 30 days of the determination, and the City may issue a stop work order. Contractor will have 30 days to cure the City's objections and will notify the City in writing of completion of the cure. If Contractor disputes the City's determination, within 15 days of Contractor's receipt of City's notice, Contractor shall notify the City in writing. In such event, the City shall make reasonable efforts to resolve the dispute however, final determination as to whether Contractor has complied with the terms of this Agreement will remain with the City.

F. INTELLECTUAL PROPERTY RIGHTS WARRANTY:

Artist hereby warrants that its designs provided, and that the purchase and use of the Artwork (designs) pursuant to this Agreement does not infringe on any patent, trademark or copyright or other proprietary rights of any third parties.

G. CITY OWNERSHIP AND USE OF ARTWORK (DESIGNS):

- a. Artist grants City the non-exclusive right to photograph, reproduce or manufacture renderings of the Artwork of all sizes, materials, in full color, or black and white (collectively "the Artwork Reproductions").
- b. Artist grants the City the non-exclusive right to display the Artwork Reproductions on City property.
- c. Artist grants City the non-exclusive right to publish the Artwork and Artwork Reproductions in any type of medium, including but not limited to electronic formats for the purposes of city or public transit publicity, marketing, community outreach, education, or public exhibition, local public or library or city calendars, and public transit service advertising.
- d. Upon prior written request of Artist, City shall place a copyright notice on the Artwork or Artwork Reproductions prior to manufacture.
- e. City shall have the right to allow Mountain Line to exercise any or all of City's legal rights related to ownership and use of the Artwork (designs) provided pursuant to this Agreement.
- f. In the event Artist is not able to continue providing artistic services to City through subsequent phases of the Downtown Connection Center development, and/or the parties are not able to agree upon a commercially reasonable terms and conditions for completion of the artistic services for the subsequent phases of the Downtown Connection Center development despite good faith negotiations, then the City shall have the right to develop the Artwork Conceptual Plan using the services of another contractor(s) but may not have the right to call the work an Artwork by Haddad|Drugan.

H. ARTIST OWNERSHIP OF ARTWORK COPYRIGHT AND COMMERCIAL USE:

1. Except as provided for in this Contract (paragraph G, related to City ownership and use), the Artist retains: (1) all rights to the Artwork (designs) under the Copyright Act of 1976, 17 U.S.C. § 101, et seq., as amended by the Visual Artists Rights Act (VARA), and any successor act; and (2) all rights expressly granted in this contract, as well as any and all other intellectual

property rights in the Artwork, whether statutory or common law, international, federal, state or local, except as specifically set forth herein.

2. Artist may, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright of the Artwork in the Artist's name and may provide the City with a copy of the application for registration, the registration number and the effective date of the registration.
3. Artist as copyright owner may use or sell the Artwork for commercial purposes, so long as such sale is subject to City's ownership and use rights as stated herein.

I. MESSAGING OF ARTWORK:

Artists shall use best efforts to ensure that no work or services funded under this Contract shall inhibit, promote, or convey a religion, a political party or position, or a religious or political message or advocacy.

J. SURVIVAL OF PROVISIONS:

These representations and warranties shall survive the termination or other expiration of this Agreement:

1. INTELLECTUAL PROPERTY RIGHTS WARRANTY;
2. CITY OWNERSHIP AND USE OF ARTWORK;
3. ARTIST OWNERSHIP OF ARTWORK COPYRIGHT AND COMMERCIAL USE;
4. MESSAGING OF ARTWORK.

K. PERMITS AND LICENSES

Artist will obtain a business license from the City pursuant to Flagstaff City Code, Chapter 3-01. Artist will be responsible for obtaining any transaction privilege tax license if required by the Arizona Department of Revenue, www.azdor.gov. Mountain Line will be responsible for obtaining any necessary permits from the City Community Development for the Downtown Connection Center project, which will incorporate the Artwork/designs under this Contract.

