

# **Request for Proposals**

## **Fire Station #3 Artful Landscaping For The City of Bloomington, MN**

### **Project 22 - 13**

**Due: 11:00 A.M., Thursday, April 21, 2022**

## **Table of Contents**

I. Purpose (Introduction) –	3
II. Objective	3
III. Definitions	3
IV. Existing Environment	4
V. Inquiries	4
VI. Pre-Proposal Conference/Meeting	5
VII. Projected Timetable	6
VIII. Scope of Work	6
Statement of Work	6
Project Deliverables	6
Project Schedule	8
IX. Proposal Contents	8
X. Submission of Proposal	9
XII. Proposal Evaluations (Evaluation Criteria)	11
XI. Contract Award	13
A. Negotiations and Contract Execution	13
B. Contracting Ethics	14
XII. Disposition of Responses	14
XIII. Insurance Requirements	15
XIV. Contract Terms and Conditions:	15
XV. Statement of Non-Collusion	16
XVI. Sample Contract	18

## **I. Purpose (Introduction) –**

The City of Bloomington is seeking proposals from qualified individuals, firms, partnerships, and corporations having specific experience in the area(s) of landscape or pocket park design and interested in providing artful landscape services to the City.

## **II. Objective**

The objective is to enter into a contract with the selected Proposer to provide the design and construction of artful landscaping in a vacant lot adjacent to the newly constructed Fire station #3 in the South Loop District for the Creative Placemaking division of the City of Bloomington

## **III. Definitions**

**ADDENDA/ ADDENDUM** – An addition, deletion, clarification, or correction to the RFP issued by the City through the RFP System.

**CITY** - The City of Bloomington, a political subdivision of the State of Minnesota.

**CONTRACT** - The written agreement between the City and the Contractor covering the performance of the Project described in this RFP. The contract includes a standard agreement between the City and the Contractor that incorporates the RFP, any Addenda, and Contractor's complete Proposal.

**CONTRACTOR** - The qualified Proposer that is awarded the Contract to the design and construction of artful landscaping for the City of Bloomington at Fire Station #3.

**PROJECT** – The design and construction of artful landscaping in a vacant lot adjacent to the newly constructed Fire station #3 in the South Loop District.

**PROPOSAL** – Proposer's pricing and proposal to provide goods, commodities labor or services submitted through the RFP System in response to this RFP.

**PROPOSER** - The person, consultant, contractor, vendor, corporation or other entity submitting a Proposal in response to the RFP.

**RFP** - This document, entitled "Request for Proposals, Fire Station #3 Artful Landscaping, For The City of Bloomington, MN," which includes any Addenda.

**RFP SYSTEM** – An online portal, Bids and Tenders, used to issue and receive RFP responses electronically.

## IV. Existing Environment

The South Loop neighborhood and district is uniquely positioned and home to a residential area, the Minnesota Valley National Wildlife Refuge, 4 light rail transit stations, proximity to a major international airport, numerous hotels, significant new development opportunities and the Mall of America. The City adopted a long-range plan to transform the area into a densely populated, walkable urban neighborhood featuring new housing, a variety of businesses, world-class recreation, entertainment options, and hospitality. In 2014 the City of Bloomington and Artistry initiated a Creative Placemaking Plan, acknowledging that the arts and other creative activities can highlight local assets and help transform the neighborhood physically, socially, and culturally. The goals of the Plan are to create Urbanism, Animation, Involvement, Leadership, and Investment.

The “Artful Landscaping” site is currently vacant and located adjacent to and just south of the newly constructed Fire Station #3 (2275 E Old Shakopee Rd, Bloomington, MN 55425). There are currently 40 plots tilled. The site is disturbed, so the selected Proposer may run into marginal topsoil and possibly fill in some areas. There is a water tank in place for gardener’s use. A portable restroom and compost/garbage will also be provided. There is currently no electrical or water service to this site. Both would need to be developed as part of the project if necessary for project components.

Space available for project elements outside of the community garden includes approximately 10,000 square feet. There is no public parking lot for this site. There is a trail from the east end of the garden that connects to the Hometown Church parking lot for use of the gardeners. The site is also surrounded by residential single and multifamily homes, Skywater Technology Headquarters, and just south of the entrance to Bass Ponds Trail. Additional photos of site can be found in Attachment A.

The “Artful Landscaping” project should directly relate to and be utilized by the Fire Station’s neighbors, gardeners, and residents of the immediate neighborhood as a special place to walk to, enjoy, and use as a community garden and pocket park.

Additional information about the South Loop District and Bloomington’s Creative Placemaking Plan and projects is available via the following resources:

- South Loop District Plan and South Loop Creative Placemaking Plan: [www.bloomingtonmn.gov/plan/south-loop-district](http://www.bloomingtonmn.gov/plan/south-loop-district)
- South Loop Creative Placemaking: [www.blm.mn/placemaking](http://www.blm.mn/placemaking)
- South Loop Public Art Audio Tour: [www.otocast.com](http://www.otocast.com)

## V. Inquiries

It is the responsibility of the Proposer to inquire about any portion of the RFP that is not fully understood or susceptible to more than one interpretation. Inquiries must be submitted to the Purchasing representative through the RFP System by clicking on the “Submit a Question” button for this specific RFP.

