

CITY COUNCIL REPORT

DATE: May 17, 2016

TO: Mayor and Councilmembers

FROM: Karl Eberhard, Community Design and Redevelopment Manager
David McIntire, Community Investment Director
Heidi Hansen, Economic Vitality Director

CC: Josh Copley, Barbara Goodrich, Shane Dille, Leadership Team

SUBJECT: RFP and current Contract with Flagstaff Arts Council

This is in response to a request for a copy of the RFP and current Contract with Flagstaff Arts Council.

DISCUSSION

Requested copies are enclosed in this report.

Note that Flagstaff Cultural Partners changed their name to Flagstaff Arts Council.

RECOMMENDATION / CONCLUSION

This report is for information only.

CITY OF FLAGSTAFF

REQUEST FOR PROPOSALS

PRODUCT AND OR SERVICES: ARTS, SCIENCE AND CULTURAL SERVICES

PROPOSAL NUMBER: 2011-61

PROPOSALS DUE NO LATER THAN: 3:00 p.m., SEPTEMBER 1, 2011

PRE-PROPOSAL MEETING (Non-Mandatory): AUGUST 17, 2011 @ 2:00 P.M.

TO BE HELD AT: CITY HALL, 211 W. ASPEN AVE., FLAGSTAFF, ARIZONA
86001, 1ST FLOOR, COUNCIL CONFERENCE ROOM.

RFP OPENING LOCATION: *City of Flagstaff
Management Services-Purchasing Division
211 West Aspen Ave.
Flagstaff, AZ 86001
(928) 779-7619/Fax (928) 779-7656*

In accordance with the Charter for the City of Flagstaff in Flagstaff, Arizona ("City") and by Arizona State Statute, competitive sealed offers for the products or services specified will be received by the City at the above specified location, until the time and date cited. Offers received by the correct time and date will be opened and the name of each Proposer will be publicly read.

Offers shall be in the actual possession of the City, at the location indicated, on or prior to the exact time and date indicated above. Late offers shall not be considered.

Offers must be submitted in a sealed envelope with the REQUEST FOR PROPOSAL name and number and the Proposer's name and address and the RFP closing date and time clearly indicated on the envelope. All offers must be completed in ink or typewritten. Additional instructions for preparing a proposal response are provided herein.

PROPOSERS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE REQUEST FOR PROPOSAL.

| | |
|------------------------|---|
| Buyer: | <u>Rick Compau, C.P.M., CPPO, CPPB</u> |
| Phone Number: | <u>(928) 213-2275</u> |
| Fax Number: | <u>(928) 779-7656</u> |
| E-mail Address: | <u>rcompau@flagstaffaz.gov</u> |
| Date: | <u>August 4, 2011</u> |

TABLE OF CONTENTS

| <u>Section</u> | <u>Page</u> |
|---|--------------------|
| Acknowledgment of Receipt..... | 3 |
| No Response Form..... | 4 |
| Instructions to Proposers..... | 5 |
| Standard Terms and Conditions..... | 9 |
| Special Terms and Conditions..... | 16 |
| Project Description/Scope of Work..... | 17 |
| Proposal Format | 20 |
| Fee Schedule..... | 22 |
| Proposer's References..... | 23 |
| Exceptions, Confidential & Additional Materials | 25 |
| Evaluation Criteria | 26 |
| Proposer Questionnaire | 27 |
| Appendix A – Determination of Responsibility..... | 29 |
| Appendix B – Proposer Disclosure Form | 33 |
| Non-Collusion Affidavit..... | 34 |
| Offer Form..... | 35 |
| Attachment A – Service Agreement..... | 36 |

ACKNOWLEDGMENT OF RECEIPT

RFP ISSUE DATE: August 4, 2011

PRODUCT AND/OR SERVICES: ARTS, SCIENCE and CULTURAL SERVICES

PROPOSAL NO.: 2011-61

QUESTIONS MUST BE RECEIVED BY: August 25, 2011

OFFER DEADLINE: 3:00 p.m., on September 1, 2011

Please provide the requested information below as acknowledgment that you have received our Request for Proposal ("RFP") noted above. It is **recommended** that interested proposers complete and return this acknowledgment via Fax to the City of Flagstaff Purchasing Office at (928) 779-7656 or by mail. **Only those companies or individuals returning completed acknowledgments will receive notification of any addenda or responses to questions regarding this RFP.** Proposals from companies or individuals **not** acknowledging the addenda may be considered incomplete, non-responsive and potentially subject to disqualification.

Name of Company
or Individual: _____

Name / Title of Contact: _____

Address: _____

Phone #: () _____ Fax #: () _____

E-Mail Address: _____

Signature: _____ Date: _____

NO RESPONSE FORM

Product and/or services ARTS, SCIENCE and CULTURAL SERVICES

Proposal Number: 2011-61

Proposers not responding to this solicitation are asked to complete this form. Please return this form to the address listed above or fax to (928) 779-7656.

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Reason for NO OFFER:

- Do not handle product/service
- Unable to respond due to current staff availability and/or business conditions
- Insufficient time
- Unable to meet terms, conditions, specifications or requirements as described within the solicitation due to:

Other: _____

This *NO OFFER* response is authorized by: _____

Signature

Title

- Please check one:
- Retain our company on the mailing list for future solicitations.
 - Please remove our company from the mailing list.
 - Please remove our company from this commodity or service only.

INSTRUCTIONS TO PROPOSERS

1. **PURPOSE:** Pursuant to provisions of the City Charter, as well as provisions contained in this document, the City intends to establish a contract for:

ARTS, SCIENCE AND CULTURAL SERVICES

The City is seeking proposals from qualified Proposers for Arts, Science and Cultural Services. The successful Proposer shall be an approved Proposer for the equipment or services being recommended and shall provide a letter from the appropriate company or individual with a statement to that effect.

2. PREPARATION OF PROPOSAL:

- a. Forms: All Offers shall be on the forms provided in this RFP Package. The RFP Package shall consist of all documents listed in the Table of Contents. It is permissible to copy these forms if required. Facsimiles, telegraphic Offers or mailgrams will not be considered.
- b. Evidence of Intent to be Bound: The Offer document must be submitted with an original ink signature by the person authorized to sign the Offer.
- c. Typed or Ink; Corrections: The Offer must be typed or in ink. Erasures, interlineations or other modifications in this RFP document shall be initialed in ink by the authorized person signing the Offer. No Offer shall be altered, amended or withdrawn after the specified RFP due time and date.
- d. Unit Price Prevails: In case of error in the extension of prices in the Offer, unit price shall govern.
- e. Days: Periods of time, stated as a number of days, shall be calendar days, unless otherwise specified.
- f. Duty to Examine: It is the responsibility of all Proposers to examine the entire RFP Package and seek clarification in writing of any item or requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing an Offer confers no right of withdrawal after due time and date.
- g. Proposers List: Proposers who fail to respond to solicitations for two consecutive procurements of similar items may be removed from the applicable Proposers list.
- h. Submittal: All Offers must be clearly marked: **ARTS, SCIENCE and CULTURAL SERVICES, RFP #2011-61**, your name or company name and the closing date and time of this RFP on the outside of the sealed envelope. **There is a Service Agreement, in addition to this RFP, that the successful Proposer will be expected to sign without alteration (See Attachment A).** Proposals shall be provided in three ring binders with **ONE (1) ORIGINAL AND FIVE (5) COPIES** of the proposal included.

3. **QUALITY OF PROPOSAL:** The quality of the proposal(s) submitted by the Proposer is viewed as a basic indication of the Proposer's general capability and technical competence. Quality is interpreted as (1) completeness, (2) thoroughness, (3) accuracy, (4) compliance with proposal instructions, and (5) the organization and conciseness of descriptive text material. Proposals that do not comply with instructions may be eliminated from further consideration.

4. **GENERAL CONTENT:** The proposal submitted should be specific and complete in every detail. It should be practical and should be prepared simply and economically, providing a

straight-forward, concise delineation of capabilities to satisfactorily perform the proposal being sought. Proposers should not necessarily limit the proposal to the performance of the services in accordance with this document but should outline any additional services and their costs if deemed necessary to accomplish the scope of services.

5. **INQUIRIES:** Any question(s) related to this RFP shall be directed to the Buyer whose name appears at the bottom of the front page of this document. Questions should be submitted in writing when time permits. Proposers shall not contact or ask questions of the department for which the requirement is being procured. The City **shall not** be responsible for Proposers adjusting their proposal based on any oral instructions made by any employees or officers of the City. All changes to the RFP shall be in the form of a written addendum, which shall be furnished to all Proposers who are listed with the City as having received the original RFP.

The City shall not respond to any requests for information pertaining to specifications received less than five working days (Monday–Friday, excluding holidays) before the proposal opening. Any interpretation or correction of the RFP documents shall be made only by written addendum and a copy of each addendum shall be mailed, faxed or delivered to all who are known to have received a RFP Package. The City shall not be responsible for any other explanations or interpretations of the RFP Package.

The Buyer may be required to submit any and all questions in writing at the City's sole discretion. Any correspondence related to a solicitation shall refer to the appropriate solicitation number, page and paragraph number. However, the Proposer shall not place the solicitation number on the outside of an envelope containing questions, since such an envelope may be identified as a sealed RFP and may not be opened until after the official RFP due date and time.

6. **LATE PROPOSAL:** Late proposal responses shall not be considered. A Proposer submitting a late proposal shall be so notified.
7. **WITHDRAWAL OF PROPOSAL:** At any time prior to a specified solicitation due time and date a Proposer (or designated representative) may withdraw the Proposal. Facsimile, telegraphic or mailgram withdrawals shall not be considered.
8. **AMENDMENT OF PROPOSAL:** The Proposer shall acknowledge receipt of a Solicitation Amendment by signing and returning the document prior to the specified due time and date. Failure to return a signed copy of a material solicitation amendment or to follow the instructions for acknowledgment of the solicitation amendment shall result in rejection of the proposal.
9. **PAYMENT:** A separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material, service or construction and a correct invoice. The City's agreement for payment terms is **NET 30**, unless the Proposer offers discounted terms.
10. **DISCOUNTS:** Payment discount periods shall be computed from the date of receipt of material/service or correct invoice, whichever is later, to the date the City's warrant is mailed. Unless freight and other charges are itemized, any discount provided shall be taken on full amount of invoice. Payment discounts of ten (10) calendar days or more shall be deducted from the proposal price in determining the low proposal. However, the City shall be entitled to take advantage of any payment discount offered by the Proposer provided payment is made within the discount period.

11. TAXES: The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, as required, shall be indicated as a separate item.

12. EVALUATION AND AWARD OF CONTRACT:

- a. Unless the Proposer states otherwise, or unless otherwise provided within the RFP, the City reserves the right to make multiple awards or to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. In accordance with the City Charter the contract shall be awarded to the lowest responsive, responsible Proposer whose proposal is the most satisfactory and advantageous to the City based on the factors set forth in the RFP Package. The City shall be the sole judge as to the acceptability of the products or services offered.
- b. Notwithstanding any other provision of the RFP Package, the City expressly reserves the right to:
 - (1) Waive any immaterial defect or informality; or
 - (2) Reject any or all Offers, or portions thereof; or
 - (3) Cancel/Reissue an RFP.
- c. All responses to this RFP are offers to contract with the City and shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the RFP Package, including the Agreement. Offers do not become contracts unless and until they are formally accepted by the City. If the value of the services or goods in the Proposal is \$50,000 or less, a contract will be formed when the City Manager accepts, in writing, the Proposer's Offer. Regardless of whether the Offer is accepted by the City Manager or not, a Agreement will be executed. Once the Agreement is fully executed, it will be the final and binding contract between the Proposer and the City. The Agreement may incorporate some or all of the RFP Package.
- d. The City reserves the right to clarify any contractual terms with the concurrence of Proposer, however, any substantial non-conformity in the Offer shall be deemed non-responsive and the Offer rejected. No alteration of any contract resulting from an Offer may be made without the express written approval of the Director of Purchasing in the form of an official contract amendment. Any attempt to alter any such contract without such approval is a violation of the contract. Any such action is subject to legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Proposer.

13. ENVIRONMENTAL PROCUREMENT POLICY: The City has established an Environmental Procurement Policy which encourages the purchase of the most environmentally responsible products and services available to meet the intended purpose. We encourage the offer of alternatives that increase the environmental responsibility of the products or services called for in this solicitation.

14. SALES TAX: The City will not pay any taxes on invoices received unless an Arizona Transaction Privilege License Number or Arizona Use Tax Number and, if applicable, a City Sales Tax Number are listed below.

The City will figure applicable taxes to offers received from out of state Proposers who do not list an Arizona Use Tax number for tabulation and total cost evaluation.

Arizona Sales Tax Number: _____

Arizona Use Tax Number: _____

City of: _____

Sales Tax Number: _____

Refer to the following to determine if the freight or delivery charges are taxable:

Delivery charges are considered non-taxable and exist only when the total charges to the ultimate customer or consumer include, as separately charged to the ultimate customer, charges for delivery to the ultimate consumer, whether the place of delivery is within or without the City, and when the taxpayer's books and records show the separate delivery charges. **Delivery charges if separately stated are considered to be non taxable.**

Freight charges for delivery from place of production or the manufacturer to the Proposer either directly or through a chain of wholesalers or jobbers or other middlemen are deemed "freight-in" and are not considered delivery. **Freight-in charges are taxable.**

15. NON-COLLUSION: The Proposer shall sign a non-collusion affidavit.

STANDARD TERMS AND CONDITIONS

The following terms and conditions are an explicit part of the solicitation and any offer received by a Proposer in response to this RFP.

1. **CERTIFICATION:** By signature on the Offer page, Proposer certifies that:
 - a. The submission of the Offer did not involve collusion or other anti-competitive practices.
 - b. Proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in the rejection of the Offer. Signing the Offer with a false statement shall void the Offer and any resulting contract and may be subject to penalties provided by law.

2. **GRATUITIES:** The City may, by written notice to the Proposer, cancel any resulting contract if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Proposer or any agent or representative of the Proposer, to any officer or employee of the City with a view toward securing a contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such contract. In the event any resulting contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Proposer the amount of the gratuity.

3. **OFFER BY PROPOSER:** All responses to this RFP are offers to contract with the City and shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the RFP Package, including the sample Agreement. Offers do not become contracts unless and until they are formally accepted by the City. Formal acceptance may occur when the City Manager accepts an Offer, or when the City Council accepts the Offer and enters into the Agreement, as allowed under the Flagstaff City Charter. The City reserves the right to clarify any contractual terms with the concurrence of Proposer, however, any substantial non-conformity in the Offer shall be deemed non-responsive and the Offer rejected. A contract approved by the City Council may only be changed by written amendment signed by duly authorized representatives of the City and the Proposer.

4. **EXCEPTION TO THE SOLICITATION:** Proposer shall identify and list all exceptions taken to all sections of this RFP Package and list these exceptions referencing the section (paragraph) where the exception exists, identifying the exceptions and the proposed wording for Proposer's exception. Proposer shall list these exceptions under the heading "Exception to the PROPOSAL Solicitation." Exceptions that surface elsewhere and that do not also appear under the heading "Exception to the Proposal Solicitation," shall be considered invalid and void and of no contractual significance.

The City reserves the right to reject, render the proposal non-responsive, enter into negotiation on any of the Proposer exceptions, or accept them.

5. **TAXES and SOCIAL SECURITY:** Proposer is advised that taxes or social security payments shall not be withheld from a City payment and that Proposer should make arrangements to pay such expenses, if any, directly.

- 6. INTERPRETATION - PAROL EVIDENCE:** The Agreement is intended by the parties as a final expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Acceptance or acquiescence in a course of performance rendered under the Agreement shall not be relevant to determine the meaning of the contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object. Whenever a term defined by the City Charter or applicable Arizona State Statute is used in the Agreement, that definition shall control.
- 7. RIGHTS AND REMEDIES:** No provision in this document or in the RFP Packet shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract.
- 8. PROTESTS:** Protests shall be resolved, in accordance with the following: A protest shall be in writing and shall be personally delivered or served upon the City Purchasing Director. A protest of a solicitation shall be received at the City Purchasing Department before the solicitation opening date. A protest of a proposed award or of an award shall be personally delivered or served upon the City Purchasing Director within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

 - a. The name, address and telephone number of the protester;
 - b. The signature of the protester or its representative;
 - c. Identification of the solicitation or contract number;
 - d. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - e. The form of relief requested.
- 9. ADVERTISING:** Proposer shall not advertise or publish information concerning the solicitation or the Agreement, without the prior written consent of the City.
- 10. RIGHT TO INSPECT PLANT:** The City may, at reasonable times and at its expense, inspect the plant or place of business of a Proposer or Sub-proposer which is related to the performance of any contract as awarded or to be awarded.
- 11. INSPECTION:** All materials, services or construction are subject to final inspection and acceptance by the City. Materials, services or construction failing to conform to the specifications of the contract shall be held at Proposer's risk and may be returned to Proposer. If so returned, all costs shall be the responsibility of Proposer.
- 12. PURCHASE ORDERS:** The City shall issue a purchase order for the goods or services covered by the contract. All such purchase orders will reference the contract number, as well as the City Council approval date and Council Agenda item number.
- 13. PACKING AND SHIPPING:** If applicable, Proposer 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.
- 14. TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within the contract.

- 15. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials, or services, must fully comply with all provisions of the contract. If a tender is made which does not fully conform, this shall constitute a breach and Proposer shall not have the right to substitute a conforming tender without prior approval from the City.
- 16. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Proposer shall deliver conforming materials, or services, in each installment or lot of the contract and may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute a breach of the contract as a whole.
- 17. SHIPMENT UNDER RESERVATION PROHIBITED:** Proposer is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
- 18. LIENS:** All goods, services and other deliverables supplied to the City under the Agreement shall be free of all liens other than the security interest held by Proposer until payment in full is made by the City. Upon request of the City, Proposer shall provide a formal release of all liens.
- 19. LICENSES:** Proposer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by Proposer as applicable to the Agreement.
- 20. COST OF PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration by the City should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
- 21. CONFIDENTIAL INFORMATION:**
- A. If a Proposer believes a specific section of its proposal to be confidential, the Proposer is to mark the page(s) "confidential" and isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The Proposer is to include a written statement as to the basis for considering the marked pages confidential.
 - B. The information identified by the person as confidential shall not be disclosed until the City makes a written determination.
 - C. The City shall review the statement and information and shall determine in writing whether the information shall be treated as confidential.
 - D. If the City determines to disclose the information, the City shall inform the Proposer in writing of such determination.
 - E. After award of a contract, proposal responses shall be considered a matter of public record and subject to disclosure. Materials submitted by Proposers shall become the property of the City unless otherwise requested at the time of submission. Materials identified as confidential by the Proposer will be reviewed by the City Purchasing Office which shall make a determination as to whether the information is disclosable. Generally, information submitted in response to this RFP is considered a matter of public record and subject to disclosure pursuant to the Arizona Public Records Law.

22. AUTHORIZED CHANGES: 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.

23. SAMPLES: Upon request, Proposers may be required to furnish a sample of the goods and/or service to be provided. Submission of a sample by a Proposer shall constitute an express warranty that the whole of the goods and/or service shall conform to the sample submitted. All samples submitted by a Proposer shall become the property of the City for testing purposes and/or future comparison at no charge unless designated otherwise by the Proposer. Samples not destroyed by testing or which are not retained for future comparison shall be returned upon request at Proposer's expense.

24. PRE-PROPOSAL CONFERENCE: A prospective Proposers' conference may be held at the City's sole discretion. If scheduled, the date and time of this conference will be indicated on the cover page of this document.

The purpose of this conference shall be to clarify the contents of this RFP Package in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this RFP Package or any apparent omission or discrepancy should be presented to the City at this conference. The City shall then determine the appropriate action necessary, if any, and issue a written amendment to the RFP. Oral statements or instructions shall not constitute an amendment to this RFP.

25. DISCUSSIONS AND REVISIONS TO PROPOSAL: Discussions may be conducted with responsible Proposers who submit proposals determined to be reasonably susceptible of being selected for award. Such discussions may facilitate the exchange of pertinent information to enable a more complete understanding of, and responsiveness to, the solicitation requirements. Should the City elect to call for 'best and final' offers, Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Proposers. The purposes of such discussions shall be to:

- A. Determine in greater detail such Proposers' qualifications, and
- B. Explore with the Proposers, the Scope of Services, the Proposers' proposed method of performance, and the relative utility of alternate methods of approach;
- C. Determining whether the Proposers have the necessary personnel and facilities to perform within the required time;
- D. Agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.

26. COOPERATIVE PURCHASING AGREEMENTS: A contract resulting from this RFP may be extended for use by the members of the Flagstaff Alliance for the Second Century. An Intergovernmental Agreement (IGA) has been executed between the City, Coconino County Community College District, Northern Arizona University, Coconino County and Flagstaff Unified

School District. The contract may also be extended to other municipalities and government agencies of the state. Any such usage by other municipalities and government agencies must be in accordance with the ordinance, charter and/or rules and regulations of the respective political entity. Any public agencies not identified within this RFP who wish to cooperatively use the contract are subject to the approval of Proposer.

