

CONTRACT FOR PURCHASE OF SERVICES

Contract No. 2023-116

This Contract is entered into this _____ day of _____, 23 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Haddad Drugan LLC, a Washington State Limited Liability Company ("Contractor" or "Artist").

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

WHEREAS, City and Contractor anticipated that the artistic services would be provided over a period of time, and pursuant to a series of mutually satisfactory agreements;

WHEREAS, Contractor completed conceptual design in contract City of Flagstaff Contract No. TER-2021-054-AG1 and completed the design phase of the Art Glass and the Southside Grove Sculpture in contract amendment TER-2021-054-AG1-AM1, City and Contractor seek to enter into this contract for artistic services through fabrication and delivery of Art Glass and through installation of the Southside Grove Sculpture;

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

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

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

**Two Art Works for the Downtown Connection
Center: Art Glass Fabrication & Delivery;
and Southside Grove Sculpture
Fabrication, Delivery & Installation**

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

2. Compensation: In consideration for the Contractor's satisfactory performance, City shall make payment to the Contractor not to exceed Five Hundred and Thirty Thousand Four Hundred and Fifty-One Dollars and zero cents (\$530,451). Payment Schedule is included in the Scope of Work attached hereto as Exhibit A. 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 increase 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 Jana Weldon, Beautification, Arts & Sciences Project Administrator, or his/her designee. All communications to the City shall be through the City Representative. City Representative is responsible for bringing any request for a contract amendment or price adjustment to the attention of the City Buyer.
5. City Cooperation: The City will cooperate with Contractor by placing at its disposal all available information concerning the City, City property, or the City project reasonably necessary for

Contractor's performance of this Contract.

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

To the City:

Emily Markel
Acting Purchasing Manager
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 86001
Emily.Markel@flagstaffaz.gov

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

To Contractor:

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

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

CONTRACTOR

Haddad Drugan, LLC

Laura Haddad, Authorized Representative

CITY OF FLAGSTAFF

Becky Daggett, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney's Office

EXHIBIT A

SCOPE OF WORK ART

I. ART GLASS

A. SITE:

The City of Flagstaff is designing art and beautification projects at the New Mountain Line Downtown Connection Center (DCC), an expansion of the existing transit hub on Phoenix Ave, between Milton St and Beaver St, Flagstaff, AZ 86001 (“the Site”).

B. ARTWORK DESCRIPTION:

Art Glass will be integrated into the main entry of the new DCC building. The architect and the artist team worked diligently to align the glass mullions and support features so that the art glass and architectural features are complementarily enhancing each other.

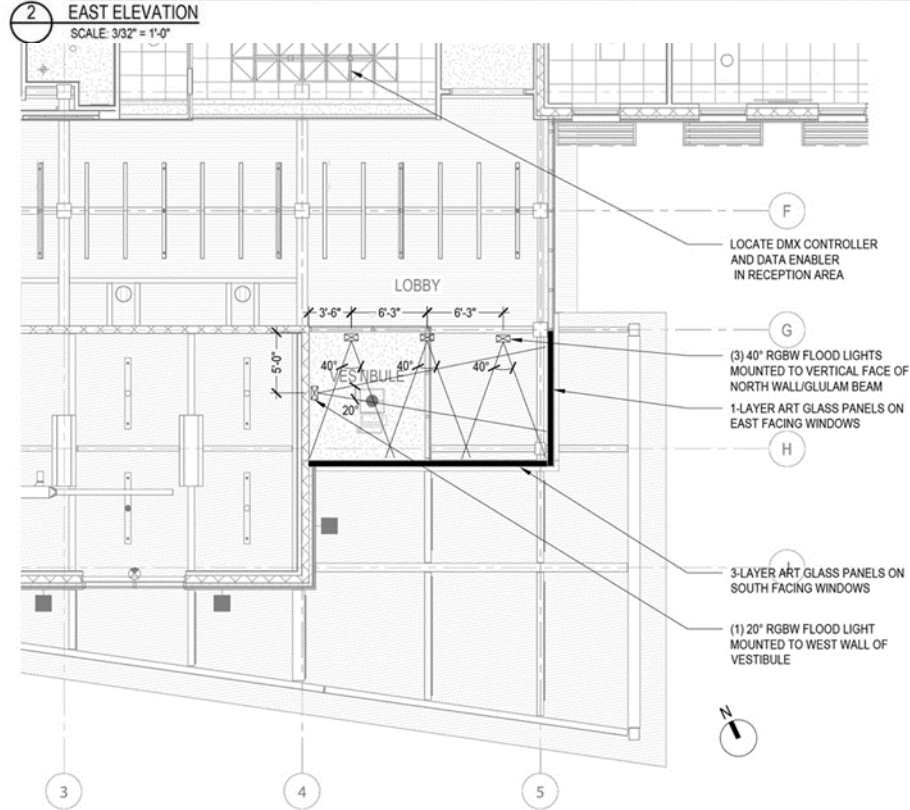


① GLASS ART PERSPECTIVE
SCALE: NTS

A multi-color section of art glass, composed of five glazing units, is located on the south façade over the front entry to the building, facing Phoenix Avenue. Another section of art glass, composed of four glazing units but of a single color, is located on the east façade facing the future bus bays and civic space. Drawing from Flagstaff’s natural beauty and elements of the Mountain Line logo and identity, the artwork is contextual as well as colorful. At night, color-changing RGB floodlights mounted to walls inside the building will backlight the art , projecting changing colors that alter the appearance of the imagery on the glass, making images dynamically emerge and recede from view.