All inquiries, questions, or clarifications must be submitted at least seven (7) calendar days prior to the due date of this RFP. Those inquiries, questions, or clarifications submitted after this date will not be answered. All inquiries will be responded to within three (3) business days. Inquiries and the City's response will be provided to all Proposers who acquired an RFP through the RFP System.

Do not ask other City personnel questions, as information gathered from other sources may not reflect the City's position or interest and could result in disqualification.

The City reserves the right to contact Proposers individually for the purpose of clarifying Proposals.

## **ADDENDA**

Addenda will be available in the RFP System to all Proposers who have registered to receive the RFP documents. Proposers shall acknowledge receipt of any Addenda through the RFP System by checking a box for each Addenda and any applicable attachment.

It is the responsibility of the Proposer to have received all Addenda that are issued. Proposers should check online at <https://bloomingtonmn.bidsandtenders.net/Module/Tenders/en> prior to submitting their Proposal.

Proposals submitted prior to the RFP closing time and date will be withdrawn automatically by the RFP System if additional Addenda are issued. Submission status will change to an incomplete status and the Proposal will be withdrawn. The Proposer can view this status change in the RFP System.

After an Addendum is issued, the Proposer is solely responsible to:

1. Make any required adjustments to their Proposal; and
2. Acknowledge the Addendum; and
3. Ensure the re-submitted Proposal is RECEIVED by the RFP System no later than the stated RFP closing time and date.

## **VI. Pre-Proposal Conference/Meeting**

The City will provide a site visit for proposers on Monday, April 11, at 1:00 PM at the Artful Landscaping site (2275 E Old Shakopee Rd, Bloomington, MN 55425). Proposers should park and meet at Hometown Church (2300 E 88th St, Bloomington, MN 55425).

## VII. Projected Timetable

Issue Request for Proposals	March 24, 2022
Questions in Writing Cutoff	April 14, 2022
Pre-Proposal Conference and Site Visit	April 11, 2022
Amendment/Addendum to RFP	April 19, 2022
Proposals Due	April 21, 2022
Evaluation of Proposals	April 28, 2022
Proposer Interviews	May 2, 2022
Contract Negotiations	May 9, 2022
Contract Execution	May 23, 2022
Notice to Proceed	June 1, 2022

## VIII. Scope of Work

### **Statement of Work**

The City of Bloomington's Creative Placemaking Commission in partnership with Artistry requests proposals for the design and construction of Artful Landscaping adjacent to the newly constructed Fire station #3 in the South Loop District. This project should incorporate community engagement and involve local artists.

### **Project Deliverables**

Project deliverables should include the following:

- a) **Creation of a landscape design concept.** The project will contemplate community feedback already received during engagement activities. Specifically, the project must include:
  - o a designed, landscaped area that features native plants and pollinators. The Proposer should plan to amend soils or pick plants with tolerance of less-than-optimal conditions. The City would like this area to be easily maintained, the Proposer should design with hardy, readily available, native plant choices that are more self-sustaining.

- garden plot aesthetic improvements to create a more cohesive design that is welcoming and aesthetically pleasing to neighbors, but still practical for gardeners;
- artful seating, ideally created by local artists;
- at least one picnic table;
- "South Loop Community Garden" sign, ideally created by local artists;

The project may include:

- walking paths;
- additional signage as needed;
- additional creative features by local artists.

Ultimately the design will achieve the creation of a new space that is welcoming to the residential area it is a part of; fosters beauty, tranquility, and provides individuals a place to walk through, rest at, and enjoy.

- b) **Incorporate community engagement.** The Proposer must incorporate community engagement in the project deliverables. Propose may determine how and when to coordinate community engagement and outreach in this project. This may be part of the final design phase, in the form of a school residency during the planning phase, part of the planting process, or any other way the Proposer would like to encourage and incorporate community involvement.

The City intends to work with Bloomington resident volunteers who would like to develop an educational space to teach kids about gardening, organics, and sustainability at the garden. The City will provide two plots (raised garden beds) and would like the selected Proposer to work with them on potential planter box art and/or any other design elements to assist with their space or programming.

- c) **Appropriate team and process.** As the project manager, the selected Proposer will sign a contract with the City of Bloomington and be responsible for all aspects of planning and implementing the project including but not limited to the budget, subcontracting, insurance coverage, obtaining permits if needed, and direct communication with City of Bloomington staff. The proposal should describe the designer/team's capacity to implement and achieve the plan and should specifically mention how they will work with local artists to achieve the plan.
- d) **Address unique environment.** This project should address the unique environment conditions of this specific area including soil conditions, harsh year-round weather conditions, nearby road salt applications and other road treatments, and air pollution especially as it relates to the nearby airport.
- e) **Maintenance Plan.** The Selected Proposer should submit a long-term maintenance plan. Low maintenance landscaping and features are encouraged. This plan should include a schedule that specifies an ideal watering, pruning, re-planting, mulching, and any other aspects that will achieve optimum benefits of the landscaping, as well as maintenance for any other features, such as benches.

**Budget**

The total budget for this project is \$200,000. This not-to-exceed total must cover all design modifications, equipment, materials, site preparations, transportation, insurance, permit fees, and any other related expenses.

