



Call for Artists and Creatives Request for Informal Proposals

Placemaking at the Historic Southside Community Garden 900 S. O'Leary Street

The City of Flagstaff announces a creative placemaking opportunity for qualified artists, creatives, artisans, or teams to design, fabricate, and install a creative placemaking project for the Historic Southside Community Garden located at 900 S. O'Leary Street. The City of Flagstaff, through its Beautification and Public Art Programs and our Beautification and Public Art Commission (BPAC), supports beautification, arts, and sciences in Flagstaff through projects such as this opportunity.

CLOSING DATE AND TIME: March 4, 2022, at 5:00 p.m.

PRE-APPLICATION MEETING: Thursday, February 10, 5:00 – 6:00 p.m. at the garden located on O'Leary Street near the intersection with South Lone Tree Road. RSVP for the Pre-Proposal Meeting to eliza.kretzmann@flagstaffaz.gov.

WHERE TO SUBMIT APPLICATIONS: Offers shall be submitted prior to the Closing Date and emailed to: eliza.kretzmann@flagstaffaz.gov.

QUESTIONS: All questions must be received by e via email at least three (3) calendar days prior to the Closing Date and Time.

PROJECT SPECIFICATIONS AND SITE

The City is releasing this call to create public art and/or beautification components as elements of creative placemaking at the Historic Southside Community Garden such as benches, entryways, signage, landscaping and planting, path delineation, sculptures, etc. to create a more welcoming and connective public space for Southside residents and community members. The budget for these elements is up to \$15,000.00.

The Southside neighborhood is in the heart of downtown Flagstaff, Arizona. Historically a racially diverse neighborhood, the Southside has been known for its diversity, businesses, and walkability. It is home to multigenerational families and students alike, as its southern border is comprised of Northern Arizona University.

According to the National Endowment for the Arts, "creative placemaking projects help to transform communities into lively, beautiful, and resilient places with the arts at their core. Creative placemaking is when artists, arts organizations, and community development practitioners deliberately integrate arts and culture into community revitalization work... creative placemaking supports local efforts to enhance quality of life and opportunity for existing residents, increase

creative activity, and create a distinct sense of place.” The interpretation of how to communicate this concept rests with the applicant(s).

Artist responsibilities will include (1) artwork/element design, fabrication, and installation, and (2) leading an aspect of community engagement. This can be included within the process of artwork/element design, fabrication and installation, site preparation, or otherwise included within the public art and beautification project process.

