

RESOURCE USE AND SHARING AGREEMENT

THIS RESOURCE USE AND SHARING AGREEMENT (hereafter “Agreement”) is made and entered into this 17th day of August 2023 by and between the CITY OF FLAGSTAFF, a political subdivision of the State of Arizona (hereafter “City”) and NORTHERN ARIZONA INTERGOVERNMENTAL PUBLIC TRANSPORTATION AUTHORITY (hereafter “Mountain Line”), a political subdivision of the state of Arizona. City and Mountain Line may be referred to in this Agreement individually as “Party” or together as “Parties.”

RECITALS

- A. WHEREAS, the Parties are members of a cooperative procurement agreement known as the Flagstaff Alliance for the Second Century Intergovernmental Agreements dated November 19, 2020 (hereafter the “Alliance IGA”), formed to address area-wide issues in the greater Flagstaff area and to better leverage the resources of Alliance members for the benefit of the community; and
- B. WHEREAS, through the Alliance IGA, the Parties are permitted to enter into additional agreements for the purpose of using and sharing resources in a manner consistent with the terms set forth within the Alliance IGA; and
- C. WHEREAS, the Parties desire to enter into this Agreement in accordance with the Alliance IGA and therein define the resource, the purpose, and the responsibilities of the Parties in conjunction with the project or resource referred to as: work related to the Art Glass and Southside Grove Sculpture; and
- D. WHEREAS, the City has authority to enter into this Agreement pursuant to Arizona Revised Statutes (“A.R.S.”) §§ 11-952 and 41-2632 and the Flagstaff City Charter, Article I, Section 3; and
- E. WHEREAS, Mountain Line has authority to enter into this Agreement pursuant to A.R.S. § 11-952; and
- F. WHEREAS, City is requesting that Mountain Line cause its contractor to complete installation, electrical, and landscaping work for certain City public art at the new Downtown Connection Center on Phoenix Avenue, the Art Glass and Southside Grove Sculpture.

NOW THEREFORE, in consideration of the mutual obligations and covenants set forth herein, the Parties agree as follows:

AGREEMENT

A. TERM AND TERMINATION:

1. This Agreement shall become effective on the date it is adopted, approved, and fully executed by both the City and Mountain Line and shall continue in full force and effect for a period of five (5) years from the date of its execution unless otherwise terminated prior

to that date by either Party pursuant to the terms and conditions of this Agreement so long as both Parties remain a Party to the Alliance IGA, and the Alliance IGA is not terminated. This Agreement may be renewed for one (1) additional five (5) year term through an addendum signed by both Parties so long as both Parties remain a Party to the Alliance IGA, and the Alliance IGA is not terminated.

2. Notwithstanding the foregoing, either Party may terminate this Agreement for convenience by providing the other Party ninety (90) days' prior written notice.

B. RESPONSIBILITIES:

1. Work. Mountain Line shall cause its contractor for the Downtown Connection Center to complete the installation, electrical, and landscaping work for City public art known as the Art Glass and Southside Grove Sculpture at the new Downtown Connection Center on Phoenix Avenue, east of Milton Road, in coordination with the Artist, Haddad Drugan, LLC, as described in the City of Flagstaff Contract for Purchase of Services, Contract No. 2023-116, dated April 7, 2023 ("the Artist Contract"), the schedule attached hereto as Exhibit A, and Mountain Line's contract with its contractor, Loven Contracting dated May 15, 2022, GMP No. 2 (collectively, the "Work"). A copy of the Artist Contract shall be provided to Mountain Line's contractor. An excerpt of Mountain Line's GMP No. 2 related to the Work for the contract with Loven Contracting shall be provided to the City. City shall be named as an additional insured and a third-party beneficiary to Mountain Line's contract with Loven Contracting (attach copy of the certificate of insurance as Exhibit B), and entitled to enforce all provisions related to performance of the Work related to the City public art, including but not limited to warranties.
2. Purchase Price. City agrees to pay Mountain Line in an amount not to exceed \$90,490.17 for satisfactory performance of the Work. Details as to pricing are set forth in the schedule attached hereto as Exhibit A.
3. Invoicing. Mountain Line shall invoice City on a reimbursement basis and provide documentation of the Work.

C. PERSONNEL:

Each Party's personnel will not for any purpose be considered employees or agents of the other Party. Each Party assumes full responsibility for the actions of its personnel while performing activities and services under this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including but not limited to withholding of income taxes and social security), workers' compensation, and disability benefits.