**Project Schedule**

Proceed with engagement plan	June 1, 2022
Installation of project deliverables	July – September, 2022
Maintenance of project deliverables	September – October 2022

\*Proposer should note in their Proposal if they cannot meet the project schedule and include their anticipated schedule.

**IX. Proposal Contents**

All Proposals shall be kept to a maximum sixteen (16) single-sided pages, in eleven (11) font size minimum, excluding the cover, and title sheets. Any project sheets, resumes, or other marketing materials may be included as an appendix to each Proposal. However, do not assume that material contained in appendices will be reviewed or considered. The cover letter, appendices, and pages acknowledging the receipt of addenda and the statement of non-collusion do not count towards the sixteen (16) page limit. Proposals need not include elaborate brochures, expensive bindings, etc.; however, legibility, clarity, conciseness, and completeness are essential.

The Proposals must include, at a minimum, and shall be organized according to the following outline:

- A. ***Cover Letter:*** Summarizes the key elements of the Proposal and outlines why your firm should be selected for this Service. The cover letter should identify the name, title, address, phone number, and email address of the person who will represent the Contractor in matters regarding the Proposal's content.
- B. ***Project Understanding:*** Describe your understanding of the Project to be provided, identify issues or areas of concern to be addressed by the Project, outline the overall objectives of the Project, and summarize your approach to fulfilling the scope of services and deliverables. The Proposer is reminded to review the insurance certificate requirements listed in Section XVI – Sample Contract.
- C. ***Proposer Background and Experience:*** Provide a brief description of your firm and any sub-contractors proposed as part of your team. Sub-contractors must be approved by the City in conjunction with each Proposal.

Identify and describe at least three (3) projects that your firm has completed that exemplify your firm's ability to complete this Project. Include client references for



each project, listing a contact name, telephone number and email address. Include dates the work was performed. The Proposers are to identify any clients and/or projects that may present a conflict of interest to providing the Project for the City as part of their Proposal.

- D. *Project Team:*** Provide short descriptions [one (1) to two (2) paragraphs] of key team members summarizing their experience and proposed role for this Project. Clearly identify who will lead the project team and who will be the main point of contact with City staff. Include an organizational chart of team members and sub-contractors. If the person identified as the project manager did not lead one (1) of the projects submitted under the Experience section, provide client references to support their project management capabilities.
- E. *Scope of Work:*** Clearly outline the tasks needed to complete each deliverable of the work outlined above. Include all substantive tasks and milestones outlined in this RFP. Identify key team members and project deliverables for each section of the Scope of Work. Identify tasks and responsibilities, if any, that are expected to be provided by the City.
- F. *Project Schedule:*** Prepare a work task flow chart that illustrates chronologically the firm's intent to reach major project milestones.
- G. *Statement of Non-collusion:*** Include pages regarding the Statement of Non-collusion. See Section XV.

The Proposals must also include time/cost estimate.

- A. *Time/Cost Estimate:*** Prepare a spreadsheet outlining anticipated time and cost, including all tasks defined in Section VIII - Scope of Services. This spreadsheet should include time and costs for key team members, including both anticipated hours and hourly rates. Prepare an hourly breakdown for each task for proposed services that identifies all reimbursable expenses, such as mileage and meetings, associated with this Proposal. The Proposal must include a total not-to-exceed amount for the Project. Pricing documents should remain separate from the rest of the Proposal.

## **X. Submission of Proposal**

### **1. Electronic Submission**

Proposers must submit all Proposals electronically via the RFP System. Oral, facsimile, email, hard copy, or telephone Proposals are invalid and will not receive consideration.

### **2. Deadline**

Proposers must submit Proposals prior the time and date indicated in the Formal Request for Proposal, or any extension thereof made by Addendum. Proposals received after the time and date designated for receipt of Proposals will not be accepted by the RFP System and will be returned unopened without being considered for award.

The Proposer shall assume full responsibility for timely submission of Proposals. Late Proposals are not permitted by the RFP System.

Timing is based on when the Proposal is received by the RFP System, not when a Proposal is submitted, as Proposal transmission can be delayed due to, but not limited to, file transfer size and transmission speed.

The closing time and date shall be determined by the RFP System's web clock.

### **3. Confirmation and Updates**

The RFP System will send a confirmation email to the Proposer advising that their Proposal was submitted successfully. If you do not receive a confirmation email, contact Bids&Tenders support at [support@bidsandtenders.ca](mailto:support@bidsandtenders.ca)

It is the Contractor's responsibility to create an account in the RFP System and register for the RFP to ensure receipt of the latest information and updates via email regarding this RFP. This is particularly important if a Proposer has obtained this RFP Document from a third party.

### **4. Signature**

A person who is authorized to legally bind the responding Consultant must sign the Proposal. The Consultant shall acknowledge that the Proposal complies with any amendments, alterations or deletions to the RFP.

### **5. Withdrawal or Modification of Quotes**

A Proposer may edit or withdraw their Proposal prior to the closing time and date. However, the Proposer is solely responsible to ensure the re-submitted Proposal is received by the RFP System no later than the stated closing time and date.

After the submittal deadline, Proposers may not modify, withdraw or cancel their Proposals for a minimum of ninety (90) days following that date.