The artistic design will be translated to glass with screen-printed enamels. The applied colors will be kiln-fired to the glass to form a permanent bond with the glass. After all colors have been individually fired, the float glass will be thermally toughened to form safety glass (according to DIN

12150-1) and worked into insulated glass units following the architect's given specifications. The overall artwork will have an approximate area of 285.5 square feet.



1 LIGHT FIXTURE LOCATION PLAN
SCALE: 1/8" = 1'-0"

90% Fabrication Documents are included in Attachment 1. Final Fabrication Documents are subject to approval of the City of Flagstaff, and a copy of the final documents will be submitted for the Contract file. Services will be performed per the Final Fabrication Documents.

C. ARTWORK PROCUREMENT:

The Artist will deliver to the Site:

- Insulated art glass units, per specifications and sizes dictated by Mountain Line's DCC project team and included in the final Fabrication Documents.
- Electrical equipment required for the art installation, also per the final Fabrication Documents.

Artist Exclusion: Installation of the art glass units and art-related electrical equipment will be installed by Mountain Line's DCC Project General Contractor as part of a separate agreement with the City, with oversight by the Artist. Installation is anticipated to occur in Summer 2024.

D. TASKS

1. Start-up and Shop Drawings:
 - Enter into subcontract with art glass fabricator (Glasmalerei Peters), which shall incorporate the final Fabrication Documents.
 - Create detailed graphics suitable for screen printing the design onto glass (by Artist)
 - Receive final dimensions of art glass units (by General Contractor)
 - Adjust artwork graphics with final glass dimensions; provide digital files to art glass fabricator for production (by Artist)
 - Deliverable: PDF files of detailed artwork graphics for review by City
2. Art Glass Fabrication (by Artist's subcontractor, Glasmalerei Peters), which shall incorporate the final Fabrication Documents:
 - Apply artwork to float glass (by Peters)
 - Assemble art glass into insulated glass units (by Peters)
 - Review artwork fabrication in process to ensure artistic intent is met (by Artist)
 - Deliverable: Photographs of art glass fabrication in process
3. Art Glass Installation:
 - Coordinate art installation schedule and details with Project Team (by Artist)
 - Pack, crate and ship art glass units to Site for receipt by General Contractor (by Peters)
 - Oversee installation of art glass units (by General Contractor, with Artist review)
 - Deliverable: Art glass units (for installation by General Contractor)
4. Electrical Equipment Installation:
 - Procure and ship electrical equipment to Site for receipt by General Contractor (by Artist)
 - Review installation of electrical equipment (by General Contractor, with Artist review)
 - Deliverable: Electrical equipment (for installation by General Contractor)
5. Electrical Equipment Start-up Services:
 - Design light shows for color-changing effects (by Artist)

- Address light fixtures and input light show programs (by Programmer TBD)
- On-site review and adjustment of light shows over 1-2 nights (by Artist, Programmer, and City)

6. Project Close-Out:

- Produce and deliver maintenance record, including light show descriptions (by Artist)
- Provide plaque information (by Artist and City)
- Provide day and night photographs of artwork (by Artist)
- Participate in ribbon-cutting or other opening event (by Artist)
- Deliverables: Maintenance record, plaque information, photographs

Exclusions: Task includes ancillary work necessary to complete the work listed as Artist's responsibility, but Artist is not responsible for work that is not listed.

E. PAYMENT SCHEDULE WITH BUDGET:

1. Payment 1 - (50%) – Shall be paid upon execution of the contract, for procurement of materials and equipment
2. Payment 2 (40%) – Shall be paid upon receipt of art glass units at site
3. Payment 3 (10%) – Shall be paid upon completion of Project Close-out; delay of project ribbon cutting shall not delay payment of artist upon City's receipt of Deliverables.

TOTAL PAYMENT AMOUNT: \$121,296.

Flagstaff DCC Phase 1 Art Budget — Art Glass

02/08/2023 FINAL DESIGN

1. MATERIALS, EQUIPMENT, & LABOR

1.01 Production Graphics	1 l.s.	\$5,000 /l.s.	\$5,000	Haddad Dragan subcontractor; layout of dots and graphic files for glass production
1.02 Glass Samples	1 l.s.	\$1,260 /l.s.	\$1,260	Peters Studio 1/27/23 quote 23-00-033; two samples printed and fired with 3 colors
1.03 South Art Glass Fabrication (CW 4)	175 s.f.	\$285 /s.f.	\$49,930	Peters Studio 1/27/23 quote 23-00-033; 3-color screen-print assembled into 5 insulated glass units
1.04 East Art Glass Fabrication (CW 5)	110 s.f.	\$225 /s.f.	\$24,830	Peters Studio 1/27/23 quote 23-00-033; 1-color screen-print assembled into 4 insulated glass units
1.05 Glass Packing and Shipping	1 l.s.	\$5,000 /l.s.	\$5,000	Peters Studio 1/27/23 quote 23-00-033; crating, ocean shipping, customs
1.06 RGB LED Floodlights (4) + Controls	1 l.s.	\$12,500 /l.s.	\$12,500	Stoneway Electric 2/1/23 Quote; (4) RGB fixtures, (1) power/data supplier, (1) DMX controller
1.07 Shipping Lights to Flagstaff	1 l.s.	\$500 /l.s.	\$500	Shipping costs to send electrical equipment from Seattle to Flagstaff
1.08 Programming Lights	1 l.s.	\$4,000 /l.s.	\$4,000	Programmer TBD; 2 days @ \$1,500 each + \$1,000 travel