D. INSURANCE AND INDEMNIFICATION:

1. Mountain Line shall maintain adequate insurance to cover any liability arising from the acts and omissions of Mountain Line employees or agents participating in this

Agreement. Mountain Line shall not be responsible for maintaining insurance coverage for liability arising from the acts and omissions of City employees or agents.

2. City shall maintain adequate insurance (which may include a bona fide self-insurance program) to cover any liability arising from the acts and omissions of City employees or agents participating in this Agreement. City shall not be responsible for maintaining insurance coverage for liability arising from the acts and omissions of Mountain Line employees or agents.
3. Each Party (as “indemnitor”) agrees to indemnify, defend, and hold harmless the other Party (as “indemnitee”) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as “claims”) arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, indemnitor’s officer, officials, agents, employees, or volunteers.

E. NONAPPROPRIATION:

If a party’s performance under this Agreement depends upon the appropriation of funds by its respective governing body, and funds necessary for performance are not so appropriated, then either party may provide written notice to the other Party and immediately cancel this Agreement without further obligation of either Party.

F. RECORD INSPECTION AND RETENTION:

The Parties agree to retain all books, accounts, reports, files, and other records relating to the Agreement and to make such records available at all reasonable times for inspection and audit by the other Party or the Auditor General of the State of Arizona, or their agents, during the term of and for a period of five (5) years after completion of this Agreement.

G. CONFLICT OF INTEREST:

In accordance with A.R.S. § 38-511, this Agreement may be cancelled for conflict of interest within three (3) years after its execution, without penalty or further liability.

H. NON-DISCRIMINATION:

The Parties agree to comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, non-discrimination, including the Americans with Disabilities Act, sexual orientation, or gender identity or expression.

I. THIRD-PARTY BENEFICIARIES:

This Agreement is intended for the exclusive benefit of the Parties hereto. Nothing herein is intended to create any rights or responsibilities to third parties.

J. ASSIGNMENT:

Neither Party shall have the right to assign this Agreement without prior written consent of the other Party.

K. MANNER OF FINANCING:

Each Party to this Agreement shall be responsible for its own costs and budgeting for performance of their respective obligations.

L. DISPUTES AND ARBITRATION:

In the event of a dispute between the Parties to this Agreement, the Parties shall attempt to resolve the disagreement on an informal, good faith basis. If that fails, pursuant to A.R.S. § 12-1518, the Parties may agree to mandatory arbitration of any legal action that is filed in the Arizona Superior Court.

M. RELATIONSHIP AND USE OF MARKS:

Except as otherwise agreed in writing, the Parties acknowledge that the relationship created by this Agreement is limited to the Work. Neither Party shall make any representations stating or implying the Parties engage in broader transactions or that a Party is otherwise associated with the other without first obtaining express written permission from the other Party. In addition, neither Party shall use any trade name, trademark, service mark, logo, domain name, nor any other distinctive brand feature owned or used by the other Party without its express written authorization.

N. NOTICES:

To City:

Jana Weldon
Beautification, Arts & Sciences
Program Manager, City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001
Phone: (928) 863-4298
Email: Jana.Weldon@flagstaffaz.gov

To Mountain Line:

Anne Dunno, Capital Development
Manager
Mountain Line
3773 N. Kaspar Drive
Flagstaff, AZ 86004
Phone: (928) 679-8942
Email: adunno@mountainline.az.gov


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their undersigned authorized representatives.

NORTHERN ARIZONA INTERGOVERNMENTAL PUBLIC TRANSPORTATION
AUTHORITY (MOUNTAIN LINE)



By: Heather Dalmolin
Its: CEO and General Manager

Approved as to form:



Legal Counsel for Mountain Line

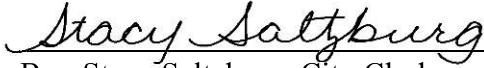
[Signature page follows]

CITY OF FLAGSTAFF



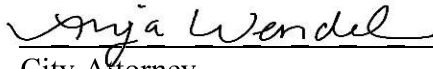
By: City Manager
Greg Clifton signed on 8/17/2023 3:24:11 PM

Attest:



By: Stacy Saltzburg, City Clerk
Stacy Saltzburg signed on 8/17/2023 3:34:42 PM

Approved as to form:



City Attorney
Anja Wendel signed on 8/15/2023 10:37:35 AM

Attachment: Exhibit A Schedule

Exhibit B Certificate of Insurance

August 11, 2023

Ms. Anne Dunno, PMP - Capital Projects Manager
 3773 N Kaspar Dr.
 Flagstaff, AZ 86004