### **6. Clarifications, Exceptions, and Addenda**

The City reserves the right to contact Proposers individually for the purpose of clarifying Proposals.

Proposers may find instances where they are unable to provide services that meet all of the expectations defined in this RFP. In such cases, the Proposer should identify the areas where they feel the requested service or product is not available, deviates from the specific requests, or is deemed to be an unwise or unwarranted approach. The Proposer will describe exceptions to the RFP and identify their impact to the City, including, but not limited to, workarounds, reductions in performance, capacity, flexibility, accuracy, and ultimately cost and value. The City reserves the right to disallow exceptions it finds are not in the best interests of the City.

Any and all exceptions to the requirements of this RFP must be identified and fully explained in the submitted Proposal.

Any addenda to this RFP will be issued and acknowledged in the RFP system. No oral statements, explanations, or commitments shall be provided.

## **7. General**

The City reserves the right to reject any or all Proposals or parts of Proposals, to accept part or all of Proposals on the basis of considerations other than lowest cost, and to create a project of lesser or greater expense than described in this RFP or the respondent's reply based on the component prices submitted.

The City reserves the right to waive irregularities in the Proposal content or to request supplemental information from Proposers.

The City is not responsible for any costs incurred by the Proposer in the preparation of the Proposal or for any other cost to the Proposer associated with responding to the RFP. No reimbursement will be made by the City for any costs incurred prior to a formal notice to proceed should an award of contract result from this solicitation. This RFP does not obligate the City to award a contract or complete any specific Project. The City reserves the right to cancel this solicitation or to change its scope if it is considered to be in the best interest of the City.

All design drawings, plans, and Proposals submitted in response to the RFP will be retained by the City and not returned.

## **XII. Proposal Evaluations (Evaluation Criteria)**

Proposal(s) will be examined to eliminate those which are clearly non-responsive to the stated requirements. Proposals will be reviewed, and a recommendation of award made based on the Proposal most closely meeting the needs outlined in this RFP and providing the best value for the City.

The criteria the City will use to select a Proposer to provide a Artful Landscaping is described below. After the evaluation of experience, project approach, and cost, a list of Proposers will be

created from the top ranked Proposals. Interviews may or may not occur based upon size and technical scope of the project.

The criteria the City will use to select a Proposer to provide artful landscaping is described below.

Weight	Component	Description
50%	Proposed Project Approach	Proposer Understands: <ul style="list-style-type: none"> <li>• Project deliverables, which include:               <ul style="list-style-type: none"> <li>○ Landscape design concept, with project elements included in RFP</li> <li>○ Plan to incorporate community engagement</li> <li>○ Appropriate team and process, with a priority of working with local artists</li> <li>○ Address unique environment</li> <li>○ Ability to understand and embody project description goals and concepts.</li> <li>○ Value of work proposed in relation to cost</li> <li>○ Environmental sustainability of proposed plan</li> </ul> </li> </ul>
25%	Project Schedule	The firm's ability to complete the project in a timely fashion with all deliverables provided to the City by October, 2022.
25%	Qualifications and Experience	Firm experience, facilities, past performance

## **Proposal Evaluation Scoring Overview:**

The City of Bloomington uses a three or four step process depending on the technical specifications, value proposition, and economic value of the Request for Proposal project in consideration. Below are the steps taken when the City of Bloomington evaluates incoming Proposals.

### **Four Step Evaluator Process:**

#### **Step 1:**

The City of Bloomington will elect between 3-7 individuals with work duties or technical knowledge regarding the Scope of Work as proposal evaluators to complete vendor score sheets. The number of evaluators will be determined with respect to the difficulty and breadth of the Scope of Work. A larger, more difficult scope will require more evaluators. A short, basic scope

of work can have a minimum of (3) City of Bloomington evaluators. Often times, City Employees requesting the Request for Proposal are individuals with technical wherewithal and expertise to adequately provide scoring input and as such will be the elected evaluators. Procurement will finalize the evaluator list prior to the distribution of scoring sheets. All vendor submissions will be examined by City of Bloomington evaluators unless there is a change of employment status regarding one of more of the evaluators.

**Step 2:**

All City of Bloomington evaluators will perform step 2, review all submitted proposals and score each proposal individually in a private location. The City of Bloomington will make all attempts to reduce the risk of bias toward any specific Proposer by providing conference rooms or private offices for evaluation. The Evaluators will all be presented the same scoring rubric for each vendor. The rubric will be weighted alongside the proposal specific sections.

**Step 3:**

If the scope of work includes a product or service that requires demonstration (A piece of capital equipment demonstration or a software as a service demonstration) then Step 3 becomes a demonstration of that product or service to the City of Bloomington Evaluators. This step may also be used to interview Proposers. Evaluators will have a chance to update their score cards if something presented in the demonstration or interview changed the evaluators' perspective. All evaluators scored submissions are final at the end of this step.

**Step 4:**

Purchasing will take the average score for each vendor by taking the total sum of points submitted by the evaluators for each individual vendor and dividing it by the number of evaluators to come up with the average score.

The Proposer submitting the selected Proposal will be required to sign an agreement with the City based on their Proposal using the attached format (See Section XVI – City Sample Contract) which is provided for information and advanced coordination. All parties who submit Proposals will be notified by email of the City's decision regarding selection. No results will be released until a contract has been executed with awarded proposer.

