

## CONTRACT FOR PURCHASE OF SERVICES

Contract No. 2021-18

This Contract is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Jones Studio, Inc., an Arizona Corporation ("Contractor" or "Artist").

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

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

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

### LIBRARY ENTRY ARTWORK

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 Seventy Five Thousand Dollars and zero cents (**\$75,000.00**), which shall be all inclusive and payment in full for materials, labor, work, permits, inspections, installation, travel, taxes, insurance and any other expenses needed to complete the Services. Payments shall be paid in five installments, per Exhibit A.
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 be completed within one (1) year.
7. Renewal: This Contract may be renewed for up to two (2) additional one (1) year terms by mutual written consent of the parties. The City Manager or his/her designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
8. Termination: This Contract may be terminated pursuant to the Standard Terms and Conditions attached hereto.
9. Price Adjustment: Any price adjustment must be approved by the City in writing as a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds

\$50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.

10. City Ownership of Document and Data: Any original documents prepared or collected by Contractor in performance of this Contract such as models, samples, reports, test plans, survey results, graphics, tables, charts, plans, maps, specifications, surveys, computations and other data shall be the property of City (“City’s work product”), unless otherwise agreed by the parties in writing.
11. Intellectual Property Rights Warranty; City Ownership and Use of Artwork; Artist Ownership of Artwork Copyright and Commercial Use. The rights of the parties are set forth in *Exhibit A*.
12. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Contractor shall immediately deliver to City copies all of City’s work product and any other documents and data accumulated by Contractor in performance of this Contract, whether complete or in process.
13. Insurance: Contractor shall meet insurance requirements of the City, set forth in Exhibit C.
14. Notice: Any formal notice concerning this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Brian Eilerts  
Senior Procurement Specialist  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001  
[Brian.Eilerts@flagstaffaz.gov](mailto:Brian.Eilerts@flagstaffaz.gov)

Jana Weldon  
Beautification, Arts & Sciences Project  
Administrator  
211 W. Aspen Ave  
Flagstaff, AZ 86001  
[Jana.Weldon@flagstaffaz.gov](mailto:Jana.Weldon@flagstaffaz.gov)

To Contractor:

Neal Jones, AIA  
Jones Studio, Inc.  
205 S. Wilson Street  
Tempe, AZ 85281  
[Neal @Jonesstudiosinc.com](mailto:Neal@Jonesstudiosinc.com)

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

CONTRACTOR

\_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF FLAGSTAFF PURCHASING DIVISION  
211 WEST ASPEN AVE.  
FLAGSTAFF, ARIZONA 86001