RE: Downtown Connection Center Art Concrete, Waterproofing, Glazing, Electrical, and Landscaping

Dear Ms. Dunno,

The following is a lump sum Guaranteed Maximum Price (GMP) proposal for the Mountain Line Downtown Connection Center Art concrete, waterproofing, glazing, electrical, and landscaping located at 216 W Phoenix Ave in Flagstaff, AZ. This proposal is based upon the following documents with only those materials, goods, labor, and services specifically stated in the following scope of work:

CONSTRUCTION DOCUMENTS		
Civil Plans developed by Woodson Engineering	95% Milestone	13 pages, dated 03/03/2023
Landscape Plans developed by Norris Design	95% Milestone	14 pages, dated 03/06/2023
Structural Plans developed by Meyer Borgman Johnson	95% Milestone	21 pages, dated 05/24/2023
Architectural Plans developed by HDR Architecture	95% Milestone	75 pages, dated 05/24/2023
Mechanical Plans developed by Affiliated Engineers Inc.	95% Milestone	19 pages, dated 05/24/2023
Plumbing Plans developed by Affiliated Engineers Inc.	95% Milestone	9 pages, dated 05/24/2023
Electrical Plans developed by Affiliated Engineers Inc.	95% Milestone	19 pages, dated 05/24/2023
Fire Protection Plans developed by Affiliated Engineers Inc.	95% Milestone	3 pages, dated 04/10/2023
Mockup Plans and Elevations developed by HDR Architecture	95% Milestone	1 page, dated 05/24/23
Revised Electrical Site Plan developed by Affiliated Engineers Inc.	95% Milestone	1 page, dated 05/24/23
Request for Information Responses (Items 1-124) developed by HDR Architecture	95% Milestone	8 pages, dated 05/30/23
PROJECT SPECIFICATIONS		
Civil Specifications – 95% Milestone	95% Milestone	Sheet C-102
Downtown Connection Center Project Manual – 95% Milestone	95% Milestone	HDR Project #: 10341759 Date: 05/24/2023

GENERAL CONDITIONS + GENERAL REQUIREMENTS:

Loven Contracting will include the following General Conditions and General Requirements:

- A. Project management to include project oversight and coordination to include the following Loven Contracting resources for a total of (1) week:
 - o Senior Project Manager
 - o Project Manager
 - o Senior Superintendent
 - o Field Engineer
 - o Project Engineer
 - o Safety Superintendent
 - o Site Maintenance to assist with site cleaning
 - o Construction waste disposal, site sanitation, and project closeout documentation
- B. All work shall be performed during normal business hours identified as Monday through Friday 7 am to 5 pm, not inclusive of any Federal or Loven Contracting recognized holidays
- C. Costs for general liability insurance, Builder's Risk, Bond, and workman's compensation

DIVISION 03 – CONCRETE:

Labor, materials, and equipment for the following:

- A. F1 and F2 footings **{ART-S201}**
- B. Wall seat **{3/LA-101, 4/LA-202}**

DIVISION 07 – WATERPROOFING:

Labor, materials, and equipment for the following:

- A. Below grade bituminous coating at steel below grade **{3/ART-S201}**

DIVISION 08 – GLAZING:

Labor, materials, and equipment for the following:

- A. Install permanent art glass procured by artist **{A-603}**

DIVISION 26 – ELECTRICAL:

Labor, materials, and equipment for the following:

- A. Provide power for art lighting **{8/E-201}**
- B. Provide duplex receptacle for art lighting controller **{4/E-301}**
- C. Installation of art light fixtures to include wiring **{ART-7.5, ART-7.6}**

DIVISION 32 – LANDSCAPING:

Labor, materials, and equipment for the following:

- A. Provide and install ¼” minus stabilized decomposed granite at 2” minimum depth in color Apache Brown {LA-101, ART-0.1}
- B. Provide and install boulders within art boundaries {ART-0.1}

ASSUMPTIONS/CLARIFICATIONS:

- A. General liability insurance, Builder’s Risk, and workman’s compensation for owner contracted artist and sculpture fabricator contractor is excluded
- B. Cost for Payment and Performance Bonds required by contract will be provided at the actual cost. Insurance fee in project budget is provided at 1.55%, project costs are dependent upon overall construction cost.
- C. All testing and inspection by Mountain Line
- D. Bond excluded, included in DCC project
- E. Excludes winter conditions, weather days, and mockups
- F. Permitting costs by owner
- G. Excludes procurement of art glass
- H. Excludes procurement and installation of sculpture

Loven Contracting appreciates the opportunity to respectfully submit this proposal for review with a proposed construction budget as outlined in Attachment “A”. This proposal is valid for (30) calendar days.