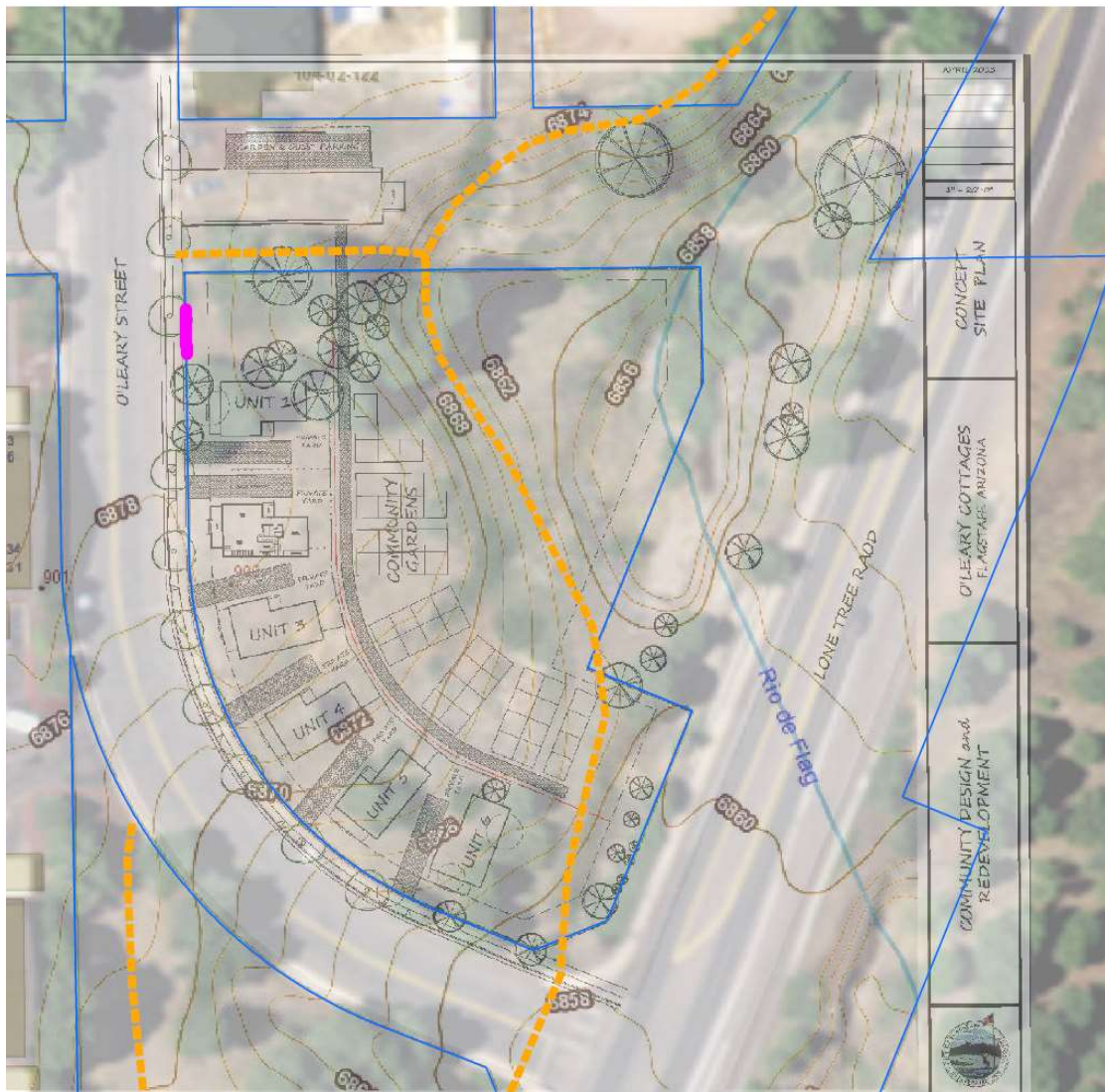
The Historic Southside Community Garden (formerly referred to as the O’Leary Community Garden) is located at 900 S. O’Leary Street, nestled between South O’Leary Street and South Lone Tree Road. The community garden was created in 2013 and is currently managed by [Terra BIRDS](#). Community resources on site include water, a garden shed, and garden plots available for community member use.

Creative placemaking project at the Historic Southside Community Garden **cannot interfere with existing plots and must NOT be placed within the footprint of the future potential housing project nor where the FUTS trail may be built.** The map included on page 3 shows the footprint for the housing and the anticipated FUTS trail expansion that must be avoided.

Community gardens need to be accessible for persons with disabilities, per the Americans with Disabilities Act (ADA). Please see the following links that help explain how these requirements may be met: [How do I build an accessible garden? - Naturalyards.com | Naturalyards.com](#); [AccessibleCommunityGardensGuide-GrassrootsGardensofBuffalo.pdf \(vcgn.org\)](#); [School and Community Garden ADA Guidelines 22411.pdf \(sharpschool.com\)](#) The City will work with selected Artist to confirm ADA compliance as needed related to any proposed Artwork.

Preferred locations include:

- Entry to the site from the sidewalk: elements can include an entryway and/or entry signage.
 - For the preferred location for an entryway, please see the pink area marked in the map on page 3. Signage can be anywhere along the sidewalk and should be moveable.
- Elements adjacent to or nearby the existing garden plots.
- Elements can be artistic and/or functional (for example, flowers and/or landscaping, artistic benches, flags that delineate the path, free-standing sculptural pieces, signage for the garden, attractive raised beds to replace the existing black cloth planters, etc.). **Elements emphasized by the Southside Community Association include: an entryway or entry signs that invite people in, seating and shade elements, elements that reflect the Southside (history, community, and future), work that celebrates the people who live here, elements that lead people into the space, elements/pieces to help to tell the story of the place and space.**



Site Map
Lone Tree/Hoskins FUTS
O'Leary Parcel

Existing FUTS
Planned FUTS



City of Flagstaff
October 2021

2 Map of the site including anticipated future development for affordable housing and extension of the Flagstaff Urban Trails System. Elements in applications either need to avoid future development areas for housing and the future path of the FUTS trail. The pink line indicates the preferred location for a garden entry element.



3 Photo of the existing site from near the sidewalk area. Currently it is difficult to see that there is even a garden there from the street and sidewalk. The raised beds are somewhat visible in the background.