Solicitation No. 2021-18

CITY OF FLAGSTAFF

\_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

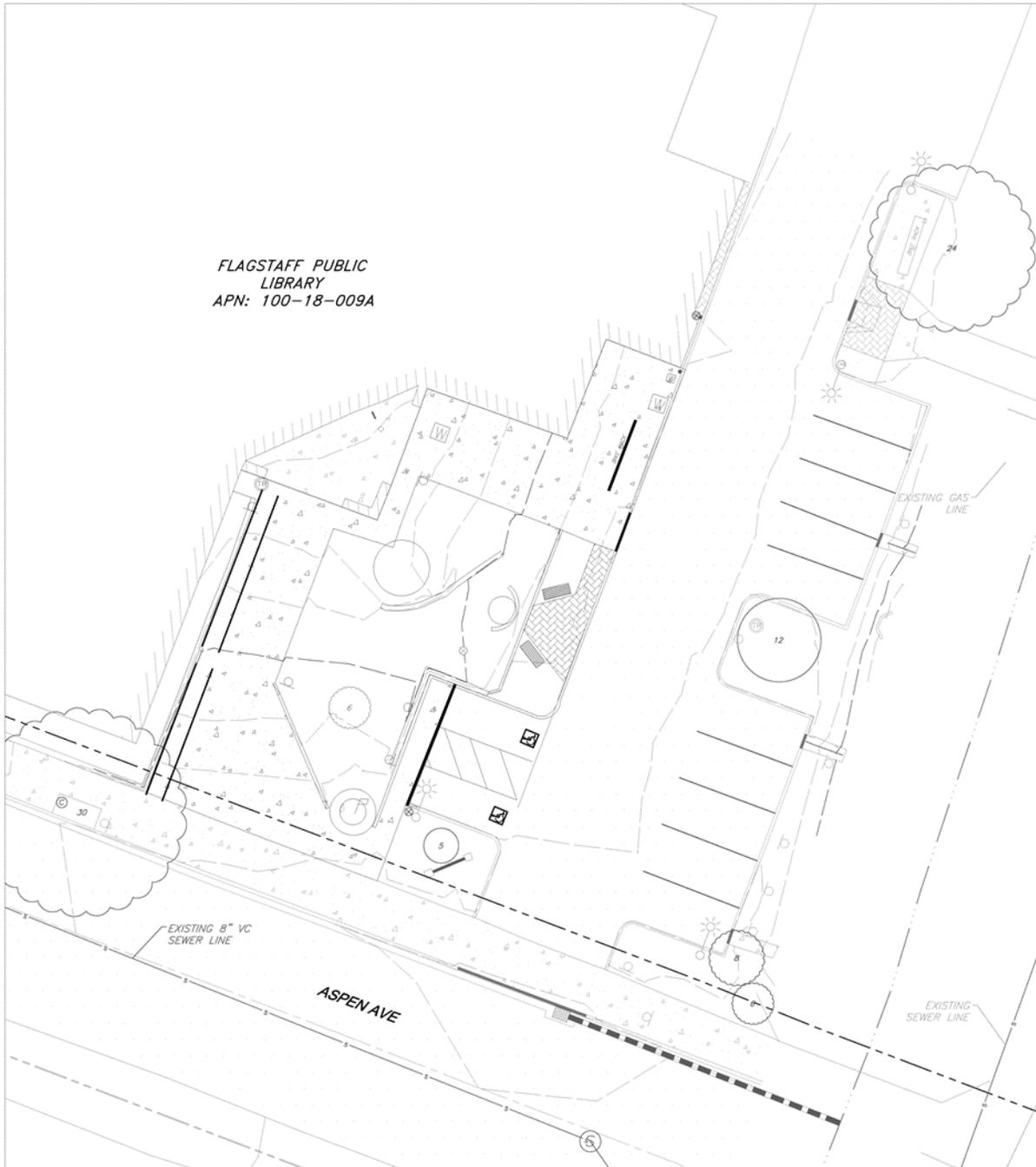
City Attorney's Office

**EXHIBIT A**

**SCOPE OF WORK**

**A. SITE:**

The City of Flagstaff is redesigning the entry plaza of the Flagstaff City – Coconino County Public Library, 300 W Aspen Avenue, Flagstaff AZ 86001, (the “Library Entry Plaza” or “Site”).



(Overview of Site)

**B. DESIGN:**

The City of Flagstaff is reconstructing the Library Entry Plaza to come into compliance with Americans with Disabilities Act (ADA) standards and has created an opportunity to re-envision the entire space. The direction from initial stakeholders is to create a handicap accessible design that highlights the building and its entry, creation of outdoor seating for library programming, develop a donor recognition opportunity (e.g. bricks or otherwise); and artwork that reflects what a library represents. The design programming is subject to evolving and changing during the community engagement period.

The Artist will design, fabricate and install original, site-specific Artwork(s) for this Library Entry Plaza. Direction for the public art is to successfully contextualized the art within the plaza; to have the Artist determine type of artwork; to amplify the programming of the plaza to the greatest extent possible; to create, fabricate and install artwork that exemplifies the possibilities a library represents, e.g., imagination, excavation of ideas, seeking, exploration, learning, community enrichment, community bonds.

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

The Artist will create appropriate visuals to convey his design prior to City approval, including three-dimensional maquettes, if directed by the City.

The Artist, in coordination with Beautification, Arts & Sciences staff, will conduct a public meeting or public outreach to present and receive feedback on the design concept from the community. Beautification and Public Art Commission (BPAC) members will be invited to all public meetings and to participate in public outreach to ensure Artist receives early feedback before required BPAC approval. Any public meetings will be posted and notice in compliance with open meeting laws. Any meeting or outreach will meet City standards for COVID-19.