Subtotal—MATERIALS, EQUIPMENT, & LABOR \$103,020

2. ARTIST FEES & EXPENSES

2.01 Artist Fee - Production Oversight	1 l.s.	\$7,500 /l.s.	\$7,500	Haddad Dragan: oversight of fabrication and installation, contractor coordination, pm
2.02 Travel Expenses	2 ea	\$2,000 /ea	\$4,000	assume 2 trips: 1. glass installation 2. lighting programming
2.03 Studio Expenses – Production	1 l.s.	\$1,000 /l.s.	\$1,000	Washington State B&O taxes; insurance & overhead

Subtotal—FEES & EXPENSES \$12,500

SUBTOTAL \$115,520 *Materials, Equipment, Labor, Fees, Expenses*

CONTINGENCY \$5,776 5%

GRAND TOTAL \$121,296

F. NOTICE AND CORRECTION OF DEFICIENCIES:

If at any time the City determines that the Artist's services do not conform to the scope of services

under this Agreement, the City reserves the right to notify the Contractor in writing of the deficiencies and that the City intends to withhold the next payment within 30 days of the determination, and the City may issue a stop work order. Contractor will have 30 days to cure the City's objections and will notify the City in writing of completion of the cure. If Contractor disputes the City's determination, within 15 days of Contractor's receipt of City's notice, Contractor shall notify the City in writing. In such event, the City shall make reasonable efforts to resolve the dispute however, final determination as to whether Contractor has complied with the terms of this Agreement will remain with the City.

G. PERMITS AND LICENSES

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

H. INTELLECTUAL PROPERTY RIGHTS WARRANTY:

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

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

- a. Artist grants City the non-exclusive right to photograph, reproduce or manufacture renderings of the Artwork of all sizes, materials, in full color, or black and white (collectively "the Artwork Reproductions").
- b. Artist grants the City the non-exclusive right to display the Artwork Reproductions on City property.
- c. Artist grants City the non-exclusive right to publish the Artwork and Artwork Reproductions in any type of medium, including but not limited to electronic formats for the purposes of city or public transit publicity, marketing, community outreach, education, or public exhibition, local public or library or city calendars, and public transit service advertising.
- d. Upon prior written request of Artist, City shall place a copyright notice on the Artwork plaque or Artwork Reproductions prior to manufacture.
- e. City shall have the right to allow Mountain Line to exercise any or all of City's legal rights related to ownership and use of the Artwork (designs) provided pursuant to this Agreement.

J. ARTIST OWNERSHIP OF ARTWORK COPYRIGHT AND COMMERCIAL USE:

1. Except as provided for in this Contract (paragraph I, immediately above, related to City ownership and use), the Artist retains: (1) all rights to the Artwork (designs) under the Copyright Act of 1976, 17 U.S.C. § 101, et seq., as amended by the Visual Artists Rights Act (VARA), and any successor act; and (2) all rights expressly granted in this contract, as well as any and all other intellectual property rights in the Artwork, whether statutory or common law, international, federal, state or local, except as specifically set forth herein.
2. Artist may, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright of the Artwork in the Artist's name and may provide the City with a copy of the application for registration, the registration number and the effective date of the registration.

3. Artist as copyright owner may use or sell the Artwork for commercial purposes, so long as such sale is subject to City's ownership and use rights as stated herein.

K. MESSAGING OF ARTWORK:

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

L. MAINTENANCE AND REPAIRS:

1. As a condition of and prior to final acceptance of the Artwork by the City, the Artist will supply the City with maintenance instructions for the Artwork and that also include a description of expectations for the natural weathering and wear and tear of the Artwork.
2. The City is responsible for the proper care and maintenance of the Artwork. The City agrees to ensure that the work is maintained and protected to the extent practical.
3. During the lifetime of the artwork the Artist will supply at no cost to the Artist and at no charge to the City, within reason, advice as to problems arising in relation to maintenance of the Artwork.
4. The City shall make every reasonable effort to consult with the Artist concerning repairs to the Artwork. To the extent practical, the Artist shall be given the opportunity to accomplish repairs at a reasonable fee. The City reserves the right to obtain competitive bids and to choose the highest quality but not necessarily the least expensive vendor for all repairs and restoration. In the event that City makes repairs or restoration not approved by Artist, Artist shall have the right, at Artist's sole option, to have Artist's association with Artwork severed.