The City is also a member of S.A.V.E. (Strategic Alliance for Volume Expenditures), which consists of numerous municipalities, counties, universities, colleges, schools and other Arizona State agencies. These cooperatives are achieved through Intergovernmental Agreements (IGAs) in accordance with provisions allowed by A.R.S. §11-952 and §41-2632. The IGAs permit purchases of material, equipment and services from Proposers at the prices, terms and conditions contained in contracts originated between any and all of these agencies and the Proposer(s) contract, as awarded.

Is your firm willing to offer the goods and services solicited under the terms and conditions of this solicitation to other members of the Flagstaff Alliance for the Second Century and S.A.V.E. under the same pricing, terms and conditions?

_____ Yes _____ No

27. FINANCIAL STATUS: All Proposers shall make available upon request a current audited financial statement, a current audited financial report, or a copy of a current federal income tax return. Failure or refusal to provide this information within five (5) business days after communication of the request by the City shall be sufficient grounds for the City to reject a proposal, and/or to declare a Proposer non-responsive or non-responsible.

If a Proposer is currently involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, the Proposer must provide the City with that information as part of its proposal. The City may consider that information during evaluation of the proposal.

By submitting a proposal in response to this solicitation, Proposer agrees that, if, during the term of any contract it has with the City, it becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Proposer under federal bankruptcy law or any state insolvency law, Proposer shall immediately provide the City with a written notice to that effect, and shall provide the City with any relevant information it requests to determine whether the Proposer will meet its obligations to the City.

28. GOVERNING LAW and JURISDICTION: This solicitation shall be governed by and construed in accordance with the laws of the State of Arizona.

29. SUBSEQUENT PURCHASES: The City, with the consent of the successful Proposer(s), reserves the right to purchase additional items as listed in this proposal, if Proposer is willing to offer the same terms and conditions as submitted in this proposal, for a period of twelve (12) months from the date of City Council approval.

30. POINT OF CONTACT: The proposal must indicate the name of one individual who the City is to contact with any questions or clarifications in regards to the proposal.

31. ON-SITE INVESTIGATION: Proposers are strongly encouraged to view all of the City's facilities that may be referenced in the Scope of Work prior to submitting their proposal. The Proposer shall be responsible for examining the facility sites and comparing it with the descriptions and specifications, to have carefully examined all of the RFP Package, including the sample contract and to have satisfied themselves as to the conditions under which the work is to be performed before submitting a proposal and entering into the contract.

No allowance shall subsequently be made on behalf of Proposer on account of an error on its part or its negligence or failure to become acquainted with the conditions of the site, or surrounding areas.

32. CONTRACT ADMINISTRATION: To help insure contract compliance, a Contract Administration Process will be an integral part of the contract. This Contract Administration Process is an audit and feedback system and will be in addition to any of the other policies and procedures contained herein. The Contract Administration Process is a total quality management tool that empowers the users to monitor and assure contract compliance. The Proposer should know during the proposal process that the successful Proposer will be closely monitored for contract compliance. No additional cost is anticipated to be incurred by the successful Proposer by the presence of the Contract Administration Process, as long as contract compliance is maintained.

All changes or amendments to the contract are to be in writing, authorized by the Purchasing Director, approved by the City Council, and signed by authorized representatives of the parties.

34. CONTRACT TYPE: Firm Fixed Fee. Initial term is for three (3) years from the date of execution of the Agreement with two (2) annual extensions, not to exceed a total of twenty-four (24) months.

35. CONTRACT RENEWAL: The City reserves the right to unilaterally extend the period of the contract for ninety (90) days beyond the stated expiration date. In addition, by mutual written consent, the contract may be renewed for supplemental periods of up to **two (2)** additional one (1) year terms.

36. PRICING ADJUSTMENTS: The City Purchasing Office shall review fully documented requests for price increases after the Agreement has been in effect for **FIRST TERM OF AGREEMENT** year(s). The requested price increase shall be based upon an increase in service level at the time of the Offer and can be shown to directly affect the price of the item concerned. The City Purchasing Office shall determine whether the requested price increase, or an alternative option, is in the best interest of the City. Thirty (30) day's prior written notification by Proposer shall be required for any price change requests. All price adjustments shall be effective upon City Council award.

37. OFFER ACCEPTANCE PERIOD: In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for ninety (90) days after the opening time and date.

38. CONTACT WITH CITY EMPLOYEES AND CONTRACTORS

All persons and/or firms that are interested in this project (including the firm's employees, representatives, agents, lobbyists, attorneys, and sub-contractors) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the evaluation/selection or creating bias in the evaluation/selection process with any person who may play a part in the evaluation/selection process. This includes but is not limited to the evaluation panel, City Council Members, City Manager, Assistant City Manager(s), Deputy City Manager(s), Department Directors or other staff. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public, and to protect the integrity of the

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

**REQUEST FOR PROPOSAL No. 2011-61
BUYER: Rick Compau, C.P.M., CPPO, CPPB
PH: (928) 213-2275 , FX: (928) 779-7656**

selection process. All contact on this selection process should be addressed to the authorized representative identified on Page One of this document.

SPECIAL TERMS AND CONDITIONS

1. KEY PERSONNEL:

It is essential that the Proposer provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Proposer shall agree to assign specific individuals to the key positions.

- A. The Proposer agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City and approval by the City.
- B. If key personnel are not available for work under this contract for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Proposer shall immediately notify the City, and shall, subject to the concurrence of the City, replace each person with personnel of substantially equal ability and qualifications.

2. **INTERVIEWS:** The City reserves the right to conduct interviews with all or some of the Proposers at any point during the evaluation process. However, the City may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria.

PROJECT DESCRIPTION

The City of Flagstaff is requesting proposals to be submitted by qualified non-profit community based arts organizations dedicated to developing, coordinating, and supporting area arts, science and culture programs.

Part 1--- Coordination: The selected Proposer for Part 1 will serve as the coordinating agency for arts, science and cultural endeavors in the Flagstaff area, expanding the role of arts, science, and culture within the community and Flagstaff and will serve as a center of arts, science and culture. The Proposer will serve to preserve and utilize the community's uniquely diverse existing expertise and talent, to increase the participation opportunities for residents, and to stimulate public and private support for arts, science and cultural endeavors. Coordinating and supportive activities will include long-range planning, leadership, promotional activities, and general and technical support for individuals, programs, activities, and organizations, including developing and maintaining effective partnerships with organizations, institutions, businesses, and individuals.

Part 2—Allocation: To further support arts, science and cultural endeavors in the Flagstaff area, the selected Proposer for Part 2 will make grants of City Council-allocated Bed, Board and Beverage Tax revenues to local providers of arts, science and culture programs.

SCOPE OF WORK

Part 1 - Coordination:

The successful Proposer will be expected to:

- I. Serve as the coordinating agency for arts, science and cultural endeavors in Flagstaff including long-range planning, leadership, and promotional activities, including;
 - A. Establishing and maintaining alignment with community, state and federal plans and initiatives, including but not limited to The Arizona Arts Education Plan, and long-range plans of the Arizona Commission on the Arts, the National Endowment for the Arts, and Alliance for the Second Century member organizations.
 - B. Preserving and utilizing the community's uniquely diverse existing expertise and talent as measured by the retention of existing proven expertise and talent.
 - C. Developing and maintaining effective partnerships with organizations, institutions, businesses, and individuals.
 - D. Providing general and technical support for individuals, programs, activities, and organizations.
- II. Expand the role of arts, culture, and sciences within Flagstaff as a center of arts, culture, and sciences in Northern Arizona.
- III. Increase the participation opportunities for residents and stimulate public and private support for arts, culture, and science endeavors in Flagstaff.

Part 2 - Allocation:

The successful Proposer will be expected to:

- I. Make grants of City Council-allocated Bed, Board and Beverage Tax (“BBB”) revenues to local source providers as follows:
 - A. The Proposer shall appoint a review committee composed of Flagstaff residents, and one member appointed by the City, which shall:
 1. Review each funding request programmatically, financially and administratively, using a proposal ranking system and taking into account the availability of alternative funding, the availability of similar services, and demonstrable public benefits from the applicant’s proposal.
 2. Make funding recommendations that shall be approved by the Proposer’s Board of Directors or other kind of oversight from some form of a governing body prior to disbursement.
 - B. The Proposer shall provide the following services with regard to the allocation and full administration of the grant program, including:
 1. Disbursement of approved allocations and other administration of all funds covered by the agreement.
 2. Notifying organizations of reporting requirements and payment schedules.
 3. Monitoring funded programs and finances.
 4. Requiring organizations to cite the contribution of the City of Flagstaff toward the project(s) in all instances where the contributions to the project(s) are recognized or listed.
 - C. On an annual basis, Proposer shall provide to the City the following with regard to BBB revenue allocation:
 1. Request for Proposals document, prior to release for distribution.
 2. Proposed Service Agreement text.
 3. Rating or evaluation form used in scoring applicant proposals.
 4. Insurance certificate for each funded organization, with the City named as “also insured.”
 5. Oral presentation to the City Council and a written Annual Report, each including a summary of all funding allocations (organizations, project description, amounts requested, amounts awarded, and other pertinent information), justification for all recommendations, and the status of all funded programs.

COMPENSATION

1. Terms:

- a. Historically, the amount of Bed, Board and Beverage Tax revenues appropriated by the City Council for grants per Part 2 - Allocation of the Scope of Work has been between \$275,000 and \$300,000. However, the Agreement will include that the actual amount is subject to annual appropriations for each fiscal year within the Agreement period.
- b. See also page 42 of the attached sample Agreement, Section 8 “General Provisions”, number 8.10, “Non-appropriations”.

2. Fees:

- a. The Proposer may propose and will receive a flat fee only for Scope of Work performed in Part 1 - Coordination Activity.
- b. The Proposer may propose and will receive either a flat fee or a percentage fee for Scope of Services performed in Part 2 - Allocation Activity.
- c. The Proposer may propose and will receive either a flat fee for Scope of Services performed in Part 1- Coordination Activity and a percentage fee for Scope of Services performed in Part 2 - Allocation Activity, or a percentage fee for Scope of Services performed in both Part 1 and Part 2.

The fee schedule on page 21 allows for this flexibility in your proposal response.

PROPOSAL FORMAT/SUBMITTAL

FORMAT AND CONTENT: To aid in the evaluation, all proposals should follow the same general format. The proposals are to be submitted in binders and have sections tabbed with proposal information as outlined in the categories/criteria below.

The Evaluation Committee will evaluate responses to this RFP based on the information provided in each of the proposer's proposal responses and interviews, as necessary. To allow for a standard basis of evaluation, all proposal responses shall follow the format outlined below. An original and five (5) copies are to be submitted. Proposal responses should be organized with sections/dividers as follows:

Cover:

The cover should contain the following relevant data as a minimum:

- Statement indicating response to: Arts, Sciences and Cultural Services
- RFP No. 2011-61
- Submittal date
- Company name (and logo if desired)
- Other information/graphics as desired

Title Page:

Proposers shall include their company name, address, e-mail/website address(es), phone and fax numbers and name(s) of principals.

A. Organization

1. Describe your organization, date founded, ownership and other business affiliations. Please provide copies of the organization's articles of organization as an Arizona non profit corporation, bylaws, and letter of exemption from the Internal Revenue Service.

B. Experience and Qualifications

1. Identify your specific experience and qualifications in terms of developing, coordinating and allocation of funds in supporting area arts, science and cultural programs in the Flagstaff area, as well as the State of Arizona.
2. Identify your specific experience and qualifications in creating public and private partnerships between organizations, institutions, businesses and individuals.
3. Identify your strategies to increase opportunities for all Flagstaff residents to experience the arts, sciences and cultural activities in a meaningful way and to stimulate public and private support for the arts, sciences and cultural endeavors in Flagstaff.
4. Identify your experience with review, rating and monitoring of sub-recipients and grant allocations.

C. Project Personnel

1. Proposer shall provide an organizational chart showing the staffing and lines of authority for key personnel.
2. Proposer shall provide a resume of each individual who would be working on the contract, if awarded, as well as information regarding previous work assignments.

D. Presented Approach

1. Proposer shall provide detailed information regarding their approach to providing the services outlined in the Scope of Work section of this RFP.
2. Proposer shall provide the metrics regarding how various activities and responsibilities will be measured.
3. Information shall be segregated and identified as either part 1 - Coordination Activity or part 2 - Allocation Activity.

E. Fee

1. Proposer shall use the Fee Schedule form on page 21 of this RFP document for proposed annual fees. .

F. References

1. Proposer shall list up to five (5) references (Proposer shall use the Proposer's References Form on page 23) from organizations to which your firm has provided arts, science and cultural services in the past five (5) years.

FEE SCHEDULE

Proposers may bid on either the Coordination Activity or the Allocation Activity as specified in the scope of work or both.

Proposers may provide a detailed fee schedule that shall be based on a flat fee only for Part 1 - Coordination Activity and may provide a flat fee or a percentage of total allocation dollars budgeted for Part - Allocation Activity. Should a Proposer decide that its want to provide the services outlined in the Scope of Work for both Part 1 - Coordination Activity and Part 2 - Allocation Activity, it can provide a fee proposal for each service type separately or combined. The fee schedule should differentiate between providing the coordination activity and the allocation activity process to local source providers, as specified in the scope of Work. This fee schedule should be applicable to a 12-month period. In addition, a not-to-exceed fee schedule should be provided for years two through five.

You can bid for each service type separately or combined:

Part 1 - Coordination Activity Only:

Administrative duties related to coordination: Flat Fee: \$ _____

Part 2 - Allocation Activity Only:

Allocation Process (assume \$300,000 total available for allocation)::

Flat fee: \$ _____ OR _____ % of total allocation dollars budgeted.

NOTE: Only one line (either flat fee or percentage of total allocation dollars should be completed. The fee for this service is part of the entire budget available for allocations.

To bid on both the Coordination and Allocation Activity:

Part 1---Coordination Activity: Flat fee: \$ _____

Part 2---Allocation Activity: Flat fee: \$ _____ OR _____ %

Part 1---Coordination Activity and Part 2---Allocation Activity Combined:

Flat fee: \$ _____ OR _____ %

PROPOSER'S REFERENCES

- 1. REFERENCES.** Proposers shall submit references for municipal projects that are comparable in size, complexity, and scope of work sought by this RFP.
- The references should also demonstrate the Proposer's experience with arts, sciences and cultural services being proposed. The histories of such projects that they have completed, firm resumes and resumes of key personnel should also be included, as well as other information believed to demonstrate the indicated types of experience.
 - All references should include the name, title, telephone number of both the current owner of the project and the owner of the project at time of work effort. Specific reasons for using the reference must also be provided.

| | |
|---|------------------------------------|
| Firm/Government Agency Name: | |
| Contact Person: | Phone: |
| Title: | Fax: |
| Address: | E-Mail Address: |
| | Reason for Selecting as Reference: |
| Project Size, Complexity, Scope and Duration: | |
| Firm/Government Agency Name: | |
| Contact Person: | Phone: |
| Title: | Fax: |
| Address: | E-Mail Address: |
| | Reason for Selecting as Reference: |
| Project Size, Complexity, Scope and Duration: | |
| Firm/Government Agency Name: | |
| Contact Person: | Phone: |
| Title: | Fax: |
| Address: | E-Mail Address: |
| | Reason for Selecting as Reference: |

| | |
|---|------------------------------------|
| Project Size, Complexity, Scope and Duration: | |
| Firm/Government Agency Name: | |
| Contact Person: | Phone: |
| Title: | Fax: |
| Address: | E-Mail Address: |
| | Reason for Selecting as Reference: |
| Project Size, Complexity, Scope and Duration: | |
| Firm/Government Agency Name: | |
| Contact Person: | Phone: |
| Title: | Fax: |
| Address: | E-Mail Address: |
| | Reason for Selecting as Reference: |
| Project Size, Complexity, Scope and Duration: | |

EXCEPTIONS, CONFIDENTIAL AND ADDITIONAL MATERIALS

Proposers shall indicate any and all exceptions taken to the provisions or specifications in this solicitation document.

Exceptions (mark one):

- No exceptions
- Exceptions taken (Describe. Attach additional pages if needed)

Confidential/Proprietary Submittals (mark one):

- No confidential/proprietary materials have been included with this offer
- Confidential/Proprietary materials included. Proposers should identify below any portion of their offer deemed confidential or proprietary (see Standard Terms and Conditions, section **titled Confidential Information**). Identification of such materials in this section does not guarantee that disclosure will be prevented but that the item will be subject to review by the Proposer and the City prior to any public disclosure. Requests to deem the entire offer as confidential will not be considered.

Additional Materials submitted (mark one):

- No additional materials have been included with this offer
- Additional Materials attached (Describe. Attach additional pages if needed)

EVALUATION CRITERIA

Proposals will be evaluated based on the Proposer's ability to meet the performance requirements and scope of work/specifications of this RFP Package. This section provides a description of the evaluation criteria that will be used to evaluate the Proposals. To be deemed responsive, it is important for the Proposer to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP Package.

The following evaluation criteria will be used by the City of Flagstaff's evaluation committee for the selection of a Proposer to provide **ARTS, SCIENCE and CULTURAL SERVICES**. The evaluation committee will review the initial proposal responses and score them according to the criteria listed below. Depending on the total number of proposal responses to this RFP, the committee may "short list" the proposers receiving the highest scores and conduct formal discussions/presentations to make a final evaluation. After final evaluation of proposal responses, the City may narrow the total number of responses down to approximately three (3) and may request "Best and Final" offers.

The following evaluation criteria and points schedule will be used to determine the award of the contract(s):

| <u>EVALUATION CRITERIA</u> | <u>RELATIVE IMPORTANCE PERCENTAGE</u> |
|-------------------------------------|--|
| 1. Experience and Qualifications | 30 |
| 2. Project Personnel | 20 |
| 3. Presented Approach | 20 |
| 4. Fee | 20 |
| 5. References | 10 |
| <u>TOTAL POINTS POSSIBLE</u> | <u>100</u> |

The City reserves the right to reject any and all proposals, or any part thereof; to accept any proposal or any part thereof; or to waive any informality when it is deemed to be in the City's best interest.

PROPOSER QUESTIONNAIRE

Company Legal/Corporate Name: _____

Doing Business As (if different than above): _____

Address: _____

City: _____ State: _____ Zip: _____ - _____

Phone: _____ Fax: _____

E-Mail Address: _____ Website: _____

Taxpayer Identification Number: _____

Remit to Address (if different than above):

Address: _____

City: _____ State: _____ Zip: _____ - _____

Contact for Questions about this proposal:

Name: _____ Fax: _____

Phone: _____ E-Mail Address: _____

Day-to-Day Project Manager (if awarded):

Name: _____ Fax: _____

Phone: _____ E-Mail Address: _____

Sales/Use Tax Information (check one):

Proposer is located outside Arizona (The City will pay use tax directly to the AZ Dept of Revenue)

Proposer is located in Arizona (The Offeror should invoice the applicable sales tax and remit to the appropriate taxing authorities)

State Sales Tax Number: _____

City Sales Tax Number: _____ City of: _____, AZ

Certified Small Business Certifying Agency: _____

Certified Minority, Woman or

Disadvantaged Business Enterprise Certifying Agency: _____

Credit References: Provide the name and telephone number of at least three organizations that your company deals with on an on-going basis.

A. Company Name _____

Contact & Phone Number _____

B. Company Name _____

Contact & Phone Number _____

C. Company Name _____

Contact & Phone Number _____

Insurance - Name of insurance agent that will provide the specified coverages.

List any other information that may be helpful in determining your qualifications including sub-contracts to be utilized, if any.

Additional Information required:

- a. Year firm was established (include former firm names and year each applied).
- b. Identify the country and state in which the firm was incorporated or otherwise organized.
- c. Type of ownership and parent company and subsidiaries, if any. Include dates of any corporate mergers and/or acquisitions including all present and former subsidiaries with dates of any and all re-structuring since the founding date.
- d. A narrative description and organization chart depicting the management of the Proposer's organization and its relationship to any larger business entity.
- e. A description of the overall operations of the Proposer, the number and scope of other projects currently ongoing or set to begin in the near future.
- f. A narrative description of Proposer's familiarity with and prior operating experience in Arizona or the Southwestern United States.
- g. Provide, at Proposer's option, any additional information not specifically listed above which demonstrates the qualifications of the Proposer to perform the scope of work specified in this RFP.

APPENDIX A DETERMINATION OF RESPONSIBILITY

DETERMINATION OF RESPONSIBILITY OF PROPOSERS, FLAGSTAFF CITY CODE SECTION NUMBER 1-20-001-0004

- A. For purposes of administering the provisions of Sections 2, 9, and 10 of Article VIII of the Flagstaff City Charter with respect to an Enumerated Contract, as hereinafter defined, and such other contracts as the City shall deem appropriate in accordance with the provisions of this Section 0004, no Proposer shall be determined to be "responsible" if that Person is a Habitual Violator, as defined herein.
- B. For purposes of this Section 0004, the masculine shall include the feminine and/or neuter and the singular the plural, and vice-versa, as sense shall require, and the following capitalized terms shall have the meaning set forth in this Subsection B, as follows:
1. "Person" means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.
 2. "Violation" means any one of the following actions or an equivalent action by any regulatory agency, court, or other competent authority as a result of or in connection with a Covered Matter:
 - a. Final administrative order imposing monetary penalties, or otherwise requiring payments, in excess of \$100,000;
 - b. Final permit revocation or suspension;
 - c. Fine or civil judgment imposing monetary penalties, or otherwise requiring payments, in excess of \$100,000;
 - d. Judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere or no contest;
 - e. Finding of contempt of any court order enforcing the provisions of any federal or state law pertaining to a Covered Matter;
 - f. Settlement agreement or consent order imposing monetary penalties, or otherwise requiring payments, in excess of \$100,000; and
 - g. Debarment or equivalent exclusionary action by any public agency or instrumentality.
 3. "Covered Matter" means any of the following:
 - a. Any offense indicating a lack of business integrity or honesty which affects the present responsibility of a Proposer, including but not limited to:
 - (l) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

- (ii) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or
 - (iii) Unlawful price fixing between competitors, allocation of customers between competitors, Proposal rigging, or any other violation of any federal or state antitrust law that relates to the submission of Proposals or proposals.
 - b. Violation of the terms of a public agreement so serious as to affect the present responsibility of a Proposer, including but not limited to:
 - (i) a willful or material failure to perform under one or more public agreements; or
 - (ii) a willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.
 - c. Failure to pay a debt (including disallowed costs and overpayments) owed to any government agency or instrumentality, provided that the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted.
 - d. Violation of any law or regulation pertaining to the protection of public health or the environment.
- 4. "Parent" means any Person who owns or controls any other corporation, partnership, association, or legal entity, however organized.
- 5. "Subsidiary" means any corporation, partnership, association, or legal entity, however organized, owned or controlled by another Person.
- 6. "Affiliate": Persons are Affiliates of one another if, directly or indirectly, one owns, controls, or has the power to control the other, or a third Person owns, controls, or has the power to control both.
- 7. "Control" means the power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a Person, whether through the ownership of stock or securities, through one or more intermediary Persons, or otherwise. For purposes of this Paragraph B.7, a Person who owns or has the power to vote, directly or indirectly, more than fifty percent (50%) of the outstanding voting securities of another Person, or more than fifty percent (50%) of value of the other Person. Such presumption may be rebutted by clear and convincing evidence. Other indicia of control shall include, but be not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or the power to appoint or actual appointment of directors or managers. For purposes of this Paragraph B.7, a person shall be treated as owning all stock and securities owned by: his siblings, spouse, and lineal descendants and ancestors; any trust of which such person or a member of such person's family is the grantor; and any corporation or other business entity in which such person or member of such person's family owns more than fifty percent (50%) of the value or voting power of such entity.

8. "Habitual Violator" means any Proposer who has incurred, or any of whose Parent, Subsidiary, or other Affiliates have incurred, in the aggregate, more than two Violations within five (5) years preceding the Proposal opening date.
 9. "Enumerated Contract" shall mean any contract by which the City purchases services to be performed, which by its terms cannot be performed in less than one (1) year and which requires the payment of a stated sum of more than One Hundred Thousand Dollars (\$100,000), but shall not include contracts for the provision of professional services (such as legal, accounting, architectural or engineering) or for the construction, improvement or repair of City buildings or other public improvements.
- C. For purposes of this Section 0004, any administrative action or order, judgment or criminal conviction that has been ruled on appeal in favor of the Proposer by a final decision of a competent authority will not be considered to be a Violation. If the Proposer has an appeal pending, the outcome of which will affect the determination of whether the Proposer is a responsible Proposer, the City shall not determine the Proposer to be a responsible Proposer until a final decision on the appeal is rendered.
- D. Along with its Proposal or proposal documents, each Person Proposaling or proposing for an Enumerated Contract, or for any other contract for which the City shall choose to apply the provisions of this Section 0004 by due notice in the Proposal solicitation or request for proposals for such contract, shall provide such information as shall be necessary and appropriate for the evaluation of a Proposer under the provisions of this Section 0004, substantially in the form attached hereto as an Exhibit.
- E. If information provided by the Proposer or otherwise available to the City shows that the Proposer, or its Parent, Subsidiary, or other Affiliates, have incurred in the aggregate more than two Violations within five (5) years preceding the Proposal opening date, the City shall notify the Proposer that the Proposer appears to be a Habitual Violator within the meaning of this Section 0004. Upon receipt of the notification, the Proposer shall have ten (10) days to produce clear and convincing evidence to the City that the Proposer is not a Habitual Violator within the meaning of this Section. If the City finds that the evidence, if any, produced by the Proposer is not clear and convincing evidence that the Proposer is not a Habitual Violator, the City shall determine the Proposer to be a Habitual Violator. If the City finds that the evidence produced by the Proposer is clear and convincing evidence that the Proposer is not a Habitual Violator, the City shall determine that the Proposer is not a Habitual Violator. Notwithstanding anything to the contrary contained herein, the City may, but shall not be required to, deem a Proposer not to be a Habitual Violator, or may waive, in whole or in part, the requirements of this Section 0004, if the City, in its sole discretion, shall determine that:
1. There is no other Proposer reasonably capable of performing the subject contract;
 2. An emergency exists such that the expeditious award of the contract is essential to the public health, safety or welfare; or
 3. A change of ownership, management or control of the Proposer demonstrates, by clear and convincing evidence, as determined by a vote of five (5) at any Council meeting duly held, that the history of the Proposer is not indicative of its current business practices.
- F. Any Proposer who intentionally provides false information, or intentionally fails to provide complete information, to the City in accordance with the requirements of Subsection D hereof shall be determined to be not a responsible Proposer within the meaning of Sections 2, 9, and 10 of Article VIII of the Flagstaff City Charter.

- G. For purposes of administering the provisions of Sections 2, 9, and 10 of Article VIII of the Flagstaff City Charter, if a Proposer is not a Habitual Violator, the City may consider any other information available to the City in determining whether a Proposer is responsible. The City's

Purchasing Director or his designee may establish further specific criteria of responsibility with respect to particular solicitations or requests for proposals, which criteria shall be set forth in such solicitation or request for proposals. Further, the City's Purchasing Director or his designee may choose to apply some or all of the provisions of this Section 0004 to any contract other than an Enumerated Contract if the nature of such contract or other circumstances indicate that the Proposer's responsibility is or may be material in the performance or administration of such contract, provided that the application of such provisions shall be noted in the Proposal solicitation or request for proposals for such contract.

- H. Any determination that a Proposer is not responsible, under Section 0004 shall be made in writing and shall set forth the grounds for such determination. A copy of such determination shall be promptly sent to such Proposer.
- I. Nothing in this Section 0004 shall be construed to limit the right of the City to find any Proposer or proposer not responsible for purposes of Sections 2, 9, and 10 of Article VIII of the Flagstaff City Charter for any sufficient reason not enumerated herein, with respect to any City contract, whether or not the requirements of this Section 0004 are applicable to such contract.
- J. If, during the course of administration or performance of any contract to which the requirements of this Section 0004 are applicable (whether by the terms hereof or by action of the City's Purchasing Director, as set forth in Subsection G hereof), either:
1. The City shall discover that the Proposer made a material omission or false statement in the course of providing the information required by Subsection D; or
 2. The Proposer commits a Violation as defined above, which, in conjunction with other Violations committed by the Proposer or any Affiliate, would make it a Habitual Violator;

Then the City may terminate the contract immediately, without penalty or further obligation (other than those as may already have accrued under the terms of the contract), except as may be otherwise expressly provided in such contract.

APPENDIX B PROPOSER DISCLOSURE FORM

Information required to be solicited pursuant to City Code Section 1-20-001-0004.D

In accordance with City Code Section 1-20-001-0004, all Proposers are required to complete and sign the following checklist. For any item checked YES, you must provide as complete an explanation as possible on one or more attached sheets, including dates, company name(s), enforcing authority, court, agency, etc. Answering YES to one or more questions does not necessarily mean that you will be disqualified from this Proposal. **HOWEVER, FAILURE TO PROVIDE TRUE AND COMPLETE INFORMATION MAY RESULT IN DISQUALIFICATION FROM THIS PROPOSAL AND OTHER CONTRACTS FOR THE CITY OF FLAGSTAFF.** A copy of City Code Section 1-20-001-0004 may be obtained from the City of Flagstaff Purchasing Department.

Has your company or any affiliate* of your company, in the past 5 years, (i) had a permit revoked or suspended, (ii) been required to pay a fine, judgment or settlement of more than \$100,000, (iii) been convicted of a criminal offense (including a plea of guilty or *nolo contendere*), (iv) been found in contempt of court, or (v) been debarred, disqualified or suspended from submitting proposals on public contracts, as a result of or in connection with any of the following:

1. Any offense indicating a lack of business integrity or honesty, including fraud, bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, theft, or price fixing, Proposal rigging, restraint of trade or other antitrust law violation?
YES _____ NO _____

2. Violation of the terms of any public contract?
YES _____ NO _____

3. Failure to pay any uncontested debt to any government agency?
YES _____ NO _____

4. Violation of any law or regulation pertaining to the protection of public health or the environment?
YES _____ NO _____

*An "affiliate" of your company means any person, company or other entity that, either directly or indirectly (for example, through stock ownership by family members), controls, is controlled by, or is under common control with, your company.

I hereby verify that the foregoing information, and any explanation attached are to the best of my knowledge, true and complete.

Signature

Title

Date

OFFER

TO THE CITY OF FLAGSTAFF:

The undersigned hereby offers and agrees to furnish the material, service, or construction in compliance with the RFP Package. Signature also certifies understanding and compliance with "Certification" as defined in Article 1 of the "Standard Terms and Conditions" of this Agreement.

For clarification of this offer, contact:

Name: _____ Phone: _____ Fax: _____

Company Name: _____

Address: _____

City, State, Zip: _____

Signature of Person Authorized to Sign Offer

Title

Printed Name

Date

ATTACHMENT A

(PLEASE READ CAREFULLY, THIS IS AN EXAMPLE AGREEMENT OF WHAT THE SUCCESSFUL PROPOSER AND THE CITY WILL ENTER INTO)

SERVICE AGREEMENT FOR ARTS, SCIENCE and CULTURAL SERVICES

**CITY OF FLAGSTAFF
and**

This Agreement for _____ Services ("Agreement") is made by and between the City of Flagstaff ("City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and [Party's Name], [Form of organization], with offices at [Party's address] ("Provider"), effective as of the date written below.

RECITALS

- A. The City desires to enter into this Agreement in order to obtain services of a _____, as outlined in the Scope of Work/Specifications section of the Request for Proposals, (RFP) number 2011-61, incorporated by reference in this Agreement; and
- B. Provider has available and offers to provide the personnel necessary to provide said services within the required time in accordance with the Scope of Services included in this Agreement;

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, the City and Provider agree as follows:

1. SERVICES TO BE PERFORMED BY PROVIDER

Provider agrees to perform the following services:

1.1 Provider agrees to provide the services as set forth in detail in Exhibit "A" attached and incorporated in this Agreement.

1.2 Provider warrants that all material or services delivered under the Agreement shall conform to the specifications of the Agreement. Receipt of the material or services specified and any incidental inspection incidental by the City shall not alter or affect the obligations of Provider or the rights of the City under the foregoing warranty.

1.3 All services, information, computer program elements, reports and other deliverables which may be created under the Agreement are the sole property of the City and shall not be used or released by Provider or any other person except with prior written permission of the City.

2. COMPENSATION OF PROVIDER

Provider agrees to provide all of the services set forth in Exhibit “A” for prices not to exceed those set forth in the fee/price schedule, attached as Exhibit “B”.

3. RIGHTS AND OBLIGATIONS OF PROVIDER

3.1 Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the City as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider’s agents or employees as an agent, employee or representative of the City. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider’s performance under this Agreement.

3.2 Provider’s Control of Work. All services to be provided by Provider shall be performed as determined by the City in accordance with the Scope of Services set forth in Exhibit “A.” Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel.

3.3 Reports to the City. Although Provider is responsible for control and supervision of work performed under this Agreement, the services provided shall be acceptable to the City and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Provider to the City and the right of the City, as set forth in the Scope of Services, and the right of the City to audit Provider’s records.

3.4 Compliance with All Laws. Provider shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement.

4. NOTICE PROVISIONS

Notice. Any notice concerning this Agreement shall be in writing and sent by certified or registered mail as follows:

To the City’s Authorized Representative
 (“Contract Administrator”):

Rick Compau, C.P.M., CPPO, CPPB
Director of Purchasing
City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001

To Provider:

Provider's representative's name, title
Provider's name, e.g. name of corporation
Address Line 1
Address Line 2
City, State Zip Code

5. INDEMNIFICATION

To the fullest extent permitted by law, Provider shall indemnify, defend, save and hold harmless the City of Flagstaff and its officers, officials, agents, and employees (collectively referred to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation)

(collectively referred to as “Claims”) including claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Provider or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of such Provider to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Provider from and against any and all claims. It is agreed that Provider shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Provider shall waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by Provider for the City.

6. INSURANCE

Provider and subcontractors shall procure and maintain insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Agreement by the Provider, Provider’s agents, representatives, employees or contractors until all of their obligations under this Agreement have been discharged, including any warranty periods. The insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City does not represent or warrant that the minimum limits set forth in this Agreement are sufficient to protect the Provider from liabilities that might arise out of this Agreement, and Provider is free to purchase such additional insurance as Provider may determine is necessary.

6.1 Minimum Scope and Limits of Insurance. Provider shall provide coverage at least as broad and with limits not less than those stated below.

| | |
|--|--------------|
| 6.1.1 Commercial General Liability - Occurrence Form (Form CG 0001, ed. 10/93 or any replacement thereof) | |
| General Aggregate | \$2,000,000 |
| Products/Completed Operations Aggregate | \$1,000,000 |
| Personal and Advertising Injury | \$1,000,000 |
| Each Occurrence | \$1,000,000 |
| Fire Damage (any one fire) | \$500,000 |
| Medical Expense (any one person) | Optional |
| 6.1.2 Automobile Liability - Any Automobile or Owned, Hired and Non-owned Vehicles (Form CA 0001, ed. 12/93 or any replacement thereof) | |
| Combined Single Limit Per Accident for Bodily Injury and Property Damage | \$1,000,000 |
| 6.1.3 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 |
| 6.1.4 Professional Liability | \$10,000,000 |

6.2 Self-insured Retention/Deductibles. Any self-insured retentions and deductibles 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.

6.3 Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

6.3.1 Commercial General Liability and Automobile Liability Coverages. The City of Flagstaff, its officers, officials, agents and employees shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Agreement and activities performed by or on behalf of the Provider, including products and completed operations of the Provider; and automobiles owned, leased, hired or borrowed by the Provider.

6.3.2 The Provider's insurance shall contain broad form contractual liability coverage.

6.3.3 The City of Flagstaff, its officers, officials, agents and employees volunteers shall be named as additional insureds to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement.

6.3.4 The Provider'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 Provider's insurance and shall not contribute to it.

6.3.5 The Provider'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.

6.3.6 Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

6.3.7 The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Provider for the City.

6.4 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. When cancellation is for non-payment of premium, then at least ten (10) days' prior notice shall be given to the City. Notices required by this section shall be sent directly to: **Buyer name and Title**, City of Flagstaff, 211 W. Aspen Avenue, Flagstaff, Arizona 86001.

6.5 Acceptability of Insurers. Provider 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 provide the Provider from potential insurer insolvency.

6.6 Verification of Coverage. The Provider shall furnish the City with certificates of insurance (ACORD form) as required by this Agreement. 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.

6.6.1 The City must receive and approve all certificates of insurance before the Provider commences work. Each insurance policy required by this Agreement shall be in effect at, or before, commencement of work under this Agreement and shall remain in effect until all Provider's and its subcontractors' obligations under this Agreement have been met. The Provider's failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of this Agreement.

6.6.2 All certificates of insurance shall be sent directly to: Rick Compau, Purchasing Director, 211 West Aspen Avenue, Flagstaff, Arizona 86001. The City project/contract number and project description shall be noted on the certificates of insurance. 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 Agreement at any time. The City shall not be obligated, however, to review any insurance policies or to advise Provider of any deficiencies in such policies and endorsements. The City's receipt of Provider's policies or endorsements shall not relieve Provider from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Provider's obligations under this Agreement.

6.7 Subcontractors. Provider's certificate(s) shall include all subcontractors as additional insureds under its policies, or Provider shall furnish to the City Separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

6.8 Approval. Any modification or variation from the insurance requirements in this Agreement must have the prior approval of the City's Attorney's Office, whose decision shall be final. Such action will not require a formal Agreement amendment but may be made by administrative action.

7. DEFAULT AND TERMINATION

7.1 **Events of Default Defined.** The following shall be Events of Default under this Agreement:

7.1.1 Any material misrepresentation made by Provider to the City;

7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider's reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Provider's reasonable control;

7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the City;

7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the City as unsatisfactory or erroneous;

7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;

7.1.2.6 Unsatisfactory performance as judged by the Contract Administrator;

7.1.2.7 Failure to provide the City, upon request, with adequate assurance of future performance;

7.1.2.8 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and

7.1.2.9 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies.

7.2.1 Upon the occurrence of any Event of Default, the City may declare Provider in default under this Agreement. The City shall provide written notification of the Event of Default. If such Event of Default is not cured within seven (7) days of receipt of the notification, the City may invoke any or all of the following remedies:

7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;

7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;

7.2.1.3 The right to monetary damages;

7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;

7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the City; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The City may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the City, and that if the City allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the City be deemed to waive or relinquish any of its rights under this Agreement.

7.2.3 In the Event of Default by the Provider, the City shall not be liable to Provider for any amount, and Provider may be liable to the City for any and all damages sustained by reason of the default which gave rise to the termination.

7.3 Right to Offset. Any costs, including but not limited to attorney's fees, costs of remediation, and costs of delay, incurred by the City due to default of Proposer, or due to the City's exercise any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before the default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Provider shall be liable for and shall remit promptly to the City the balance upon written demand from the City.

7.4 Termination for Convenience. The City reserves the right to terminate, with or without cause, any resulting order or contract upon thirty (30) days written notice. The City shall be responsible only for those standard items or services which have been delivered and accepted. If any items being purchased are truly unique and therefore not salable or useable for any other application, the City shall reimburse Proposer for actual labor, material, and burden costs, plus a profit not to exceed 8%. Title to all materials, work-in-progress, and completed but undelivered goods, shall pass to the City after costs are claimed and allowed. Proposer shall submit detailed cost claims in an acceptable manner and shall permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

8. GENERAL PROVISIONS

8.1 Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

8.2 Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona. Provider hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

8.3 Attorney's Fees. Subject to Section 8.11, if suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court, including an appellate court, may adjudge reasonable as attorney fees.

8.4 Severability. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

8.5 Successors and Assigns. No right or interest in the Agreement shall be assigned by Provider without prior written permission of the City, and no delegation of any duty of Provider shall be made without prior written permission of the City. The City shall not unreasonably withhold approval and shall notify Provider of the City's position within fifteen (15) days of receipt of written notice by Provider. This Agreement shall extend to and be binding upon the Provider, its successors and assigns, including any individual, company, partnership, or other entity with or into which the Provider shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the Provider shall sell its assets.

8.6 Subcontracts. No subcontract shall be entered into by Provider with any other party to furnish any service specified herein without the advance written approval of the City. All subcontracts shall comply with Federal, State and local laws and regulations that are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth in the Agreement which shall apply with equal force to the subcontract, as if the Subcontractor were the Provider referred to herein. Provider is responsible for contract performance whether or not Subcontractors are used. The City shall not unreasonably withhold approval and shall notify Provider of the City's position

within fifteen (15) days of receipt of written notice by Provider. Provider shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

8.7 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Provider further covenants that in the

performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

8.8 Authority to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder, and that it has taken all actions necessary to authorize entering into this Agreement.

8.9 Integration. This Agreement represents the entire understanding of City and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters, except for documents comprising the RFP Package that have been incorporated into this Agreement. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.

8.10 Non-appropriation. If the City Council does not appropriate funds to continue this Agreement and pay for charges hereunder, the City may terminate this Agreement at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Provider at least thirty (30) days prior to any termination for a lack of funds and will pay to the Provider all approved charges incurred prior to Provider's receipt of such notice, subject to the availability of funds therefor.

8.11 Mediation. If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall take place in Flagstaff, Arizona, shall be self-administered, and shall be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision shall not constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

8.12 Non-Discrimination. Provider shall not discriminate against any employee, or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 75-5 as modified by State Executive Order 99-4 or A.R.S. 41-1461 et. seq. The Provider shall be required to comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

8.13 Compliance with Federal Immigration Laws and Regulations. Provider hereby warrants to the City that the Provider and each of its subcontractors ("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 "Provider Immigration Warranty").