## **XI. Contract Award**

### **A. Negotiations and Contract Execution**

The City reserves the right to negotiate the final terms and conditions of the contract to be executed. In the event the City and the Proposer are unable to agree upon all contract provisions, the City reserves the right to cease negotiations, and to move on to select another proposer, or to reject all Proposals.

**B. Contracting Ethics**

1. No elected officials or employees of the City who exercise any responsibility in the review, approval, or implementation of the Proposal shall participate in any decision which affects his or her direct or indirect financial interests.
2. It is a breach of ethical standards for any person to offer, give, or agree to give any City employee or elected officials person, or for any City employee or Council person to solicit, demand, accept, or agree to accept from another person or agency, a gratuity or an offer of employment whenever a reasonable prudent person would conclude that such consideration was motivated by an individual, group, or corporate desire to obtain special, preferential, or more favorable treatment than is normally accorded the general public.
3. The Proposer shall not assign any interest in this contract and shall not transfer any interest in the same without the prior written consent of the City.
4. The Proposer shall not accept any private client or project that may place it in ethical conflict during its representation of the City.

**XII. Disposition of Responses**

All materials submitted in response to this RFP will become the property of the City and will become public record after the evaluation process is completed and an award decision made. If the Proposer submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statutes 13.37, the Proposer must:

- Clearly mark all trade secret materials in its response at the time the response is submitted but indicating in writing the specific page number(s) and paragraph(s) classified as trade secret and therefore nonpublic.
- Include a statement with its response justifying the trade secret designation for each item and defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the City, its agents and employees, from any judgments or damages awarded against the City in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the City's award of a contract. In submitting a response to this RFP, the Proposer agrees that this indemnification survives as long as the trade secret materials are in possession of the City. The City is required to keep all the basic documents related to its contracts, including responses to the RFP for a minimum of seven (7) years.

The City will not consider the prices submitted by the Proposer to be proprietary or trade secret materials.

Responses to this RFP will not be open for public review until the City decides to pursue a contract and that contract is executed.

### **XIII. Insurance Requirements**

Proposer shall maintain insurance coverage, naming City as additional insured, as described in Section XVI. The Proposer shall not commence work until all insurance has been obtained and copies have been filed and accepted by the City. The Proposer shall be responsible for maintaining a valid certificate of insurance throughout the term of the Contract, as required in the sample agreement.

### **XIV. Contract Terms and Conditions:**

A sample of the City's contract is included in Section XVI. The clauses included in the sample contract will be included in the contract between the City and the Proposer that has been chosen to provide the Services described herein and in the Proposers' Proposal. Any exceptions to the contract terms and conditions included in Section XVI must be identified in the submitted Proposal.

## **XV. Statement of Non-Collusion**

The following statement shall be made as part of the Proposer's proposal.

I affirm that I am the Proposer, a partner of the consulting Proposer, or an officer or employee of the Proposer's corporation with authority to sign on the Proposer's behalf.

I also affirm that the attached has been compiled independently and without collusion or agreement, or understanding with any other proposer designed to limit competition.

I hereby affirm that the contents of this Proposal have not been communicated by the Proposer or its agent to any person not an employee or agent of the City.

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Signed

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Print Name

---

Title

---

Date

---

Proposer Name

---

Address

---

City / State / Zip Code

---

Telephone and Fax Numbers

---

Email Address



I certify this Proposal complies with the RFP and conditions issued by the City except as clearly marked in the attached copy.

Date	
Name	
Authorized Signature	
Title	
Company Name	
Address	
City, State	
Zip Code	
Telephone Number	
Fax Number	
E-mail	

## **XVI. Sample Contract**

### **SERVICES AGREEMENT - SAMPLE**

#### **CONTRACTOR LEGAL NAME**

THIS AGREEMENT is made on \_\_\_\_\_ ("Effective Date") by and between **INSERT CONTRACTOR LEGAL NAME**, a **choose type of business** located at **enter Contractor's registered business address** ("Contractor"), and the **CITY OF BLOOMINGTON, MINNESOTA**, a Minnesota municipal corporation located at 1800 West Old Shakopee Road, Bloomington, Minnesota 55431-3027 ("City"):

#### **RECITALS**

- A. Contractor is engaged in the business of providing **[insert services to be provided]** services.
- B. The City desires to secure a contract to provide **enter specific services the City wants the Contractor to provide.**
- C. Contractor represents that it has the expertise and capabilities to provide the City with the requested services.
- D. City desires to engage Contractor to provide the services described in this Agreement and Contractor is willing to provide such services on the terms and conditions in this Agreement.

**NOW, THEREFORE**, based on the Recitals above and in consideration of the terms and conditions expressed in this Agreement, the City and Contractor agree as follows:

#### **AGREEMENT**

- 1. **Services to be Provided.** Contractor agrees to provide the City with **[insert services to be provided]** services as described in Contractor's Scope of Services attached to this

Agreement as Exhibit A or any supplemental letter agreements, or both, entered into between the City and Contractor (the "Services"). The Services referenced in the attached Exhibit A or any supplemental letter agreements shall be incorporated into this Agreement by reference. All Services shall be provided in a manner consistent with the level of care and skill ordinarily exercised by contractors currently providing similar services.