M. ARTIST'S WARRANTIES OF QUALITY AND CONDITION OF ARTWORK:

1. The Artist warrants to the City that the fabrication and installation of the Artwork will be performed in a workmanlike manner and that the Artwork will be free of defects in workmanship, fabrication, materials or installation, including inherent vice, and that the Artist will, at the Artist's own expense, remedy any defects found in the Artwork due to faulty workmanship, fabrication, or materials for a period of two (2) years after the final acceptance of the Artwork by the City. Artist shall promptly repair or replace in the City's sole discretion and at no additional cost to the City any portion of the Artwork that is found to be defective during the warranty period. Changes in Artwork due to vandalism, inherent flaws of the architectural system in which the Artwork is integrated, or actions of Mountain Line's General Contractor responsible for installing the Artwork are not subject to warranty.
2. The Artist warrants to the City that the Artwork maintenance recommendations to be provided by the Artist to the City set forth in **Exhibit D** will be adequate to maintain the Artwork in good condition, reasonable wear and tear excepted, for the estimated life of the Artwork (a minimum of 25 years).
3. With the exception of damage due to vandalism or accident by any person other than the Artist or persons under Artist's employ, direction or supervision, the Artist warrants that the Artwork will not contain any defect in design or construction including any defect which may be a reasonably foreseeable hazard or a danger to the health and safety of the public and further agrees to cooperate in designing and permitting adjustments to the Artwork, if necessary, to eliminate hazards or potential hazards which become apparent after the Artwork is accepted by the City.
4. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.

N. MODIFICATIONS TO OR REMOVAL OF ARTWORK

The City will not intentionally alter, modify, change, destroy, or damage the Artwork without making

reasonable attempts to consult with the Artist except in cases where Artwork is posing or is in imminent danger and emergency action is required. If alteration, modification, or change is desired for non-emergency situations, City agrees to consult with Artist on best solutions to preserve integrity of Artwork. City may, in its discretion, in accordance with standards of practice deaccession or relocate the Artwork, but will endeavor to consult with the Artist prior to any deaccession or relocation, unless Artwork is posing or is in imminent danger and emergency action is required.

O. SURVIVAL OF PROVISIONS:

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

1. INTELLECTUAL PROPERTY RIGHTS WARRANTY;
2. CITY OWNERSHIP AND USE OF ARTWORK;
3. ARTIST OWNERSHIP OF ARTWORK COPYRIGHT AND COMMERCIAL USE;
4. MESSAGING OF ARTWORK.
5. MAINTENANCE AND REPAIRS
6. ARTIST'S WARRANTIES OF QUALITY AND CONDITION OF ARTWORK
7. MODIFICATIONS TO OR REMOVAL OF ARTWORK

P. FINAL ACCEPTANCE:

Artist shall notify the City in writing when the Artwork has been completed and installed. Within fourteen (14) days after receiving the Notice of Completion, City shall inspect the Artwork to determine whether it conforms with the Final Design Documents and shall send Artist a written notice of acceptance ("Final Acceptance") or rejection of the Artwork as follows:

1. City's notice of Final Acceptance of the Artwork shall constitute City's acknowledgment that Artist has completed the Artwork in substantial conformity with the Final Design Documents. Title to the Artwork passes to the City upon Acceptance of the Artwork.
2. If the City issues a notice of rejection of the Artwork, Artist will make any necessary adjustments to the Artwork within thirty (30) days of receiving City's notice of rejection to bring the Artwork in conformance with the Final Design Documents.

II. SOUTHSIDE GROVE SCULPTURE

A. SITE:

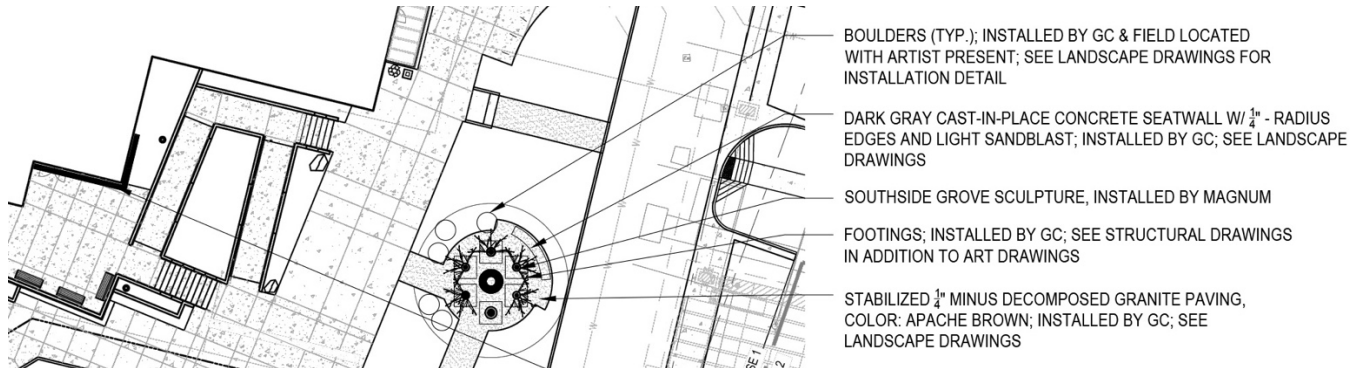
The City of Flagstaff is designing art and beautification projects at the New Mountain Line Downtown Connection Center (DCC), an expansion of the existing transit hub on Phoenix Ave, between Milton St and Beaver St, Flagstaff, AZ 86001.

B. ARTWORK DESCRIPTION:

"Southside Grove" is a landmark sculpture to be located within a landscaped area adjacent the entry plaza of the new DCC building. Sculptural steel trees, aligned to celestial events, create a strong and durable form. A variety of finishes and details give them a soft, organic appearance that plays with changing light. Together they create an immersive experience that visitors can enter to have a close-up view of the trunks as well as a central "time table" feature.



1 GROVE SCULPTURE IMAGE
SCALE: NTS



The primary elements of the sculpture are:

- Six ponderosa pine and telescope inspired “Trunks” made from weathered steel, positioned in a circle and aligned to solstices and equinoxes;
- Cultural symbols etched into all six Trunks, representing important cultures that have come together as community in Flagstaff;
- Etched bark texture inspired by Ponderosa Pines on the cladding of the five “Tree Trunks”;
- (75) overhead horizontal “Branches” on the five “Tree Trunks”;
- (75) Acrylic Linear Prisms that catch sunlight on the ends of the Branches;
- (Approximately 75) “Pine Needle Clusters” composed of colored acrylic rods and silver spheres, attached to the ends of some branchlets;
- Oculus opening in the single “Telescope Trunk,” marking the position of the sun at noon on the Vernal and Autumnal Equinoxes;
- Bell-like feature on the top of the single “Telescope Trunk” that creates a chime sound when it is windy;

- “Time Table” in the center of the sculptural grove, made from a weathering steel base with a granite top that is etched with tree rings and text referencing significant natural and cultural events in astronomy, and of Indigenous peoples and other cultures of the Southside and Flagstaff.

90% Fabrication Documents are included in Attachment 1. Final Fabrication Documents are subject to approval of the City of Flagstaff, and a copy of the final documents will be submitted for the Contract file. Services will be performed per the Final Fabrication Documents.

C. ARTWORK PROCUREMENT:

The Artist will deliver and install at the site:

- All sculpture components.

Artist Exclusion: Concrete foundations for the sculpture will be installed by the DCC Project General Contractor as part of a separate contract with the City, with oversight by the Artist. The DCC Project General Contractor will also be installing landscape elements, with Artist oversight as noted under Tasks.

Installation is anticipated to occur in Summer 2024

D. TASKS

7. Start-up and Shop Drawings:
 - Enter into subcontracts with fabricator/installer, Magnum Architectural, Inc. and stone fabricator, Hilgartner Natural Stone Company. Magnum Architectural Inc will install all elements of the sculpture and has AZ Contractor’s License: 120931 B-0. The requirement of an AZ Contractor License must be in the contract between Artist and installer. Any change of installer subcontractor must be approved by City and the AZ Contractor License requirement will not be waived.
 - Create detailed illustrative files depicting Time Table graphic, suitable for etching onto granite; revise as needed per City and Stakeholder review of content of text (by Artist)
 - Acquire material samples and make mock-ups of needle clusters, bell, and granite etching (by Magnum and Hilgartner)
 - Create detailed production drawings of sculpture parts and assemblies (by Magnum)
 - Review sculpture assemblies with Structural Engineer; engineer will stamp relevant sheets of fabricator’s shop drawings (by Meyer Borgman Johnson, under separate contract with City)
 - Deliverable: PDF files of Time Table graphic for review and comment by City; PDF files of stamped structural drawings and calculations (by MBJ)
8. Sculpture Fabrication (by Artist’s subcontractors, Magnum and Hilgartner):
 - Procure materials and hardware required to produce sculpture (by Magnum)
 - Apply Time Table graphic to granite slab; pack and ship to Magnum’s shop in Phoenix (by Hilgartner)
 - Fabricate sculpture, with oversight by Artist (by Magnum)
 - Review artwork fabrication in process to ensure artistic intent is met (by Artist)
 - Deliverable: Photographs of sculpture fabrication in process

9. Sculpture Installation:

- Coordinate art installation schedule and details with Project Team (by Artist)
- Review and approve layout and installation of foundation forms, work to be performed by Mountain Line’s General Contractor
- Pack, transport, and deliver sculpture to DCC Site (by Magnum)
- Install sculpture, with oversight by Artist (by Magnum and Artist)
- Deliverable: Sculpture

10. Project Close-Out:

- Review placement of paving, planting, boulders and seating elements around sculpture (by General Contractor, with Artist review)
- Produce and deliver maintenance plan (by Artist)
- Provide plaque information (by Artist and City)
- Provide daytime photographs of artwork (by Artist)
- Participate in ribbon-cutting or other opening event (by Artist)
- Deliverables: Maintenance plan, plaque information, photographs

Exclusions: Any Work not listed as a Task is assumed to be the work of others.