Artist shall prepare preliminary fabrication budget(s) for the Artwork. Preliminary fabrication budget(s) are required for BPAC concept approval.

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

For design, fabrication and installation of all public art elements, the artist must adhere to designated areas and measurements as specified by Beautification, Arts & Sciences staff and by Capital Improvement Projects staff. Capital Improvements Project staff is required to authorize commencement of fabrication and installation of the Artwork in writing before Artist proceeds with these steps.

**C. REDESIGN:**

The City's right to approve or reject the design will be at the City's sole discretion. If the City determines that the proposed design is unacceptable or requires modifications, the Artist at its own expense will be required to submit a second design proposal within a reasonable period of time specified by the City. Artist acknowledges City approval of design is a requirement prior to commencement of fabrication. If City does not approve a design, either party may terminate this Contract for convenience, and City will pay Artist only for the Initial Payment (see Payment Schedule below).

#### D. CONSTRUCTION DOCUMENTS:

Artist shall produce construction documents necessary for the fabrication and installation of the Artwork. Payment for any sub-consultants to produce construction documents, including the structural engineer and electrical engineer, shall be the responsibility of the Artist.

All construction documents submitted by Artist shall be under seal of a registered Arizona engineer or architect if required in accordance with the City engineering standards. Artist is responsible for submitting construction documents to accommodate City's construction schedule for the Entry Plaza.

#### E. SUBCONTRACTS:

Artist will contract with any and all fabricators required to create the Artwork and provide City Beautification, Arts & Sciences staff access to review progress of fabrication. Artist will contract with any and all installers required to install the Artwork and meet all City requirements to work on-site.

#### F. PAYMENT SCHEDULE:

1. Initial payment – **\$2,500 (3%)** Contract Initiation shall be paid upon contract signing as artist **notice to proceed** with design concept phase.
2. Progress payment - **\$8750 (12%)** – Shall be paid upon the City's approval (Beautification, Arts & Sciences Commission approval) of the **design concept and fabrication preliminary budget** referred to in the Contractor's Services, estimated to be completed by **February 8, 2021**.
3. Progress payment - **\$45,000 (60%)** – Shall be paid upon **initiation of fabrication**, estimated to be completed by **June 30, 2021**. Contractor shall submit all constructions documents, including any structural engineering required, and contact information for any fabrication subcontractors.
4. Progress payment - **\$11,250 (15%)** – Shall be paid upon **initiation of installation**, estimated to be completed by **August 31, 2021**. Contractor shall provide contact information for any installation subcontractors.
5. Final payment - **\$ 7,500 (10%)** – Shall be paid upon City's final acceptance of 100% of the installed Artwork, estimated to be completed by **December 15, 2021**. The invoice shall be labeled as "final". The final invoice submitted shall include photographs of the completed artwork, the Artistic, Technical and Maintenance Record set forth in **Exhibit D**, Title and ownership of Artwork transfer to the City upon Contractor's receipt of this final payment.

#### G. NOTICE AND CORRECTION OF DEFICIENCIES:

If at any time the City determines that the Artwork design, fabrication, or installation does not conform to the approved final design or 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.

#### H. FINAL ACCEPTANCE:

The City shall notify the Artist in writing of its final acceptance of the Artwork. Final determination as to whether all services have been performed according to this Agreement shall remain with the City.

**I. INTELLECTUAL PROPERTY RIGHTS WARRANTY:**

Artist hereby warrants that the Artwork provided, and that City's purchase and use of the Artwork pursuant to this contract/purchase order does not infringe on any patent, trademark or copyright or other proprietary rights of any third parties.

**J. CITY OWNERSHIP AND USE OF ARTWORK:**

1. Upon purchase, title to the Artwork passes to the City.
2. Artist grants City the non-exclusive right to photograph, reproduce or manufacture renderings of the Artwork of all sizes, materials, shades of color, or black and white (collectively "the Artwork Reproductions").
3. Artist grants the City the non-exclusive right to display the Artwork Reproductions on City property.
4. 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 publicity, marketing, community outreach, education, or public exhibition, and local calendars.
5. Upon prior written request of Artist, City shall place a copyright notice on the Artwork or Artwork Reproductions prior to manufacture.