EXHIBIT B

**CITY OF FLAGSTAFF
STANDARD TERMS AND CONDITIONS**

(As included in the solicitation for the Contract, and includes modifications as shown)

IN GENERAL

1. **NOTICE TO PROCEED:** Contract shall commence upon effective date of the Contract.
2. **LICENSES AND PERMITS:** Contractor shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.
3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.
4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive, and the City reserves the right to contract with others for materials or services.
5. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

PAYMENT

6. **INVOICES:** A separate invoice shall be issued for each phase and each job completed per payment schedule. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped, or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
7. **LATE INVOICES:** The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year. The City Representative shall keep Contractor apprised of schedule to ensure that work tasks are completed in synchronization with City's fiscal requirements for full payment.
8. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

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

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

SERVICES

14. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.

INSPECTION, RECORDS, ADMINISTRATION

15. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.
16. **PUBLIC RECORDS:** This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as "confidential", the City will endeavor to notify Contractor prior to release of such information.
17. **CONTRACT ADMINISTRATION:** Contractor will be required to participate in the City's Contract Administration Process. Contractor will be closely monitored for contract compliance and will be required to promptly correct any deficiencies.

CONTRACT CHANGES

18. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
19. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
20. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.

21. **SEVERABILITY:** If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.
22. **NO WAIVER:** Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
23. **ASSIGNMENT:** This Contract may be assigned by Contractor with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to City. The Purchasing Director shall have authority to consent to an assignment on behalf of City.
24. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

25. **SUBCONTRACTING:** Contractor may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
26. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition, any Contractor located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02 Civil Rights which also prohibits discrimination based on sexual orientation, or gender identity or expression.
27. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.
28. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor

agrees to assist the City in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

DEFAULT AND TERMINATION

- 29. TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition Contract remedies provided for herein.
- 30. CITY REMEDIES:** In the event of Contractor's default, City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
- 31. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 32. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 33. TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
- 34. TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor.
- 35. TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate this Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.
- 36. PAYMENT UPON TERMINATION:** Upon termination of this Contract for any cause described in this Agreement, City will pay Contractor for satisfactory performance up until the effective date of termination, including for work in progress that has not yet been submitted. This payment amount shall be determined through communications and fair mutual agreement between City and

Contractor. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.

37. **CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant ("Gratuities") in connection with award or performance of the Contract.
38. **CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor except final payment as described in Clause 36.

MISCELLANEOUS

39. **INSURANCE:** Contractor shall maintain workers' compensation insurance if Contractor has employees.
40. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.
41. **NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.
42. **THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties, with the following exception: Northern Arizona Intergovernmental Public Transportation Authority (NAIPTA) doing business as Mountain Line is an express third party beneficiary of this Contract.
43. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
44. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
45. **ATTORNEYS FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.
46. **FORCE MAJUERE:** 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 a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of this Contract.

There will be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the events described above, and 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.

EXHIBIT C

INSURANCE REQUIREMENTS

(Includes modifications as shown)

1. In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.
2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.
3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

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

a. Commercial General Liability - Occurrence Form

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

b. ~~Umbrella Coverage~~ ————— ~~\$2,000,000~~

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

d. Workers' Compensation and Employer's Liability (If Contractor has employees)

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

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

responsible for any self-insured retention amounts. City at its option may require Contractor to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:
 - a. Additional Insured. In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.
 - b. Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.
 - c. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Contractor's insurance and shall not contribute to it.
 - d. Each Insured. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
 - f. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.
6. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:

Attention: Brian Eilerts, Senior Procurement Specialist
Contract No. 2021-26
Purchasing Department
City of Flagstaff,
211 W. Aspen Avenue
Flagstaff, Arizona 86001
Brian.Eilerts@flagstaffaz.gov

7. Acceptability of Insurers. Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A- : VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

8. Certificates of Insurance. The Contractor shall furnish the City with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City project/contract number and project description shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Contractor commences work.
9. Policies. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.
10. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.