Thank you,



Alyssa Kuzukian
CPE, LEED Green Associate, GGP, CM-BIM
Senior Estimator
Loven Contracting

PROJECT NAME:	DCC GMP #2 Art Scope Attachment "A"
PROJECT NUMBER:	21-345-01
LAST UPDATED:	8/11/2023
OWNER(S):	Mountain Line
DURATION:	59 weeks
SQUARE FOOTAGE:	21107 BSF

DIVISION 01-GENERAL CONDITIONS		
DIVISION PHASE CODE	CATEGORY DESCRIPTION	ART
012105	Administrative Assistance	\$ 330.36
012106	Project Accounting	\$ 153.86
013101	Project Executive	\$ 202.50
013102	Senior Project Manager	\$ 690.00
013103	Project Manager	\$ 2,060.00
013106	Senior Superintendent	\$ 3,816.00
013105	Project Engineer	\$ 1,230.00
01-General Conditions Total		\$ 8,482.72

DIVISION 01A- GENERAL REQUIREMENTS		
DIVISION PHASE CODE	CATEGORY DESCRIPTION	ART
012100	Small Tools	\$ -
012101	Construction Electronic Media	\$ 45.00
014000	Transportation	\$ 766.45
015113	Construction Electricity	\$ 133.00
015123	Building Acclimation	\$ -
015126	Construction Lighting	\$ -
015136	Construction Drinking Water	\$ -
015213	Field Office	\$ 262.00
015214	Site Foreman/Field Engineer	\$ 1,512.00
015216	Safety Material + Aids	\$ 44.00
015217	Safety Superintendent	\$ 43.50
015219	Site Sanitation	\$ 68.75
015400	Construction Aids/Rental	\$ -
015526	Traffic Control	\$ -
015623	Site Barricades	\$ -
015626	Site Fencing + LCI Logo Screen	\$ -
015629	Protective Walkways	\$ -
015639	Tree Protection	\$ -
015723	SWPPP	\$ -
015813	Project Signage	\$ -
017416	Site Maintenance	\$ 760.00
017419	Construction Waste Disposal	\$ 125.00
017423	Final Cleaning	\$ -
017719	Closeout Requirements	\$ 103.00
017829	Final Site Survey	\$ -
017839	Project Record Docs	\$ 103.00
01A-General Requirements Total		\$ 3,965.70

DIVISION 03 - CONCRETE		
DIVISION PHASE CODE	CATEGORY DESCRIPTION	ART
033100	Structural Concrete	\$ 16,193.50
03-Concrete Total		\$ 16,193.50

DIVISION 07 - THERMAL AND MOISTURE PROTECTION		
DIVISION PHASE CODE	CATEGORY DESCRIPTION	ART
071100	Waterproofing	\$ 1,500.00
07-Thermal and Moisture Protection Total		\$ 1,500.00

DIVISION 08 - OPENINGS		
DIVISION PHASE CODE	CATEGORY DESCRIPTION	ART
088100	Glass Glazing	\$ 32,637.00
08-Openings Total		\$ 32,637.00

DIVISION 26 - ELECTRICAL		
DIVISION PHASE CODE	CATEGORY DESCRIPTION	ART
260000	Electrical	\$ 5,900.00
26-Electrical Total		\$ 5,900.00

DIVISION 32 - EXTERIOR IMPROVEMENTS		
DIVISION PHASE CODE	CATEGORY DESCRIPTION	ART
329000	Landscaping	\$ 8,142.59
32-Exterior Improvements Total		\$ 8,142.59

ESTIMATE SUMMARY		
		ART
Subtotal		\$ 76,821.51
Winter Conditions Allowance		\$ -
Weather Days		\$ -
CCSBP		\$ -
Mockups		\$ -
Contractor Contingency		\$ 1,920.54
Material Escalation Allowance		\$ 1,920.54
Insurance	1.55%	\$ 1,250.27
Construction Fee	4.25%	\$ 3,481.30
Builder's Risk		\$ -
Bond		\$ -
Sales Tax	9.18%	\$ 5,096.02
Total Estimate		\$ 90,490.17