2. **Time for Completion.** This Agreement shall remain in force and effect commencing from Effective Date and continuing until the earlier of **enter completion date of contract** or completion of the project unless terminated by the City or amended pursuant to the Agreement.
3. **Consideration.** The consideration, which City shall pay to Contractor and shall not exceed **\$enter total \$ amount of contract.00**, for both the Services performed by Contractor and the expenses incurred by Contractor in performing the Services, shall be as set forth in Exhibit A and incorporated into this Agreement. City shall make progress payments, based on monthly invoices from Contractor. City's payment shall be made within 30 days after Contractor's statement. Contractor's statement shall contain a detailed list of project labor and hours, rates, titles, and amounts undertaken by the Contractor during that billing period.
4. **Expense Reimbursement.** The Contractor will not be compensated separately for necessary incidental expenses. All expenses of the Contractor shall be built into the Contractor's fixed compensation rates, unless reimbursement is provided for an expense that received the prior written approval of the City, which approval may be provided via electronic mail.
5. **Approvals.** The Contractor will secure the City's written approval before making any expenditures, purchases, or commitments on the City's behalf beyond those listed in the Services. The City's approval may be provided via electronic mail.
6. **Termination.** Notwithstanding any other provision hereof to the contrary, this Agreement may be terminated as follows:
  - a. The parties, by mutual written agreement, may terminate this Agreement at any time;
  - b. Contractor may terminate this Agreement in the event of a breach of the Agreement by the City upon providing thirty (30) days' written notice to the City;

- c. The City may terminate this Agreement at any time at its option, for any reason or no reason at all; or
- d. City may terminate this Agreement immediately upon Contractor's failure to have in force any insurance required by this Agreement.

In the event of a termination, City shall pay Contractor for Services performed to the date of termination and for all costs or other expenses incurred prior to the date of termination.

- 7. **Amendments.** No amendments may be made to this Agreement except in writing signed by both parties.
- 8. **Remedies.** In the event of a termination of this Agreement by City because of a breach by Contractor, City may complete the Services either by itself or by contract with other persons or entities, or any combination thereof. The foregoing remedies provided to the City for breach of this Agreement by Contractor shall not be exclusive. City shall be entitled to exercise any one or more other legal or equitable remedies available because of Contractor's breach.
- 9. **Records/Inspection.** Pursuant to Minnesota Statutes § 16C.05, Subd. 5, the Contractor agrees that the books, records, documents, and accounting procedures and practices of the Contractor, that are relevant to the contract or transaction, are subject to examination by the City and the state auditor or legislative auditor for a minimum of six years. The Contractor shall maintain such records for a minimum of six years after final payment.
- 10. **Indemnification.** To the fullest extent permitted by law, the Contractor, and the Contractor's successors or assigns, agree to protect, defend, indemnify, save, and hold harmless the City, its officers, officials, agents, volunteers, and employees from any and all claims; lawsuits; causes of actions of any kind, nature, or character; damages; losses; or the costs, disbursements, and expenses of defending the same, including but not limited to attorneys' fees, professional services, and other technical, administrative or professional assistance resulting from or arising out of Contractor's (or its subcontractors, agents, volunteers, members, invitees, representatives, or employees) performance of the duties required by or arising from this Agreement, or caused in whole or in part by any negligent act or omission or willful misconduct, or arising out of the failure to obtain or maintain the insurance required by this Agreement. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled. The parties agree that these indemnification obligations will survive the completion or termination of this Agreement.

11. **Insurance.** Contractor shall maintain reasonable insurance coverage throughout this Agreement. Contractor agrees that before any work related to the approved Project can be performed, Contractor shall provide certificate of insurance with limits of insurance of at least the following amounts: Worker's Compensation Insurance as required by Minnesota Statutes, Section 176.181; Auto Liability in an amount not less than \$1,000,000.00 per occurrence; and Commercial General Liability in an amount of not less than \$1,500,000.00 per occurrence for bodily injury or death arising out of each occurrence, and \$1,500,000.00 per occurrence for property damage. To meet the minimum Commercial General Liability and Auto Liability requirements, the Contractor may use a combination of Excess and Umbrella coverage. The Contractor shall also name the City as an additional insured on its Commercial General Liability, Auto Liability, and Umbrella or Excess policies, and will provide the City with a current certificate of insurance that includes the following language: "The City of Bloomington is named as an additional insured with respect to the commercial general liability, automobile liability and umbrella or excess liability, as required by the contract. The umbrella or excess liability policy follows form on all underlying coverages." The certificate of liability insurance must also contain a statement that the Contractor or its insurance provider shall not cancel or amend the policies included on the certificate unless thirty (30) days' written notice is provided to the City, or ten (10) days' written notice in the case of non-payment.
12. **Assignment and Subcontracting.** Neither the City nor the Contractor shall assign, subcontract, or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in the Agreement, in whole or in part, without the written consent of the other except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Contractor from employing such independent consultants, associates, and subcontractors, as it may deem appropriate to assist it in the performance of services required by this Agreement. Any instrument in violation of this provision is null and void.
13. **Independent Contractor.** Contractor shall be deemed an independent contractor. Contractor's duties will be performed with the understanding that Contractor has special expertise as to the services which Contractor is to perform and is customarily engaged in the independent performance of the same or similar services for others. All required equipment and personnel shall be provided or contracted for by Contractor. The manner in which the services are performed shall be controlled by Contractor; however, the

nature of the services and the results to be achieved shall be specified by City. The parties agree that this is not a joint venture and the parties are not co-partners. Contractor is not to be deemed an employee or agent of City and has no authority to make any binding commitments or obligations on behalf of City except to the extent expressly provided in this Agreement. All services provided by the Contractor pursuant to this Agreement shall be provided by the Contractor as an independent contractor and not as an employee of the City for any purpose, including but not limited to: income tax withholding, workers' compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.