E. PAYMENT SCHEDULE WITH BUDGET:

1. Payment 1 - (20%) – Shall be paid upon execution of the contract, for procurement of subcontracts
2. Payment 2 (50%) – Shall be paid upon initiation of sculpture fabrication
3. Payment 3 (25%) – Shall be paid upon completion of sculpture installation
4. Payment 4 (5%) – Shall be paid upon completion of Project Close-out; delay of project ribbon cutting shall not delay payment of artist upon City’s receipt of Deliverables

TOTAL PAYMENT AMOUNT: \$409,155.00

Flagstaff DCC Phase 1 Art Budget — Grove Sculpture

02/08/2023 FINAL DESIGN

1. MATERIALS, EQUIPMENT, & LABOR

1.01 Sculpture Modeling and Drafting	1 l.s.	\$5,000 /l.s.	\$5,000	Hoddad Dragan and subcontractors; design details, 3D modeling, and CAD drafting
1.02 Sample Materials	1 l.s.	\$600 /l.s.	\$600	Acrylic rods, prisms, bell materials, bark, prisms
1.03 Bell	1 ea	\$5,000 /ea	\$5,000	Bell for South Tower
1.04 Acrylic Prisms	93 ea	\$18 /ea	\$1,674	Mini-Science Inc., 25 mm x 25 mm x 25 mm x 150 mm long; includes 18 extras
1.05 Prisms Machining	93 ea	\$10 /ea	\$930	Custom Edge 2/1/22 estimate; notch and drill holes at base
1.06 Metalwork Fabrication-Installation	1 l.s.	\$316,975 /l.s.	\$316,975	Magnum 1/27/23 estimate B-120932; shop drawings, samples, materials, labor, pre-oxidized finish, laser-cut bark, needle assemblies, prism attachments, delivery, rental equipment, installation
1.07 Time Table Graphics	1 l.s.	\$4,000 /l.s.	\$4,000	Hoddad Dragan subcontractor; layout of tree rings & timeline and graphic files for etching stone
1.08 Granite Table Top Fabrication	1 l.s.	\$20,992 /l.s.	\$20,992	Hilgartner estimate; 5'-diameter, cut-to-size, polished, sandblasted, carved
1.09 Granite Packing and Shipping	1 l.s.	\$6,000 /l.s.	\$6,000	Hilgartner estimate; crating and shipping
1.10 Table Base	1 l.s.	\$0 /l.s.	\$0	Included in Magnum estimate estimate B-120932 above
1.11 Granite Installation	1 l.s.	\$0 /l.s.	\$0	Included in Magnum estimate estimate B-120932 above
Subtotal—GROVE SCULPTURE			\$361,171	

2. ARTIST FEES & EXPENSES

2.01 Artist Fee - Production Oversight	1 l.s.	\$22,500 /l.s.	\$22,500	Hoddad Dragan: oversight of fabrication and installation, contractor coordination, pm
2.02 Travel Expenses	2 ea	\$2,000 /ea	\$4,000	assume 2 trips: 1. foundation installation 2. sculpture installation
2.03 Studio Expenses – Production	1 l.s.	\$2,000 /l.s.	\$2,000	Washington State B&O taxes; insurance & overhead
Subtotal—FEES & EXPENSES			\$28,500	

SUBTOTAL	\$389,671	Materials, Equipment, Labor, Fees, Expenses
CONTINGENCY	\$19,484	5%
GRAND TOTAL	\$409,155	

F. NOTICE AND CORRECTION OF DEFICIENCIES

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

G. PERMITS AND LICENSES

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

H. INTELLECTUAL PROPERTY RIGHTS WARRANTY:

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

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

- f. Artist grants City the non-exclusive right to photograph, reproduce or manufacture renderings of the Artwork of all sizes, materials, in full color, or black and white (collectively "the Artwork Reproductions").
- g. Artist grants the City the non-exclusive right to display the Artwork Reproductions on City property.
- h. Artist grants City the non-exclusive right to publish the Artwork and Artwork Reproductions in any type of medium, including but not limited to electronic formats for the purposes of city or public transit publicity, marketing, community outreach, education, or public exhibition, local public or library or city calendars, and public transit service advertising.
- i. Upon prior written request of Artist, City shall place a copyright notice on the Artwork or Artwork Reproductions prior to manufacture.
- j. City shall have the right to allow Mountain Line to exercise any or all of City's legal rights related to ownership and use of the Artwork (designs) provided pursuant to this Agreement.
- k. City anticipates that the Artwork (Southside Grove Sculpture) will be relocated in the future in response to the Rio de Flag Flood Control Project. In the event Artist is not able to continue providing artistic services to City through subsequent phases of the Downtown Connection Center development (relocation), and/or the parties are not able to agree upon a commercially reasonable terms and conditions for completion of the artistic services for the subsequent phases of the Downtown Connection Center development (relocation) despite good faith negotiations, then the City shall have the right to use another contractor to oversee relocation of the Artwork adhering to principles of the initial artwork siting as described in Final Fabrication Documents.

J. ARTIST OWNERSHIP OF ARTWORK COPYRIGHT AND COMMERCIAL USE:

- a. Except as provided for in this Contract (paragraph G, related to City ownership and use), the Artist retains: (1) all rights to the Artwork (designs) under the Copyright Act of 1976, 17 U.S.C. § 101, et seq., as amended by the Visual Artists Rights Act (VARA), and any successor act; an property rights in the Artwork, whether statutory or common law, international, federal, state or local, except as specifically set forth herein.
- b. 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.
- c. Artist as copyright owner may use or sell the Artwork for commercial purposes, so long as such sale is subject to City's ownership and use rights as stated herein.

K. MESSAGING OF ARTWORK:

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

L. MAINTENANCE AND REPAIRS

- a. As a condition of and prior to final acceptance of the Artwork by the City, the Artist will supply the City with maintenance instructions for the Artwork that also include a description of expectations for the natural weathering and wear and tear of the Artwork.
- b. The City is responsible for the proper care and maintenance of the Artwork. The City agrees to ensure that the work is maintained and protected to the extent practical.
- c. During the lifetime of the artwork the Artist will supply at no cost to the Artist and at no charge to the City, advice as to problems arising in relation to maintenance of the Artwork.
- d. The City shall make every reasonable effort to consult with the Artist concerning repairs to the Artwork. To the extent practical, the Artist shall be given the opportunity to accomplish repairs at a reasonable fee. The City reserves the right to obtain competitive bids and to choose the highest quality but not necessarily the least expensive vendor for all repairs and restoration. In the event that City makes repairs or restoration not approved by Artist, Artist shall have the right, at Artist's sole option, to have Artist's association with Artwork severed.

M. ARTIST WARRANTIES OF QUALITY AND CONDITIONS OF ARTWORK

- a. The Artist warrants to the City that the fabrication and installation of the Artwork will be performed in a workmanlike manner and that the Artwork will be free of defects in workmanship, fabrication, materials or installation, including inherent vice, and that the Artist will, at the Artist's own expense, remedy any defects found in the Artwork due to faulty workmanship, fabrication, materials or installation for a period of two (2) years after the final acceptance of the Artwork by the City. Artist shall promptly repair or replace in the City's sole discretion and at no additional cost to the City any portion of the Artwork that is found to be defective during the warranty period. Artist is not warranting against changes in the Artwork due to Mountain Line's General Contractor's work; or vandalism, and natural weathering and aging of the materials as expected by Artist and City and described in the maintenance instructions.
- b. The Artist warrants to the City that the Artwork maintenance recommendations to be

provided by the Artist to the City set forth in **Exhibit D** will be adequate to maintain the Artwork in good condition, reasonable wear and tear excepted, for the estimated life of the Artwork (minimum of 25 years).

- c. With the exception of damage due to vandalism or accident by any person other than the Artist or persons under Artist's employ, direction or supervision, the Artist warrants that the Artwork will not contain any defect in design or construction including any defect which may be a reasonably foreseeable hazard or a danger to the health and safety of the public, assuming sensible behavior, and further agrees to cooperate in designing and permitting adjustments to the work, if necessary, to eliminate hazards or potential hazards which become apparent after the Artwork is accepted by the City.
- d. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.

N. MODIFICATIONS OR REMOVAL OF ARTWORK

The City will not intentionally alter, modify, change, destroy, or damage the Artwork without making reasonable attempts to consult with the Artist except in cases where Artwork is posing an, or is in, imminent danger and emergency action is required. If alteration, modification, or change is desired for non-emergency situations, City agrees to consult with Artist on best solutions to preserve integrity of Artwork. City may, in its discretion, in accordance standards of practice, deaccession or relocate the Artwork, but will make reasonable attempts to consult with the Artist prior to any deaccession or relocation, unless Artwork is posing an, or is in, imminent danger and emergency action is required. City and Artist agree that this sculpture has one planned relocation to the Civic Space in Mountain Line's Phase 2 of the DCC project and that if feasible Artist will participate in the process of designing its placement and integration at the Civic Space location.



O. SURVIVAL OF PROVISIONS:

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

- a. INTELLECTUAL PROPERTY RIGHTS WARRANTY;
- b. CITY OWNERSHIP AND USE OF ARTWORK;
- c. ARTIST OWNERSHIP OF ARTWORK COPYRIGHT AND COMMERCIAL USE;
- d. MESSAGING OF ARTWORK
- e. MAINTENANCE AND REPAIRS
- f. ARTIST WARRANTIES OF QUALITY AND CONDITIONS OF ARTWORK
- g. MODIFICATIONS OR REMOVAL OF ARTWORK

P. FINAL ACCEPTANCE

Artist shall notify the City in writing when the Artwork has been completed and installed. Within fourteen (14) days after receiving the Notice of Completion, City shall inspect the Artwork to determine whether it conforms with the Final Design Documents and shall send Artist a written notice of acceptance ("Final Acceptance") or rejection of the Artwork as follows:

1. City's notice of Final Acceptance of the Artwork shall constitute City's acknowledgment that Artist has completed the Artwork in substantial conformity with the Final Design Documents. Title to the Artwork passes to the City upon Acceptance of the Artwork.
2. If the City issues a notice of rejection of the Artwork, Artist will make any necessary adjustments to the Artwork within thirty (30) days of receiving City's notice of rejection to bring the Artwork in conformance with the Final Design Documents.

EXHIBIT B

STANDARD TERMS AND CONDITIONS

(Last Updated January 19, 2023)

*The term "Contractor" may substitute for the term "vendors," "consultants," or "firms," depending on the purpose of the underlying Contract.

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.~~ Contract shall commence upon effective date of the contract.
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 may not substitute nonconforming materials and/or services. Delivery of nonconforming materials and/or services, or a default of any nature, shall constitute 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. COOPERATIVE PURCHASE CONTRACTS:** Presuming that Contractor agreed to such during the procurement process, Contractor will enter into cooperative purchase arrangements, as sanctioned by state and federal law, to allow Contractor to sell materials and services to any member of a cooperative group under the same pricing, terms and conditions of the contract awarded to the Contractor by the public procurement unit, following a competitive procurement process.
- 61. ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with the City without the prior written consent of the City.
- 62. 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.
- 63. 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.
- 64. GOVERNING LAW:** The Contract shall be construed in accordance with the laws of Arizona.
- 65. FORUM:** In the event of litigation relating to the Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
- 66. 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.
- 67. 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.