4 Raised beds at the community garden (taken during the off season).



5 Additional photo of the site. To the east of the garden the topography drops off, providing opportunities for views or for future use of the site such as terracing.

DURATION

Both short/temporary and/or long-term projects are welcome at this site. Project may be relocated or removed at any time at the discretion of the City of Flagstaff.

VENDOR ELGIBILITY

This project is open to all qualified artists/creatives or artist teams who are residents of the United States.

PROJECT BUDGET

The chosen artist or artist team who is awarded the contract will receive \$15,000.00 to produce and execute a design-fabrication-installation proposal and to present the proposal, upon request, to the selection panel, citizen advisory boards, the public, and staff.

The total budget for this project is up to \$15,000.00 and must cover all expenses including:

- All costs, including supplies and materials, necessary for design, fabrication, and installation for completing this project.
- Taxes and insurance.
- Once awarded, the applicant will need to obtain insurance in amounts determined by the City (see standard insurance requirements attached in the sample contract). Insurance requirements may be reduced depending on the scope and content of the proposed project.
- Interface with the community, including volunteer day or other aspect of engagement.

- All costs for transportation for the artist and the artwork installation, including attendance at public meetings and working with the City staff.

ESTIMATED SCHEDULE

The City of Flagstaff reserves the right to alter these dates as necessary.

Date	Item
February 10, 2022	Pre-application meeting on site at the garden (see page 1 for details).
March 4, 2022	Call closes and applications are due.
Spring 2022	Applicant selected by a panel of community members.
Spring – Summer 2022	Project Implementation, including fabrication and installation of elements, community engagement (if included), etc.
Payment Schedule	The City will provide up to 30% of total payment upon execution of contract, 60% after approval of the design by BPAC, and 10% after final acceptance of the project by the City.

For Additional Information: Eliza Kretzmann, Beautification, Arts and Sciences Manager, eliza.kretzmann@flagstaffaz.gov or 928-213-2969 (voicemail only).

APPLICATION REQUIREMENTS and SCORING

The following must be submitted as specified below:

- A **statement** of interest in **PDF** format addressing the concept(s), design, qualifications summary, and general project approach, including information regarding applicant's approach to community involvement and your experience with the community of Flagstaff (not to exceed 1000 words). Include at the bottom of the page **Contact information** (name, address, email, and telephone no.)
- **No more than ten (10) images** of the proposed design(s), location on site, and fabrication and installation plans placed in a **Power Point**, one image per slide, plain black background, and no words.

Email application materials as attachments to: eliza.kretzmann@flagstaffaz.gov

Total size of the email with application requirement attachments **cannot exceed 25 MB. Applications not meeting the above listed requirements will not be considered.**

The application materials are due and must be submitted by **March 4, 2022, at 5:00 p.m.** All submissions are electronic.

SELECTION PROCESS

A selection panel of community members will be convened to review all submissions meeting

the application requirements and deadline. The artist or artist team will be selected based on criteria detailed below. Once recommended by the panel, the Beautification and Public Art Commission (BPAC) must approve the artist proposal before a contract will be offered and the project may begin.

Criteria for the Selection Panel

This is also on page 9:

CRITERIA	POINTS
Originality, visual/aesthetic quality, and artistic merit of proposal.	30
How well the project complements the specific site location, including how well the project improves the physical environment and how well the project reflects the community in which it resides.	30
Experience and expertise in two or three-dimensional public art media appropriate for outdoor installation in high desert environments; Structural elements, if included, are durable for the time intended for their use and appropriate for the site	15
Ability to successfully interact with and engage the community and deal with local public issues and concerns; knowledge of and experience in Flagstaff.	25
TOTAL POINTS	100

DUE DILIGENCE: It is your responsibility to examine the entire Solicitation prior to completing your offer, including the form of contract, City of Flagstaff Standard Terms and Conditions and Special Terms and Conditions.

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LATE OFFERS: Late applications shall not be accepted. The City will return any late offers.

WITHDRAWAL OF APPLICATION: You may withdraw an application in writing before the Closing Date and Time. ~~A withdrawal must be signed by the vendor's authorized representative and submitted to the Senior Procurement Specialist by hand delivery or mail.~~

OFFER ACCEPTANCE PERIOD: An offer made in response to this Solicitation shall be valid and irrevocable for ninety (90) days after the Closing Date and Time for proposal submittals.

