

CONTRACT FOR PURCHASE OF SERVICES

Contract No. 2021-90

This Contract is entered into this 27th day of April, 2021 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Bird Eye Consortium Corporation d/b/a Foxglove Gardening, an Arizona Corporation, ("Contractor").

WHEREAS, the City of Flagstaff 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:

Flowers Program: Downtown and Southside

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

2. Compensation: In consideration for the Contractor's satisfactory performance, City shall pay Contractor an amount not to exceed forty five thousand eight hundred forty one dollars and zero cents (**\$45,841.00**). Any price adjustments must be approved by mutual written consent of the parties. The City Manager or his/her designee (the Purchasing Director) may approve an adjustment if the annual contract price is less than \$50,000; otherwise City Council approval is required.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated 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 Eliza Kretzmann, Beautification, Arts & Sciences Manager, 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 term is for a period of one (1) year unless terminated pursuant to the Standard Terms and Conditions. This Contract shall be effective as of the date signed by both parties.
7. Renewal: This Contract may be renewed for up to four (4) additional one (1) year terms by mutual written consent of the parties. The City Manager or his/her designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
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 by the City in writing as a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds \$50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.

INSURANCE

10. Insurance: Contractor shall meet insurance requirements of the City, set forth in Exhibit C.

MISCELLANEOUS

11. 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

Eliza Kretzmann
Beautification,
Arts & Sciences
Manager

City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Eliza.Kretzmann@flagstaffaz.gov

To Contractor:

Jason Minshe
PO Box 23877
Flagstaff, AZ 86002
Foxglovegardening
@gmail.com


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

EXHIBIT A
SCOPE OF WORK

VENDOR SPECIFICATIONS

1. Vendor shall have a minimum of three (3) years of experience providing Landscaping Services for Owners and native plants in Northern Arizona.

CONTRACTOR



Print name: JASON MIWSHEW

Title: PRESIDENT

CITY OF FLAGSTAFF

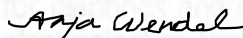
Print name: Greg Clifton

Title: City Manager

Attest:

City Clerk

Approved as to form:



City Attorney's Office

PART II: PLANTING

PLANTINGS: DOWNTOWN AND SOUTHSIDE:

Vendor provides: Plant materials, plant design and species selection as appropriate for sites, fertilizer as needed upon planting, soil for pots and hanging baskets, and mulch (as needed) for planting sites. All plant trimmings or other debris will be discarded off-site. The City will work with the vendor for an encroachment permit (for the installation of baskets, etc.) and any other needed permits, such as a permit to work in the public right-of-way. The City will bear the cost of the required permits.

EXHIBIT A
SCOPE OF WORK

VENDOR SPECIFICATIONS

1. Vendor shall have a minimum of three (3) years of experience providing Landscaping Services of flowers and native plants in Northern Arizona.
2. Vendor to maintain all licenses required for the work, including but not limited to a business license.
3. Vendor able to provide regular landscaping maintenance (weekly or more frequent as needed) services as outlined herein.
4. Vendor able to examine plantings on a weekly basis to identify any problems or potential problems.
5. The City of Flagstaff will require a thirty (30) day warranty on plant materials except for the areas maintained the City, or plantings damaged due to vandalism or inclement weather such as hail.
6. Vendor shall provide, at vendor's own risk, all labor, materials, tools, equipment, insurance, transportation, hauling, dumping, and all other items needed to provide the services outlined in this Scope of Work/Specifications.

DATES OF PLANTINGS

Late May/early June to early-mid October 2021, based on frost dates. Precise dates of planting and removal will be determined between the vendor and the City. Planting dates must be approved by the City. Vendor may be required to obtain a permit to work in public rights-of-way for plantings and removal. The City has a plant list in the zoning code that may be helpful for plant selection that is available to vendors. Maintenance extension in the fall may be considered dependent on weather and frost.

PART I: PLANTING

PLANTINGS: DOWNTOWN AND SOUTHSIDE:

Vendor provides: Plant materials, plant design and species selection as appropriate for sites, fertilizer as needed upon planting, soil for pots and hanging baskets, and mulch (as needed) for planting sites. All plant trimmings or other debris will be discarded off-site. The City will work with the vendor for an encroachment permit (for the installation of baskets, etc.) and any other needed permits, such as a permit to work in the public right-of-way. The City will bear the cost of the required permits.

1. **Hanging Baskets – 36 Total:** Create twenty-four (24) hanging baskets for downtown, 22" in width to hang on downtown lampposts. Create twelve (12) hanging baskets for the Southside, 30" in width.
 - a. The City will provide the baskets and two coco liners per basket for planting. Baskets are of commercial quality and metal with fiber lining.
 - b. Downtown hanging baskets will be in Heritage Square and hanging on streets near Heritage Square with locations provided by the City.
 - c. Southside hanging baskets will be along South San Francisco Street and anticipated for South Beaver Street with locations provided by the City of Flagstaff.
 - d. Create basket plantings with Flagstaff-appropriate species for a full, colorful, and spilling effect.
 - e. Provide fill, soil, plant material and mulch (if needed); baskets must include a closed-loop hook to attach to brackets securely.
 - f. Precise locations to be provided by the City to the vendor.
 - g. Hang baskets at the beginning of the season and remove at the end of the season with dates confirmed by your city point-of-contact.
 - h. The City will provide storage of hanging basket materials in the off-season.