14. **Compliance with Laws.** Contractor shall exercise due care to comply with applicable federal, state and local laws, rules, ordinances and regulations in effect as of the date Contractor agrees to provide the applicable services detailed in the attached exhibits or any supplemental letter agreement. Contractor's guests, invitees, members, officers, officials, agents, employees, volunteers, representatives, and subcontractors shall abide by the City's policies prohibiting sexual harassment, firearms, and smoking, as well as all other reasonable work rules, safety rules, or policies regulating the conduct of persons on City property, at all times while performing duties pursuant to this Agreement. Contractor agrees and understands that a violation of any of these policies or rules constitutes a breach of the Agreement and sufficient grounds for immediate termination of the Agreement by the City.
15. **Entire Agreement.** This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between the City and the Contractor, and supersedes any other written or oral agreements between the City and the Contractor. This Agreement can only be modified in writing signed by the City and the Contractor. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
16. **Third Party Rights.** The parties to this Agreement do not intend to confer on any third party any rights under this Agreement.
17. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Hennepin County, Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

18. **Conflict of Interest.** The Contractor shall use reasonable care to avoid conflicts of interest and appearances of impropriety in representation of the City. In the event of a conflict of interest, Contractor shall advise the City and either secure a waiver of the conflict or advise the City that it will be unable to provide the requested services.
19. **Work Products and Ownership of Documents.** All records, information, materials and other work products, including, but not limited to the completed reports, drawings, plans, and specifications prepared and developed in connection with the provision of services pursuant to this Agreement shall become the property of the City, but reproductions of such records, information, materials and other work products in whole or in part may be retained by the Contractor. Regardless of when such information was provided, the Contractor agrees that it will not disclose for any purpose any information the Contractor has obtained arising out of or related to this Agreement, except as authorized by the City or as required by law. These obligations survive the termination of this Agreement.
20. **Agreement Not Exclusive.** The City retains the right to hire other **[insert services to be provided]** service providers for other matters, in the City's sole discretion.
21. **Data Practices Act Compliance.** Any and all data provided to the Contractor, received from the Contractor, created, collected, received, stored, used, maintained, or disseminated by the Contractor pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. Contractor agrees to notify the City within three (3) business days if it receives a data request from a third party. This paragraph does not create a duty on the part of the Contractor to provide access to public data to the public if the public data are available from the City, except as required by the terms of this Agreement. These obligations survive the termination of this Agreement.
22. **No Discrimination.** Contractor agrees not to discriminate in providing products and services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion. Violation of any part of this provision may lead to immediate termination of this Agreement. Contractor agrees to comply with Americans with Disabilities Act, as amended ("ADA"), Section 504 of the Rehabilitation Act of 1973, and the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A. Contractor agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of these laws by the Contractor or its guests, invitees, members, officers, officials, agents, employees, volunteers,

representatives and subcontractors. Upon request, the Contractor shall provide accommodation to allow individuals with disabilities to participate in all services under this Agreement. Contractor agrees to utilize their own auxiliary aid or service in order to comply with ADA requirements for effective communication with people with disabilities.

23. **Authorized Agents.** The City's authorized agent for purposes of administration of this contract is **enter City's department contact for this contract**, the **enter title of City contact** of the City, or designee. The Contractor's authorized agent for purposes of administration of this contract is **enter Contractor's contact name**, who shall perform or supervise the performance of all Services.

24. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to:

Contractor: **enter Contractor's business name and address**;  
Attn: **enter Contractor's name, email and phone number**;

City: City of Bloomington, 1800 West Old Shakopee Road, Bloomington, MN 55431,  
Attn: **enter City's contact name; fill in City contact's email address; 952-563-fill in phone number**;

or such other contact information as either party may provide to the other by notice given in accordance with this provision. A convenience copy may be provided electronically.

25. **Waiver.** No waiver of any provision or of any breach of this Agreement shall constitute a waiver of any other provisions or any other or further breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of the party to be charged with such a waiver.
26. **Headings.** The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit or affect the scope and intent of this Agreement.
27. **Mediation.** Both parties agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation at the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, Minnesota 55405. In the event mediation is unsuccessful, either party may exercise its legal or equitable rights.