ADDENDA: The City will issue any interpretation or correction of the Solicitation only by written addendum and a copy of each addendum will be e-mailed to you.

RETURN OF SIGNED ADDENDA: You are required to sign and return each Addendum along with your offer. Failure to return a signed copy of each Addendum shall result in rejection of the offer.

IMPROPER CONTACT WITH CITY EMPLOYEES: All vendors submitting an offer (including the firm's employees, representatives, agents, lobbyists, attorneys, and subcontractors) will refrain from direct or indirect contact for the purpose of influencing or creating bias in the evaluation/selection process with any person who may play a part in the evaluation/selection process. This includes but is not limited to the evaluation committee, City Council Members, City Manager, Assistant City Manager(s), Deputy City Manager(s), Department Directors, or other staff ("City Staff"). This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public, and to protect the integrity of the selection process. Vendor is responsible for bringing all questions and concerns to the city staff point-person, Eliza Kretzmann, identified on Page One of this document. If Eliza Kretzmann is unresponsive, the vendor may contact the City Manager. A vendor may be disqualified if the vendor:

(a) contacts a quorum of the Council or contributes to an open meeting law violation; (b) offers political support or gratuities in exchange for approval or support of vendor's offer; (c) obtains information from City Staff not available to other vendors which may result in an unfair advantage in the competitive procurement process and fails to notify Buyer of this fact within 48 hours thereafter; or (d) engages in any other egregious conduct.

PROCUREMENT PROCESS: The City's procurement process is described in the Procurement Code Manual, which can be accessed at www.flagstaff.az.gov. You are not required to but may review this Manual. The Solicitation is intended to provide all relevant information related to the procurement so that you may submit an offer. In the event of any conflict, the procedure outlined in this Solicitation will be followed or the conflict will be resolved by an Addendum.

CONTRACT WITH CITY

FORM OF CONTRACT: The City's proposed form of contract is attached to this Solicitation as *Attachment A*. The final form of contract will be conformed to match this Solicitation prior to contract award

STANDARD TERMS AND CONDITIONS: The City of Flagstaff Standard Terms and Conditions *Exhibit B* and are an explicit part of the Solicitation and any resulting contract with the City, unless otherwise specified in the Solicitation.

EXCEPTIONS: You may request changes to the form of contract, insurance or any terms and conditions as part of your offer.

CHANGES TO CONTRACT AFTER CONTRACT AWARD: Requests to change the contract after contract award may be rejected by the City. The contract shall not be modified within the first year after contract award where: (a) an amendment may result in a competitive advantage that was not made available to other vendors; (b) requests for changes may delay commencement of performance.

EVALUATION OF OFFER AND CONTRACT AWARD

PROPOSAL MOST ADVANTAGEOUS TO THE CITY: The City will award a contract in whole or in part to a responsible and responsive vendor whose offer is the most satisfactory and advantageous to the City based on the following Evaluation Criteria:

CRITERIA	POINTS
Originality, visual/aesthetic quality, and artistic merit of proposal.	30
How well the project complements the specific site location, including how well the project improves the physical environment and how well the project reflects the community in which it resides.	30
Experience and expertise in two or three-dimensional public art media appropriate for outdoor installation in high desert environments; Structural elements, if included, are durable for the time intended for their use and appropriate for the site	15
Ability to successfully interact with and engage the community and deal with local public issues and concerns; knowledge of and experience in Flagstaff.	25

TOTAL POINTS

100

FORMAT FOR RESPONSE: Interested and qualified firms are encouraged to provide a brief proposal based upon the Scope of Work and the Evaluation of Offer and Contract Award criteria.

RESPONSIBILITY: In evaluating responsibility, the City may consider all matters related to the vendor's ability to perform the contract satisfactorily as further described in Flagstaff City Code, Title 1, Chapter 1-20.

REQUESTS FOR ADDITIONAL INFORMATION: After the Closing Date and Time, the City may request you to provide additional information related to your offer. Failure to provide this information within five (5) business days after communication of the request by the City will be grounds for the City to reject an offer, and/or to declare the offer as non-responsive or non-responsible.

RESERVATION OF RIGHTS: The City reserves the right to reject any and all offers, or any part thereof. The City reserves the right to accept any offer in whole or in part, to multiple firms, or any line item, and to award a contract for purchase of the same. The City reserves the right to waive any clerical error or nonmaterial defect in the offer when it is deemed to be in the City's best interest. The City reserves the right to cancel or reissue a Solicitation.

NOTICE OF PROPOSED CONTRACT AWARD OR RECOMMENDATION: All vendors will receive an email notifying them of the City's proposed contract award or recommendation to reject all offers. This notice will be sent at least five (5) days before the City executes the contract/purchase order.

PUBLIC RECORDS: Offers received by the City are available for public inspection after a contract has been awarded, subject to any confidentiality restrictions.

ATTACHMENT A

SAMPLE CONTRACT

CONTRACT FOR PURCHASE OF SERVICES

Contract No. 2020-105

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 _____, (an individual or an Arizona non-profit corporation or an Arizona limited liability company) ("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:

Historic Southside Community Garden Creative Placemaking Project

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 \$15,000. 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 and 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 shall be effective as of the date signed by both parties and shall be completed within nine (9) months from notice to proceed.
7. Renewal: This Contract may be renewed for up to two (2) additional three (3) month 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.

DATA AND RECORDS

10. RESERVED

11. RESERVED

12. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Contractor shall immediately deliver to City copies all of City's work product and any other documents and data accumulated by Contractor in performance of this Contract, whether complete or in process.

INSURANCE

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

MISCELLANEOUS

14. Notice: Any formal notice concerning this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

To Contractor:

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

1. 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.

VENDOR

Print name: _____

Title: _____

CITY OF FLAGSTAFF

Print name: _____

Title: _____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

EXHIBIT A

EXAMPLE SCOPE OF WORK:

Artist will design, manufacture and install the elements at the Historic Southside Community Garden as described below:

[Description to be input here]

Schedule for the Project is:

[Schedule to be input here]

Payment for the Project is: The City will provide up to 30% of total payment upon execution of contract, 60% after approval of the design by BPAC, and 10% after final acceptance of the project by the City.

City Ownership and Use:

1. Artist grants City the non-exclusive right to photograph, reproduce or manufacture renderings of the Artwork/Elements of all sizes, materials, in full color, or black and white (collectively "the Artwork Reproductions").
2. Artist grants the City the non-exclusive right to display the Artwork Reproductions on City property.
3. 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 publicity, marketing, community outreach, education, or public exhibition, local public or library or city calendars.
4. Upon prior written request of Artist, City shall place a copyright notice on the Artwork or Artwork Reproductions prior to manufacture.
5. City shall have the right to exercise any or all of City's legal rights related to ownership and use of the Artwork (designs) provided pursuant to this Agreement.

Contractor Ownership and Commercial Use:

1. Except as provided for in this Contract (paragraph A, 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 the sale is subject to City's ownership and use rights as stated herein.

EXHIBIT B

CITY OF FLAGSTAFF STANDARD TERMS AND CONDITIONS

IN GENERAL

1. **PARTIES:** The City of Flagstaff ("City") and the contractor identified in the Contract ("Contractor") may be referred to individually as "Party" or collectively as "Parties".
2. **NOTICE TO PROCEED:** Contractor shall not commence performance until after the City has issued a Notice to Proceed.
3. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract and provide copies to City upon request.
4. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of the Contract.
5. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, the Contract is non-exclusive and the City reserves the right to contract with others for materials or services.
6. **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.

MATERIALS

7. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
8. **QUALITY:** Contractor warrants that all materials supplied under the Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials and will be safe and appropriate for use as normally used. The City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
9. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.
10. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to the City upon the City's acceptance of the materials.
11. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of

Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.

12. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.
13. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.
14. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor and may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute shall deliver conforming materials, or services, in each installment or lot of the Contract a breach of the Contract as a whole.
15. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
16. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens, other than the security interest held by Contractor, until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.
17. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

PAYMENT

18. **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 had been shipped or work performed. Invoices shall be sent within thirty (30) days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
19. **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, the City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
20. **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 the 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.

21. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
22. **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 the City.
23. **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 the City.
24. **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 the City or fees and charges owed to the City under the Contract.
25. **OFAC:** No payments may be made to any person in violation of Office of Foreign Assets Control regulations. 31 C.F.R. Part 501.

SERVICES

26. **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.
27. **CONTROL:** Contractor shall be responsible for the control of the work.
28. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
29. **SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
30. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
31. **ACCEPTANCE:** If the City rejects Contractor's work due to noncompliance with the Contract, the City, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.
32. **WARRANTY:** Contractor warrants all work for a period of one year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one year warranty is in addition to and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

33. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five years after completion of the Contract.

34. **RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.
35. **PUBLIC RECORDS:** The 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.
36. **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.

INDEMNIFICATION

37. **GENERAL INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys’ fees and other costs of defense, arising out of the acts, errors, or omissions of Contractor, its officers, agents, employees, and subcontractors, in performing or failing to perform the responsibilities identified in the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects, and upon tender by the City: (a) defend the same at Contractor’s sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys’ fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.
38. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys’ fees and other costs of defense arising out of the alleged infringement of any patent, trademark or copyright or other proprietary rights of any third-parties arising out of Contract performance or use by the City of materials furnished or work performed under the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor’s sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys’ fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.
39. **NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from an against any third-party claims, actions, liabilities, costs, including reasonable attorneys’ fees and other costs of defense arising out of all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, including but not limited to, consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the City. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor’s sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys’ fees,

suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

- 40. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 41. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the Parties.
- 42. **AMENDMENTS:** The Contract may be amended by written agreement of the Parties.
- 43. **SEVERABILITY:** If any term or provision of the 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 the Contract shall remain in full force and effect.
- 44. **NO WAIVER:** Both Parties have 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.
- 45. **ASSIGNMENT:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. Any assignment without such consent shall be null and void. No assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to the City. The Purchasing Director shall have authority to consent to an assignment on behalf of the City.
- 46. **BINDING EFFECT:** The Contract shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

- 47. **SUBCONTRACTING:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. The City reserves the right to withhold consent if the 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.
- 48. **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 whose business is 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.
- 49. **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's personnel shall abstain from use or possession of illegal drugs while engaged in performance of the Contract.

- 50. IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors shall comply with all state and federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of state and federal immigration laws and regulations shall constitute a material breach of the Contract and shall subject Contractor to penalties up to and including termination of the Contract. The City may, at its sole discretion, conduct random verification of the employment records of the employees of the Contractor and any subcontractors to ensure compliance with all state and federal immigration laws and regulations. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contract 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

- 51. TERMINATION FOR DEFAULT:** Prior to terminating the 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 to the Contract remedies provided for herein.
- 52. CITY REMEDIES:** In the event of Contractor's default, the 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. The 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.
- 53. CONTRACTOR REMEDIES:** In the event of the City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 54. TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of the Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
- 55. TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, the 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 the Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by the City before the effective date of termination.
- 56. 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 the 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.

57. **PAYMENT UPON TERMINATION:** Upon termination of the Contract, the City will pay Contractor for satisfactory performance up until the effective date of termination. The City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
58. **CANCELLATION FOR GRATUITIES:** The City may cancel the 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 in connection with award or performance of the Contract.
59. **CANCELLATION FOR CONFLICT OF INTEREST:** Pursuant to A.R.S. § 38-511, if the City identifies a conflict of interest in the award or performance of the Contract, the City may cancel the Contract within three years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

60. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with the City without the prior written consent of the City.
61. **NOTICES:** All notices given pursuant to the 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 days after being sent; or (c) sent by overnight courier, with receipt deemed effective two days after being sent. Notice may be sent by email as a secondary form of notice.
62. **THIRD PARTY BENEFICIARIES:** The Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
63. **GOVERNING LAW:** The Contract shall be construed in accordance with the laws of Arizona.
64. **FORUM:** In the event of litigation relating to the Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
65. **ATTORNEYS' FEES:** If any action at law or in equity is necessary to enforce the terms of the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.
66. **FORCE MAJUERE:**
- a. There may be events that occur during the term of the Contract that are beyond the control of both the City and Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God ("Events"). 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 the Contract.
 - b. There shall be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the Events and the City shall not pay additional costs incurred by Contractor as a result of such Events.
 - c. The Parties shall act in good faith to extend the Contract completion date without any penalty to Contractor and that the extension will be in an amount of time equal to any temporary delay. This provision of the Contract supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

67. **NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no cents (\$100,000), the Party shall certify that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.
68. **CHANGES TO CONTRACT:** The Contract shall not be modified within the first year after Contract award where: (a) an amendment may result in a competitive advantage that was not made available to other proposers/bidders; or (b) requests for changes may delay commencement of performance.

EXHIBIT C

INSURANCE REQUIREMENTS

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	\$1,000,000
Products/Completed Operations	\$1500,000
Each Occurrence	\$500,000

b. Umbrella Coverage \$1,000,000

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
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Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000

e. Professional Liability \$2,000,000

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. 2020-122
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.