2. **Large Moveable Planter Boxes Downtown:** Provide plantings for four (4) rectangular planters in the downtown area. Planting area of boxes are approximately 60" in length, 42" wide, and 28" in depth. Boxes will be used to close certain areas during events or to create/beautify outdoor seating areas.
 - a. Create plantings with Flagstaff-appropriate species for a full, colorful, and spilling effect.
 - b. Provide baskets and fill, soil, plant material and mulch (if needed).
 - c. The City provides precise locations to the vendor and places the boxes. Boxes are anticipated to be in close proximity to Heritage Square.
 - d. The planter boxes will be filled by the City with concrete or other material except for the top 1' of the boxes.
 - e. The City also stores boxes in the off-season (if needed).

3. **Wine and Whiskey Barrel Plantings:** Provide plantings for twenty (20) wine barrel plantings and four (4) whiskey barrel plantings. Barrels are provided by the City of Flagstaff. Wine barrels are approximately 22" at the top and bottom, 37" tall and 26" wide. Wine barrels are filled with sandbags provided by the City except for the top 1' to be filled with soil for planting. Whiskey barrels are 26" in diameter and 17" tall. **The City will maintain sixteen (16) of the wine barrels after planting that are anticipated to be in Heritage Square while the vendor maintains four (4) on the Southside** as shown in Table 1 in the 'Maintenance' section.

Wine and Whiskey Barrel Plantings:

 - a. Create barrel plantings with Flagstaff-appropriate species for a full, colorful, and spilling effect (*see Image 1, on the next page for an example of a wine barrel planting from 2020*).
 - b. Provide soil, plant material, material to hold soil in place at the top of the wine barrels (such as shade cloth), and mulch and soil for the whiskey barrels.

- i. These barrels already have high-quality soil present from 2020 plantings; supplemental soil is needed to add any additional fill due to settling and soil loss from removal of existing small spruce tree winter plantings.
 - ii. Wine barrels also already have cloth material to hold in soil in 15 of the 20 barrels (additional cloth needed for about 5 of the barrels).
- c. The City provides sandbags to weight the barrel and fill it except for the top 1' of the barrel and the City places the barrels prior to planting. The City also stores the barrels in the off-season (if needed).
- d. The City provides precise locations to the vendor. Barrels are anticipated mainly downtown in Heritage Square (16) with four (4) on the Southside.



- 4. Heritage Square Permanent Planters: Add to existing plantings for the large square planter in Heritage Square and the rectangular planters along Aspen Avenue. After the vendor plants these large permanent planters they will be maintained by the City of Flagstaff.

Large Planter (planter is about 300 square feet total, with about 50 square feet of space for annual and additional perennial plantings to fill out/supplement plantings provided in 2020 pilot):

- a. Plant Flagstaff-appropriate pollinator and monarch species intermixed with colorful annuals for a full, bright display to fill out existing perennials.
- b. Provide plants, seeds, supplemental topsoil, and mulch as needed for planting.
- c. High quality soil is present in the planters; provide additional soil needed to refresh the planters and account for settling or surface disturbance.
- d. Prepare soil and site for planting.
- e. Add rocks or other vertical element in the center of the garden to deter seating and walking in the garden and provide visual interest.
- f. Place perimeter metal fencing provided by the City around the pollinator garden.
- g. A focus on aesthetics as well as function is needed.

Planters Along Aspen Avenue at Heritage Square: (about 75 square feet total, about 20 square feet of space for annual plantings to supplement existing annual plantings from 2020 pilot program and earlier): Provide plantings to add to existing plants in the rectangular planters along Aspen Avenue. These sections were planted with additional perennials in 2020, this is to provide additional annuals and perennials and to the existing plantings. **After the vendor plants these large permanent planters they also will be maintained by the City of Flagstaff** as shown in Table 1 in the 'Maintenance' section.

- a. Add colorful annuals and/or perennial or pollinator species to complement existing plantings for a full, bright display.
- b. Provide plants, seeds, supplemental topsoil, and mulch as needed for planting.

- c. High quality soil is present in the planters; provide additional soil needed to refresh the planters and account for settling or surface disturbance.
- d. Prepare soil and site for planting.
- e. A focus on aesthetics as well as function is needed.

Image 2: Large Planter at Heritage Square (top) and image 3 and 4: planters along Aspen Avenue. All pictured planters have existing plantings with perennials from 2020 and prior; this is to fill out planters with additional perennials and annuals for a colorful effect.



PART II: MAINTENANCE

PLANT MAINTENANCE, PLANTER MAINTENANCE AND WATERING

1. The City of Flagstaff will provide maintenance on some of the plantings, while the vendor provides maintenance on others. The table below shows maintenance responsibilities:

Table 1:

Items	Location	Planting	Maintenance/Watering Responsibility
24 Hanging Baskets, 22"	Downtown	Vendor to plant and hang (brackets installed by the City)	Vendor
12 Hanging Baskets, 30"	Southside	Vendor to plant and hang (brackets installed by the City)	Vendor
Moveable Rectangular Planters	Downtown	Vendor (planters provided and placed by the City)	Vendor
4 Wine Barrels	Southside	Vendor (barrels provided and placed by the City)	Vendor
16 Wine Barrels	Downtown in Heritage Square	Vendor (barrels provided and placed by the City)	City of Flagstaff to Maintain (planted by vendor)
4 Whiskey Barrels	Downtown	Vendor (barrels provided and placed by the City)	Vendor
Large Planters in Heritage Square	Heritage Square	Vendor to plant	City of Flagstaff to Maintain (planted by vendor)

2. Vendor shall examine all plantings (including those maintained by the City), on a weekly basis on to identify any problems or potential problems. Written checklist will be provided to City, with date of examination, name of inspector, plantings examined, any concerns, and any actions taken in response to concerns.
3. Vendor shall apply only certified organic herbicides and/or pesticides.

- 4.** Planters and baskets the vendor maintains shall be kept in a healthy, vigorous growing condition, free from disease and large concentrations of pests.
- 5.** Hand-watering is critical. Hand-water as needed to maintain plantings in a healthy, stress-free condition. It is Vendor's responsibility to provide water for the plantings they maintain and to ensure that plants receive adequate water regardless of weather conditions.
 - a. Use of reclaimed water is preferred if possible.
- 6.** It is the responsibility of Vendor to conserve water and assure that all watering rules and regulations are followed. Vendor shall pay any penalties, fines, or citations for watering ordinance violations.
- 7.** Vendor shall adjust watering times on a weekly basis to ensure adequate irrigation. Do not over-water plantings. Do not allow run-off from any watering.
- 8.** Dead or missing plants shall be replaced in areas maintained by the vendor; after the thirty (30) day warranty period replacement shall be paid for by the City as additional materials. If barrels or planter are damaged and need replanting, this planting will also be paid for as additional materials by the City, and new barrels or planters will be provided by the City. Before replacement, vendor shall submit a brief quote for replacement within one (1) week of being alerted to the loss.
- 9.** Vendor shall add additional soil and mulch as needed throughout the growing season. If larger replacements are needed, replacement shall be paid for as additional materials by the city. Before replacement, vendor shall submit a brief quote for replacement.
- 10.** Vendor shall make minor replacements and repairs to planters as part of the required maintenance work. A minor item would be something that takes less than thirty (30) minutes to repair by skilled workmen, using minimal replacement parts.
- 11.** Vendor shall deadhead spent flowers, maintain a fresh and clean appearance of planters, including cleaning them of debris, trash, and foreign materials weekly, including around plants and minor cleaning of the exterior of planters.
- 12.** Remove graffiti from planters as soon as it is observed. Report graffiti that cannot be removed by vendor and/or major damage to planters to the city representative the same day it is observed.
- 13.** Vendor shall take all reasonable precautions required to protect landscape areas from equipment damage.
- 14.** Vendor is responsible for removal of hanging baskets and temporary plantings after growing season (mid-October or earlier date approved in writing by City).

EXHIBIT B

CITY OF FLAGSTAFF STANDARD TERMS AND CONDITIONS

IN GENERAL

1. **NOTICE TO PROCEED:** Contractor shall not commence performance until after City has issued a Notice to Proceed.
2. **LICENSES AND PERMITS:** Contractor 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 shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped, or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
7. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
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 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. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination.
- 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, City will pay Contractor for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
- 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.

MISCELLANEOUS

- 39. INSURANCE:** Contractor shall maintain workers' compensation insurance.
- 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.
- 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**

1. In General. Firm 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 Firm, its agents, representatives, employees or Firms.
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 Firm's obligations under this Contract have been met, including any warranty periods. The Firm'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 Firm from liabilities that might arise out of this Contract, and Firm is free to purchase such additional insurance as Firm may determine is necessary.

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

a. Commercial General Liability - Occurrence Form

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

b. Umbrella Coverage \$2,000,000

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

d. Workers' Compensation and Employer's Liability

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

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. Firm shall be solely responsible for any self-insured retention amounts. City at its option may require Firm 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 Firm, including products and completed operations of the Firm, and automobiles owned, leased, hired or borrowed by the Firm.
 - b. Broad Form. The Firm's insurance shall contain broad form contractual liability coverage.
 - c. Primary Insurance. The Firm'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 Firm's insurance and shall not contribute to it.
 - d. Each Insured. The Firm'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 Firm 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 Firm 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
Contract No. 2021-53 Temporary Personnel Services
Purchasing Department
City of Flagstaff,
211 W. Aspen Avenue
Flagstaff, Arizona 86001.
7. Acceptability of Insurers. Firm 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 Firm from potential insurer insolvency.
 8. Certificates of Insurance. The Firm 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 Firm 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 Firm of any deficiencies in such policies and endorsements. The City's receipt of Firm's policies or endorsements shall not relieve Firm from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Firm'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.