68. 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.

69. 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.

70. FORCED LABOR OF ETHNIC UYGHURS: If Contractor engages in for-profit activity and has ten (10) or more employees, pursuant to A.R.S. §35-394, the Contractor certifies that it does not currently, and agrees for the duration of the contract that it will not, use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and 3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Contractor becomes aware during the term of the contract that the company is not in compliance with the written certification, the Contractor shall notify the City within five (5) business days after becoming aware of the noncompliance. If the Contractor does not provide the City with a written certification that the Contractor has remedied the noncompliance within 180 days after notifying the City of the noncompliance, this Contract terminates, except that if the contract termination date occurs before the end of the remedy period the Contract terminations on the Contract termination date.

EXHIBIT C

STANDARD INSURANCE REQUIREMENTS

(Last Updated January 19, 2023)

*The term "Contractor" may substitute for the term "vendors," "consultants," or "firms," depending on the purpose of the underlying Contract.

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 the Contract by Contractor, its agents, representatives, employees, and/or subcontractors.
2. **REQUIREMENT TO PROCURE AND MAINTAIN:** Each insurance policy required by the Contract shall be in effect at, or before, commencement of work under the Contract and shall remain in effect until all of Contractor's obligations under the Contract have been met, including any warranty periods. Contractor's failure to maintain the insurance policies as required by the Contract, or to provide timely evidence of renewal, will be considered a material breach of the Contract.
3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** The following insurance requirements are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. The City does not represent or warrant that the minimum limits set forth in the Contract are sufficient to protect Contractor from liabilities that might arise out of the Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Where applicable, as related to the Scope of Work, Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

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

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

c. Automobile Liability

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

d. Workers' Compensation and Employer's Liability, if applicable. Haddad/Drugan LLC has no employees

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$1,000,000
Disease - Each Employee	\$1,000,000
Disease - Policy Limit	\$1,000,000

~~e. Professional Liability~~ ~~\$2,000,000~~

f. ~~Network Security and Privacy Liability~~

Per claim	\$2,000,000
Annual Aggregate	\$2,000,000

~~**4. NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall maintain the requisite insurance requirements covering 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. The insurance policy shall include coverage for third party claims. The insurance policy shall contain an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided.~~

5. SELF-INSURED RETENTION: Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that Contractor reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and/or subcontractors. Contractor shall be solely responsible for any self-insured retention amounts. The 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.

6. OTHER INSURANCE REQUIREMENTS: The insurance 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, employees, and/or subcontractors shall be named and endorsed as additional insureds with respect to liability arising out of the Contract and activities performed by or on behalf of Contractor, including products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
- b. Broad Form: Contractor's insurance policy shall contain broad form contractual liability coverage.
- c. Primary Insurance: Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and/or subcontractors. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and/or subcontractors shall be in excess of the coverage of Contractor's insurance and shall not contribute to it.
- d. Each Insured: Contractor's insurance policies 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 Contractor shall not be limited to the liability assumed under the indemnification provisions of the Contract.

f. Waiver of Subrogation: The insurance policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees, and/or subcontractors for losses arising from work performed by Contractor for the City.

7. **NOTICE OF CANCELLATION**: Each insurance policy required by the insurance provisions of the Contract shall provide the required coverage and shall not be suspended, voided, cancelled, and/or 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 Procurement Agent and shall reference the Contract Number.
8. **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 Contractor from potential insurer insolvency.
9. **CERTIFICATES OF INSURANCE**: Contractor shall furnish the City with certificates of insurance (ACORD form) as required by the 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 Contract number shall be noted on the certificates of insurance. If requested by the City, all certificates of insurance and endorsements must be received and approved by the City before the Contractor commences work.
10. **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 the Contract. 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 the Contract.
11. **MODIFICATIONS**: Any modification or variation from the insurance requirements in the 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.

EXHIBIT D

ARTISTIC, TECHNICAL AND MAINTENANCE RECORD (To be submitted with final invoice)

1. General Information

Artist

Title of artwork

Location

General description of artwork

2. Artist's Statement about Artwork – to be used for publicity of the Artwork.

3. Artwork Information – in depth information for overall Artwork and for each individual element.

Medium and Description of Materials (include materials thickness, welding rod alloy or joint material, casting alloy, wax body, glass or fiber type)

Special Methods Utilized in Execution of Artwork (welding or joint method, technique or construction method – attach fabrication drawings)

Material Finish (glaze, paint color and type, sanding grit, tool pattern, patina, surface sealer)

Installation Method(s) (foundation installation structure, bolt/pin size, grout)

Placement of Artwork (cautions regarding sunlight, heat, etc)

4. Vendors/Parts/Storage – include supplier's name, address and phone number, description for all components of Artwork; attach copies of manufacturer specifications whenever possible.

5. Regular Maintenance Schedule – include cleaning agents and recommended cleaning procedure, yearly maintenance schedule for the entire Artwork and recommended procedure to check any electrical or mechanical parts that are integrated in this work.

6. Special Considerations and/or Additional Pertinent Information

7. Plaque Text Essentials

Artist's Name

Title of Artwork, Year Completed

Materials