8.13.1 A breach of the Provider Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Provider to penalties up to and including termination of this Agreement at the sole discretion of the City.

8.13.2 The City retains the legal right to inspect the papers of any Provider or Subcontractor employee who works on this Agreement to ensure that the Provider or Subcontractor is

complying with the Provider Immigration Warranty. Provider agrees to assist the City in regard to any such inspections.

8.13.3 The City may, at its sole discretion, conduct random verification of the employment records of the Provider and any of Subcontractors to ensure compliance with Provider's Immigration Warranty. Provider agrees to assist the City in regard to any random verifications performed.

8.13.4 The provisions of this Article must be included in any contract the Provider enters into with any and all of its Subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

8.14 Anti-Trust Violations. The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Provider. Therefore, to the extent permitted by law, Provider hereby assigns to the City any and all claims for such overcharges as to the goods or services used to fulfill this Agreement.

8.15 Advertising. Proposer shall not advertise or publish information concerning the Agreement, without the prior written consent of the City.

8.16 Inspection. All material, services or construction are subject to final inspection and acceptance by the City. The City may, at reasonable times and at its expense, inspect the plant or place of business of a Proposer or Subproposer which is related to the performance of any contract. This right of inspection and supervision shall include, but not be limited to the right of the City to audit Provider's records.

8.17 Force Majeure. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure.

8.17.1 The term "force majeure" means an occurrence that is unforeseeable and beyond the control of the party affected, which occurs without its fault or negligence, and which it is unable to prevent by exercising reasonable diligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, or failures or refusal to act by government authority, and other similar occurrences. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party, in writing, of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this agreement.

8.17.2 Force majeure shall not include the following occurrences:

8.17.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or by an oversold condition of the market.

8.17.2.2 Late performance by a Subcontractor unless the delay arises directly out of a force majeure occurrence in accordance with this force majeure term and condition. Any delay or failure in performance by either party hereto shall not constitute default

hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that, such delay or failure is caused by force majeure.

8.17.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing as soon as is practical, of the commencement of such delay and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed certified-return receipt and shall make a specific reference to this section, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this Agreement.

8.18 Business Operations in Sudan/Iran. In accordance with A.R.S. § 35-397, the Provider certifies that the Provider and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Provider’s certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Agreement.

9. DURATION

This Agreement shall become effective on and from the day and year executed by the parties, indicated below, and shall continue in force until **END DATE OF INITIAL TERM** unless sooner terminated as provided above. The City reserves the right to unilaterally extend the period of the Agreement for ninety (90) days beyond the stated termination date. In addition, by mutual written amendment, the Agreement may be renewed for supplemental periods of up to **NUMBER OF ADDITIONAL TERMS** additional one (1) year terms.

City of Flagstaff

Provider

City Manager

PROVIDER’S NAME AND TITLE

Attest:

City Clerk

Approved as to form:

City Attorney

Date of Execution:_____

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

REQUEST FOR PROPOSAL No. 2011-61
BUYER: Rick Compau, C.P.M., CPPO, CPPB
PH: (928) 213-2275 , FX: (928) 779-7656

EXHIBIT A

SCOPE OF WORK

INSERT SCOPE OF WORK

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

REQUEST FOR PROPOSAL No. 2011-61
BUYER: Rick Compau, C.P.M., CPPO, CPPB
PH: (928) 213-2275 , FX: (928) 779-7656

EXHIBIT B

FEE SCHEDULE

INSERT FEE/PRICE SCHEDULE

**SERVICE AGREEMENT
FOR
ARTS, SCIENCE and CULTURAL SERVICES**

**CITY OF FLAGSTAFF
and
FLAGSTAFF CULTURAL PARTNERS, INC.**

This Service Agreement for Arts, Science and Cultural Services ("Agreement") is made by and between the City of Flagstaff ("City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and Flagstaff Cultural Partners, Inc. ("Provider"), a nonprofit organization, with offices at 2300 N. Fort Valley Road, Flagstaff, Arizona, effective as of the Date of Execution written below.

RECITALS

- A. The City desires to enter into this Agreement in order to obtain services from a nonprofit community based arts organization dedicated to developing, coordinating and supporting area arts, science and cultural programs, as outlined in the Scope of Work/Specifications section of the Request for Proposals, (RFP) number 2011-61, incorporated by reference in this Agreement; and
- B. Provider has available and offers to provide the personnel necessary to provide said services within the required time in accordance with the Scope of Services included in this Agreement;

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, the City and Provider agree as follows:

1. SERVICES TO BE PERFORMED BY PROVIDER

Provider agrees to perform the following services:

1.1 Provider agrees to provide the services as set forth in detail in Exhibit A, attached and incorporated in this Agreement by reference.

1.2 Provider warrants that all material or services delivered under the Agreement shall conform to the specifications of the Agreement. Receipt of the material or services specified and any incidental inspection incidental by the City shall not alter or affect the obligations of Provider or the rights of the City under the foregoing warranty.

1.3 All services, information, computer program elements, reports and other deliverables which may be created under the Agreement are the sole property of the City and shall not be used or released by Provider or any other person except with prior written permission of the City.

2. COMPENSATION OF PROVIDER

Provider agrees to provide all of the services set forth in Exhibit A for prices not to exceed those set forth in the fee/price schedule, attached as Exhibit Band incorporated in this Agreement by reference. Provider understands and agrees that appropriations for the purposes of this Agreement are and shall be determined by City Council each year, as stated in Section 8.10, below.

3. RIGHTS AND OBLIGATIONS OF PROVIDER

3.1 Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the City as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or

representative of the City. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement.

3.2 Provider's Control of Work. All services to be provided by Provider shall be performed as determined by the City in accordance with the Scope of Services set forth in Exhibit "A." Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel.

3.3 Reports to the City. Although Provider is responsible for control and supervision of work performed under this Agreement, the services provided shall be acceptable to the City and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Provider to the City and the right of the City, as set forth in the Scope of Services, and the right of the City to audit Provider's records.

3.4 Compliance with All Laws. Provider shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement.

4. NOTICE PROVISIONS

Notice. Any notice concerning this Agreement shall be in writing and sent by certified or registered mail as follows:

To the City's Authorized Representative
("Contract Administrator"):

Karl Eberhard, AIA
Community Design and Redevelopment Manager
City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001

To Provider:

John Tannous
Executive Director
Flagstaff Cultural Partners
PO Box 296
Flagstaff, Arizona 86002-0296

5. INDEMNIFICATION

To the fullest extent permitted by law, Provider shall indemnify, defend, save and hold harmless the City of Flagstaff and its officers, officials, agents, and employees (collectively referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (collectively referred to as "Claims") including claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Provider or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Provider to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Provider from and against any and all claims. It is agreed that Provider shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Provider shall waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by Provider for the City.

6. INSURANCE

Provider and subcontractors shall procure and maintain insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Agreement by the Provider, Provider's agents, representatives, employees or contractors until all of their obligations under this Agreement have been discharged, including any warranty periods. The insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City does not represent or warrant that the minimum limits set forth in this Agreement are sufficient to protect the Provider from liabilities that might arise out of this Agreement, and Provider is free to purchase such additional insurance as Provider may determine is necessary.

6.1 Minimum Scope and Limits of Insurance. Provider shall provide coverage at least as broad and with limits not less than those stated below.

| | |
|---|-------------|
| 6.1.1 Commercial General Liability - Occurrence Form | |
| (Form CG 0001, ed. 10/93 or any replacement thereof) | |
| General Aggregate | \$2,000,000 |
| Products/Completed Operations Aggregate | \$1,000,000 |
| Personal and Advertising Injury | \$1,000,000 |
| Each Occurrence | \$1,000,000 |
| Fire Damage (any one fire) | \$500,000 |
| Medical Expense (any one person) | Optional |
| | |
| 6.1.2 Automobile Liability - Any Automobile or Owned, Hired and Non-owned Vehicles | |
| (Form CA 0001, ed. 12/93 or any replacement thereof) | |
| Combined Single Limit Per Accident for Bodily Injury and Property Damage | \$1,000,000 |
| | |
| 6.1.3 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 |
| | |
| 6.1.4 Professional Liability | \$2,000,000 |

6.2 Self-insured Retention/Deductibles. Any self-insured retentions and deductibles 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.

6.3 Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

6.3.1 Commercial General Liability and Automobile Liability Coverages. The City of Flagstaff, its officers, officials, agents and employees shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Agreement and activities performed by or on behalf of the Provider, including products and completed operations of the Provider; and automobiles owned, leased, hired or borrowed by the Provider.

6.3.2 The Provider's insurance shall contain broad form contractual liability coverage.

6.3.3 The City of Flagstaff, its officers, officials, agents and employees volunteers shall be named as additional insureds to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement.

6.3.4 The Provider'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 Provider's insurance and shall not contribute to it.

6.3.5 The Provider'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.

6.3.6 Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

6.3.7 The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Provider for the City.

6.4 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. When cancellation is for non-payment of premium, then at least ten (10) days' prior notice shall be given to the City. Notices required by this section shall be sent directly to: Rick Compau, C.P.M., CPPO, CPPB, Director of Purchasing City of Flagstaff, 211 W. Aspen Avenue, Flagstaff, Arizona 86001.

6.5 Acceptability of Insurers. Provider 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 provide the Provider from potential insurer insolvency.

6.6 Verification of Coverage. The Provider shall furnish the City with certificates of insurance (ACORD form) as required by this Agreement. 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.

6.6.1 The City must receive and approve all certificates of insurance before the Provider commences work. Each insurance policy required by this Agreement shall be in effect at, or before, commencement of work under this Agreement and shall remain in effect until all Provider's and its subcontractors' obligations under this Agreement have been met. The Provider's failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of this Agreement.

6.6.2 All certificates of insurance shall be sent directly to: Rick Compau, Purchasing Director, 211 West Aspen Avenue, Flagstaff, Arizona 86001. The City project/contract number and project description shall be noted on the certificates of insurance. 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 Agreement at any time. The City shall not be obligated, however, to review any insurance policies or to advise Provider of any deficiencies in such policies and endorsements. The City's receipt of Provider's policies or endorsements shall not relieve Provider from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Provider's obligations under this Agreement.

6.7 Subcontractors. Provider's certificate(s) shall include all subcontractors as additional insureds under its policies, or Provider shall furnish to the City Separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

6.8 Approval. Any modification or variation from the insurance requirements in this Agreement must have the prior approval of the City's Attorney's Office, whose decision shall be final. Such action will not require a formal Agreement amendment but may be made by administrative action.

7. DEFAULT AND TERMINATION

7.1 Events of Default Defined. The following shall be Events of Default under this Agreement:

7.1.1 Any material misrepresentation made by Provider to the City;

7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider's reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Provider's reasonable control;

7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the City;

7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the City as unsatisfactory or erroneous;

7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;

7.1.2.6 Unsatisfactory performance as judged by the Contract Administrator;

7.1.2.7 Failure to provide the City, upon request, with adequate assurance of future performance;

7.1.2.8 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and

7.1.2.9 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies.

7.2.1 Upon the occurrence of any Event of Default, the City may declare Provider in default under this Agreement. The City shall provide written notification of the Event of Default. If such Event of Default is not cured within seven (7) days of receipt of the notification, the City may invoke any or all of the following remedies:

7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;

7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;

7.2.1.3 The right to monetary damages;

7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;

7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the City; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The City may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the City, and that if the City allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the City be deemed to waive or relinquish any of its rights under this Agreement.

7.2.3 In the Event of Default by the Provider, the City shall not be liable to Provider for any amount, and Provider may be liable to the City for any and all damages sustained by reason of the default which gave rise to the termination.

7.3 Termination for Convenience. The City reserves the right to terminate this Agreement, with or without cause, upon thirty (30) days written notice.

8. GENERAL PROVISIONS

8.1 Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

8.2 Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona. Provider hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

8.3 Attorney's Fees. Subject to Section 8.11, if suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court, including an appellate court, may adjudge reasonable as attorney fees.

8.4 Severability. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

8.5 Successors and Assigns. No right or interest in the Agreement shall be assigned by Provider without prior written permission of the City, and no delegation of any duty of Provider shall be made without prior written permission of the City. The City shall not unreasonably withhold approval and shall notify Provider of the City's position within fifteen (15) days of receipt of written notice by Provider. This Agreement shall extend to and be binding upon the Provider, its successors and assigns, including any individual, company, partnership, or other entity with or into which the Provider shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the Provider shall sell its assets.

8.6 Subcontracts. No subcontract shall be entered into by Provider with any other party to furnish any service specified herein without the advance written approval of the City. All subcontracts shall comply with Federal, State and local laws and regulations that are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth in the Agreement which shall apply with equal force to the subcontract, as if the Subcontractor were the Provider referred to herein. Provider is responsible for contract performance whether or not Subcontractors are used. The City shall not unreasonably withhold approval and shall notify Provider of the City's position

within fifteen (15) days of receipt of written notice by Provider. Provider shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

8.7 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

8.8 Authority to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder, and that it has taken all actions necessary to authorize entering into this Agreement.

8.9 Integration. This Agreement represents the entire understanding of City and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters, except for documents comprising the RFP Package that have been incorporated into this Agreement. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.

8.10 Non-appropriation. If the City Council does not appropriate funds to continue this Agreement and pay for charges hereunder, the City may terminate this Agreement at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Provider at least thirty (30) days prior to any termination for a lack of funds and will pay to the Provider all approved charges incurred prior to Provider's receipt of such notice, subject to the availability of funds therefor.

8.11 Mediation. If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall take place in Flagstaff, Arizona, shall be self-administered, and shall be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision shall not constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

8.12 Non-Discrimination. Provider shall not discriminate against any employee, or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 75-5 as modified by State Executive Order 99-4 or A.R.S. 41-1461 et. seq. The Provider shall be required to comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

8.13 Compliance with Federal Immigration Laws and Regulations. Provider hereby warrants to the City that the Provider and each of its subcontractors ("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 "Provider Immigration Warranty").

8.13.1 A breach of the Provider Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Provider to penalties up to and including termination of this Agreement at the sole discretion of the City.

8.13.2 The City retains the legal right to inspect the papers of any Provider or Subcontractor employee who works on this Agreement to ensure that the Provider or Subcontractor is

complying with the Provider Immigration Warranty. Provider agrees to assist the City in regard to any such inspections.

8.13.3 The City may, at its sole discretion, conduct random verification of the employment records of the Provider and any of Subcontractors to ensure compliance with Provider's Immigration Warranty. Provider agrees to assist the City in regard to any random verifications performed.

8.13.4 The provisions of this Article must be included in any contract the Provider enters into with any and all of its Subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

8.14 Advertising. Proposer shall not advertise or publish information concerning the Agreement, without the prior written consent of the City.

8.15 Inspection. All material, services or construction are subject to final inspection and acceptance by the City. The City may, at reasonable times and at its expense, inspect the plant or place of business of a Proposer or Sub-proposer which is related to the performance of any contract. This right of inspection and supervision shall include, but not be limited to the right of the City to audit Provider's records.

8.16 Force Majeure. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure.

8.16.1 The term "force majeure" means an occurrence that is unforeseeable and beyond the control of the party affected, which occurs without its fault or negligence, and which it is unable to prevent by exercising reasonable diligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, or failures or refusal to act by government authority, and other similar occurrences. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party, in writing, of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this agreement.

8.16.2 Force majeure shall not include the following occurrences:

8.16.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or by an oversold condition of the market.

8.16.2.2 Late performance by a Subcontractor unless the delay arises directly out of a force majeure occurrence in accordance with this force majeure term and condition. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that, such delay or failure is caused by force majeure.

8.16.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing as soon as is practical, of the commencement of such delay and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed certified-return receipt and shall make a specific reference to this section, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Agreement modification for a period of

time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this Agreement.

8.17 Business Operations in Sudan/Iran. In accordance with A.R.S. § 35-397, the Provider certifies that the Provider and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Provider's certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Agreement.

9. DURATION

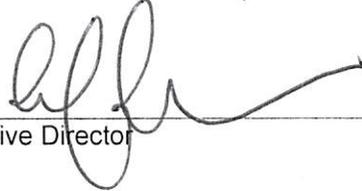
This Agreement shall become effective on July 1, 2012 and shall continue in force until **June 30, 2015**, unless sooner terminated as provided above. The City reserves the right to unilaterally extend the period of the Agreement for ninety (90) days beyond the stated termination date. In addition, by mutual agreement and written amendment signed by duly authorized representatives of the parties, the duration of the Agreement may be extended for supplemental periods of up to two (2) additional one (1) year terms.

City of Flagstaff



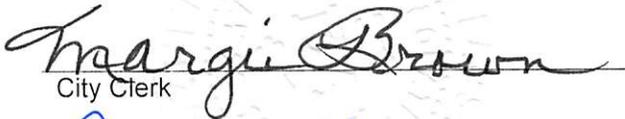
Kevin Burke, City Manager

Flagstaff Cultural Partners, Inc.



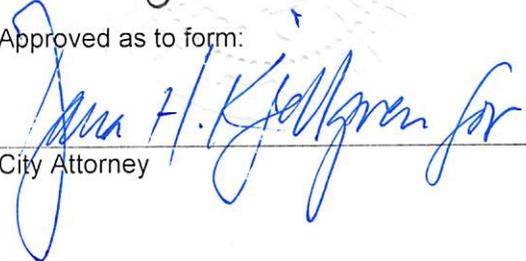
Executive Director

Attest:



City Clerk

Approved as to form:



City Attorney

Date of Execution: 12-12-11

EXHIBIT A
SCOPE OF WORK

1. Coordination

With regard to the coordination of arts, science and cultural activities, Provider shall:

1.1 Serve as the coordinating agency for arts, science and cultural endeavors in Flagstaff including long-range planning, leadership, and promotional activities, including;

1.1.1 Establishing and maintaining alignment with community, state and federal plans and initiatives, including but not limited to The Arizona Arts Education Plan, and long-range plans of the Arizona Commission on the Arts, the National Endowment for the Arts, and Alliance for the Second Century member organizations;

1.1.2 Preserving and utilizing the community's uniquely diverse existing expertise and talent as measured by the retention of existing proven expertise and talent;

1.1.3 Developing and maintaining effective partnerships with organizations, institutions, businesses, and individuals; and

1.1.4 Providing general and technical support for individuals, programs, activities, and organizations.

1.2 Expand the role of arts, culture, and sciences within Flagstaff as a center of arts, culture, and sciences in Northern Arizona.

1.3 Increase the participation opportunities for residents and stimulate public and private support for arts, culture, and science endeavors in Flagstaff.

2. Allocation

With regard to the allocation of City funds for arts, science and cultural activities, Provider shall:

2.1 Make grants of City Council-allocated Bed, Board and Beverage Tax ("BBB") revenues to local source providers as follows:

2.1.1 Provider shall appoint a review committee composed of Flagstaff residents, and one member appointed by the City, which shall:

2.1.1.1 Review each funding request programmatically, financially and administratively, using a proposal ranking system and taking into account the availability of alternative funding, the availability of similar services, and demonstrable public benefits from the applicant's proposal.

2.1.1.2 Make funding recommendations that shall be approved by the Proposer's Board of Directors or other kind of oversight from some form of a governing body prior to disbursement.

2.1.2 Provider shall provide the following services with regard to the allocation and full administration of the grant program, including;

- ✓ 2.1.2.1 Disbursement of approved allocations and other administration of all funds covered by the agreement.
- 2.1.2.2 Notifying organizations of reporting requirements and payment schedules.
- 2.1.2.3 Monitoring funded programs and finances.
- 2.1.2.4 Requiring organizations to cite the contribution of the City of Flagstaff toward the project(s) in all instances where the contributions to the project(s) are recognized or listed.

2.1.3 On an annual basis, Provider shall provide to the City the following with regard to BBB revenue allocation:

- 2.1.3.1 Request for Proposals document, prior to release for distribution;
- 2.1.3.2 Proposed Service Agreement text;
- 2.1.3.3 Rating or evaluation form used in scoring applicant proposals;
- 2.1.3.4 Insurance certificate for each funded organization, with the City named as "also insured;" and
- 2.1.3.5 An oral presentation to the City Council and a written Annual Report, each including a summary of all funding allocations (organizations, project description, amounts requested, amounts awarded, and other pertinent information), justification for all recommendations, and the status of all funded programs.

EXHIBIT B
FEE SCHEDULE

1. Base Amount Fees. Provider shall be paid Sixty-Five Thousand Dollars (\$65,000) in Year One of the Agreement ("Base Amount") for administration of the Coordination Activity and the Allocation Activity, combined ("Administrative Fees"). If the BBB tax revenues increase or decrease in any of the Agreement Years after the Year One, the Administrative Fees shall increase or decrease from the previous Agreement Year by the same percentage as the percentage change for the BBB tax revenues, with a maximum increase of three percent (3%) per year to be paid to Provider.

2. Non Appropriation. Provider understands and agrees that these fees are part of the appropriations of monies for subgrants and administrative fees from BBB tax revenues and shall be determined by the City Council each year in its sole discretion.