**K. ARTIST OWNERSHIP OF ARTWORK COPYRIGHT AND COMMERCIAL USE:**

1. The Artist retains: (1) all rights to the Artwork 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.

**L. 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, 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.
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.
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 hazard or a danger to the health and safety of the public and further agrees to cooperate in making or permitting adjustments to the work, 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.

**M. 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.

**N. 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.
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, 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.

**O. SURVIVAL OF PROVISIONS:**

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

- I. INTELLECTUAL PROPERTY RIGHTS WARRANTY;
- J. CITY OWNERSHIP AND USE OF ARTWORK;
- K. ARTIST OWNERSHIP OF ARTWORK COPYRIGHT AND COMMERCIAL USE
- L. ARTIST'S WARRANTIES OF QUALITY AND CONDITION OF ARTWORK;
- M. MESSAGING OF ARTWORK;
- N. MAINTENANCE AND REPAIRS.

**EXHIBIT B**

**CITY OF FLAGSTAFF  
STANDARD TERMS AND CONDITIONS**

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

**IN GENERAL**

1. **NOTICE TO PROCEED:** ~~Contractor shall not commence performance until after City has issued a Notice to Proceed.~~ Contract shall commence upon effective date of the Contract.
2. **LICENSES AND PERMITS:** Contractor shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.
3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.
4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive, and the City reserves the right to contract with others for materials or services.
5. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

**PAYMENT**

6. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped, or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
7. **LATE INVOICES:** ~~The City may deduct up to 10% of the payment price for late invoices.~~ The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City ~~will~~ may elect to not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
8. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

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

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

### **SERVICES**

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

### **INSPECTION, RECORDS, ADMINISTRATION**

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

### **CONTRACT CHANGES**

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

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

#### **EMPLOYEES AND SUBCONTRACTORS**

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

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

## **DEFAULT AND TERMINATION**

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

36. **PAYMENT UPON TERMINATION:** Upon termination of this Contract, City will pay Contractor for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
37. **CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant ("Gratuities") in connection with award or performance of the Contract.
38. **CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor.

### **MISCELLANEOUS**

39. **INSURANCE:** Contractor shall maintain workers' compensation insurance.
40. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.
41. **NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.
42. **THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
43. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
44. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
45. **ATTORNEYS FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.
46. **FORCE MAJUERE:** There may be events that occur during the term of this Contract that are beyond the control of both the City and the Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God. These events may result in a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of this Contract.

There will be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the events described above, and the City will pay no additional costs incurred as a result of such events.

The parties agree to act in good faith to extend the Contract completion date without any penalty to the Contractor and that the extension will be in an amount of time equal to any temporary delay.

**CITY OF FLAGSTAFF PURCHASING DIVISION  
211 WEST ASPEN AVE.  
FLAGSTAFF, ARIZONA 86001**

**Solicitation No. 2021-18**

This term supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

**EXHIBIT C**

**INSURANCE REQUIREMENTS**

**(With City approved modifications as noted)**

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

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

a. Commercial General Liability - Occurrence Form

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

b. Umbrella Coverage ~~\$2,000,000~~ \$1,000,000

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

d. Workers' Compensation and Employer's Liability

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

e. Professional Liability \$2,000,000 (For any architect/engineering services)

4. Self-Insured Retention. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions

with respect to the City, its officers, agents, employees, and volunteers. Contractor shall be solely responsible for any self-insured retention amounts. City at its option may require Contractor to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

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

Attention: Brian Eilerts, Senior Procurement Specialist  
Contract No. 2021-18  
Purchasing Department  
City of Flagstaff,  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001  
[Brian.Eilerts@flagstaffaz.gov](mailto:Brian.Eilerts@flagstaffaz.gov)

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

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

**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

Artist’s Name

Title of Artwork, Year Completed

Beautification, Arts & Sciences, City of Flagstaff