28. **Payment of Subcontractors.** Pursuant to Minnesota Statutes § 471.425, Subd. 4a, Contractor agrees that it must pay any subcontractor within ten (10) days of the prime contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. Contractor agrees that it must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.
29. **Publicity.** City and Contractor shall develop language to use when discussing the Services. Contractor agrees that any publicity regarding the Services or the subject matter of this Agreement must not be released unless it complies with the approved language. Contractor must not use the City's logo or state that the City endorses its services without the City's advanced written approval.
30. **Severability.** In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect.
31. **Signatory.** Each person executing this Agreement ("Signatory") represents and warrants that he or she is duly authorized. In the event the Contractor did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liability of the Contractor, as described in this Agreement, personally.
32. **Counterparts and Electronic Communication.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be transmitted by electronic mail in portable document format ("pdf") and signatures appearing on electronic mail instruments shall be treated as original signatures.

[Signature pages follow.]

**IN WITNESS WHEREOF**, the City and the Contractor have caused this Services Agreement to be executed by their duly authorized representatives in duplicate on the respective dates indicated below.

**CITY OF BLOOMINGTON, MINNESOTA**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
James D. Verbrugge  
Its: City Manager

Reviewed and approved by the City Attorney.

\_\_\_\_\_  
Melissa J. Manderschied

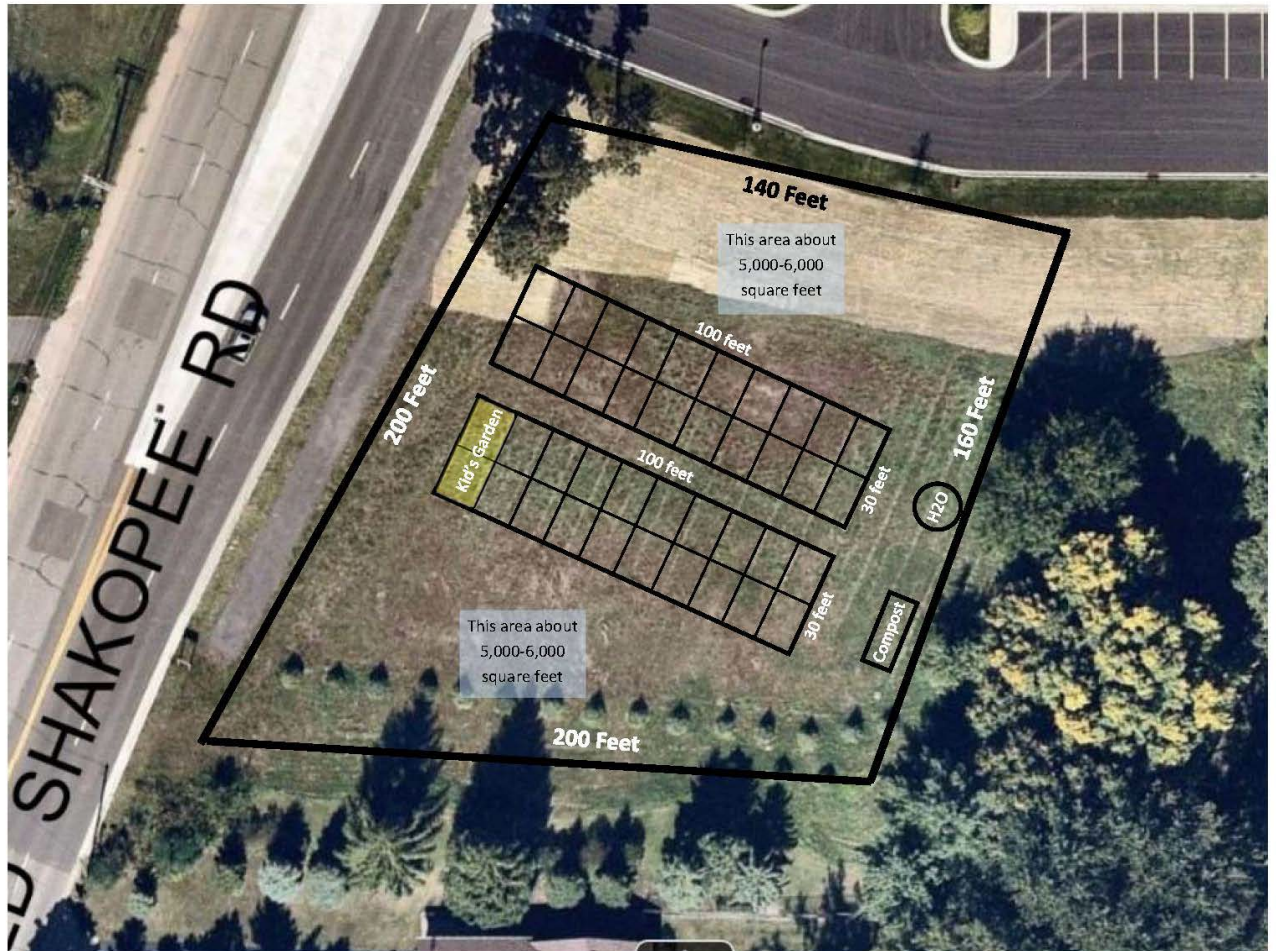
**INSERT CONTRACTOR LEGAL NAME – ALL CAPS/BOLD**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Its: \_\_\_\_\_

## ATTACHMENT A

### Artful Landscaping RFP, site photos.

Bloomington Fire Station 3 Community Garden



Looking to the south west direction:





Looking to the south direction:



Looking to the south east direction:





Looking to the east direction:

