FINAL AGENDA
A M E N D E D*

REGULAR COUNCIL MEETING
TUESDAY
APRIL 2, 2013

COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
4:00 P.M. AND 6:00 P.M.

4:00 P.M. MEETING

Individual Items on the 4:00 p.m. meeting agenda may be postponed to the 6:00 p.m. meeting.

1. CALL TO ORDER

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

2. ROLL CALL

NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.

MAYOR NABOURS
VICE MAYOR EVANS
COUNCILMEMBER BAROTZ
COUNCILMEMBER BREWSTER
COUNCILMEMBER ORAVITS
COUNCILMEMBER OVERTON
COUNCILMEMBER WOODSON

3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

MISSION STATEMENT

The mission of the City of Flagstaff is to protect and enhance the quality of life of its citizens.

4. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

A. Consideration and Approval of Minutes: Flagstaff City Council Regular Meeting of March 19, 2013; Special Meeting of March 26, 2013; and Joint Special Meeting/Work Session of March 26, 2013.

RECOMMENDED ACTION:

Amend/Approve the minutes of the Flagstaff City Council Regular Meeting of March 19, 2013; Special Meeting of March 26, 2013; and Joint Special Meeting/Work Session of March 26, 2013.

5. PUBLIC PARTICIPATION

Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

6. PROCLAMATIONS AND RECOGNITIONS

None

7. APPOINTMENTS

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body...., pursuant to A.R.S. §38-431.03(A)(1).

None

8. LIQUOR LICENSE PUBLIC HEARINGS

A. Consideration and Action on Liquor License Application: Randy Guse, “Walgreens #15206", 2610 E. Route 66, Series 09 (liquor store - all spirituous liquor), Location Transfer.

RECOMMENDED ACTION:

Open the public hearing.
Receive citizen input.
Close the public hearing.

The City Council has the option to:
(1) Forward the application to the State with a recommendation for approval;
(2) Forward the application to the State with no recommendation; or
(3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

9. CONSENT ITEMS

All matters under Consent Agenda are considered by the City Council to be routine and will be enacted by one motion approving the recommendations listed on the agenda. Unless otherwise indicated, expenditures approved by Council are budgeted items.

A. **Consideration and Approval of Amendment:** Consideration of a Joint Letter of Renewal/Amendment One with the Arizona Department of Transportation, Intermodal Transportation Division for the Data Access/Exchange Agreement.

RECOMMENDED ACTION:

Approve Joint Letter of Renewal/Amendment One to JPA/IGA 2009-247 for the period of 12/10/2012 to 12/09/2017 as presented.

B. **Consideration of Purchase of Services**: Installation of "Nova' ProBounce" monolithic overlay system over the existing tennis (1) and basketball (1) courts at Cheshire Park, located at 3000 N. Fremont Boulevard, west of Ft. Valley Road.

RECOMMENDED ACTION:

Authorize the purchase of services from sole source provider, General Acrylics, for the installation of the Nova' ProBounce monolithic overlay system for the repair and long-term maintenance of the existing tennis (1) and basketball (1) courts at Cheshire Park for the sum of $89,280.00.

C. **Consideration and Approval of Legal Services Contract:** Contract for Legal Services with the law firm of Holmes Wright Hyde & Hays PLC, for the purpose of collecting unpaid transaction privilege taxes (sales taxes) from specific on-line travel companies.

RECOMMENDED ACTION:

Motion to approve a Contract for Legal Services with Holm Wright Hyde & Hays PLC for collection of unpaid sales taxes on a contingency fee basis, including authority for litigation on behalf of the City.

10. **ROUTINE ITEMS**

A. **Consideration and Approval of Purchase under Maricopa County Contract:** Aerial Photography and Digital Terrain Model (DTM) Acquisition.

RECOMMENDED ACTION:

Approve the purchase under Maricopa County Contract Aerial Imaging services in the amount of $98,188.30. Please see Page 2 (Key Considerations) for further discussion on possible motions.

B. **Consideration of Appointments:** On-Call Judges for the Flagstaff Municipal Court.

RECOMMENDED ACTION:

Approve the appointment as recommended by Hon. Thomas L. Chotena, Presiding Magistrate of the Flagstaff Municipal Court.

C. **Consideration and Approval of Financing:** Capital Financing for Solar Photovoltaic Systems

RECOMMENDED ACTION:

Consider awarding a contract to Banc of America Public Capital under RFP No. 2013-24 to authorize capital financing for the installation of up to four (4) solar photovoltaic electric energy generating systems on City property including the Airport, Aquaplex, Rio de Flag Wastewater Treatment Facility, and Wildcat Wastewater Treatment Facility.

D. **Consideration of Resolution No. 2013-05**: Approval of the City of Flagstaff Housing Authority's Annual Plan

RECOMMENDED ACTION:

1) Read Resolution No. 2013-05 by title only
2) City Clerk reads Resolution No. 2013-05 (if approved above)
3) Adopt Resolution 2013-05

E. **Authorization for Legal Action**: Against American Contractor's Indemnity Company (ACIC) to enforce the provisions of the Presidio in the Pines landscaping bond.

RECOMMENDED ACTION:

Authorize the Interim City Attorney to bring a legal action against American Contractor's Indemnity Company (ACIC) to enforce the provisions of the Presidio in the Pines landscaping bond.

F. **Consideration and Approval of Agreement**: With State of Arizona (Forestry and Land Board) for Flagstaff Watershed Protection Project (FWPP).

RECOMMENDED ACTION:

Approve the Agreement, to include signature of Mayor.

G. **Consideration and Approval of Agreement**: With Greater Flagstaff Forests Partnership (GFFP) for Flagstaff Watershed Protection Project (FWPP).

RECOMMENDED ACTION:

Approve the Scope of Work Amendment to the existing City-GFFP Professional Forest Restoration Initiative Services Agreement (July 1, 2011), including the attached Amendment Work Plan - FY13, to include signature by the City Manager.

H. **Consideration / Adoption of Ordinance No. 2013-02:** An ordinance amending the Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, Division 3-05-004, *Privilege Taxes*, by amending Section 3-05-004-0430 *Timbering and Other Extraction*, by deleting a tax exemption for felling, producing or preparing timber for sale or commercial use; amending Section 3-05-004-0475, *Transporting for Hire*, by deleting tax exemptions related to transporting by motor vehicle outside the City, towing and transportation by railroad, all in an effort to achieve a more uniform Model City Tax Code; and amending Section 3-05-006-0600, *Termination, Approval and Authority to Amend Chapter*, by making clerical revisions to clarify the history of tax code changes; providing for penalties, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date.

RECOMMENDED ACTION:

1) Read Ordinance No. 2013-02 by title only for the final time on April 2, 2013
2) City Clerk reads Ordinance No. 2013-02 by title only for the final time (if approved above)
3) Adopt Ordinance No. 2013-02

RECESS

6:00 P.M. MEETING

RECONVENE

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

11. ROLL CALL

NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.

MAYOR NABOURS
VICE MAYOR EVANS
COUNCILMEMBER BAROTZ
COUNCILMEMBER BREWSTER
COUNCILMEMBER ORAVITS
COUNCILMEMBER OVERTON
COUNCILMEMBER WOODSON

12. CARRY OVER ITEMS FROM THE 4:00 P.M. AGENDA

13. PUBLIC HEARING ITEMS

None

14. REGULAR AGENDA

A. Consideration and Approval of Intergovernmental Agreement with Arizona State Parks: The purpose of the Intergovernmental Agreement with Arizona State Parks is to outline mutual responsibilities in implementing the Arizona Site Steward Program at Picture Canyon.

RECOMMENDED ACTION:

Approve the Intergovernmental Agreement (IGA) with Arizona State Parks to implement the Arizona Site Steward Program at Picture Canyon.

B. Discussion: Ordinance No. 2013-09 and Resolution No. 2013-08 - A resolution declaring the *2013 Addendum 5 of the Flagstaff Employee Handbook of Regulations* a Public Document, and an Ordinance adopting said Public Document by reference.

RECOMMENDED ACTION:

Discuss the documents on April 2, 2013.

C. Discussion: Rio de Flag Path Forward.

RECOMMENDED ACTION:

Council direction.

D. *Presentation on Observatory Mesa Growing Smarter Grant Application

15. DISCUSSION ITEMS

None

16. PUBLIC PARTICIPATION

17. INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, REQUESTS FOR FUTURE AGENDA ITEMS

18. ADJOURNMENT

CERTIFICATE OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on _____ , at _____ a.m./p.m. in accordance with the statement filed by the City Council with the City Clerk.

Dated this _____ day of _____, 2013.

_____
Elizabeth A. Burke, MMC, City Clerk

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Elizabeth A. Burke, City Clerk
Date:	03/28/2013
Meeting Date:	04/02/2013

TITLE

Consideration and Approval of Minutes: Flagstaff City Council Regular Meeting of March 19, 2013; Special Meeting of March 26, 2013; and Joint Special Meeting/Work Session of March 26, 2013.

RECOMMENDED ACTION:

Amend/Approve the minutes of the Flagstaff City Council Regular Meeting of March 19, 2013; Special Meeting of March 26, 2013; and Joint Special Meeting/Work Session of March 26, 2013.

INFORMATION

Attached are copies of the above-referenced minutes for your review and amendment/approval at the April 2, 2013, Council Meeting.

Attachments: CCRM.03192013.Minutes
CCSM.03262013.Minutes
CCWS.03262013.Minutes

MINUTES

REGULAR COUNCIL MEETING
TUESDAY, MARCH 19, 2013
COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
4:00 P.M. AND 6:00 P.M.

4:00 P.M.

1. CALL TO ORDER

Mayor Nabours called the meeting to order at 4:02 p.m.

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

2. ROLL CALL

NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.

Councilmembers present:	Councilmembers absent:
MAYOR NABOURS	COUNCILMEMBER WOODSON (excused)
VICE MAYOR EVANS	
COUNCILMEMBER BREWSTER	
COUNCILMEMBER BAROTZ	
COUNCILMEMBER ORAVITS	
COUNCILMEMBER OVERTON	

Others present: Deputy City Manager Jerene Watson; Interim City Attorney Michelle D'Andrea.

3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

The Council and audience recited the Pledge of Allegiance and Mayor Nabours read the City's Mission Statement.

MISSION STATEMENT

The mission of the City of Flagstaff is to protect and enhance the quality of life of its citizens.

4. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

A. **Consideration and Approval of Minutes**: March 5, 2013, Special Council Meeting; March 5, 2013, Regular Council Meeting; March 7, 2013, Special Council Meeting; and March 11, 2013, Joint Meeting of the City Council and Coconino County Board of Supervisors.

Councilmember Oravits referred to the bottom of page 10 of the March 5, 2013, Regular Council meeting minutes, noting that it should read "Councilman Oravits" rather than "Councilman Overton."

Councilmember Oravits moved to approve the minutes [of March 5, 2013, Special Council Meeting; March 5, 2013, Regular Council Meeting; March 7, 2013, Special Council Meeting; and March 11, 2013, Joint Meeting of the City Council and Coconino County Board of Supervisors] as amended; seconded; passed unanimously.

5. PUBLIC PARTICIPATION

Public Participation enables the public to address the Council about an item that is not on the agenda. Comments relating to items that are on the agenda will be taken at the time that the item is discussed. If you wish to address the Council at tonight's meeting, please complete a comment card and submit it to the recording clerk as soon as possible. Your name will be called when it is your turn to speak. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

Mark Di Lucido, CD&R Project Administrator of the City's Economic Vitality Division, briefly reviewed the City's new *Vision Flagstaff* program. Mayor Nabours suggested that he get on a future agenda so he had more time to demonstrate the program.

6. PROCLAMATIONS AND RECOGNITIONS

None

7. APPOINTMENTS

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that the City Council may vote to go into executive session, which will not be open to the public, for the purpose of discussing or considering employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body...., pursuant to A.R.S. §38-431.03(A)(1).

None

8. **LIQUOR LICENSE PUBLIC HEARINGS**

A. **Consideration and Action on Liquor License Application:** Sara Holloway, "Air Cafe", 6200 S. Pulliam Dr. #109, Series 12 (restaurant), New License.

Councilmember Overton moved to open the Public Hearing; seconded; passed unanimously.

There being no public input received, **Councilmember Overton moved to close the Public Hearing; seconded; passed unanimously.**

Councilmember Oravits moved to forward the application to the State with a recommendation for approval; seconded; passed unanimously.

9. **CONSENT ITEMS**

ALL MATTERS UNDER 'CONSENT AGENDA' ARE CONSIDERED BY THE CITY COUNCIL TO BE ROUTINE AND WILL BE ENACTED BY ONE MOTION APPROVING THE RECOMMENDATIONS LISTED ON THE AGENDA. UNLESS OTHERWISE INDICATED, EXPENDITURES APPROVED BY COUNCIL ARE BUDGETED ITEMS.

A. **Consideration and Approval of Purchase under Maricopa County Contract:** Aerial Photography and Digital Terrain Model (DTM) Acquisition.

Councilmember Oravits gave a brief demonstration on the differences he has found between the aerial photography software used by Coconino County and Yavapai County, noting that the program used by Coconino County does not work on iPads or iPhones.

A lengthy discussion was held on various programs and their benefits. Information Technology Director Ladd Vagen explained that the photographs used by the City are used internally by various departments and they are more accurate than what is available on sites such as Yavapai County, which are probably provided by Bing.

Robb Krause of the IT Department demonstrated the difference in accuracy available with the City's internal system and public systems utilized by the counties for property information. Mr. Vagen explained that the information used internally by the City could be made available to the public, but it would require more money and manpower.

Councilmember Barotz said that there appeared to be two different issues being addressed—the photographs themselves and the overall software programs.

Discussion was held on the ability to coordinate efforts with the County and their system. Mr. Vagen said that it was his understanding that the County was asked if they were interested in participating with this update and they declined.

Councilmember Oravits moved to postpone this item to next week, and schedule a Special Meeting in case their questions are answered and they are comfortable moving forward with making a motion at that time since time was of the essence; seconded; passed unanimously.

Staff was directed to address the following:

1) *What software does Yavapai County and Coconino County use?*
2) *Why do some provide access to iPads/iPhones and others do not? What would be required to correct that?*
3) *Who provides Yavapai County's / Coconino County's photographs? Bing? Does Yavapai County receive annual updates from Bing or take their own photographs?*
4) *Who provides the four map layers?*
5) *If we can obtain updated photographs and spend the $98,000 on upgrading the system, should we do that?*
6) *Do we or can we coordinate with obtaining aerial photographs with Yavapai County? If they contract for their photographs could the City and County take turns with the expense of each update?*

10. **ROUTINE ITEMS**

A. **Consideration and Approval of Purchase:** Solid Waste Trucks New Bid Number 2013-08: Solid Waste Truck: New Chassis with New or Refurbished Body.

Councilmember Overton moved to approve the purchase [under Bid Number 2013-08 from Alliance Refuse Trucks of Gilbert, AZ for one rear load and two front load garbage trucks with new truck cab / chassis and refurbished bodies in the amount of $530,813 with trade ins]; seconded; passed unanimously.

B. **Consideration to Purchase**: Four (4) Police Interceptor Sedans.

Mayor Nabours said that he had spoken with the owner of Babbitt Ford as to why they did not bid on this purchase, and it was his understanding that the bid asked for Crown Victorias, but Crown Victorias are not produced anymore and can only be obtained through a few dealers. He indicated that if they had known that Police Interceptors would be acceptable they would have bid.

Senior Procurement Specialist Candace Schroeder said that the specifications were written for a "police vehicle." They were hoping to receive bids on Crown Victorias because the City has the additional equipment needed for them, but the specs were written in a way to accept any type of "police vehicle." She said that they received bids for other types of vehicles as well, such as Tahoes and Chargers.

Mayor Nabours asked if the bidders knew that the City had the extra equipment and would have preferred Crown Victorias, and if they may have believed that if a

Crown Victoria was bid at a higher rate than another type of vehicle, the City would still award to the Crown Victoria because of that equipment.

Ms. Schroeder explained that it was an Invitation to Bid and procurement regulations would have required her to award to the lowest, responsible bidder, which in this case was the Police Interceptor.

Mayor Nabours said that the Council would like to be able to take care of local businesses. Ms. Schroeder said that she does, too, and that was why they went with an Invitation to Bid, to allow all dealers to bid. She said that the local dealers knew about the Invitation to Bid and she felt staff did everything they could to provide for that opportunity.

Vice Mayor Evans said that she felt that staff did an excellent job in securing the vehicles, and appreciated their service. **She then moved to accept [and approve the purchase of the lowest responsive and responsible bid from Sanderson Ford of Phoenix, for the purchase of four (4) 2013 Ford Police Interceptor Sedans in the amount of $113,422.72 plus applicable sales tax]; seconded; passed 5-1 with Mayor Nabours casting the dissenting vote.**

C. **Consideration and Approval of Temporary Use of City-Owned Property:** Located at 216 W. Phoenix Avenue, Flagstaff, AZ 86001

Councilmember Brewster moved to approve the license [with Goodwill Industries for temporary use of a City property located at 216 W. Phoenix Avenue, Flagstaff, Arizona 86001]; seconded; passed unanimously.

D. **Consideration of Cost Reimbursement Agreement:** An agreement between the City of Flagstaff and the Federal Bureau of Investigation (FBI) to provide overtime reimbursement by the FBI for the formalized Northern Arizona Violent Gang Safe Streets Task Force.

Councilmember Barotz moved to approve the Cost Reimbursement Agreement to receive reimbursement of overtime costs from the FBI; seconded; passed unanimously.

E. **Consideration and Approval of Intergovernmental Agreement:** Consideration of an Intergovernmental Agreement (IGA) with the City of Williams, City of Page, Northern Arizona University, Coconino County, City of Flagstaff, Town of Fredonia, City of Sedona, Arizona Department of Public Safety, and Arizona Game and Fish Commission for the creation and participation in the Arizona Child Abduction Response Team (CART), Coconino Region.

Councilmember Overton moved to approve [the multi-agency IGA to create and participate in the Coconino Region Arizona Child Abduction Response Team (CART)]; seconded.

Councilmember Brewster asked for staff to explain the difference between this and Amber Alert. Lt. Mansfield said that when they meet the specific criteria an Amber Alert is issued and the department begins their investigation, which can

drain a department's staff. The CART team allows for additional resources to be pulled from a region or state to assist that department. They are currently attempting to become certified as a Regional CART team, which would include agencies throughout northern Arizona.

Motion passed unanimously.

RECESS

The Flagstaff City Council meeting of March 19, 2013, recessed at 4:59 p.m.

6:00 P.M. MEETING

RECONVENE

Mayor Nabours reconvened the meeting of March 19, 2013, at 6:03 p.m.

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

11. **ROLL CALL**

Councilmembers present:	Councilmembers absent:
MAYOR NABOURS	COUNCILMEMBER WOODSON (excused)
VICE MAYOR EVANS	
COUNCILMEMBER BREWSTER	
COUNCILMEMBER BAROTZ	
COUNCILMEMBER ORAVITS	
COUNCILMEMBER OVERTON	

Others present: Deputy City Manager Jerene Watson; Interim City Attorney Michelle D'Andrea.

12. **CARRY OVER ITEMS FROM THE 4:00 P.M. AGENDA**

None

13. **PUBLIC HEARING ITEMS**

None

14. **REGULAR AGENDA**

A. **Consideration and Approval of Grant Application:** Arizona Governor's Office of Highway Safety (GOHS) Federal Fiscal Year 2014 for Police Department Applications for DUI Task Force, Youth Alcohol Prevention and Interdiction, Collision Reconstruction Team Training/Equipment, and Fire Department Extrication Equipment.

Grants Manager Stacey Brechler-Knaggs briefly reviewed the requests and Lt. Frank Higgins of the Police Department and Fire Chief Mike Iacona introduced themselves.

Lt. Higgins said that these were ongoing grants that they have received for several years, and this year they were also requesting monies to address underage alcohol consumption.

Chief Iacona said that the Fire Department has also applied for this grant a number of times and this year it would primarily be used for extrication equipment to be used at vehicle accidents.

Ms. Brechler-Knaggs noted that there were no matching funds required; they were 100% federal funds administered through the Governor's Office of Highway Safety.

Vice Mayor Evans moved to approve [the application(s) to the Arizona Governor's Office of Highway Safety (GOHS) for grant funds for the Police Department in the amount of $45,240 for DUI Task Force activities, $44,160 for Youth Alcohol Prevention and Interdiction task force, $24,032 for Collision Reconstruction Team Training/Equipment and $26,013 for the Fire Department Extrication Equipment]; seconded; passed unanimously.

B. **Public Hearing and Consideration / Adoption of Ordinance No. 2013-02:** An ordinance amending the Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, Division 3-05-004, *Privilege Taxes*, by amending Section 3-05-004-0430 *Timbering and Other Extraction*, by deleting a tax exemption for felling, producing or preparing timber for sale or commercial use; amending Section 3-05-004-0475, *Transporting for Hire*, by deleting tax exemptions related to transporting by motor vehicle outside the City, towing and transportation by railroad, all in an effort to achieve a more uniform Model City Tax Code; and amending Section 3-05-006-0600, *Termination, Approval and Authority to Amend Chapter*, by making clerical revisions to clarify the history of tax code changes; providing for penalties, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date.

Revenue Director Andy Wagemaker said that this was previously discussed at the November 2012 Budget Meeting, and then he reviewed the PowerPoint presentation which addressed:

- BACKGROUND
  - Governor's TPT Simplification Task Force

Streamline codes
Eliminate "Green Sheet" items specific to municipalities (Flagstaff has 4)
Eliminate little used MCTC options in all cities (EE and FF)

- FLAGSTAFF "GREEN SHEET" ITEMS
  - #1: Tax Expiration Date - Proposed Removal
  - #2: Railroad Exemption - No business impact Proposed Removal
  - #3: Timbering Exemption - Proposed Removal (no current Flagstaff business impact)
  - #4: BBB Ordinance (2% Tax) – Under Review – waiting to see how TPT Task Force handles lodging category

Councilmember Brewster asked if it made any difference if the BBB tax had been approved by the voters. Mr. Wagemaker replied that it did and the League recognizes that. It is a Flagstaff issue to make sure it fits into the broader scheme in the future.

- FLAGSTAFF ONLY OPTIONS:
  - Local Option EE and FF – Proposed Removal
  - EE – Out of City Destination Exemption
  - FF – Towing Exemption
    - Flagstaff is only City with options selected
    - State Title 28 exempts these transactions
    - Increase in tax revenue of $0
    - City currently issues business license for these businesses

Mayor Nabours noted that different cities have selected different options, such as Phoenix with their food sales tax. Mr. Cheema replied that was correct. The City of Phoenix has chosen to tax their food with a local sales tax, while the City of Flagstaff does not.

Mayor Nabours noted that the end result of the changes tonight has no change to the City's expected revenues. Staff replied that was correct.

Mayor Nabours moved to open the Public Hearing; seconded; passed unanimously.

There being no public input, **Mayor Nabours moved to close the Public Hearing; seconded; passed unanimously.**

Councilmember Barotz moved to read Ordinance No. 2013-02 by title only for the first time; seconded; passed unanimously.

An ordinance amending the Flagstaff City Code, Title 3, Business Regulations*, Chapter 3-05,* Privilege and Excise Taxes*, Division 3-05-004,* Privilege Taxes*, by amending Section 3-05-004-0430* Timbering and Other Extraction*, by deleting a tax exemption for felling, producing or preparing timber for sale or commercial use; amending Section 3-05-004-0475,* Transporting for Hire*, by deleting tax exemptions related to transporting by motor vehicle outside the City, towing and transportation by railroad, all in an effort to achieve a more uniform Model City*

Tax Code; and amending Section 3-05-006-0600, Termination, Approval and Authority to Amend Chapter*, by making clerical revisions to clarify the history of tax code changes; providing for penalties, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date.*

15. **DISCUSSION ITEMS**

None

16. **PUBLIC PARTICIPATION**

Craig Sheets distributed a handout and addressed concerns with meth labs in the City, noting that he has been traveling the nation and working with the FBI regarding this issue.

17. **INFORMATIONAL ITEMS AND REPORTS FROM COUNCIL AND STAFF, REQUESTS FOR FUTURE AGENDA ITEMS**

Vice Mayor Evans reported that she attended the headstone placement ceremony for Pvt. Devilbiss of the Arizona Rangers. He and Pvt. Stephen Black were two of the original Arizona Rangers, and they are both buried in Flagstaff. There were Rangers from as far away as Nogales attending the event.

Vice Mayor Evans asked for an update regarding law enforcement at the Old Tourist Home on San Francisco. Mayor Nabours agreed that the Council would like a status report regarding this.

Councilmember Barotz reported on her trip to Washington DC last week, noting that she attended the National League of Cities Conference and also had an opportunity to meet with the State legislators regarding the City's federal legislative agenda. She also attended several meetings with Jeff Meilback from NAIPTA, as they continue to build a bus system within the City. She said that they also met with the Undersecretary of Agriculture regarding the Forest Health program and they were very engaged and supportive. She thanked the City Manager and her colleagues for the opportunity.

Councilmember Brewster reported that she had also visited Washington DC last week with some of her colleagues, meeting with both sides of the aisle on various issues including Rio de Flag and Red Gap.

Councilmember Oravits said that he had e-mailed a proposal on A-frame signs to Mr. Burke and Ms. Watson and was hoping it would be e-mailed to everyone.

He said that it appears that the median work on Fourth Street off of Route 66 is being extended and he has received concerns from constituents regarding access. He asked that it be looked into to see what may be done to address those concerns.

Councilmember Oravits reported that he also attended the trip to Washington DC. He said that it was a very interesting experience and they had some good discussions. He continues to have concerns about how the Federal government operates and more than

ever he believes the City should work toward being self-sufficient and less reliant on grants because of the Federal budget.

Mayor Nabours said that they met with nine different offices just on the Rio de Flag issue and one of the departments mentioned that it was one of the top five "screwed up" projects in the country.

18. **ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council of March 19, 2013, adjourned at 6:34 p.m.

_____
MAYOR

ATTEST:

_____
CITY CLERK

CERTIFICATION

ARIZONA)
) ss.
Coconino)

I, ELIZABETH A. BURKE, do hereby certify that I am the City Clerk of the City of Flagstaff, County of Coconino, State of Arizona, and that the above Minutes are a true and correct summary of the meeting of the Council of the City of Flagstaff held March 19, 2013. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 2nd day of April, 2013.

_____
CITY CLERK

MINUTES OF THE SPECIAL MEETING (EXECUTIVE SESSION) OF THE FLAGSTAFF CITY COUNCIL HELD ON TUESDAY, MARCH, 2013, IN THE STAFF CONFERENCE ROOM, SECOND FLOOR OF THE FLAGSTAFF CITY HALL, 211 WEST ASPEN, FLAGSTAFF, ARIZONA

1. Call to Order

Mayor Nabours called the meeting to order at 4:02 p.m.

2. Roll Call

Present:	Absent
MAYOR NABOURS	COUNCILMEMBER BREWSTER
VICE MAYOR EVANS	
COUNCILMEMBER BAROTZ	
COUNCILMEMBER ORAVITS (arrived at 4:04 p.m.)	
COUNCILMEMBER OVERTON	
COUNCILMEMBER WOODSON (declared a Conflict of Interest on Item 4.C.2 and left the room)	

Others present: City Manager Kevin Burke; Interim City Attorney Michelle D'Andrea.

3. Recess into Executive Session

Mayor Nabours moved to recess into Executive Session; seconded by Councilmember Overton; passed unanimously. The Flagstaff City Council recessed into Executive Session at 4:02 p.m.

4. **EXECUTIVE SESSION:**

A. Discussion or consultation for legal advice with the attorney or attorneys of the public body, pursuant to ARS §38-431.03(A)(3).

I. Procurement Manual

B. Discussion or consultation for legal advice with the attorney or attorneys of the public body, and discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property, pursuant to ARS §§38-431.03(A)(3) and (7), respectively.

I. Fourth Street/Huntington/Route 66

C. Discussion or consultation for legal advice with the attorney or attorneys of the public body, and discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in

pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, pursuant to ARS §§38-431.03(A)(3) and (4), respectively.

I. On-line Travel Companies Litigation
II. Presidio in the Pines

5. Adjournment

The Flagstaff City Council reconvened into Open Session at 5:50 p.m. at which time the Special Meeting of March 26, 2013, adjourned.

_____
MAYOR

ATTEST:

_____
CITY CLERK

MINUTES

JOINT SPECIAL COUNCIL MEETING / WORK SESSION
TUESDAY, MARCH 26, 2013
COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
6:00 P.M.

1. Call to Order.

Mayor Nabours called the Flagstaff Joint Special City Council Meeting/Work Session of March 26, 2013, to order at 6:02 p.m.

2. Pledge of Allegiance.

The City Council and audience recited the Pledge of Allegiance.

3. Roll Call

Councilmembers present: **Councilmembers absent:**

MAYOR NABOURS
VICE MAYOR EVANS
COUNCILMEMBER BAROTZ
COUNCILMEMBER BREWSTER (telephonically)
COUNCILMEMBER ORAVITS
COUNCILMEMBER OVERTON
COUNCILMEMBER WOODSON

Others present: City Manager Kevin Burke; Interim City Attorney Michelle D'Andrea

4. Public Participation (*Non-Agenda Items Only*):

Public Participation enables the public to address the council about items that **are not** on the prepared agenda. Public Participation appears on the agenda twice, at the beginning and at the end of the work session. You may speak at one or the other, but not both. Anyone wishing to comment at the meeting is asked to fill out a speaker card and submit it to the recording clerk. When the item comes up on the agenda, your name will be called. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone to have an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

None.

5. Consideration and Approval of Purchase under Maricopa County Contract: Aerial Photography and Digital Terrain Model (DTM) Acquisition.

Ladd Vagen, IT Director, introduced Robb Krause, IT Specialist, who provided a PowerPoint presentation on Geographical Information Systems (GIS).

The last topographic survey was done in 2004 and the last aerial images were done in 2007.

Malcolm Alter, Stormwater Manager, continued the presentation with examples of the use of GIS by the Stormwater section, and Ryan Roberts, Utilities Engineering Manager, continued gave examples of the use of GIS by the Utilities Department.

Lastly, Patrick Bourque, Public Works Section Head, Solid Waste and Fleet, continued the presentation with examples of the use of GIS by the Solid Waste section, specifically the Landfill.

Council clarified the cost breakdown for each of the flights. There is one flight for the aerial photos and one flight for the LiDar photos.

Council asked about the effect of up to date data in responding to emergencies and emergency planning, and if the emergency response would be better with more current data. Staff responded that the emergency response would be better and the preparedness of the responders would be greater. The maps that are being used now do not have the most current data and is not the desired format.

Mr. Burke offered that the City will end up paying for this service one way or another through the various projects that are going on throughout the City. These projects often require recent aerial photos for planning and engineering and the cost of obtaining those photos will be passed through to the City through the contracts. This route offers the biggest return on investment because the entire city can be done at one time versus multiple instances.

Council asked about the impact to citizens. Mr. Alter indicated that updated and correct information is needed to correct the FEMA maps that place a number of citizens in flood plains erroneously. In order to get people out of the floodplain they need this information. Additionally, the current information is critical from a flooding perspective in order to better predict water flow in a flood event. This is why the LiDar and Aerial photography together are vital; they go hand in hand with these predictions.

It was pointed out that the departments requesting this service have more than enough money to cover the cost of the service. The departments budgeted for this service in this fiscal year.

It was asked if there is a way to direct that the funds come from the enterprise funds first and last from the GF accounts. Mr. Burke responded that it was possible to make that distinction if so approved.

It was commented that the enterprise funds should bear a majority of the cost because they utilize the product more frequently.

The following individuals spoke against approval of the contract:

- Gabor Kovacs
- Richard Mihalik

Mayor Nabours moved to approve the purchase with Sanborn Agency through the Maricopa County Contract for Aerial Imaging services in the amount of $98,188.30 with the limitation that only 20% of that be paid from the General Fund and the remainder be paid from the enterprise funds; seconded; motion failed 2:5 with Vice Mayor Evans, and Councilmembers Barotz, Brewster, Woodson, and Overton casting dissenting votes.

Council commented on the value of the product but concern with the timing.

At 7:06 p.m. Councilmember Brewster was excused from the meeting due to technological issues that prevented her from hearing the Council discussion.

Councilmember Woodson moved to proceed with the purchase contract for aerial imaging services with as much as possible being paid from the enterprise funds as has been previously budgeted; seconded; motion failed 3:3 with Mayor Nabours, and Councilmembers Oravits and Overton casting the dissenting votes.

Councilmember Woodson moved to postpone the issue to the next regular Council meeting; seconded.

There was discussion as to whether this was a valid motion. A break was held from 7:10 p.m. to 7:21 p.m. for staff and the City Attorney to confer.

Mayor Nabours offered clarification that the motion to postpone is allowed. At the next meeting the motions would not be the same motions that have already been made tonight but it could be something a little bit different. At this meeting tonight or after following some procedures at the next meeting there can be a motion to reconsider the issue.

At this time Councilmember Woodson withdrew his motion to postpone the issue to the next regular council meeting; and Vice Mayor Evans withdrew her second.

Councilmember Oravits moved to postpone the issue to the next regular Council Meeting; seconded; passed unanimously.

6. Adjournment

The Flagstaff Joint Special City Council meeting of March 26, 2013, adjourned at 7:24 p.m.

WORK SESSION

1. Call to Order

Mayor Nabours called the Flagstaff Work Session of March 26, 2013, to order at 7:24 p.m.

2. Preliminary Review of Draft Agenda for the April 2, 2013, City Council Meeting.*

** Public comment on draft agenda items may be taken under "Review of Draft Agenda Items" later in the meeting, at the discretion of the Mayor. Citizens wishing to speak on agenda items not specifically called out by the City Council for discussion under the second Review section may submit a speaker card for their items of interest to the recording clerk.*

Vice Mayor Evans said that she had questions on items 8A and 8B for the applicants. Mayor Nabours indicated that item 8A has been withdrawn by the applicant.

Councilmember Overton requested a PowerPoint presentation on item 10B to better understand how they got there and the finance details.

Councilmember Woodson declared that he would have a conflict of interest with item 10B and would be excusing himself at that time for the discussion.

Councilmember Woodson also requested information on the makeup of the Greater Flagstaff Forest Partnership.

Councilmember Barotz requested information on item 10A specifically related to why the applicant lives in Phoenix but the job is located in Flagstaff.

3. Public Participation *(Non-Agenda Items Only):*

Public Participation enables the public to address the council about items that are not on the prepared agenda. Public Participation appears on the agenda twice, at the beginning and at the end of the work session. You may speak at one or the other, but not both. Anyone wishing to comment at the meeting is asked to fill out a speaker card and submit it to the recording clerk. When the item comes up on the agenda, your name will be called. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone to have an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

Jim Cronk, Planning Director, provided Council with a brief update on the Regional Plan. A working draft has been completed and Council will be receiving a copy by the end of the week. Additionally, hard copies will be available for public viewing at a number of locations throughout the City. Mr. Cronk offered an invitation to the public announcement function on Friday, March 29th from 12:00 – 5:00 pm.

4. Flagstaff Cultural Partners - Art Incubator Update.

Laura Kelly, Project Director of Flagstaff Cultural Partners, provided Council with an update on the Arts Incubator.

Ms. Kelly is working to develop a workforce development program for the arts industry. The real idea behind the incubator is providing a safe place for ideas to grow and help develop the marketplace skills of artist to make them more viable.

The long range goal is the acquisition of a building where artists could make their work and show it to the public. The space would include support services, gallery space, and workshop space.

The shorter range goal is the creation of a nine month certificate granting course that is a series of business courses for those in the artist industries. Similar to the structure of the Flagstaff Leadership Program the concept is to develop a cohort that goes through a series of skills, mentoring, interaction, etc. together that yields stronger business skills and networking. Courses offered would include things such as grant writing, public speaking, etc.

The next steps for Flagstaff Cultural Partners is to meet one on one with Councilmembers and other public officials to get feedback and buy in on the process. In addition to these meetings, continued research on programs similar to this in other communities and marshalling the rich palate of resources here in the city (NACET, CC, COF, NAU, etc) and development of the courses themselves are ongoing.

5. Introduction of proposed adoption of the 2012 International Codes and Title 4, 2013 Building Code Amendments.

Mike Scheu, Building Official, provided a history of how the City arrived at this point of adoption.

In July of 2011, the Council approved going to a six year code adoption cycle, bypassing the 2009 Codes and waiting to adopt the 2012 International Codes. In September of 2012, the Insurance Service Organization conducted a review of the Building Code plan review process and building inspection process. Due to not having adopted the most current codes (the 2009 Codes); the City's classification tentatively went from a Class 2 to a Class 9 for residential, commercial and industrial property. The City has until October 2, 2013, to have completed the plan for adopting the 2012 International Building Codes to restore the rating.

Since February 2012 there have been ongoing public code forums for community members to get them updated on the 2012 codes.

Staff is also moving forward with self certification. The City went through the Phoenix process and is working to develop a training program/process for audit.

Council asked about the International Energy Code and the impact to the average single family home. Mr. Scheu indicated that a study was done in Salt Lake City between 2006 and 2011 that showed anywhere from $1900 to $2400 increase in addition to what is being paid now.

Additionally House Bill 2404 that is currently in the Senate states that any house listed for a HERS rating of 80 or below meets the state requirement for energy efficiency. This bill will lower the requirement from the international recommendation.

Council expressed a desire to fully understand how the new codes will directly affect consumers and contractors. This is an opportunity to look at the existing code and clean up some of the current standards that have not worked so well since the last adoption.

Mr. Burke offered that if there are any issues or concerns that Council has with the current or proposed code to bring them up to staff now in order to make sure that issues and concerns are identified and addressed in a timely manner with this adoption.

Jim Cronk, Planning Director, pointed out that the code must be adopted by ordinance and suggested combining the first reading with the public hearing and a month later do the second reading. This would allow time for staff to react and adjust to things we hear during the public hearing.

6. Presentation on the City of Flagstaff's Procurement Code Manual.

Rick Compau, Purchasing Director, provided a PowerPoint presentation that provides an overview of the development of the Procurement Code Manual. The City of Flagstaff has not had a manual, but always followed the state procurement regulations. This manual will provide a framework for purchasing.

Council indicated that there have been issues in the past and they have heard complaints associated with Article 7.1A and suggest that the language be beefed up in that section to further establish ethics of its own.

Additionally, Council would like to see public disclosure of all awards, possibly on the City website that indicates what they are for, who was awarded the contract and the dollar amount. It provides transparency and a good indicator of balance.

Council also asked that the manual clarify and further define what is considered a *reasonable good faith effort* and what a *local vendor* is.

The presentation ended at Article 9 with a continuation requested at a later work session.

7. Presentation on the Discussion and Next Steps for the Core Services Maintenance Facility.

Pat Bourque, Public Works Section Head for Solid Waste and Fleet, provided a PowerPoint presentation that gave a brief update on the Core Services Maintenance Facility and available properties identified.

Rick Compau, Purchasing Director, continued the presentation with information on how the new Request for Proposals (RFP) differs from the previous RFP.

Council asked for the RFP information to go out the National Association of Realtors as an outreach tool.

Jill Trompeter, Real Estate Manager indicated that a mailing list of all of the licensed realtors in town was created and that notification will be sent to all of them.

Council inquired about the ability to require attendance at the pre-proposal meeting in order for an RFP to be accepted. Mr. Compau indicated that the City can certainly make this a requirement but it may require a more lengthy advertisement process to allow for time for the information to be integrated appropriately in the bids. Additionally there is the

risk of missing a really good opportunity due to extenuating circumstances preventing attendance.

There was discussion about the benefit of potential bidders touring the McAllister Ranch property. The idea is that there may be more competitive proposals if they know that there is a viable alternative for the City.

There was further discussion about the weight of each proposal requirement and where they fit in order of importance and how they are scored. Council agreed that it will be important to clearly define what it takes to score well.

Council and staff discussed the language associated with purchase or exchange of City owned property. It was determined that the word *purchase* would need to be removed from that section and leave the requirement as *exchange* of current City owned property.

8. Review of Draft Agenda Items for the April 2, 2013, City Council Meeting.*

None

9. Public Participation

None

10. Informational Items To/From Mayor, Council, and City Manager.

Vice Mayor Evans requested information about the dumpster that is taking up 2.5 parking spaces on San Francisco and Route 66; she is being contacted by people about this issue and would like to provide a response.

Vice Mayor Evans also requested information from the Flagstaff Police Department on how many times they responded to the old tourist home in the past 3 years, if the calls were classified as health and safety responses and the approximate cost for each time they responded. Lastly, if there was a mechanism in place and at what point the owners would be responsible for the cost of these responses.

Councilmember Barotz announced that the Senate Environment and Public Works Committee unanimously passed the Water Resources Development Act that would authorize 18 new U.S. Army Corps of Engineers flood protection, navigation and ecosystem restoration projects while instituting a number of reforms to the process.

There is a provision in the bill that says it would increase flexibility for non-federal sponsors of Corps projects, including a pilot program aimed at improving the quality and speed of projects by allowing local and state governments to take over as project manager for Corps projects. This is very timely given the recent discussions about the Rio de Flag project. This will be one to watch.

Councilmember Oravits requested the last 12 months of travel records for the Sustainability program. He would like a summary of what the trips entailed, length of time, total cost of trip, and what funds were used to pay for these trips.

He also thanked staff for jumping on the median issue at the farmers market median.

Mr. Burke offered that while in Hawaii he came across a front page news article that dealt with infrastructure issues' it was somewhat nice to see they are not the only ones dealing with these issues.

11. Adjournment

The Flagstaff City Council Work Session of March 26, 2013, adjourned at 9:29 p.m.

_____
MAYOR

ATTEST:

_____
CITY CLERK

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Saltzburg, Deputy City Clerk
Date:	03/28/2013
Meeting Date:	04/02/2013

TITLE:

Consideration and Action on Liquor License Application: Randy Guse, "Walgreens #15206", 2610 E. Route 66, Series 09 (liquor store - all spirituous liquor), Location Transfer.

RECOMMENDED ACTION:

Open the public hearing.
Receive citizen input.
Close the public hearing.

The City Council has the option to:
(1) Forward the application to the State with a recommendation for approval;
(2) Forward the application to the State with no recommendation; or
(3) Forward the application to the State with a recommendation for denial based on the testimony received at the public hearing and/or other factors.

Policy Decision or Reason for Action:

Series 09 (Liquor Store - all spirituous liquor) licenses are obtained through the person and/or location transfer of an existing license from another business. The location transfer is from Walgreens #2273 at 1500 E. Cedar Ave. with an active license. Store #2273 will close upon the opening of store #15206.

Financial Impact:

There is no budgetary impact to the City of Flagstaff.

Connection to Council Goal:

Effective governance - regulatory action.

Has There Been Previous Council Decision on This:

Not applicable.

Options and Alternatives:

(1) Table the item if additional information or time is needed.
(2) Make no recommendation.
(3) Forward the application to the State with a recommendation for approval.
(4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Background/History:

An application for a location transfer Series 09 liquor license was received from Randy Guse for Walgreens #15206, 2610 E. Route 66. The location transfer is from Walgreens #2273 located at 1500 E. Cedar Ave. The liquor license from Walgreens #2273 is currently active; this Walgreens will close upon the opening of store #15206.

A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department **resulted in a recommendation for denial (please see attached memo).**

A background investigation performed by Gregory Brooks, Code Compliance Officer, resulted in no active code violations being reported.

Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, who stated that the business is in good standing.

Key Considerations:

The application is for a location transfer, consideration may be given to the applicant's location.

A Series 09 (Liquor Store) license allows a spirituous liquor store retailer to sell all spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

The deadline for issuing a recommendation on this application is April 3, 2013.

The applicant is required by statute to provide a 300 ft. distance between the applicant's business and the nearest church or school for government and PD has found an issue with this requirement.

Expanded Financial Considerations:

This business will contribute to the tax base of the community.

We are not aware of any other relevant considerations.

Community Benefits and Considerations:

The application and notice was properly posted on March 7, 2013.

No written protests have been received to date.

Expanded Options and Alternatives:

(1) Table the item if additional information or time is needed.
(2) Make no recommendation.
(3) Forward the application to the State with a recommendation for approval.
(4) Forward the application to the State with a recommendation for denial, stating the reasons for such recommendation.

Attachments:

Walgreens - Letter to Applicant
Hearing Procedures
Series 09 Description
Walgreens - Section 13
Walgreens - PD Memo
Walgreens - Code Memo

Walgreens - Tax Memo
PD Supp. Letter
Drwg. #1
Drwg. #2

OFFICE OF THE CITY CLERK

March 20, 2013

Walgreens
Attn: Randy Guse
P.O. Box 901
Deerfield, IL 60015

Dear Mr. Guse:

Your application for a Series 09 location transfer liquor license for Walgreens at 2610 E. Route 66 was posted on March 7, 2013. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on Tuesday, April 2, 2013 which begins at **4:00 p.m**.

It is important that you or your representative attend this Council Meeting and be prepared to answer any questions that the City Council may have. Failure to be available for questions could result in a recommendation for denial of your application. We suggest that you contact your legal counsel or the Department of Liquor Licenses and Control at 602-542-5141 to determine the criteria for your license. To help you understand how the public hearing process will be conducted, we are enclosing a copy of the City's liquor license application hearing procedures.

The twenty-day posting period for your liquor license application will expire on March 27, 2013 and the application may be removed from the premises at that time.

If you have any questions, please feel free to call me at 928-213-2077.

Sincerely,

Stacy Saltzburg
Deputy City Clerk

Enclosure

City of Flagstaff

Liquor License Application
Hearing Procedures

1. When the matter is reached at the Council meeting, the presiding officer will accept a motion to open the public hearing on the item.

2. The presiding officer will request that the Applicant come forward to address the Council regarding the application in a presentation not exceeding ten (10) minutes. Council may question the Applicant regarding the testimony or other evidence provided by the Applicant.

3. The presiding officer will then ask whether City staff have information to present to the Council regarding the application. Staff should come forward at this point and present information to the Council in a presentation not exceeding ten (10) minutes. Council may question City staff regarding the testimony or other evidence provided by City staff.

4. Other parties, if any, may then testify, limited to three (3) minutes per person. Council may question these parties regarding the testimony they present to the Council.

5. The Applicant may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of the Applicant.

6. City staff may make a concise closing statement to the Council, limited to five (5) minutes. During this statement, Council may ask additional questions of City Staff.

7. By motion, Council will then close the public hearing.

8. By motion, the Council will then vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

License Types: Series 09 Liquor Store License (All spirituous liquors)

Transferable (From person to person and/or location to location within the same county only)
Off-sale retail privileges
Note: Terms in **BOLD CAPITALS** are defined in the glossary.

PURPOSE:
Allows a spirituous liquor store retailer to sell all spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

ADDITIONAL RIGHTS AND RESPONSIBILITIES:
A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of **DELIVERY**. The retailer must complete a Department approved "Record of Delivery" form for each spirituous liquor retail delivery.

On any original applications, new managers and/or the person responsible for the day-to-day operations must attend a basic and management training class.

A licensee acting as a **RETAIL AGENT**, authorized to purchase and accept delivery of spirituous liquor by other licensees, must receive a certificate of registration from the Department.

A **PREGNANCY WARNING SIGN** for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar.

SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

1. Current Business: (Exactly as it appears on license) Name Walgreens #2273
   Address 1500 E Cedar Ave, Flagstaff, AZ 86004
2. New Business: (Physical Street Location) Name Walgreens #15206
   Address 2610 E Route 66, Flagstaff, AZ 86004
3. License Type: Series 9 License Number: 09030039
4. If more than one license to be transferred: License Type:_____ License Number: _____
5. What date do you plan to move? 03/01/2013 What date do you plan to open? 03/01/2013

SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizonal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

a) Restaurant license (§ 4-205.02)
b) Hotel/motel license (§ 4-205.01)
c) Government license (§ 4-205.03)
d) Fenced playing area of a golf course (§ 4-207 (B)(5))

'13 FEB 1 Liq. Lic. 001107

1. Distance to nearest school: 1,584 ft. Name of school Flagstaff Junior Academy
   Address 2301 North 4th Street, Flagstaff, AZ 86004
   City, State, Zip
2. Distance to nearest church: 528 ft. Name of church Canyon Chapel
   Address 1919 North 4th Street, Flagstaff, AZ 86004
   City, State, Zip
3. I am the: ☒ Lessee ☐ Sublessee ☐ Owner ☐ Purchaser (of premises)
4. If the premises is leased give lessors: Name Eagle Crest Enterprises, LLC.
   Address 85 Wolf Rock Road, Keystone, CO 80435
   City, State, Zip

4a. Monthly rental/lease rate $ 5,000.00 What is the remaining length of the lease 60 yrs. 0 mos.

4b. What is the penalty if the lease is not fulfilled? $_____ or other we would go into default
(give details - attach additional sheet if necessary)

5. What is the total **business** indebtedness for this license/location excluding the lease? $ 0
   Please list lenders you owe money to.

Last	First	Middle	Amount Owed	Mailing Address	City State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Retail Drug Stores

SECTION 13 - continued

7. Has a license or a transfer license for the premises on this application been denied by the state within the past one (1) year?
   ☐ YES ☒ NO If yes, attach explanation.
8. Does any spirituous liquor manufacturer, wholesaler, or employee have any interest in your business? ☐ YES ☒ NO
9. Is the premises currently licensed with a liquor license? ☐ YES ☒ NO If yes, give license number and licensee's name:

License #_____(exactly as it appears on license) Name _____

SECTION 14 Restaurant or hotel/motel license applicants:

1. Is there an existing restaurant or hotel/motel liquor license at the proposed location? ☐ YES ☐ NO
   If yes, give the name of licensee, Agent or a company name:

   _____ and license #: _____
   Last First Middle
2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. § 4-203.01; and complete SECTION 5 of this application.
3. All restaurant and hotel/motel applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor Licenses and Control.
4. As stated in A.R.S. § 4-205.02.G.2, a restaurant is an establishment which derives at least 40 percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from all sales of food and spirituous liquor on the licensed premises. By applying for this ☐ hotel/motel ☐ restaurant license, I certify that I understand that I must maintain a minimum of 40 percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit (form LIC 1013) with this application.

   _____
   applicant's signature

   As stated in A.R.S § 4-205.02 (B), I understand it is my responsibility to contact the Department of Liquor Licenses and Control to schedule an inspection when all tables and chairs are on site, kitchen equipment, and, if applicable, patio barriers are in place on the licensed premises. With the exception of the patio barriers, these items are not required to be properly installed for this inspection. Failure to schedule an inspection will delay issuance of the license. If you are not ready for your inspection 90 days after filing your application, please request an extension in writing, specify why the extension is necessary, and the new inspection date you are requesting. To schedule your site inspection visit www.azliquor.gov and click on the "Information" tab.

   _____
   applicants initials

SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)

1. Check **ALL** boxes that apply to your business:

   ☒ Entrances/Exits ☒ Liquor storage areas Patio: ☐ Contiguous
   ☐ Service windows ☒ Drive-in windows ☐ Non Contiguous

2. Is your licensed premises currently closed due to construction, renovation, or redesign? ☐ YES ☒ NO
   If yes, what is your estimated opening date? _____
   month/day/year
3. Restaurants and hotel/motel applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Diagram paper is provided on page 7.
4. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spiritous liquor is to be sold, served, consumed, dispensed, possessed, or stored on the premises unless it is a restaurant (see #3 above).
5. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises, such as parking lots, living quarters, etc. 132 Sq. Ft. 14,550 Sq. Ft.

   As stated in A.R.S. § 4-207.01(B), I understand it is my responsibility to notify the Department of Liquor Licenses and Control when there are changes to boundaries, entrances, exits, added or deleted doors, windows or service windows,or increase or decrease to the square footage after submitting this initial drawing.

   applicants initials

'13 FEB 1 Liq. Lic. 11:07

MEMORANDUM

Memo #13-034-01

TO: **Chief Treadway**

FROM: **Sgt. Matt Wright #704**

DATE: **March 14, 2013**

RE: **Series 09 Location Transfer of existing liquor license for Walgreens**

On March 11, 2013, I initiated an investigation into an application for a series 09 location transfer. The application was filed by Agent Randy Guse who listed Controlling Persons, Mark Wagner, Richard Steiner, Rick Hans, Robert Silverman, John Mann and Michael Felish. The listed Manager for Walgreens is Mandy Brokaw. The new Walgreens store is located at 2610 E. Route 66 in Flagstaff. This is an application to transfer the existing license 09030039 from the existing store located at 1500 E. Cedar in Flagstaff to the new Walgreens location. The Cedar Ave store will close upon opening of the new store on East Route 66.

A query through local systems and public access on Randy Guse, Mark Wagner, Richard Steiner, Rick Hans, Robert Silverman, John Mann, Michael Felish and Mandy Brokaw showed no derogatory records. I spoke with Mandy Brokaw who confirmed the location change of the business. Mandy confirmed she had completed the mandatory liquor law training course and provided proof. Mandy stated she had not ever received any liquor law violations, does not have any pending, and has been the manager of the Walgreens for several years.

I checked the internet which showed a church across the street from the new Walgreen's location. I contacted a State Liquor Agent who confirmed the Walgreens store must be outside of 300 feet from the nearest church or school. I was directed to measure the buildings from the closest building edge of the business to the closest building edge of the nearest church or school.

I went 2610 E. Rt. 66 the new Walgreens location. I found the closest point of Walgreens to the Church (Canyon Chapel) located at 1919 N. 4th Street, was the North West corner of Walgreens. I used a "roll a tape" to measure in a straight line of sight to the South East corner of Canyon Chapel. I found the distance between the two buildings edges to be approximately 292 feet. This was a generous measurement as I was unable to lay the tape flat due to raised obstructions between the buildings.

I then used a laser distance measuring device. I found the distance between the same two points to be approximately 285 feet. I then measured the distance from the front doors of Walgreens located on the south west corner of the building to the south east corner of the church. The distance between these two points is approximately 330 feet.

Due to the closest building edge of Walgreens and the closest building edge of Canyon Chapel being less than 300 feet away I can not recommend approval.

Planning and Development Services Memorandum

January 30, 2013

TO: Susan Alden, City Records Technician

THROUGH: Tom Boughner, Code Compliance Manager TB

FROM: Gregory Brooks, Code Compliance Officer II

RE: Application for Liquor License #09030039
2610 E. Rt. 66, Flagstaff, Arizona 86004
Assessor's Parcel Number 107-14-007
Randy Guse on behalf of Walgreens #15206

This application is a request for a Series 09 (Liquor Store) location transfer liquor license from Randy Guse on behalf of Walgreens #15206, located in the Highway Commercial (HC) Zone. This district allows for liquor stores.

There are no active Zoning Code violations associated with Randy Guse or Walgreens #15206 at this time.

This liquor license is recommended for approval.

Memo

To: Stacy Saltzberg, Deputy City Clerk

From: Ranbir Cheema - Tax, Licensing & Revenue Manager

Date: March 19, 2013

Re: Series 12 Liquor License – Location Transfer – Walgreens #15206

Walgreen Arizona Drug Co is licensed with the City Sales Tax Section for all its locations and current on its tax return filing. Currently they are in good standing with the Sales Tax Section.

/liquor licenses/Walgreens.doc

MEMORANDUM

Memo #13-034-01

TO: **Chief Treadway**

FROM: **Sgt. Matt Wright #704**

DATE: **March 29, 2013**

RE: **SUPPLEMENTAL INFORMATION REF: Series 09 Location Transfer of existing liquor license for Walgreens**

Supplemental Information

On Tuesday March 26, 2013 I received an email from Danny Bockting who is the Senior Project Manager hired by Walgreens for the construction of the new Walgreen's store. Danny's email clearly outlines that he did agree that the measurements I took as stated in my previous memo indicates the Store is with in 300 feet of the nearest church, Canyon Chapel located at 1919 N. Fourth St. Danny states in his email that he had spoken with a representative from the Arizona Department of Liquor License and Control (AZDDLC) who advised Danny to prepare a very detailed drawing that clearly illustrates a portion of the Walgreens building that would be removed from the application showing space within the store that would not be licensed under the proposed liquor license. This space of the building being excluded from the liquor license would put the portion of the licensed premises at or just outside 300 feet away from the Canyon Chapel.

Danny provided this drawing which is attached. The shaded area indicates the new area the proposed liquor license would cover. The drawing indicates a 300 foot mark, and puts the shaded area outside of the 300 foot mark. This drawing is identified as drawing number 1. I went to the building and measured and found the shaded area on the drawing to be right at or just over 300 feet away from Canyon Chapel. On March 27, 2013 I spoke with Danny who confirmed the information he had provided via email. Danny also stated the drawings he provided were completed by a surveyor and felt confident in its accuracy. I agreed that the measurements looked very close but appeared the new proposed area of the store to be licensed would be at or just outside 300 feet.

I spoke with an investigator at the Arizona Department of Liquor License and Control. He confirmed that if the license application was modified and was outside of 300 feet they would be fine with the application. I was advised Alan Parris of the AZDLLC would be coming to Flagstaff to measure the distance as well.

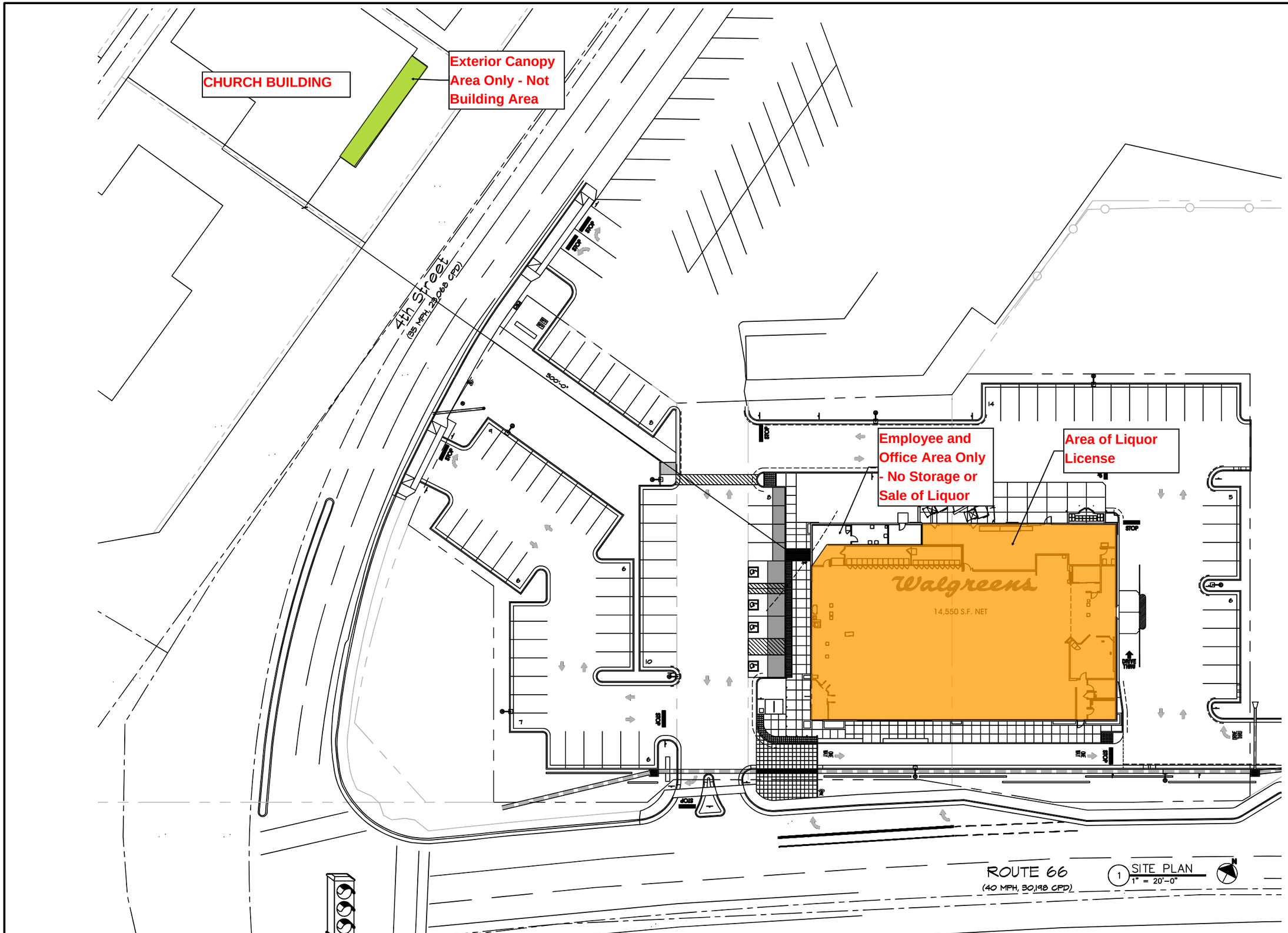
I spoke with Mandy Brokaw the listed manager on the application. Mandy had a very clear idea of where the new proposed boundaries would be for the sale and storage of alcohol if approved.

Mandy walked me through the business and assisted with the measurements. Mandy also stated the new store did not have any plans to sell 40 ounce malt liquor, or any beer sold only in single cans. Mandy stated they would be selling beer packaged in 6 packs along with beer packaged in larger packs up to and including 30 pack sizes. Mandy also explained all of the smaller bottles of spirituous liquor (such as “shooters” and ½ pints) would be for sale but stored behind the counter as to reduce shoplifting and other related crimes.

I have also left two voice messages at the Canyon Chapel. I wanted to solicit their thoughts and concerns if any about the liquor license request by Walgreen’s. I also wanted to provide them with the date and time of the council meeting. I have not received a return phone call to date.

On March 28, 2013 a representative from AZDLLC, Mr. Parris, came to confirm the measurements. We went to the Walgreen’s and met with Mandy. It was during this conversation that Mr. Parris advised the AZDLLC did not have the new amended drawing on file which would be required prior to proceeding with a new recommendation. We measured and confirmed the area that needed to be removed from the licensed area of the store to confirm compliance with the 300 foot mandate. Mr. Parris later met with representatives from Walgreens who completed another diagram shading out the area that will not be part of the licensed premise if approved. This was filed with the AZDLLC and emailed to me thus making drawing number 1 provided by Danny Bockting obsolete.

I have attached the detailed drawing as provided by AZDLLC (Identified as Drawing #2) which was filed and accepted on March 29, 2013. With the new proposal of the modified licensed area being outside of 300 feet of the nearest church, and the fact this is acceptable to the AZDLLC I change my recommendation to the Council for approval.



NADEL

Nadel Studio One, Inc.
3333 E. Camelback Road
Suite 200
Phoenix, AZ 85018
T. 602.956.9900
F. 602.956.9901
www.nadelarc.com

I HEREBY CERTIFY THAT THIS PLAN AND SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED ARCHITECT OR ENGINEER UNDER THE LAWS OF THE STATE OF ARIZONA AS SIGNIFIED BY MY HAND AND SEAL.

REVISIONS

NO.	DATE	BY	DESCRIPTION
2	6-13-12		OWNER REVISIONS
1	6-1-12		CK/ CITY COMMENTS

GENERAL PROJECT DATA & SITE PLAN

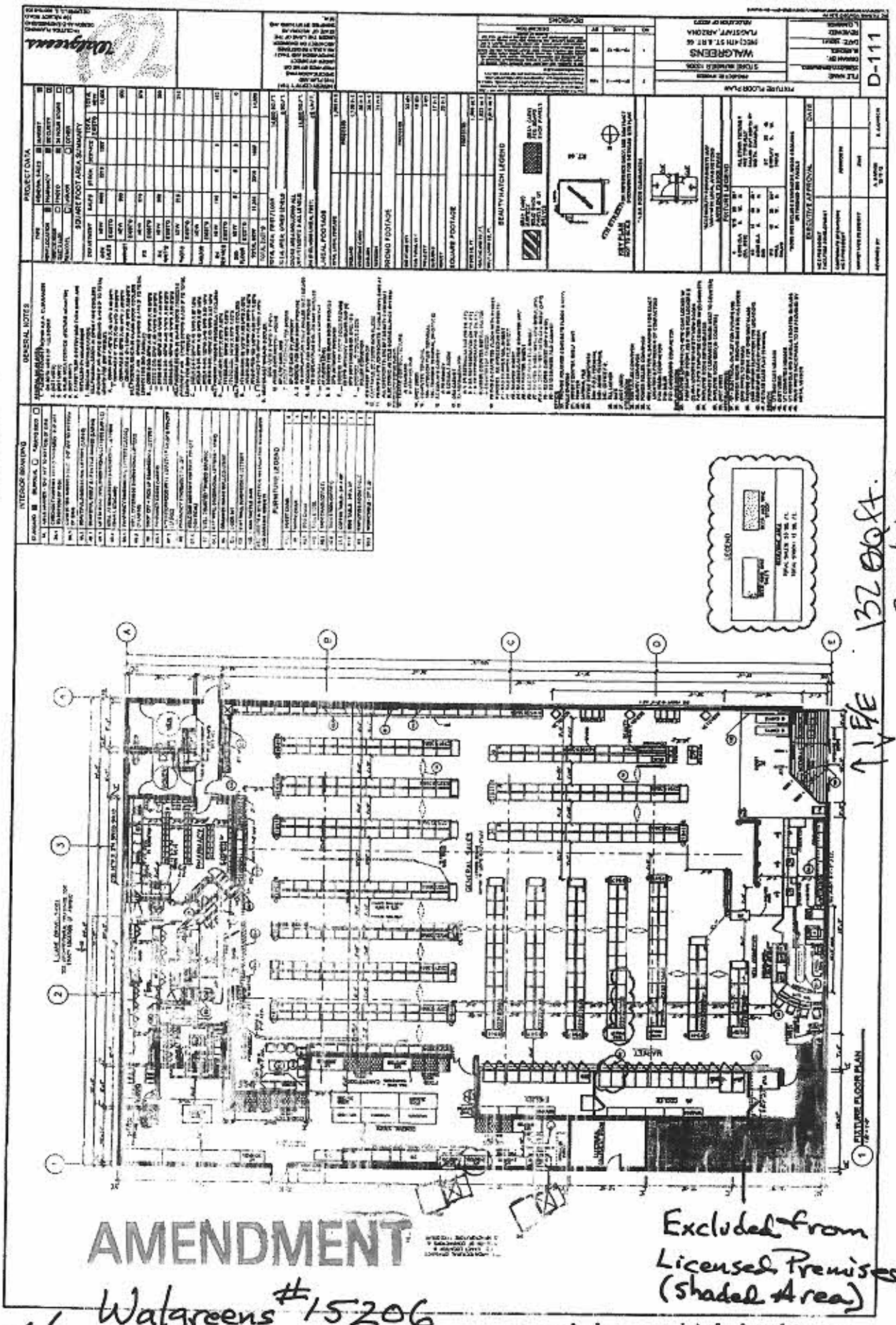
STORE NUMBER 15206

WALGREENS
NEC 4th St. and Route 66
FLAGSTAFF, AZ
CITY SUBMITTAL

CADD PLOT: 10006-C100.DWG
DRAWN BY: J. BARCLAY
DATE: 4-6-12
REVIEWED: J. SWANSON

C-100

'13 MAR 29 Liq. Lic. AM11:19



AMENDMENT

Walgreens #15206

#09030039

Amendment

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, Randy Guse., Liquor License Agent for Walgreen's Company, and Walgreen's Arizona Drug Company and its subsidiaries, with local offices located 5324 E. Washington, Phoenix, Arizona 85034 ("Agent and/or Principal") do hereby make, constitute and appoint Peter H. Schelstraete, Attorney at Law with his office at Two Renaissance Square, 40 North Central, Suite 1400, Phoenix, Arizona 85004 as my true and lawful Attorney-In-Fact, for me and in my name, place and stead, and for my use, behalf and benefit to perform the following acts and things:

To make, execute and deliver any and all applications, amendments, forms or documents necessary in connection with matters in any way relating to liquor licensing, as I might be required to sign.

Agent and Principal gives and grants to Attorney-In-Fact full power to do and perform all and every act and thing whatsoever requisite and necessary to be done as fully to all intents and purposes as Agent and Principal might or could do if personally present. Agent and Principal ratifies and confirms all that Attorney-In-Fact shall lawfully do or cause to be done by virtue of this Special Power of Attorney.

This Special Power of Attorney shall expire on 8-31, 2013.

Randy Guse

'13 MAR 29 Liq. Lic. AM11:06

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this _____ day of March 2013, before me, the undersigned Notary Public, personally appeared Randy Guse, known to me (or satisfactorily proven) to be the person whose name is described to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS HEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:
11 26 2014

Notary Public State of Arizona
Maricopa County
Elizabeth Lawyer
My Commission Expires 11/26/2014

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Jeff Bauman, Traffic Engineer
Date:	03/28/2013
Meeting Date:	04/02/2013

TITLE:

Consideration and Approval of Amendment: Consideration of a Joint Letter of Renewal/Amendment One with the Arizona Department of Transportation, Intermodal Transportation Division for the Data Access/Exchange Agreement.

RECOMMENDED ACTION:

Approve Joint Letter of Renewal/Amendment One to JPA/IGA 2009-247 for the period of 12/10/2012 to 12/09/2017 as presented.

Policy Decision or Reason for Action:

This agreement between the City of Flagstaff and the Arizona Department of Transportation - Intermodal Transportation Division, Traffic Records Section allows the City of Flagstaff to continue to access and download Crash Report data from ALISS Database via the Safety Data Mart. The Safety Data Mart includes all crashes that occur within the Flagstaff Metropolitan Planning Organization's boundaries as reported by the Department of Public Safety, City of Flagstaff Police Department, Coconino County Sheriff's Department and all other reporting law enforcement agencies.

City and FMPO staff use this crash information to help identify high crash locations and to develop subsequent remedial safety measures.

Financial Impact:

None

Connection to Council Goal:

1. Effective governance

Has There Been Previous Council Decision on This:

No, the initial JPA/IGA did not have Council action.

Options and Alternatives:

-Approve JPA/IGA Amendment One as presented, which will allow staff to continue having access to crash report information.
-Deny JPA/IGA Amendment One as presented, which will keep staff from being able to access citywide crash data through the Safety Data Mart.

Community Involvement:
Inform

Attachments: Original JPA 09 247
JPA 09 247

Arizona Department of Transportation

Motor Vehicle Division

1801 West Jefferson Street Phoenix, Arizona 85007

Janice K. Brewer
Governor

John S. Halikowski
Director

Stacey K. Stanton
Division Director

JPA 2009 - 247

DATA ACCESS / EXCHANGE AGREEMENT

Date:	**December 10, 2009**
Name of Department:	**City of Flagstaff**
Doing Business As:	**City of Flagstaff**
Business Address:	**211 W. Aspen, Flagstaff, AZ 86001**
Mailing Address:	**211 W. Aspen, Flagstaff, AZ 86001**
Telephone Number:	**(928) 779-7651**

City of Flagstaff (AGENCY) hereby requests authorization for connectivity to the Arizona Department of Transportation's (ADOT) (check all that apply):

- ❑ ALISS Database to submit electronic crash records.
- ❑ ALISS Database to access and retrieve crash data.
- X Safety Data Mart to query, analyze and retrieve crash data.

City of Flagstaff (AGENCY) is authorized to enter into this Agreement pursuant to A.R.S. §§28-401 et seq. and with GITA Statewide Standard P740-S741, Standard 4.7.3, as part of the foregoing Data Access / Exchange Agreement between the Arizona Department of Transportation (ADOT) and the **City of Flagstaff.**

The AGENCY (as defined below) hereby requests authorization for connectivity to the ALISS Database and/or AIDW Safety Data Mart of the Arizona Department of Transportation, Motor Vehicle Division (MVD). The AGENCY's specific access capabilities are set forth and further described in the attached Addendum, which shall be considered a part of this Agreement between the AGENCY and ADOT.

The AGENCY understands and agrees that it shall only access the ALISS Database and/or the AIDW Safety Data Mart in accordance with the terms and conditions set forth herein. If at any time ADOT believes the AGENCY is using such access in an unauthorized or unlawful manner, ADOT reserves the right, in its sole discretion, to immediately terminate this Agreement.

This Database Access Agreement complies with GITA Statewide Standard P740-S741, Standard 4.7.3.

Definitions

"ADOT" means the Arizona Department of Transportation.

"ALISS" means the Accident Location, Identification and Surveillance System.

"Authorized individuals" means those persons who are employed or contracted by AGENCY to perform the activities authorized hereunder.

"Connectivity" means to make and/or maintain a computer connection with ADOT for the purpose of performing the activities authorized under this agreement.

"AGENCY" means **City of Flagstaff**

"Encrypt" means to scramble computerized information to secure data by using special algorithms for transmission or other purposes.

"Personal Information" means information that identifies an individual, including without limitation an individual's name, photograph, social security number, driver license number, physical description, race, ethnic origin, sexual orientation, income, blood type, DNA code, fingerprints, marital status, religion, home address, home telephone number, education, financial matters, and medical or employment history readily identifiable to a specific individual but does not include information on vehicular accidents, driving violations, and driver's status.

"RACF" means Resource Access Control Facility, which is a software security product that protects information by controlling access to it.

"Secure location" means an area designated specifically for authorized individuals to access ADOT's database(s) and to which all unauthorized individuals shall be prohibited from entering.

"Sensitive Information" means any state information either in detail or aggregate that may be prejudicial or harmful to the state and its citizens.

Location of Activities

AGENCY may conduct authorized activities only at those locations which have been pre-approved by ADOT such as their place of business that adheres to the other guidelines outlined in this Agreement. ADOT reserves the right, in its sole discretion, to disapprove of location.

Equipment

AGENCY shall obtain computer equipment and software that is compatible with the information systems and connectivity requirements of ADOT, and which will allow access only to the specific database(s) listed in the Addendum to this Agreement.

Data Security

AGENCY shall provide a secure location for all computer equipment used to access ADOT's database(s).

AGENCY shall provide access to ADOT's ALISS Database and/or Safety Data Mart only to AGENCY personnel or contractors who are authorized individuals, and to no one else. If at any time ADOT believes that an authorized individual is using such access inappropriately, ADOT reserves the right to immediately terminate that individual's database access and/or to terminate AGENCY authorization under this Agreement.

AGENCY shall comply with all ADOT policies, procedures and directives regarding security and database access, including any future amendments thereto. All subcontractors utilized to perform the activities authorized by this Agreement must abide by the same security and access requirements as AGENCY.

AGENCY must disclose and obtain ADOT approval of any existing and/or contemplated strategic alliances, partnerships, Intergovernmental Agreements or subcontracting arrangements that AGENCY has or will enter into which involve the processing and/or use of ADOT data acquired pursuant to this Agreement.

AGENCY, its officers, agents, employees, contractors and representatives shall not, without the prior written approval of ADOT, disclose, distribute, or utilize in any manner not expressly authorized under this Agreement, any personal or sensitive information which is connected or otherwise associated with or accessed pursuant to this Agreement, either during the term of this Agreement or subsequent to any termination of this Agreement.

AGENCY shall maintain all hard copy information and electronic data related to this Agreement in a secure location at all times.

Data Privacy

AGENCY shall not utilize its computer connections with ADOT for any purpose other than the purpose(s) specified in the Addendum to this Agreement.

Network Security

AGENCY understands and agrees that any and all personal or sensitive information that it stores or transmits over external or public computer networks, such as the Internet, must be encrypted.

AGENCY computers that are permanently or intermittently connected to internal computer networks must have an ADOT approved, password-based, access control system in order to access ADOT's database(s). This requirement applies to computers with direct connections to data centers, as well as AGENCY "wide area network." Regardless of the network connections, all AGENCY computers which are used to access ADOT information must employ approved, password-based, access control systems.

All in-bound connections to AGENCY computers from external networks must also be protected. All access control systems must utilize user-identifications (i.e. RACF ID's) and passwords unique to each user, as well as user-privilege restriction mechanisms. Password sharing is prohibited.

Non-exclusivity

This Agreement shall not preclude ADOT from entering into the same or similar Agreement with other public or private entities, including those performing identical or similar functions as AGENCY.

Notification

AGENCY shall assign a contact person for problem resolution and notification of procedural changes. AGENCY shall advise ADOT within two business days of any change in its designated contact person. All notices or demands upon either party shall be in writing and an original shall be delivered in person, or sent by mail addressed as follows:

To ADOT at:

Motor Vehicle Division
Traffic Records Section
ATTN: John Riemer
206 S. 17th Ave, Mail Drop 064R
Phoenix, AZ 85007-3233

To AGENCY at:

City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001
Contact: Jeffery Bauman
Fax: (928) 779-7684

Records

The AGENCY shall maintain a log or register of all ADOT records it requests and all ADOT records it obtains by virtue of the access provided herein. The AGENCY shall retain this log or register either manually or electronically for a period of five years after the date of request and receipt of the records. All other books, papers, records, data, and accounting records relating to this Agreement ("Records") shall be maintained by AGENCY for a period of five (5) years, or such greater or lesser time as may be required by federal or state law, rule, or the ADOT Records Retention Schedule. The Records shall be subject to inspection and audit by ADOT for five years after termination or completion of this Agreement. The Records shall be produced at the offices designated by ADOT.

It is further agreed that ownership of all records relating to this Agreement resides exclusively with ADOT, except for data retrieved pursuant to this Agreement.

Compliance

AGENCY shall comply with all of the terms set forth in this Agreement, together with all applicable state statutes, rules, and regulations. AGENCY shall also comply with all relevant ADOT policies, procedures and directives that ADOT provides to AGENCY throughout the course of this Agreement. All AGENCY subcontractors are held to the same compliance standards, and any failure to comply on the part of the subcontractor will be deemed a failure on the part of AGENCY.

Non-compliance

If AGENCY fails to comply with the terms of this Agreement, or with any applicable law, rule or regulation, ADOT reserves the right to take any remedial action that it deems necessary and appropriate, including without limitation the suspension, cancellation, revocation, or termination of this Agreement. In case of a violation of law, the Agreement shall immediately terminate.

Amendment and Modification of Agreement

AGENCY shall review and approve in writing any modification of the Agreement. Upon the amendment of any applicable law, rule or regulation, the Agreement shall automatically be modified to reflect such amendment. Any modification of the Agreement shall be incorporated herein and shall be subject to all other provisions of this Agreement. AGENCY may submit a written request to ADOT if there are any changes it desires be made to the Agreement, and such a request shall be approved or denied at ADOT's sole discretion.

Termination

Either party may terminate this Agreement for convenience or cause upon thirty (30) days prior written notice to the other party. Upon any termination of this Agreement, AGENCY shall, at ADOT's request, remove and deliver to MVD all electronic data stored on any electronic storage devices and shall immediately return all other data and information received in connection herewith to ADOT.

This Agreement is subject to cancellation by the Governor pursuant to A.R.S. §38-511, or by ADOT for cause and without prior notice if the public interest so requires.

Waiver/Severability

AGENCY agrees that a waiver of any provision of this Agreement shall not act as a waiver of any other provision of this Agreement. If a provision of this Agreement is for any reason declared invalid, illegal, or unenforceable, that declaration shall not affect the remainder of the provisions of the Agreement.

Duration

This Agreement shall commence upon approval by the Assistant Division Director, Executive Services Group and execution by both parties, and shall thereafter continue in effect for a term of three (3) years, unless previously terminated or canceled as provided herein. Upon expiration of this three-year period, the parties may mutually agree to extend the term of the Agreement for another three (or fewer) years by entering into a "Joint Letter of Renewal."

Liability

ADOT assumes no financial obligation or liability under this Agreement. The AGENCY assumes full responsibility for any liability which arises out of this Agreement. Any damages arising from carrying out or resulting from, in any respect, the terms of this Agreement or any modification thereof shall be the liability of the AGENCY and that to the extent permitted by law, the AGENCY hereby agrees to save and hold harmless and indemnify from loss the State of Arizona and ADOT, and any of their departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State of Arizona or ADOT, or any of their departments, agencies, officers and employees, or their independent contractors, the AGENCY, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State of Arizona or ADOT, any of their departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

Certification

On behalf of AGENCY identified below, I hereby request approval of this Agreement. I certify that all of the information set forth herein by AGENCY is true and accurate, and that any records or information obtained from ADOT's database(s) and system(s) pursuant to this Agreement will be used solely for the purpose(s) specified in the Addendum to this Agreement, and for no other purposes. I further certify that I have the authority to execute this Agreement on behalf of AGENCY. I understand that AGENCY must abide by the provisions of this Agreement if approved by the Assistant Division Director, Executive Services Group and executed by both parties.

Mandatory Provisions for Arizona State Agencies

None of the provisions of the Agreement may be waived, changed of altered except in writing signed by both parties.

Notwithstanding any provision of the Agreement to the contrary, ADOT is not authorized to indemnify the AGENCY.

Every payment obligation of the ADOT under this Agreement is conditioned upon the availability of funds allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by ADOT or any other agency of the State of Arizona at the end of the period for which funds are available. No liability shall accrue to ADOT or any other agency of the State of Arizona in the event this provision is exercised, and neither ADOT nor any other agency of the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

AGENCY shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the American with Disabilities Act. AGENCY shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

Scrutinized Business Operations. Pursuant to A.R.S. 35-391.06 and 35-393.06, the AGENCY certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. 35-391 or/and 35-393, as applicable. If the State of Arizona or ADOT determines that the AGENCY submitted a false certification, ADOT may impose remedies as provided by law including cancellation or termination of this Agreement.

Compliance requirement for A.R.S. 41-4401 – immigration laws and E-Verify requirement.

- The AGENCY warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)

- A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breech of the contract and the AGENCY may be subject to penalties up to and including termination of the Agreement.

- ADOT retains the legal right to inspect the papers of any employee who works on the Agreement to ensure that the AGENCY or subcontractor is complying with the warranty under paragraph 8(a).

AGENCY assigns to ADOT any claim for overcharges resulting form antitrust violations to the extent that such violations concern materials or services supplied by third parties to AGENCY toward fulfillment of this Agreement.

This Agreement shall be construed in accordance to the laws of the State of Arizona.
The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. 12-1518 except as may be required by other applicable statutes.

The parties may execute this Agreement in two or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same document.

City of Flagstaff

Kevin Burke
Signature

Kevin Burke
Name Printed

City Manager
Title

12/10/09
Date

For ADOT USE ONLY

Received this date 1/28/10. Signed John Riemer

Version 2.0

AUTHORIZATION

On behalf of the Arizona Department of Transportation, the authorization requested by **City of Flagstaff** pursuant to this Agreement (including the attached Addendum) is hereby approved.

DATED THIS 5th DAY OF February, 2010.

Motor Vehicle Division/Executive Services Group

George Delgado
Assistant Division Director, Motor Vehicle Division/Executive Services Group
Arizona Department of Transportation

AGREEMENT ADDENDUM

THIS ADDENDUM is made and entered into pursuant to A.R.S. §§28-401 et seq. and with GITA Statewide Standard P740-S741, Standard 4.7.3, as part of the foregoing Data Access / Exchange Agreement between the Arizona Department of Transportation (ADOT) and the **City of Flagstaff.**

Subject to ADOT's right to terminate as set forth in this Agreement:

I. ADOT <grants/does not grant> AGENCY authorization to access its ALISS Database via approved direct program-to-program interactions over an approved persistent connection and to thereby submit electronic crash records information contained in such databases according to the terms and conditions stated in this Agreement. Electronic crash records shall be submitted no more than once per day.

II. ADOT <grants/does not grant> AGENCY authorization to access its ALISS Database via an approved secure gateway and with two-factor authentication to retrieve pertinent crash records data including vehicle information according to the terms and conditions stated in this agreement.

III. ADOT <grants/does not grant> AGENCY authorization to access its Safety Data Mart via an approved secure gateway and with user identifications and passwords unique to each user to run queries and retrieve crash data strictly for the purposes of safety analysis and in accordance with the terms and conditions stated in this agreement. Data query and retrieval may be done on an as-needed basis.

The foregoing Agreement and Addendum are mutually agreed to:

Motor Vehicle Division/Executive Services Group	**City of Flagstaff**
Signature	Signature
George Delgado	Kevin Burke
Name Printed	Name Printed
Assistant Division Director	City Manager
Title	Title
2-5-10	12/10/09
Date	Date

DATA ACCESS / EXCHANGE AGREEMENT

ATTEST:

Laura Matthews for
CITY CLERK

APPROVED AS TO FORM:

Dax Wormuth for
CITY ATTORNEY

Arizona Department of Transportation

Intermodal Transportation Division

205 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janice K. Brewer
Governor

Jennifer Toth
State Engineer

John S. Halikowski
Director

DATA ACCESS / EXCHANGE AGREEMENT
JOINT LETTER OF RENEWAL
AMENDMENT ONE

ADOT File No.: **JPA/IGA 09-247**

Date:

Name of Department: **City of Flagstaff**

Doing Business As: **City of Flagstaff**

Business Address: **211 W Aspen, Flagstaff, AZ 86001**

Mailing Address: **211 W Aspen, Flagstaff, AZ 86001**

Telephone Number: **928-779-7651**

Duration:

The Parties agree to enter into this Joint Letter of Renewal/Amendment One to extend the term of the Agreement, ADOT File No. JPA/IGA **09-247** for an additional five years.

1. The Parties agree to extend the expiration date of the agreement from **12/10/2012** to **12/9/2017**.

2. ALL NOTICES AND DEMANDS upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

To ADOT at:

Intermodal Transportation Division
Traffic Records Section
ATTN: Mr. Rick Turner
206 S 17th Ave, Mail Drop 064R,
Phoenix, AZ 85007-3233
Phone: 602-712-6227

To AGENCY at:

City of Flagstaff
211 W Aspen
Flagstaff, AZ 86001
Contact: **Jeffery Bauman**
Phone: **928-779-7651**
Fax: **928-779-7684**

3. EXCEPT AS AMENDED herein, ALL OTHER terms and conditions of the original Agreement remain in full force and effect.

DRAFT

The parties may execute this Agreement in two or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same document.

City of Flagstaff

_____
Signature

Kevin Burke
_____
Name Printed

City Manager
_____
Title

_____
Date

For ADOT USE ONLY

Received this date _____. Signed _____

AUTHORIZATION

On behalf of the Arizona Department of Transportation, the authorization requested by **City of Flagstaff** pursuant to this Agreement (Joint Letter of Renewal/Amendment One) is hereby approved.

DATED THIS _____ DAY OF _____, 20_____.

Intermodal Transportation Division / Traffic Engineering

_____
Dallas Hammit, P.E
Senior Deputy State Engineer, Intermodal Transportation Division
Arizona Department of Transportation

DRAFT

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Steve Zimmerman, Parks Manager, Public Works

Date: 03/28/2013

Meeting Date: 04/02/2013

TITLE:

Consideration of Purchase of Services: Installation of "Nova' ProBounce" monolithic overlay system over the existing tennis (1) and basketball (1) courts at Cheshire Park, located at 3000 N. Fremont Boulevard, west of Ft. Valley Road.

RECOMMENDED ACTION:

Authorize the purchase of services from sole source provider, General Acrylics, for the installation of the Nova' ProBounce monolithic overlay system for the repair and long-term maintenance of the existing tennis (1) and basketball (1) courts at Cheshire Park for the sum of $89,280.00.

Policy Decision or Reason for Action:

This request for maintenance and repair allows the City to purchase the Nova' ProBounce court system from General Acrylics, a "sole source" distributor for this product and also the only authorized distributor licensed to sell this product in the state. Purchasing staff was consulted, determining that there are no governmental or cooperative agreements available to purchase this service through. The "sole source" status precludes the City from having to conduct a competitive bid process.

Financial Impact:

Parks Section has available funds in account number 001-2602-520-4103 for Capital Improvements.

Connection to Council Goal:

Repair and maintain infrastructure (Parks)

Previous Council Decision on This:

No

Options and Alternatives:

1. Purchase the Nova' ProBounce monolithic court system
2. Continue with current resurfacing process
3. Conduct competitive bid process
4. Remove and replace courts

Background/History:

All tennis and basketball courts are on a rotational resurfacing plan every five (5) years. The condition of the Cheshire courts require extensive concrete repairs which are not necessary on other courts. These concrete repairs are subject to being displaced by the freeze and thaw cycles which causes more chipping and peeling of the courts' surfaces. This break down is occurring before the scheduled maintenance cycle and is outside the one (1) year warranty that comes with the current process. Numerous complaints have been received about the condition and playability of the courts.

Current Process

Resurfacing consists of water blasting to remove the old surface to bare concrete, and then patching all the cracks and applying the new surface. The surface top coating consists of acrylic/urethane paint with 30# mesh sand mixed in to ensure a rough, non-skid surface. The current process is labor intensive and requires a vast amount of water for removing the old surface. This process comes with a one (1) year warranty without the option to extend the warranty.

Alternative Process

The Nova' ProBounce is a patented monolithic overlay system which is completely detached from the underlying surface which bridges the deficiencies in the court. This system has been in use for twenty years at locations with similar conditions to Flagstaff. This product comes with a five (5)-year product warranty with an option to extend for five (5) years, but does not cover color fading after the first year.The condition for extended warranty requires an onsite inspection and a fee of $500.00.

This process consists of filling all cracks flush to the court surface and grinding down any high spots. The Nova' PB Stratum, a specially designed stable membrane is installed over the entire court surface. The membrane is seamed together, sealed and in-filled with 2.2lbs per sq. ft of approved in-fill. The in-fill is then sealed and bound by flooding with an urethane based product to create a monolithic, independent free floating cushioned pavement on the surface. Two (2) coats of binder are applied over the entire system, and an acrylic color surfacing system including three (3) sand filled texture coats is applied.

Key Considerations:

When preparing to schedule resurfacing of these courts, staff became aware of the alternative process offered by General Acrylics. The City of Flagstaff has a long term working relationship with General Acrylics, for the last ten (10) years, who has been awarded the past two (2) contracts for court resurfacing. The alternative process is outside the current contract guidelines.

Current Process

Resurfacing maintenance cycle is up to five (5) years with yearly inspections.
Resurfacing maintenance cost is $15,294 per court.
One year non-renewable warranty

Alternative Process

Resurfacing maintenance cycle is five (5) to ten (10) years with yearly inspections.
Resurfacing maintenance consists of reapplying the top coat of paint at a cost of $4,300 per court.
Five (5) year warranty with option to renew up to five (5) years.

Community Benefits and Considerations:

The Nova' ProBounce court system will provide a safe court surface, which improves the playability of the courts and reduces complaints from users. A reduction in costs for the ongoing maintenance is expected.

Community Involvement:

None

Expanded Options and Alternatives:

1) The purchase of the Nova' ProBounce Monolithic Court System provides a longer lasting playing surface that requires less frequent resurfacing at a reduced cost with a five (5) year warranty, but does require a higher up front cost.

2) If we were to continue with the current process there are lower initial costs, but the resurfacing cycle is more frequent and does not address the current deficiencies in the courts. With this process there would be more frequent resurfacing at a higher cost with only a one (1) year warranty and more management by staff.

3) Conduct the competitive bid process

4) Remove and replace the courts was an option considered but was determined to be cost prohibitive and not necessary at this time as other options were available.

Attachments: Current Process Quote
Alternative Process Quote
Court Sample

PROPOSAL SUBMITTED TO:
Steve Zimmermann
City of Flagstaff
211 West Aspen Avenue
Flagstaff,AZ 86001
Office: 928-699-5147
E-Mail: szimmerman@flagstaffaz.gov

Date: Dec. 13, 2011

PROPOSAL

Job site Cheshire Park
Per your Request General Acrylics, Inc. respectfully submits the following proposal to supply all materials, equipment, and labor to perform the following work per City of Flagstaff Services Contract #28054: Re-surface one (1) concrete tennis court and one (1) concrete basketball court

LINE ITEMS	UNITS	PRICES	PER UNIT	TOTAL PER LINE ITEM
Repair and Resurfacing				
Resurface 1 existing concrete basketball court per contract #28054 specifications	1	$ 14,685.00	Court	$ 14,685.00
Repair and Resurfacing				
Resurface 1 existing concrete tennis court per contract #28054 specifications	1	$ 14,135.00	Court	$ 14,135.00
		$ -		$ -
		$ -		$ -
		$ -		$ -
		$ -		$ -
		$ -		$ -
		$ -		$ -
		$ -		$ -
		$ -		$ -
		$ -		$ -
		$ -		$ -
		$ -		$ -
		$ -		$ -
			SUBTOTAL:	$ 28,820.00
			BOND	Included
	SALES TAX:	6.1399%		$ 1,769.52
			TOTAL:	$ 30,589.52

UPON APPROVAL BY CITY OF FLAGSTAFF PURCHASING
PLEASE ISSUE PURCHASE ORDER TO GENERAL ACRYLICS, INC.

GENERAL ACRYLICS, INC.

Submitted By: *Matt Vaughan*
Matt Vaughan

AZ License # 077085

(602) 569-9377• Fax (623) 298-1310• Toll Free (800) 436-2279
22222 N. 22nd Avenue • Phoenix, AZ 85027
www.generalacrylics.com

PROPOSAL SUBMITTED TO:
Steve Zimmermann
City of Flagstaff
211 West Aspen Avenue
Flagstaff,AZ 86001
Office: 928-699-5147
E-Mail: szimmerman@flagstaffaz.gov

Date: 03/19/2013

PROPOSAL

Job site: Cheshire Park - "Nova' Pro-Bounce"
Per your Request General Acrylics, Inc. respectfully submits the following proposal to supply all materials, equipment, and labor to perform the following work at Cheshire Park for The City of Flagstaff: Install the Nova' Pro-Bounce surface system over two (2) existing concrete tennis courts, per the manufacturer's written specifications:

LINE ITEMS	UNITS	PRICES	PER UNIT	TOTAL PER LINE ITEM
Repair and Resurfacing:				
Install the Nova' Pro-Bounce surface system over two (2) existing concrete tennis courts	1	$ 84,115.40	Court	$ 84,115.40
Clean the existing surface area to remove all dust, dirt, and foreign debris				
Fill low areas with Super Krete or Gameco Super Patch in order to reduce their severity.				
Note: if court does not have proper slope and positive drainage it will not be possible to repair low areas without an asphalt or concrete overlay and this is not part of this proposal				
Note: There are irregularities in the surface of this court, (high and low areas), where we will grind down and feather out these high spots on the court surface and at any cracks that have vertical displacement in order to create a less severe transition from high to low				
Fill all cracks until flush using Super-Krete® and/or Super Flex.				
Install the Nova' PB-Stratum-a specially designed dimensionally stable membrane over the entire court surface. Stratum is to be seamed together using the Nova'PB-Bounce system and in filled with 2.2lbs of approved in-fill. The stratum is then to be sealed and bound by flooding with PolySeal to create a monolithic, independent free floating cushioned pavement on the surface.				
Apply two (2) coats of Gameco PB-ACR Binder coat surface over entire system.				
Apply Gameco 100% Acrylic color surfacing system including: three (3) sand filled texture coats				
NOTE: Color to be from Gameco color chart				
Accurately locate all playing lines and stripe using Gameco White Line Paint				
Repaint net posts and re-hang nets				
General Acrylic's to provide warranty application to customer at completion of installation. After receipt of the completed application in General Acrylic's office, General Acrylic's to provide customer with a 5 year limited warranty from manufacturer of Nova' Pro-Bounce System.				

		SUBTOTAL:	$ 84,115.40
		BOND	N/A
SALES TAX:	6.1399%		$ 5,164.60
		TOTAL:	$ 89,280.00

UPON APPROVAL BY CITY OF FLAGSTAFF PURCHASING
PLEASE ISSUE PURCHASE ORDER TO GENERAL ACRYLICS, INC.
Must be Accompanied by General Acrylics Proposal Dated 01/15/2013

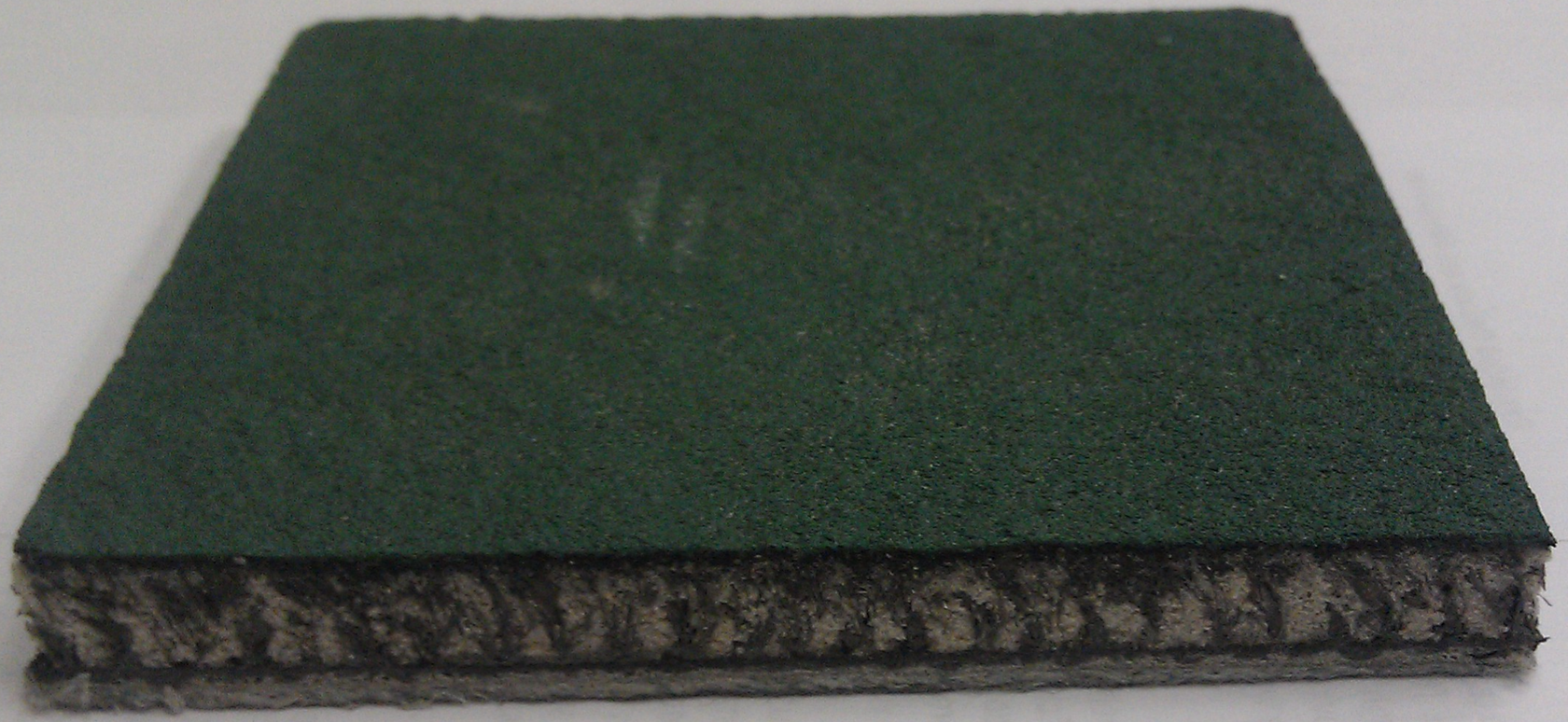
GENERAL ACRYLICS, INC.

Submitted By: *Matt Vaughan*
Matt Vaughan

AZ License # 077085

(602) 569-9377• Fax (623) 298-1310• Toll Free (800) 436-2279
22222 N. 22nd Avenue • Phoenix, AZ 85027
www.generalacrylics.com

MEMBER AMERICAN SPORTS BUILDERS ASSOCIATION



CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Ranbir Cheema, Tax License & Revenue Manager

Co-Submitter: Anja Wendel, Sr Asst City Attorney

Submitted For: Barbara Goodrich, Management Services Director

Date: 03/28/2013

Meeting Date: 04/02/2013

TITLE:

Consideration and Approval of Legal Services Contract: Contract for Legal Services with the law firm of Holmes Wright Hyde & Hays PLC, for the purpose of collecting unpaid transaction privilege taxes (sales taxes) from specific on-line travel companies.

RECOMMENDED ACTION:

Motion to approve a Contract for Legal Services with Holm Wright Hyde & Hays PLC for collection of unpaid sales taxes on a contingency fee basis, including authority for litigation on behalf of the City.

Policy Decision or Reason for Action:

To coordinate sales tax collection efforts and share litigation costs with other Arizona cities in recovery of sales taxes assessed against online travel companies. Assessments are based on gross income received by online travel companies acting as brokers for selling hotel rooms and lodging.

Financial Impact:

No upfront City expenditures are required. The City is not required to pay for legal services unless the cities recover unpaid taxes. The law firm has offered to provide services on a contingency basis. If the cities prevail, the law firm will be reimbursed its litigation costs, then will be paid a 27% attorneys fee from the remaining recovered amount before remitting the balance to the cities. The City of Flagstaff will receive a proportionate share of the overall recovery. Minimal staff time in administering the contract is involved.

Connection to Council Goal:

1. Retain, expand, and diversify economic base
2. Effective governance.

Has There Been Previous Council Decision on This:

No. Executive Sessions were held on July 17, 2012 and again on March 26, 2013 to consult with City Attorneys concerning possible litigation.

Options and Alternatives:

1. Approve the legal services contract. If the City approves the legal services contract, the City will not expend any upfront funds and will benefit from a joint litigation effort.
2. Do not approve the legal services contract. If the City chooses not to approve the legal services contract, the City will need to consider alternative legal services arrangements. Options include alternative outside legal representation or using City legal representation.

Background/History:

The City of Tempe ("Tempe") conducted a multi-jurisdictional audit on behalf of 13 cities, including the City of Flagstaff, for collection of unpaid transaction privilege taxes from on-line travel companies. On-line travel companies serve as brokers on behalf of hotels and lodging establishments. The on-line travel companies had not been paying taxes on gross income received from booking hotel rooms and lodging, retained as broker fees. Tempe determined approximately $6 million is owed to the 13 cities for the audit period of 2004-2009. In 2012, Tempe issued a Request for Proposals for legal services for the collection of unpaid taxes. The law firm of Holm Wright Hyde & Hays PLC was selected as the successful proposer ("the Firm.") Tempe awarded a contract to the Firm. All other cities that were a part of the original audit, not including Flagstaff and Nogales, have awarded contracts to the Firm. The Firm will pay for all litigation costs and attorneys fees upfront. The Firm will be paid from any amount collected from taxpayers as follows: (a) first, all litigation costs will be reimbursed, such as reporter costs for depositions, copy charges, and expert fees; (b) then the Firm will be paid a contingency fee of 27% of the balance as its attorney's fee; (c) then the remaining amount will be distributed to the participating cities. The proposed City of Flagstaff contract incorporates the terms and conditions of the Tempe Contract, with some modifications. In the event the City of Flagstaff terminates the legal services contract early, then the Firm has stated that the contingency fee would not apply. Instead the City would pay reasonable charges, which would include reasonable attorneys fees and other litigation costs to date.

All cities issued the assessments from the multi-jurisdictional audit in March 2013. The issuance of the assessments triggers a 45 day administrative appeal period. The on-line travel companies each have the opportunity to dispute that taxes are owed, and may request an administrative hearing before the Municipal Tax Hearing Officer. Following such hearings, the hearing officer's decision may be appealed to trial court, at which point litigation may commence. Litigation may not be necessary if a settlement is reached with the online travel copmanies as to tax liabillity.

Due to state taxpayer confidentiality laws, this staff report does not include details as to the City assessments.

Key Considerations:

If the City chooses not to enter into the proposed legal services contract, the City will need to have legal representation, whether internal or external, to represent the City at administrative tax hearings, and any subsequent appeals to tax court.

Community Involvement:

Inform

Attachments: Contract for Legal Services
Exhibit A

CONTRACT FOR LEGAL SERVICES

This CONTRACT FOR LEGAL SERVICES (the "Contract") is entered into and is effective as of the _____ day of_____, 2013 by and between CITY OFFLAGSTAFF, an Arizona municipal corporation (the "City"), and the law firm of HOLM WRIGHT HYDE & HAYS PLC ("Counsel").

WHEREAS, City is authorized to use agreements approved by other Arizona municipalities if such agreements allow for cooperative use; and

WHEREAS, the City of Tempe issued RFP No. 12-096 titled "Legal Representation for Statewide Efforts to Collect Unpaid Taxes;" and

WHEREAS, City of Tempe awarded a contract, T12-096-01, to Counsel, comprised of the RFP and Counsel's response; and

WHEREAS, Contract No. T12-096-01 provides for cooperative use by other cities; and

WHEREAS, the City of Tempe Contract No. T12-096-01, attached hereto as Exhibit A, is adopted as part of this Contract.

AGREEMENT

In consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Counsel hereby agree as follows:

1. **Scope of Services.** Counsel agrees to represent City and provide legal counsel in all matters related to the City's attempts to collect unpaid privilege taxes from identified on-line travel companies (see RFP pg. 26) for the reviewed joint audit period (various, beginning 4/1/2000 through 6/30/2009).

   Counsel agrees to perform legal services specified this Contract and as identified and described in this Contract as they relate to the previously identified joint audit period and companies. To the extent Counsel wishes to include additional on-line travel companies (OTC's) not already subject to audit and/or to include additional periods not contained in the joint audit period, Counsel shall not do so without the express written consent of the City Attorney.

2. **Term of Contract.** Unless terminated as provided below, the term of this Contract shall expire upon the conclusion of any litigation or other proceedings as set forth in this Contract, as related to the original OTC's joint audit period.

3. **Authorized Expenditures for Legal Services and Expenses.** City agrees to pay Counsel for services rendered in accordance with the proposed fee arrangement set forth in Section Four of the RFP Response as modified by Contract No. T12-096-01.

4. **Lead Attorney**. Counsel shall serve as Lead Attorney to City. However, Counsel may utilize the services of other attorneys or law firms as set forth in RFP No. 12-096 provided that the overall fees to the City are not changed.
5. **Subcontracting/ Assignment; Experts**. Except as set forth in Section 4 above, services covered by this Contract shall not be assigned or subcontracted, in whole or in part, without the prior written notice and consent of the City Attorney. Technical experts shall not be retained by Counsel without the prior written consent of the City Attorney. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with Counsel.

6. **Insurance**. Counsel shall carry commercial general liability, vehicle liability, professional liability, and worker's compensation insurance in such amounts as are standard in the industry and provide proof of same to City upon request of the City Attorney.

7. **Independent Contractor**. The services provided by Counsel under this Contract are those of an independent contractor, not an employee.

8. **Termination Under A.R.S. § 38-511**. Per A.R.S. § 38-511, City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or creating the Contract on behalf of City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party of the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of this Contract. The cancellation shall be effective when written notice from City is received by all other parties to Contract, unless the notice specifies a later time.

9. **Common Interests and Conflicts of Interest.** City acknowledges that Counsel is jointly representing City and other municipalities on the matters contemplated by this Contract. To achieve economies of scale and to maximize the effectiveness of City in any adjudication, City authorizes Counsel to seek strategies and positions in such adjudication that advance the common interests of all retained municipalities. However, City also recognizes that from time to time issues may arise in the adjudication in which City and other municipalities may have diverse, incompatible or conflicting interests.

   Counsel will fully and timely inform and explain to City the factual and legal basis for each conflict of interest among participating municipalities which Counsel perceives as a result of the performance of its duties under this Contract respecting issues raised in adjudication; and

   City will disclose to Counsel perceived or known conflicts of interest among the participating municipalities respecting issues raised in the adjudication.

   In the event the participating municipalities, with Counsel's assistance, are unable to resolve a conflict of interest among them, such conflicts shall be dealt with in

accordance with the Arizona Supreme Court's Rules of Professional Conduct; provided, however, this Contract shall be construed to confer upon City and upon Counsel a direct obligation to negotiate in good faith in an attempt to resolve such concerns in order to allow Counsel to continue to represent the municipalities in situations where the rules would require Counsel to cease representing City.

Counsel will notify City if one of the participating municipalities has withdrawn from the joint representation contemplated herein.

10. **Compliance with Federal and State Laws.** Counsel understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, Counsel understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

11. **Equal Employment Opportunity.** Counsel will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Counsel will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

12. **Immigration Law Compliance.**
Under the provisions of A.R.S. §41-4401, Counsel warrants to the City that Counsel and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that Counsel and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by Counsel or any of its subcontractors will be considered a material breach of this Contract and may subject Counsel or Subcontractor to penalties up to and including termination of this Contract or any subcontract. Counsel will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. Counsel's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

The City retains the legal right to inspect the papers of any employee of Counsel or any subcontractor who works on this Contract to ensure that Counsel or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of Counsel and any of its subcontractors to ensure compliance with this warranty.

Counsel agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

13. **Termination for Convenience.** City reserves the right to terminate this contract or any part of this Contract for its sole convenience with 30 days written notice. In the event of any termination, Counsel must immediately stop all work, and must immediately cause any of its Subcontractors to cease all work. Counsel will not be paid for any work done upon receipt of the notice of termination, nor for any costs incurred by Counsel's Subcontractors, which Counsel could reasonably have avoided.

14. **Cancellation for Cause.** City may also cancel this contract or any part of this Contract with 7 days notice for cause in the event of any default by Counsel, or if Counsel fails to comply with any of the terms and conditions of this contract. Unsatisfactory performance as judged by the City Attorney, and failure to provide City, upon request, with adequate assurances of future performance will all be causes allowing City to cancel this contract for cause. In the event of cancellation for cause, City will not be liable to Counsel for any amount, and Counsel will be liable to City for any and all damages sustained by reason of the default which gave rise to the termination.

    In the event Counsel is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Counsel.

    If the City cancels this Contract or any part of the Contract services, the City will notify Counsel in writing, and upon receiving notice, Counsel must discontinue advancing the work and proceed to close all operations.

    Upon cancellation, Counsel must deliver to City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by City. Use of incomplete data will be at City's sole responsibility.

    Counsel must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, Counsel will be entitled to be paid for Work performed and accepted by the City before the default.

    If Counsel fails to fulfill in a timely and proper manner its obligations, or if Counsel violates any of the terms of this Contract, the City may withhold any payments to Counsel for the purpose of setoff until the exact amount of damages due the City from Counsel is determined by a court of competent jurisdiction.

    If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

15. **Non-appropriation of funds.** If the City Council does not appropriate funds to continue this Contract, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice of termination to Counsel at least 30 days before the end of its current fiscal period and will pay to Counsel all approved charges incurred through the end of this period.

16. **Contract Modification.** Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.

17. **Attorney's Fees.** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.

18. **Force Majeure.** Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts include, but are not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

19. **Taxes.** Counsel is solely responsible for any and all tax obligations which may result out of Counsel's performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by Counsel.

20. **Advertising.** No advertising or publicity concerning the City using Counsel's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Attorney.

21. **Third Party Beneficiary**. Except as recognized in Section 9, nothing under the Contract will be construed to give any rights or benefits in the Contract to anyone other than the City and Counsel, and all duties and responsibilities undertaken in accordance with the Contract will be for the sole and exclusive benefit of the City and Counsel and not for the benefit of any other party.

22. **Severability.** If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered deleted.

23. **Authority.** Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each

party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

24. **Prohibited Activities.** Counsel, and on behalf of any subcontractors, certifies, to the extent applicable under A.R.S. §§ 35-391 et seq. and 35-393 et seq., that neither has "scrutinized" business operations, as defined in the above statutes, in Sudan or Iran.

HOLM WRIGHT HYDE & HAYS PLC

By: _____

Title: _____

CITY OF FLAGSTAFF,
a municipal corporation

_____
Jerry Nabours, Mayor

ATTEST:

_____
Elizabeth Burke, City Clerk

APPROVED AS TO FORM:

_____
Michelle D'Andrea, Interim City Attorney

Attachment: Exhibit A
City of Tempe Contract Award Notice
City of Tempe Staff Summary Report
RFP#12-096 Notice
RFP#12-096 Standard Terms & Conditions
RFP#12-09 Special Terms and Conditions
RFP#12-096 Scope of Work
Holm Wright Hyde & Hays PLC Proposal:

1. Letter dated March 8, 2012
2. Offer Form and Proposal (White Papers re. Tempe, Phoenix and Tucson taxes omitted)
3. Additional Copies Statement
3. Proposal Questionnaire
4. Fee and Costs Information

Contract Award Notice

Tempe

City Procurement Office/City of Tempe • PO Box 5002 • 20 East 6th Street • Tempe, AZ 85280 • (480) 350-8324 • www.tempe.gov/purchasing

Contract Number: T12-096-01

Staff Summary # 20120426fsta04

Holm Wright Hyde & Hays PLC
Brad Holm
10429 S. 51st Street
Phoenix AZ 85044

Contract Period 04/27/2012
To

Phone: (480)961-0422
bholm@holmwright.com

Vendor Number: 81101

Solicitation/Contract Requirements

This Contract Award Notice is issued for the purchase of **Legal Representation for Statewide Efforts to Collect Unpaid Taxes** per the terms, conditions, specifications and requirements of **RFP #12-096**. The contract shall remain in effect until the case is settled to the City of Tempe's satisfaction or cancelled It is to be noted that any contracted vendor document(s) that conflict with the language and requirements of the City's solicitation are not acceptable and will void the contract. In addition, contracted vendor is not to begin work or make delivery of awarded items until any and all required insurance and/or performance bonds are posted with the City Procurement Office.

Pricing

Item No.	Item Description	Unit Price
1.	Contingency based - fee to be 27.0% of collected amount	

Vendor Address Change

If contracted vendor has a change of address for mailing payments and/or for mailing future bid solicitations, it is the vendor's responsibility to notify the City Procurement Officer identified with this contract and to ensure all such mailing address information is kept current. At least once a year, contact the Procurement Officer identified for this contract and ensure your current address has been entered to the City Procurement Office automated system.

Please note that your City of Tempe contract number is **T12-096-01**. This number **must** appear on all receivers, invoices and statements. Payment will be made on a monthly basis following receipt of a monthly itemized statement. Monthly invoices must be segregated by City departments and mailed directly to each City customer department. Invoices **must** be mailed to the following address: City of Tempe, **Division, Attn:**, P.O. Box 5002, Tempe, AZ. 85280. Statements **must** be mailed to: City of Tempe, **Accounting** PO Box 5002, Tempe, Arizona 85280.

Tony Allen, CPPB
Procurement Officer
(480) 350-8548

Michael Greene, CPM
Central Services Administrator

THIS IS NOT A PURCHASE ORDER.

All terms and conditions of this Award Document are per the City's Solicitation Document

Staff Summary Report

Tempe

Council Meeting Date: **Agenda Item Number:** _____

SUBJECT: Request approval to award a contract to Holm Wright Hyde & Hays PLC to provide legal representation related to potential actions against on-line travel companies (OTCs) in relation to underpayment of taxes.

DOCUMENT NAME: 20120426fsta04 PURCHASES (1004-01)

COMMENTS: There is no direct cost associated with this contract. There is no specified end date to the contract since it is impossible to determine the time that may be necessary to settle this issue. Contract will remain open until a determination in the case is made or the participating cities recommend closure.

PREPARED BY: Tony Allen, CPPB, Procurement Officer, 480-350-8548

REVIEWED BY: Jerry Hart, CPA, Deputy Finance & Technology Director - Finance, 480-350-8505
Michael Greene, CPM, Central Services Administrator, 480-350-8516
Andrew Ching, City Attorney, 480-350-8575
Dave Park, Assistant City Attorney, 480-350-8907
Phil Falcosky, Tax Audit Supervisor, 480-350-8685

LEGAL REVIEW BY: Dave Park, Assistant City Attorney, 480-350-8907

DEPARTMENT REVIEW BY: Ken Jones, Finance & Technology Director, 480-350-8504

FISCAL NOTE: (RFP12-096) Representing firm has agreed to a contingency based fee in relation to any recovery; therefore, there is no cost to the City.

RECOMMENDATION: Award the contract.

ADDITIONAL INFO: The City of Tempe, acting as lead jurisdiction in a multijurisdictional action, issued a Request for Proposal (RFP) to establish a contract for legal representation against on-line travel agencies in relation to the underpayment of taxes.

The City of Tempe conducted an audit for the period of January 2001 through March 2009 on behalf of the below mentioned Arizona cities and towns, all of which administer and collect municipal transaction privilege taxes separately from the state collection system(classified as "Non-Program Cities").

Apache Junction
Chandler
Flagstaff
Glendale
Mesa
Nogales
Peoria
Phoenix
Prescott
Scottsdale
Tempe
Tucson

It is the group's contention that OTCs have charged customers amounts greater than the amount for which tax has been remitted by hotels. The Non-Program Cities contend that the

OTCs, under Model City Tax Code Regulations, are subject to municipal transaction privilege tax on the full amount paid by the customer. Upon information and belief, the audit indicates that municipal transaction privilege taxes have been filed and remitted by hotels only on the amount received from the OTCs and not on the amount paid by the customer. The Non-Program Cities allege that the OTCs are therefore liable for municipal transaction privilege taxes on any amounts received from customers in excess of that reported by the hotels and any interest and penalties accrued on this amount.

The underpayment of tax by OTCs included in the audit, covering the period of January 2001 through March 2009, is believed to be in excess of $6.5 million for all participating cities. Liability on due taxes since March 2009 has not yet been determined.

Evaluation Process

Four (4) proposals were received and scored by a committee comprised of Legal, Tax & License and Procurement staff.

The responding firms were evaluated based on the following criteria – all subcategories carry equal weight unless noted otherwise.

Criteria	Weight
1 Fee Structure	6 (32%)
2 Qualifications and experience	6 (32%)
a Qualifications of firm	
b Qualifications of lawyers to be assigned	
c Experience of firm in this legal area	
d Experience of lead attorney to be assigned	
3 Methodology to be used	5 (26%)
4 Overall response to RFP	2 (10%)
a Quality, composition and completeness	
b Acceptance of terms and conditions	
5 Interview – if held	

Results of Scoring

Firm	Score	Cost
Holm Wright Hyde & Hays	180.00	27.5% Contingency
Struck Wieneke & Love	134.00	30.0% Contingency + expenses
Dimalanta Clark	105.00	hourly fee
Asimou & Associates	101.00	20% contingency + hourly fee or straight hourly fee

Best and Final

A Best and Final offer was sent to the top two scoring firms to allow them the opportunity to insure that they had made their best offer to the City.

Holm Wright Hyde & Hays lowered their contingency fee to 27.0%.

Struck Wieneke & Love made no adjustment to their fee.

Recommendation

It is recommended that a contract be awarded to Holm Wright Hyde & Hays PLC, the high scorer.

Cost

This is a contingency based arrangement so there will be no cost due any of the participating cities. The firm of Holm Wright Hyde & Hays included a provision in their proposal that stated if the case is lost there would be no cost to the participating cities.

If the case is settled in favor of the participating cities, the collected recovered monies, less the fee due Holm Wright Hyde & Hays, will be distributed to the cities in direct proportion to the taxable amounts due them.

REQUEST FOR PROPOSAL CITY OF TEMPE

REQUEST FOR PROPOSAL : 12-096

RFP ISSUE DATE: 02/09/2012
Commodity Code(s): 063-12

PROCUREMENT DESCRIPTION: Legal Representation for Statewide Efforts to Collect Unpaid Taxes

PROPOSAL DUE DATE/TIME: **Thursday, March 8, 2012, 3:00 P.M. Local Time**

Late proposals will not be considered.

PROPOSAL RESPONSE MUST BE DELIVERED TO CITY PROCUREMENT OFFICE.

Mailing Address: P.O. Box 5002, Tempe, AZ 85280
Street Address: 20 E. Sixth Street (2nd Floor), Tempe, AZ 85281

Mailing Alert: Firms should use the Street Address to ensure on-time express deliveries. The Mailing Address provided above routes through the City's internal mail distribution center and may impact delivery time.

PRE-PROPOSAL CONFERENCE (if scheduled): N/A

DEADLINE FOR INQUIRIES: Monday, February 27, 2012, 5:00 P.M., Local Time

Sealed proposals must be received and in the actual possession of the City Procurement Office on or before the exact Proposal Due Date/Time indicated above. Proposal responses will be opened and each Offeror's name will be publicly read. Prices are not read and shall be kept confidential until award. Late proposals will not be considered.

Proposals must be submitted by a sealed envelope/package with the Request for Proposal number, Offeror's name and address clearly indicated on the envelope/package. **It is critical that the RFP number be included on the front of the envelope to ensure proper handling.**

Proposals must be completed in ink or typewritten and a completed proposal response returned to the City Procurement Office by the Proposal Due Date/Time indicated above. The "Vendor's Offer" (Form 201-B RFP) must be completed and signed in ink. Proposals by electronic transmission, telegraph, mailgram or facsimile will not be considered.

Offerors are asked to immediately and carefully read the entire Request for Proposal and not later than ten (10) days before the Proposal Due Date/Time, address any questions or clarifications to the Procurement Officer identified below:

Tony Allen , CPPB E-mail: anthony_allen@tempe.gov Phone No: (480)350.8548
Procurement Officer

Award recommendations are publicly posted to the City Procurement Office web page **www.tempe.gov/purchasing** and at the Procurement Office reception counter.

Submit one (1) original signed and completed proposal response for evaluation purposes. For this specific RFP, eight (8) additional copies of RFP response – each copy must be on an individual CD or Flash Drive are also to be submitted for evaluation purposes. A late, unsigned and/or materially incomplete proposal response will be considered nonresponsive and rejected.

The City Procurement Office is committed to fair and equal procurement opportunities for all firms wishing to do business with the City and encourages the participation of small and disadvantaged businesses.

MG
Michael Greene, C.P.M.
Central Services Administrator

STANDARD TERMS & CONDITIONS

Please note that these Standard Terms & Conditions shall be fully complied with by Offeror. Failure to comply with these requirements may result in rejection of a proposal for non-responsiveness, or cancellation or termination of any awarded Contract.

1. **Applicable Law:** This Contract shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code as adopted in the State of Arizona, except as otherwise provided in this Request for Proposal and resultant Contract, and all statutes or ordinances pertaining specifically to the City. This Contract shall be governed by State of Arizona law and suits pertaining to this Contract may only be brought in courts located in Maricopa County, Arizona.

2. **Arizona Climate Action Compliance:** Offeror shall comply with all applicable standards, laws, rules, orders and regulations issued pursuant to A.R.S. §49-101, *et seq.*, including but not limited to, Arizona Executive Orders Nos. 2006-13 and 2005-02, with regard to reducing GHG emissions, increasing energy efficiency, conserving natural resources and developing renewable energy sources.

3. **Availability of Funds for the Next Fiscal Year:** The City's obligation for performance of the Contract is contingent upon the availability of City, state and federal funds that are allocated or appropriated for payment obligations of the Contract. If funds are not allocated by the City or available for the continued use or purchase of services, work and/or materials set forth herein, the City may terminate the Contract. The City will use reasonable efforts to notify Contractor of such non-allocation affecting the obligations of the Contractor and/or City. The City shall not be penalized or adversely affected for exercise of its termination rights. Further, the City shall in no way be obligated or liable for additional payments or other damages as a result of such termination. No legal liability on the part of the City for any payment may arise for performance under this Contract.

4. **Certification:** By signing the "Vendor's Offer", form 201-B (RFP), the Offeror certifies:

   A. The submission of the vendor's proposal Offer response did not involve collusion or other anti-competitive practices.

   B. The City is an equal opportunity, affirmative action employer. Offeror hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. Offeror agrees and covenants that it will comply in all respects with the applicable provisions of Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, Arizona Executive Order No. 99-4, and all other applicable state and federal statutes governing equal opportunity.

   C. Offeror 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 submitted Offer. Failure to sign the "Vendor's Offer" or signing it with a false statement shall void the submitted proposal and any resulting Contract. In addition, the Offeror may be barred from future proposal and bidding participation with the City and may be subject to such further actions as permitted by law.

   D. The Offeror agrees to promote and offer to the City only those materials and/or services as stated and allowed by this Request for Proposal and resultant Contract award. Violation of this condition shall be grounds for Contract termination by the City.

E. The Offeror expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. Offeror further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.

F. Offeror agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Offeror acknowledges that a breach of this warranty is a material breach of this Contract and Offeror is subject to penalties for violation(s) of this provision, including termination of this Contract. The City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Offeror. Offeror hereby agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

5. **Commencement of Work:** Contractor is cautioned not to commence any work or provide any materials or services under the Contract until and unless Contractor receives a purchase order, Notice to Proceed, or is otherwise directed in writing to do so, by the City.

6. **Confidentiality of Records:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.

7. **Conflict of Interest:** This Contract is subject to the cancellation provisions of A.R.S. § 38-511.

8. **Contract Formation:** This Contract shall consist of this Request for Proposal and the vendor's proposal Offer submitted, as may be found responsive and approved by the City. In the event of a conflict in language between the documents, the provisions of the City's Request for Proposal shall govern. The City's Request for Proposal shall govern in all other matters not otherwise specified by the Contract between the parties. All previous contracts between the Offeror and the City are not applicable to this Contract or other resultant contracts. Any contracted vendor documents that conflict with the language and requirements of the City's solicitation are not acceptable and void the Contract.

9. **Contract Modifications:** This Request for Proposal and resultant Contact may only be modified by a written contract modification issued by the City Procurement Office and counter-signed by the Contractor. Contractors are not authorized to modify any portion of this solicitation or resulting Contract without the written approval of the City Procurement Office and issuance of an official modification notice.

10. **Contracts Administration:** Contractor must notify the designated Procurement Officer from the City's Procurement Office for guidance or direction of matters of Contract interpretation or problems regarding the terms, conditions or scope of this Contract. The Contract shall contain the entire agreement between the City and the Contractor and the Contract shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

11. **Cooperative Use of Contract:** Any Contract resulting from this solicitation shall be for the use of the City of Tempe. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tempe's Department of Procurement are eligible to participate in any subsequent Contract. Additionally, this Contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See http://www.maricopa.gov/Materials/SAVE/save-members.pdf for a listing of participating agencies. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter and/or rules and regulations of the respective political entity.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others. Contractor shall be responsible for correctly administering this Contract in accordance with all terms, conditions, requirements, and approved pricing to any eligible procurement unit.

12. **Dispute Resolution:** This Contract is subject to arbitration to the extent required by law. If arbitration is not required by law, the City and the Contractor agree to negotiate with each other in good faith to resolve any disputes arising out of the Contract. In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred with said fees and costs to be included in any judgment rendered.

13. **Energy Efficient Products:** The City may consider energy conservation factors including costs in the evaluation of equipment and product purchases for the purpose of obtaining energy efficient products. In addition, vendor proposal Offers may specify items that have been given an energy efficient classification by the federal government for consideration by the City.

14. **Billing:** All invoices submitted by Contractor for the City's review and approval shall be in itemized form to identify the specific item(s) being billed. Items must be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the City shall refer to the Contract number resulting from this Request for Proposal. Separate invoices are required on individual contracts or purchase orders. Only invoices with items resulting from this Request for Proposal will be accepted for review and approval by the City.

15. **Estimated Quantities:** This Request for Proposal references quantities as a general indication of the City's needs. The City anticipates considerable activity resulting from Contracts that will be awarded as a result of this Request for Proposal; however, the quantities shown are estimates only and the City reserves the right to increase or decrease any quantities actually acquired, in its sole discretion. No commitment of any kind is made concerning quantities and Offeror hereby acknowledges and accepts same.

16. **Events of Default and Termination:**

A. The occurrence of any or more of the following events shall constitute a material breach of and default under the Contract. The City reserves the right to terminate the whole or any part of the Contract due to Contractor's failure to fully comply with any term or condition herein.

i) Any failure by Contractor to pay funds or furnish materials, services and/or goods that fail to conform to any requirement of this Contract or provide personnel that do not meet Contract requirements;

ii) Any failure by Contractor to observe, perform or undertake any provision, covenant or condition of this Contract to be observed or performed by Contractor herein, including but not limited to failing to submit any report required herein;

iii) Any failure to make progress in the performance required pursuant to the Contract and/or gives the City reason to believe that Contractor cannot or will not perform to the requirements of the Contract; or,

iv) Any failure of Contractor to commence construction, work or services within the time specified herein, and to diligently undertake Contractor's work to completion.

B. Upon and during the continuance of an event of default, the City, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to Contractor, may do the following:

i) Terminate the Contract;

ii) Pursue and/or reserve any and all rights for claims to damages for breach or default of the Contract; and/or,

iii) Recover any and all monies due from Contractor, including but not limited to, the detriment proximately caused by Contractor's failure to perform its obligations under the Contract, or which in the ordinary course would likely result there from, including, any and all costs and expenses incurred by the City in: (a) maintaining, repairing, altering and/or preserving the premises (if any) of the Project; (b) costs incurred in selecting and retaining substitute Contractor for the purchase of services, materials and/or work from another source; and/or (c) attorneys' fees and costs in pursuing any remedies under the Contract and/or arising there from.

C. The exercise of any one of the City's remedies as set forth herein shall not preclude subsequent or concurrent exercise of further or additional remedies. In addition, the City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance, breach or convenience, or pursuant to A.R.S. § 38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the Contractor.

D. Termination shall be commenced by delivery of written notice to Contractor by the City personally or by certified mail, return receipt requested. Upon notice of termination, Contractor shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease work pursuant to the Contract. Contractor shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that Contractor could reasonably have avoided.

E. The City, in its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.

17. **Termination for Convenience**: The City at its sole discretion may terminate this Contract for convenience with thirty (30) days advance notice to Contractor. Contractor shall be reimbursed for all appropriate costs as provided for within the Contract up to the termination date specified.

18. **Force Majeure:**

A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the Contract only in the event that and to the extent that such party's performance of the Contract is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

B. Force majeure shall not include the following occurrences:

i) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.

ii) Late performance by a subcontractor.

C. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via certified mail and shall make a specific reference to this clause, 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 by hand delivery or certified mail when it has done so. The time of completion shall be extended by Contract 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 the Contract.

19. **Gratuities:** The City may elect to terminate any resultant Contract, if it is found that gratuities in any form were offered or given by the Contractor or agent thereof, to any employee of the City or member of a City evaluation committee with a view toward securing an order, securing favorable treatment with respect to awarding, amending or making of any determinations with respect to performing such order. In event the Contract is terminated 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 Contractor the amount of gratuity.

20. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Contractor may be legally liable in the performance of this Contract. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Contract by Contractor or any employee of the Contractor or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This provision shall survive the term of this Contract.

21. **Interpretation of Parole Evidence:** This Contract is intended as a final expression of the agreement between the parties and as a complete and exclusive statement of the Contract, unless the signing of a subsequent Contract is specifically called for in this Request for Proposal. 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 Contract. Acceptance or acquiescence in a course of performance rendered under this Contract 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.

Contractor shall respond within five (5) calendar days after notice by the City of any defects and/or maintenance requests to immediately remedy the condition of the job site. Should the Contractor fail to respond promptly as set forth herein, the City shall correct the job site at the expense of the Contractor, and recover all attendant costs.

22. **Key Personnel:** Contractor shall provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract during the Contract term and any renewal periods. The Contractor must agree to assign specific individuals to the key positions.

A. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without prior written notice to the City.

B If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall replace each person with personnel of substantially equal ability and qualifications upon prior City approval.

23. **Licenses and Permits:** Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor, at its sole expense.

24. **No Assignment:** No right or interest in this Contract shall be assigned by Contractor and no delegation of any duty of Contractor shall be made without prior written permission of the City.

25. **Notices:** All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices"), shall be in writing and shall be hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

City of Tempe Procurement Office
Attn: Procurement Officer
20 E. 6th Street (Second Floor)
PO Box 5002
Tempe, Arizona 85280

[Contractor's Name]
[Attn of Offeror Named in Contract]
[Address]

Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder.

26. **No Waiver:** No breach of default hereunder shall be deemed to have been waived by the City, except by written instrument to that effect signed by an authorized agent of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after demand by the City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City. Acceptance by the City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by the City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries.

27. **Overcharges by Antitrust Violations:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the City. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as the goods and/or services used fulfill the Contract.

28. **Performance Standards**: Equipment shall operate in accordance with the performance criteria specified in the Request for Proposal, including the manufacturer's published specifications applicable to the machine involved. Each machine is expected to be available for productive use, as provided in the procurement documents. Penalties and/or bonuses applicable to machine and system performance, if any, shall be calculated as specified in the Request for Proposal.

29. **Preparation of Specifications by Persons Other Than City Personnel:** No person preparing specifications for this Request for Proposal shall receive any direct or indirect benefit from the use of these specifications.

30. **Procurement of Recycled Materials:** If the price of recycled material that conforms to specifications is within five percent (5%) of the lower priced material that is not recycled and the recycled Offeror is otherwise the lowest responsive and responsible Offeror, the proposal containing recycled material shall be considered more advantageous; provided the item(s) to be obtained contains at least the minimum amount of recycled content material as defined in the City's solicitation and sufficient funds have been budgeted for the purchase.

31. **Provisions By Law:** Each and every provision of law and any clause required by law to be in this Contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract will forthwith be physically amended to make such insertion or correction.

32. **Public Record:** After award of Contract, proposal responses shall be considered public record and open for public inspection except to the extent the withholding of information is permitted or required by law. If an Offeror believes a specific section of its proposal response is confidential, the Offeror shall mark the page(s) confidential and isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The Offeror shall include a written statement as to the basis for considering the marked pages confidential and the City Procurement Office will review the material and make a determination, pursuant to A.R.S. §§ 39-121, *et seq.*, and 41-1330, *et seq.* A general statement of confidentiality (boiler plate statement) that is not appropriately referenced to a specific section of the RFP will not be sufficient to warrant protection by the City. The confidential portion of the submission must be clearly noted with accompanying justification for treating the section confidential. Failure of the vendor to appropriately designate confidential information in this manner will relieve the City of any obligation to protect this information as confidential.

33. **Records:** Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes §§ 35-214 and 36-215, Contractor shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of the City Attorney or City Procurement Office.

34. **Relationship of Parties:** It is clearly understood that each party to this Contract will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other party. The Contractor is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to the Offeror. An employee or agent of one party shall not be an employee or agent of the other party for any purpose whatsoever.

35. **Rights and Remedies:** No provisions of this Request for Proposal or in the proposal shall be construed, expressly or by implication, as a waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of the City to insist upon strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, shall not release the Contractor from any responsibilities or obligations imposed by the Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.

36. **Safety Standards:** All items supplied on this Contract must comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.

37. **Serial Numbers:** Proposals shall include equipment on which the original manufacturer's serial number has not been altered in any way. The City reserves the right to reject any and all equipment.

38. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

39. **Specially Designated Nationals and Blocked Persons List:** Contractor represents and warrants to the City that neither Contractor nor any affiliate or representative of Contractor:

    A. Is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed. Reg. 49079 ("Order");

    B. Is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s);

    C. Is engaged in activities prohibited in the Order; or,

    D. Has been convicted, pleaded *nolo contendre,* indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

40. **Time of the Essence:** Time is and shall be of the essence in this Contract. If the delivery date(s) specified herein cannot be met, Contractor shall notify the City using an acknowledgment of receipt of order and intent to perform without delay, for instruction. The City reserves the right to terminate this Contract and to hold Contractor liable for any cost of cover, excess cost(s) or damage(s) incurred as a result of delay.

41. **Unauthorized Firearms & Explosives:** No person conducting business on City property is to carry a firearm or explosive of any type. All Offerors, Contractors and subcontractors shall honor this requirement at all times and failure to honor this requirement shall result in Contract termination and additional penalties. This requirement also applies to any and all persons, including those who maintain a concealed weapon's permit. In addition to Contract termination, anyone carrying a firearm or explosive device will be subject to further legal action.

42. **Warranties:** Contractor expressly warrants that all materials and/or goods delivered under the Contract shall conform to the specifications of this Contract, and be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. This express warranty shall not be waived by way of acceptance or payment by the City, or otherwise. Contractor expressly warrants the following:

    A. All workmanship shall be finest and first-class;

    B. All materials and goods utilized shall be new and of the highest suitable grade for its purpose; and,

    C. All services will be performed in a good and workmanlike manner. Contractor's warranties shall survive inspection, acceptance and/or payment by the City, and shall run to the City, its successors, agents and assigns.

    The Contractor agrees to make good by replacement and/or repair, at its sole expense and at no cost to the City, any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after acceptance by the City, unless otherwise specified herein. Should Contractor fail to perform said replacement and/or repair to City's satisfaction within a reasonable period of time, City may correct or replace said defective or nonconforming materials and recover the costs thereof from Contractor. This warranty shall not operate to reduce the statute of limitations period for breach of contract actions or otherwise, or reduce or eliminate any legal or equitable remedies.

43. **Work for Hire and Ownership of Deliverables:** Contractor hereby agrees and covenants that all the results and proceeds of Contractor's work and/or services for the Project specified herein, for Contractor and all of its agents, employees, officers and subcontractors, shall be owned by the City, including the copyright thereto, as work for hire. In the event, for any reason such results and proceeds are not deemed work for hire, Contractor agrees and covenants that it shall be deemed to have assigned to the City all of its right, title and interests in such results, proceeds and content to the City, without limitation. Contractor agrees to indemnify and hold the City harmless from and against all claims, liability, losses, damages and expenses, including without limitation, legal fees and costs, arising from or due to any actual or claimed trademark, patent or copyright infringement and any litigation based thereon, with respect to any work, services and/or materials contemplated in this Contract. Contractor agrees to pay to defend any and all such actions brought against the City. Contractor's obligations hereunder shall survive acceptance by the City of all covenants herein as well as the term of the Contract itself.

44. **Non-exclusive Contract:** Any Contract resulting from this Request for Proposal shall be awarded with the understanding and agreement that it is non-exclusive and entered into for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source to secure cost savings or if timely delivery may be met by the Contractor

45. **Ordering Process:** Upon award of a Contract by the City Procurement Office, the City may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate Contractor. Each purchase order must cite the correct Contract number. Such purchase order is required for the City to order and the Contractor to deliver the material and/or service.

46. **Shipping Terms:** Prices shall be F.O.B. Destination to the delivery location(s) designated herein. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The City will notify the Contractor promptly of any damaged materials and shall assist the Contractor in arranging for inspection. Shipments under reservation are prohibited. No tender of a bill of lading shall operate as a tender of the materials.

47. **Delegated Awards**: In the event this Contract is administratively awarded via delegated authority as provided for in Section 26A-5 of the Procurement Ordinance, the Contractor acknowledges that a final Contract with the City of Tempe requires City Council approval and possibly the signature of the Mayor. Should this Contract be rejected by the City Council, Contractor agrees that it is immediately void and unenforceable against any party. The awarded firm(s) will be compensated only for any and all costs incurred up to the date of notification of such termination.

Special Terms and Conditions

Proposals taking exception to Special Terms & Conditions stated within this Request for Proposal may cause the Proposal to be considered nonresponsive and rejected.

1. **City Procurement Document:** This Request for Proposal is issued by the City. No alteration of any portion of this Request for Proposal by an Offeror is permitted and any attempt to do so shall result in vendor's proposal Offer being considered nonresponsive, and rejected. No alteration of any portion of a resultant Contract is permitted without the written approval of the City Procurement Office and any attempt to do so shall be considered a breach of the Contract. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, Contract termination and/or suspension of the Contractor.

2. **Offer Acceptance Period:** To allow for an adequate evaluation, the City requires the vendor's proposal Offer in response to this Request for Proposal to be valid and irrevocable for one hundred twenty (120) days after the proposal due time and date.

3. **Contract Type:** Firm fixed price, Single Requirement, definite quantity.

4. **Insurance:**

   A. Insurance Required: Prior to commencing services under this Contract, Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, subcontractors, or sub-subcontractors. For Offerors with self-insurance, proof of self-insurance with minimum limits expressed below must be submitted on proper forms for evaluation prior to award of Contract.

   A Contract Award Notice or Purchase Order will not be issued to a Vendor until receipt of all required insurance documents by the City Procurement Office with such documents meeting all requirements herein. In addition, before any Contract renewal, all required insurance must be in force and on file with the City Procurement Office. Contractor must submit required insurance within ten (10) calendar days after request by the City Procurement Office or the award may be rescinded and another Vendor selected for award.

   B. Minimum Limits of Coverage: Without limiting any obligations or liabilities, the Contractor, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

      i. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

         a. *Commercial General Liability*

         Commercial general liability insurance limit of not less than $1,000,000 for each occurrence, with a $2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Contract or the general aggregate shall be twice the required per claim limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as insurance service officer policy form CG2010 11/85 edition or any replacement thereof.

In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.

Such policy shall contain a "severability of interests" provision.

b. *Worker's Compensation*

The Contractor shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of services; and employer's liability insurance of not less than $100,000 for each accident, $100,000 disease for each employee and $500,000 disease policy limit.

In case services are subcontracted, the Contractor will require the subcontractor to provide worker's compensation and employer's liability to at least the same extent as provided by Contractor.

c. *Automobile Liability*

Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than $1,000,000 per accident regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

C. Additional Insured. The insurance coverage, except for workers compensation and professional liability coverage, required by this Contract, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the Contractor shall be primary insurance. This provision and the naming of the city as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this Contract.

E. Primary Coverage. Contractor's insurance shall be primary insurance to the City, and any insurance or self insurance maintained by the City shall not contribute to it.

F. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.

G. Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the Contractor.

H. Deductible/Retention. The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self insured retentions shall be disclosed by the contractor and shall not be applicable with respect to the coverage provided to the City under such policies. Contractor shall be solely responsible for deductible and/or self-insurance retention and the City, at its option, may require

Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

I. Certificates of Insurance. Prior to commencing work or services under this Contract, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to: Contract Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.

J. Copies of Policies. The City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.

5. **Professional Liability:** The Contractor shall maintain professional liability insurance covering errors and omissions arising out of the services performed by the Contractor and/or any person(s) employed by it, with an unimpaired limit of not less than $1,000,000 each claim and $1,000,000 all claims. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of services as evidenced by annual certificates of insurance provided by Contractor to the City. In addition, Contractor shall maintain property coverage on an all-risk, replacement cost basis in an amount established by the City with valuable papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of the Contractor used in the completion of this Contract.

Scope of Work

The City of Tempe is issuing this Request for Proposal (RFP) to establish a contract for legal representation related to potential actions against on-line travel companies (OTCs) in relation to underpayment of taxes.

Because of the potential for a lengthy process, the resulting contract for legal services will have no specified end date. The contract will be renewed on an annual basis until legal action is completed, or completed to the satisfaction of the participating cities – predicated on satisfactory performance of the awarded firm.

The City of Tempe is acting as lead jurisdiction in a multijurisdictional audit of room reservations secured through OTCs and related transaction privilege tax remittances. The completed audit covers the period of January 2001 through March 2009. This audit has been conducted on behalf of the below mentioned Arizona cities and town, all of which administer and collect municipal transaction privilege taxes separately from the state collection system (classified as "Non-Program Cities").

Apache Junction
Chandler
Flagstaff
Glendale
Mesa
Nogales
Peoria
Phoenix
Prescott
Scottsdale
Tempe
Tucson

OTCs have charged customers amounts greater than the amount for which tax has been remitted by hotels. The Non-Program Cities contend that the OTCs, under Model City Tax Code Regulations, are subject to municipal transaction privilege tax on the full amount paid by the customer. Upon information and belief, the audit indicates that municipal transaction privilege taxes have been filed and remitted by hotels only on the amount received from the OTCs and not on the amount paid by the customer. The Non-Program Cities allege that the OTCs are therefore liable for municipal transaction privilege taxes on any amounts received from customers in excess of that reported by the hotels and any interest and penalties accrued on this amount.

The underpayment of tax by OTCs included in the audit, covering the period of January 2001 through March 2009, is believed to be in excess of $6.5 million. Liability on due taxes since March 2009 has not yet been determined.

Background

The Model City Tax Code is a uniform sales and use tax act which has been adopted by all Arizona cities. A complete copy of the Model City Tax Code can be found using the following web address:

http://www.arizonatax.com/modeltaxcode.htm

Selected elements of the code that are shown below are believed to be pertinent to any potential legal action against OTCs. Be advised that this list is not exhaustive and other Code sections and Arizona laws may apply.

Sec. ___-100. General definitions.

"Broker" means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

"Hotel" means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes, or primary health care facilities.

Sec. ___-200. Determination of gross income: in general.

(a) Gross income includes:

(1) the value proceeding or accruing from the sale of property, the providing of service, or both.

(2) the total amount of the sale, lease, license for use, or rental price at the time of such sale, rental, lease, or license.

(3) all receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.

(4) all other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.

(b) Barter, exchange, trade-outs, or similar transactions are includable in gross income at the fair market value of the service rendered or property transferred, whichever is higher, as they represent consideration given for consideration received.

(c) No deduction or exclusion is allowed from gross income on account of the cost of the property sold, the time value of money, expense of any kind or nature, losses, materials used, labor or service performed, interest paid, or credits granted.

Sec. ___-400. Imposition of Privilege Taxes; presumption.

(a) There are hereby levied and imposed, subject to all other provisions of this Chapter, the following Privilege Taxes for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector:

(1) a Privilege Tax upon persons on account of their business activities, to the extent provided elsewhere in this Article, to be measured by the gross income of persons, whether derived from residents of the City or not, or whether derived from within the City or from without.

Sec. ___-444. Hotels.

The tax rate shall be at an amount equal to ___ percent (_%) of the gross income from the business activity upon every person engaging or continuing in the business of

(a) Transient.

(b) Exclusions. The tax imposed by this Section shall not include:

(1) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility.

(2) Gross proceeds of sales or gross income that is properly included in another business activity under this Article and that is taxable to the person engaged in that business activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

(3) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this Article.

(4) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under Section __-410 or Section __-475 due to an exclusion, exemption or deduction.

(5) Gross proceeds of sales or gross income from commissions received from a person providing services or property to the customers of the hotel. However, such commissions may be subject to tax under Section ___-445 or Section ___-450 as rental, leasing or licensing for use of real or tangible personal property.

Sec. ___-447. Rental, leasing, and licensing for use of real property: additional tax upon transient lodging.

In addition to the taxes levied as provided in Section ___-444, there is hereby levied and shall be collected an additional tax in an amount equal to _____ percent (___%) of the gross income from the business activity of any hotel engaging or continuing within the City in the business of charging for lodging and/or lodging

Reg. ___-100.1. Brokers

(a) For the purposes of proper administration of this Chapter and to prevent evasion of taxes imposed, brokers shall be wherever necessary treated as taxpayers for all purposes, and shall file a return and remit the tax imposed on the activity on behalf of the principal. No deduction shall be allowed for any commissions or fees retained by such broker, except as provided in Section ___-405, relating to advertising commissions.

(b) Brokers for vendors. A broker acting for a seller, lessor, or other similar person deriving gross income in a category upon which this Chapter imposes a tax shall be liable for such tax, even if his principal would not be subject to the tax if he conducted such activity in his own behalf, by reason of the activity being deemed a "casual" one. For example:

(1) An auctioneer or other sales agent of tangible personal property is subject to the tax imposed upon retail sales, even if such sales would be deemed "casual" if his principal had sold such items himself.

(2) A property manager is subject to the tax imposed upon rental, leasing, or licensing of real property, even if such rental, leasing, or licensing would be deemed "casual" if his principal managed such real property himself.

(c) Brokers for vendees. A broker acting solely for a buyer, lessee, tenant, or other similar person who is a party to a transaction which may be subject to the tax, shall be liable for such tax and for filing a return in connection with such tax only to the extent his principal is subject to the tax.

(d) The liability of a broker does not relieve the principal of liability except upon presentation to the Tax Collector of proof of payment of the tax, and only to the extent of the correct payment. The broker shall be relieved of the responsibility to file and pay taxes upon the filing and correct payment of such taxes by the principal.

List of potential firms for settlement

Based upon preliminary results of the audit, the OTCs from which underpaid taxes are due may include, but are not limited, the following firms:

Orbitz Worldwide Incorporated
The Expedia Companies
Priceline.com Inc. and its subsidiaries
Travelocity.com LP

The Non-Program Cities wish the action to be as complete as possible, however, good judgment must prevail and costs to litigate against some firms may exceed any derived repayment of taxes.

Desired results from this legal action

Payment of taxes due participating cities along with interest and penalties.

It is essential that the actions against firms set a precedent for future transactions conducted by all OTCs so that, in the future, taxes are paid in full.

Requirements and Responsibilities

Desired minimum requirements are listed below:

- Provide review of audit information and verify quality of information and suitability for potential legal actions.
- Determine if an additional audit is necessary to determine liability since the end date of the current audit.
- Counsel will provide legal representation, litigation and all necessary legal services, including investigation, legal research, preparation of documents, pleadings, briefs and memoranda, and appear in court as needed.
- Legal services shall be for all participating cities. Through the issuance of this RFP by the City of Tempe, the City of Tempe assumes a coordinator role only.
- The participating cities will designate a central contact who will serve as the representative for all aspects related to this action and shall be kept informed of progress, actions, etc. related to this action.
- No significant decisions, in whole or in part, shall be made without the prior approval of by the participating cities, including but not limited to, resolution of legal issues, or litigation of any kind, including appeals.
- Any and all offers of compromise by adverse parties shall be promptly transmitted to the participating cities together with Counsel's recommendations.
- It is preferred that the lead attorney have a minimum of five (5) years current experience in providing legal service to municipal clients.
- Determine what, if any, changes must be made to the Common Interest Agreement entered into by the Non-Program Cities related to this proposed representation and audit.

Subject to the advice of the law firm selected, it is preferred that any litigation will be filed in courts located in Maricopa County, Arizona.

- Lawyer(s) representing participating cities must be able to be admitted to practice law in Arizona courts.

Awarded firm must provide:

- Expertise in tax issues
- Familiarity with actions against OTCs
- Have experience in similar cases with positive results

- Provide a review of the audit that has been conducted and the verify soundness of the data
- Provide all staffing, including staff for potential legal litigation, on behalf of participating cities
- Monthly updates of progress must be submitted to contacts provided by participating cities
- Any required contract agreement(s) from the Law firm pertaining to this RFP shall be submitted at the time of submission

HOLM WRIGHT HYDE & HAYS PLC
ATTORNEYS AT LAW
10429 SOUTH 51ST STREET, SUITE 285
PHOENIX, ARIZONA 85044
(480) 961-0040
FAX (480) 961-0818

Brad Holm
Direct Line: (480) 961-0422
bholm@holmwright.com

March 8, 2012

Tony Allen
City of Tempe
Financial Services/Procurement Office
20 E. Sixth Street (2nd Floor)
Tempe, Arizona 85281

Re: RFP, Legal Representation for Statewide Efforts to Collect Unpaid Taxes
Subject: Team Proposal, RFP No. 12-096

Dear Mr. Allen:

Thank you for the opportunity to submit our proposal to provide legal services for the City of Tempe and other municipalities in the statewide effort to collect unpaid taxes. We understand that the municipalities intend to retain lawyers to file litigation against on-line travel companies (OTCs) for underpayment of taxes.

Our litigation team—comprised of Holm Wright Hyde & Hays PLC, Schneider Wallace Cottrell Brayton Konecky LLP, and The National Online Travel Litigation Group (consisting of lawyers from the Bird Law Group, P.C.; Crongeyer Law Firm, P.C.; and The Finnel Firm, P.C.)—has specific and vast experience handling complex and numerous cases against OTCs.

A. Statement of submission.

Our team submits this formal proposal in response to Tempe and the municipalities' request for proposal no. 12-096.

B. Small and Disadvantaged Business Participation.

Our team understands the municipalities' commitment to small and disadvantaged businesses. We often use the WBE/SBE-certified firm—Griffin & Associates, L.L.C.—for our court reporting needs. And we will make every effort to hire small and disadvantaged businesses as we seek consultants, expert witnesses, and other supportive entities in the performance of the contract.

C. Proposal organization.

Our proposal is organized by tab numbers as set forth in the proposal checklist for submittals on page 31 of Tempe's request for proposal. We submit one original and eight electronic copies (8 CDs under tab 2) with this letter. If you have questions regarding our response, please contact me directly at (480) 961-0422.

Very truly yours,

HOLM WRIGHT HYDE & HAYS PLC

By
Brad Holm

BH/eml

PROPOSAL: LEGAL REPRESENTATION FOR STATEWIDE EFFORTS TO COLLECT UNPAID TAXES

CITY OF TEMPE REQUEST FOR PROPOSAL
RFP NO. 12-096, ISSUED 02/09/2012

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

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1. Offer Form and Proposal.

Our team submits the signed vendor's offer form (no. 201B) and we present our complete proposal. Accompanying our proposal are three white papers on reclaiming unremitted taxes from online travel companies for the cities of Tempe, Tucson, and Phoenix (tabs A, B, and C). The legal analysis in these white papers is also applicable to the other municipalities: Apache Junction, Chandler, Flagstaff, Glendale, Mesa, Nogales, Peoria, Prescott, and Scottsdale.

Vendor's Offer

Form 201-B (RFP)

Return this Section with your Response

It is required that Offeror complete, sign and submit the original of this form to the City Procurement Office with the proposal response. An unsigned "Vendor's Offer", late proposal response and/or a materially incomplete response will be considered nonresponsive and rejected.

Offeror is to type or legibly write in ink all information required below.

Company Name: Holm Wright Hyde & Hays PLC

Company Mailing Address: 10429 South 51st Street, Suite 285

City: Phoenix State: Arizona Zip: 85044

Contact Person: Brad Holm Title: Managing Partner

Phone No.: 480-961-0422 FAX: 480-961-0818 E-mail: bholm@holmwright.com

Company Tax Information:

Arizona Transaction Privilege (Sales) Tax No.: _____ or

Arizona Use Tax No.: _____

Federal I.D. No.: 86-0974303

City & State Where Sales Tax is Paid: _____, _____

If a Tempe based firm, provide Tempe Transaction Privilege (Sales) Tax No.: _____

THIS PROPOSAL IS OFFERED BY

Name of Authorized Individual (TYPE OR PRINT IN INK) Brad Holm

Title of Authorized Individual (TYPE OR PRINT IN INK) Managing Partner

REQUIRED SIGNATURE OF AUTHORIZED OFFEROR (MUST SIGN IN INK)

By signing this Vendor's Offer, Offeror acknowledges acceptance of all terms and conditions contained herein and that prices offered were independently developed without consultation with any other Offeror or potential Offeror. In accordance with A.R.S. 35-393, et seq., the Offeror hereby certifies that it does not have scrutinized business operations in Iran or Sudan. Failure to sign and return this form with proposal response will be considered nonresponsive and rejected.

_____ March 8, 2012

Signature of Authorized Offeror **Date**

(H:/RFP 3-2008)

PROPOSAL TO RECLAIM UNREMITTED TAXES FROM ONLINE TRAVEL COMPANIES ON BEHALF OF ARIZONA MUNICIPALITIES

Submitted March 8, 2012

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

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INTRODUCTION

Across the country, the online travel companies ("OTCs"), e.g., Expedia, Travelocity, Orbitz, and Priceline, utilize a uniform plan to sidestep the payment of sales tax and transient room tax (collectively "hotel tax") for the rental of hotel rooms. The essence of the OTCs' plan is simple: they collect more than the amount they remit in hotel taxes to the government and hide the difference by bundling the taxes owed with their "travel facilitation fees."

The difference between the hotel taxes collected from consumers on the retail amount they paid and the transient room and sales taxes remitted by the OTCs translates into *millions of dollars* of lost revenue to cities each year.

1. SCOPE OF REPRESENTATION

Our litigation team—comprised of Holm Wright Hyde & Hays PLC ("Holm Wright"), Schneider Wallace Cottrell Brayton Konecky LLP ("Schneider Wallace"), and The National Online Travel Litigation Group[1] ("National Group")—has specific and vast experience handling complex and multi-faceted litigation against the OTCs. Members of our team have handled several cases against the OTCs for more than a half decade.

These cases involve comprehensive and detailed discovery (often exceeding several hundred thousand pages) and substantive pleadings. We believe our team's collective experience will provide the cities of Phoenix, Tucson, Scottsdale, and the other municipalities that have adopted the Arizona Model Tax Code (the "municipalities") with the strategic and practical advantages that will help expedite and aggressively advance the pursuit of the municipalities' claims against OTCs. We have included as an exhibit a preliminary white paper on our initial thoughts regarding the OTCs' liability in this case, utilizing Tempe's, Tucson's and Phoenix's tax code as a point of reference.

We believe that Holm Wright's success representing Phoenix in major complex litigation combined with the National Group's specific expertise in this exact litigation (against these same companies, represented by the same law firms, on behalf of cities, counties, and states with interests similar to Arizona cities) would provide the municipalities with comprehensive and balanced representation on this important issue.

[1] The National Group consists of lawyers from the Bird Law Group, P.C, Crongeyer Law Firm, P.C., and The Finnell Firm, P.C. These firms are headed by William Bird, John Crongeyer, and Robert Finnell.

2. THE TEAM—WHO'S INVOLVED

A. Experience

Our litigation team is comprised of trusted local and national counsel with a wealth of experience in complex litigation, governmental agency representation, and hotel tax litigation. The team's capacity to pursue the municipalities' claims and effectively respond to the OTCs' defenses is enhanced by the fact that the team's attorneys have worked together previously on litigation against OTCs around the country. This collaboration has given our team the unique experience, knowledge, and resources necessary to provide the municipalities with a distinct advantage over other counsel.

Specifically, members of our team have represented cities, counties, and states around the country for more than six years. We have experience in more states than any other team, nationally, with cases in Colorado, Montana, Georgia, Indiana, Michigan, Maryland, Missouri, and California. And the team has filed or is preparing litigation on behalf of Houston, Pittsburg, Adelanto, Reno, Modesto, Winter Park, and the state of Utah.

Members of our team include the first attorneys to successfully resist the OTCs' motion to dismiss in federal court. Specifically, in May 2006, Judge Harold Murphy in the Northern District of Georgia denied the OTCs' dismissal motion and wrote the seminal opinion since followed by more than a dozen other federal and state courts.

Several recent victories in Maryland have added to our team's reputation and success. Specifically, on behalf of the City of Baltimore, we steered around a negative federal court decision in the Fourth Circuit and defeated the OTCs' motion to dismiss. Following our team's performance at a critical hearing on cross-motions for summary judgment, two of the OTC defendants settled with Baltimore for millions of dollars on previously disputed claims. A partial summary judgment was then obtained against the remaining defendants.

Our efforts have achieved outstanding results at all stages of litigation. And these efforts have accomplished tangible results for clients. Our team has also obtained OTC settlements in Michigan and Missouri.

Besides victories for current clients, our team has access to a wealth of invaluable information to assist new clients. *The team has the most substantial database of documents and substantive discovery of any lawyers in the country working these cases.* This database includes collection data and documents pertaining to hundreds of thousands of hotel bookings by OTCs.

The team even has access to discovery from other teams representing governments, although these teams do not have access to our discovery.[2] The discovery—sharing orders obtained from Maryland, Michigan, and Georgia courts—provide our team with a unique competitive advantage over all other attorneys.

The team's experience and resources are self-evident in a list of our recent cases. These cases comprise some of the current hotel tax litigation with which members of the team are involved.

- *Town of Breckenridge, Colorado v. Colorado Travel Company, LLC*, Case Number 2011CV420 (Summit County District Court, 5th J.D., CO);
- *Montana Dep't of Revenue v. Priceline.com*, Cause No. CDV-2010-1056 (Mont. 1st Jud. Dist.);
- *City of Rome, Georgia v. Hotels.com,* 2006 U.S. Dist. LEXIS 56369 (N.D. Ga.);
- *City of Oakland, California v. Hotels.com*, Civil Action No. C07-03432 (N.D. Ca.);
- *Baltimore County, Maryland v. Priceline.com, Inc.*, Civil Action No. MJG-10-1104 (D. Md.);
- *Mayor & City Council of Baltimore v. Priceline.com, Inc.,* Civil Action No. MJG-08-3319 (D. Md.);
- *Montgomery County, Maryland v. Priceline.com, Inc.*, Civil Action No. MJG-10-3558 (D. Md.); and
- *County of Genesee, et al. v. Hotels.com, L.P., et al.*, Civil Action File No. 09-276-CZ (Cir. Ct. for Ingham County) (action on behalf of multiple Michigan local governments).

Several team members proposing to represent the municipalities have devoted the majority of their practice (more than 75%) to representing plaintiffs in complex litigation, running the gamut from actions against online travel companies to class actions against manufacturers. Litigation is the primary area of practice for our proposed lead and other attorneys.

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[2] Such a distillation of information is important where the OTCs routinely produce thousands of pages of documents.

Specifically, Holm Wright's trial lawyers have appeared in federal and state courts at all levels, and they routinely handle complex matters encompassing all substantive areas of law. Brad Holm recently obtained a $19.1 million recovery against a national architectural firm and its insurers for design errors and omissions on a $130 million construction-manager-at-risk project in Phoenix, Arizona. Additionally, he and his firm recovered $16 million against a national engineering firm and its insurers for design errors and omissions on the Arizona Air National Guard Fuel Storage and Distribution Project.

B. Lead Attorneys

Lead Attorneys	**Law Firms**
Brad Holm and Scott Andersen	Holm Wright Hyde & Hays PLC
Garrett W. Woytkins and Michael McKay	Schneider Wallace Cottrell Brayton Konecky LLP
Bill Bird, John Crongeyer, and Bob Finnell	The National Online Travel Litigation Group

C. Lead Attorney Profiles (Partners)

Brad Holm

Brad Holm concentrates his practice in commercial litigation, with particular emphasis on construction, architect/engineer liability, and environmental matters.

His recent experience includes:

- A $19.1 million recovery against a national architectural firm and its insurers for design errors and omissions on a $130 million construction-manager-at-risk project in Phoenix, Arizona.
- The successful procurement of a contractor to supply the Automated Train Operating System for the new PHX Sky Train at Phoenix Sky Harbor International Airport. This $1 billion project is currently under construction.
- The successful defense of an Arizona municipality in a $200 million dispute involving construction of a unified plant at one of the largest wastewater treatment facilities in the United States.
- The successful defense of a commercial client in a significant business dispute that involved a covenant not to compete and pitted one the nation's largest business-forms manufacturers against a local commercial printer.

- A $16-million recovery against a national engineering firm and its insurers for design errors and omissions on the Arizona Air National Guard Fuel Storage and Distribution Project.
- The successful procurement of a contractor to build a new reach of the San Antonio River Walk in San Antonio, Texas.
- The successful defense of a national engineering firm in Superfund litigation involving the Phoenix/Goodyear North site. TCE from the old Unidynamics production facility had seeped down to groundwater.
- The privilege of serving as counsel to the Arizona Diamondbacks Major League Baseball team during construction of Bank One Ballpark (now Chase Field) in Phoenix, Arizona. Mr. Holm worked on procurement, arbitrated disputes during construction, and litigated construction claims following substantial completion.
- In 2005-2007, Mr. Holm simultaneously handled two cases *each* involving over 10 million pages of documents. In the two cases, he and his partners took about 100 depositions. One of those was a plaintiff's case in which his client recovered $19.1 million; the other was a defense case settled at mediation for $0.

Court Admissions

- 1981, Utah and U.S. District Court, District of Utah
- 1984, U.S. Court of Appeals, Tenth Circuit
- 1987, Arizona, U.S. District Court, District of Arizona, and U.S. Court of Appeals, Ninth Circuit
- 2001, United States Supreme Court

Education

- J. Reuben Clark Law School, Brigham Young University, UT, 1981, Juris Doctor
  Honors: *cum laude*; J. Reuben Clark Scholar (top 10% of law class); BYU Law Review; Moot Court
- Brigham Young University, Provo, UT, 1978, Bachelor of Arts
  Honors: *summa cum laude*

Professional Activities and Memberships

- Adjunct Professor, Sandra Day O'Connor College of Law, Arizona State University (2011-2012), teaching electronic discovery and digital evidence
- Maricopa County Superior Court Judge Pro Tem (1989-1993)
- Member, Construction Section, State Bar of Arizona (former member of Executive Council of Construction Section)
- Instructor of Business Law, Stevens Henager College (Provo, Utah)

- American Bar Association (member of Forum on the Construction Industry and Litigation Section)
- Maricopa County Bar Association
- Frequent seminar speaker on construction-related topics (including presentations at Construction Superconference in San Francisco)

Professional Recognition and Awards

- Southwest Super Lawyers® (2011-2012)
- Harry S. Truman Scholarship, 1977
- Edwin S. Hinckley Scholarship, 1977

Representative Presentations

- *Mastering Construction Law 2011: Arizona's Construction Anti-Indemnity Statutes,* State Bar of Arizona (February 2011)
- *Arizona Construction Law 2010: Compliance with Notice Provisions in Your Construction Contract,* Mock Appellate Advocate, State Bar of Arizona (February 2010)

Scott Andersen

Mr. Andersen graduated from Arizona State University with an economics degree in 1997. He received his law degree from California Western School of Law in 1999. He is admitted to practice before all Arizona state courts, the U.S. District Court for the District of Arizona and the United States Court of Appeals for the Ninth Circuit.

He primarily practices commercial litigation, construction law, and insurance-defense litigation, representing corporations, municipalities, and individuals in all phases of litigation.

Garrett Woytkins

Garrett Woytkins is the head of Schneider Wallace's financial services practice and its consumer class action practice. Mr. Woytkins is a frequent writer, speaker and continuing legal education ("CLE") instructor concerning complex litigation. He has served as a faculty member during the past two years for the Practicing Law Institute's ("PLI") Consumer Financial Services Institute, and he has contributed articles to the textbooks that the PLI generates incident to that project. He has served as a CLE instructor at CLE events sponsored by the State Bar of Arizona, Legal Assistance for Seniors in California, Bridgeport, Strafford and Mass Torts Made Perfect.

In 2008, the Arizona Volunteer Lawyers Program gave Mr. Woytkins its "For Love of Justice" award in recognition of his volunteer work assisting Arizona homeowners fighting foreclosure. Mr. Woytkins is currently an officer of the Business Torts Section of the American Association for Justice. He currently represents a number of public entities as plaintiffs against insurance companies, investment banks and pharmaceutical companies; among them are the cities of Phoenix and Adelanto, California, the state of Louisiana and hospitals and hospital financing districts in West Virginia and Texas.

Mr. Woytkins received his Bachelor of Arts Degree from Rice University, where he graduated magna cum laude, and received his law degree from the University of Chicago Law School, where he was a staff member of The University of Chicago Law Review. Following law school, Mr. Woytkins served for a year as a law clerk to the Honorable John M. Duhe, Jr., of the United States Court of Appeals for the Fifth Circuit, and worked for five years in the Washington, DC, office of O'Melveny & Myers LLP.

Michael McKay

Michael McKay represents plaintiffs in complex commercial disputes and class actions. His experience includes litigating securities claims, consumer fraud claims, antitrust allegations, racketeering claims and business torts. He has recovered over $500 million in the last five years for his clients. Mr. McKay, along with other lawyers, represented a nationwide class in In re Conseco Life Ins. Co. Cost of Ins. Litig., MDL No. 1610 AHM (C.D. Cal.), which settled for over $400 million. He represented a nationwide class in *In re Ins. Brokerage Antitrust Litig.*, MDL No. 1663 GEB (D. New Jersey), which settled for over $121 million.

Mr. McKay is admitted to practice before the U.S. Supreme Court, Ninth Circuit Court of Appeals, U.S. District Court, District of Arizona, U.S. District Court, District of Colorado, and the Arizona Supreme Court. Prior to joining Schneider Wallace, he served as a law clerk for The Honorable Gordon J. Low, Utah First District Court, and as a law clerk for the United States Attorney's Office, N.D.N.Y. He graduated with honors from Syracuse University College of Law.

John W. Crongeyer, M.D.

John W. Crongeyer of Crongeyer Law Firm, P.C. has extensive experience in prosecuting and defending complex litigation cases. Dr. Crongeyer has served as lead or co-lead counsel in more than 30 complex litigation matters, including initiating and leading litigation efforts on behalf of counties and cities in Georgia, Missouri, Indiana, and Michigan to collect hotel taxes owed by online travel companies. Dr. Crongeyer also represents the cities of Baltimore and Oakland in their respective efforts to obtain back taxes, penalties, and interest.

Dr. Crongeyer was valedictorian at the University of Mississippi, graduating *summa cum laude*, before obtaining his medical degree at the Johns Hopkins School of Medicine, where he served as the Commencement Speaker. After completing his internship in neurosurgery, Dr. Crongeyer elected to continue his education and pursue a law degree from Yale Law School.

Dr. Crongeyer and his firm's legal work have been cited in the national media, including the Wall Street Journal, USA Today, the New York Times, the Atlanta Journal Constitution, Chicago Tribune, Washington Post, and ABC Primetime. Dr. Crongeyer has also appeared live on "Good Morning America" to discuss one of his complex litigation cases with Diane Sawyer.

Education

Yale University Law School, New Haven, CT, 2002	*Juris Doctor*
Johns Hopkins School of Medicine, Baltimore, MD, 1998	*M.D.*
	Commencement Speaker
University of Mississippi, Oxford, MS, 1994	*B.S.,*
	Valedictorian

Professional Associations and Memberships

State Bar of Georgia	*Member*
American Bar Association	*Member*
Atlanta Bar Association	*Member*
Lawyers Club of Atlanta	*Member*

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. District Court Eastern District of Michigan
U.S. Patent Bar

William Q. Bird

William Q. Bird has been practicing law in Atlanta for over 38 years, having handled complex civil litigation matters throughout his career. The managing partner of Bird Law Group, P.C., Mr. Bird enjoys an outstanding reputation as an honest and uncompromising trial attorney. Mr. Bird was elected to and served in the position of past president of the Georgia Trial Lawyers Association. He currently serves as an esteemed member of the American College of Trial Lawyers.

Mr. Bird has been consistently named one of The Best Lawyers in America and honored as one of Georgia's Legal Elite. Additionally, he has been voted by his peers as one of Georgia's Super Lawyers and named as one of Georgia's Top 100 Attorneys. Recently, Mr. Bird was awarded the prestigious Tradition of Excellence Award by the State Bar of Georgia.

Mr. Bird is well-known throughout the legal community for his ability to handle complex cases and to fight hard to recover adequate compensation for his clients.

Education

The University of Texas School of Law, Austin, TX, 1972	*Juris Doctor*
Wabash College, Crawfordsville, IN, 1969	*B.A.*
Brunel University, Uxbridge, England	

Honors and Awards

State Bar of Georgia Tradition of Excellence Award, 2009	*Recipient*
Insurance Counsel Journal Award, 1971	*Recipient*
Best Lawyers in America	
Atlanta's Top 100 Super Lawyers	
Georgia Elite Lawyers	
National Institute of Trial Advocacy	*Fellow*
American College of Trial Lawyers	*Fellow*

Professional Associations and Memberships

Atlanta Bar Association	*Member*
American Bar Association	*Member*
State Bar of Georgia	*Member*
Georgia Trial Lawyers Association	*President*, 1989 – 1990
Georgia Trial Lawyers Association	*President-Elect,* 1988 - 1989
Georgia Trial Lawyers Association	*Executive Vice-President,* 1987 - 1988
American Association for Justice	*Board of Governors,* 1991 - 1996
American Board of Trial Advocates	*Member*
Lawyers Club of Atlanta	*Member*
Roscoe-Pound American Trial Lawyers Foundation	*Member*
Georgia Bar Foundation	

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. Court of Appeals, 11th Circuit
U.S. Supreme Court

Robert K. Finnell

Robert "Bob" Finnell has over 35 years of experience in civil litigation, with substantial experience in class action and complex litigation. He heads the Finnell Firm, P.C. in Rome, Georgia. He has been involved in multiple suits brought against the online travel companies.

Education

Cumberland School of Law, Birmingham, AL	*Juris Doctor*
The University of Kentucky, Lexington, KY	*B.A.*

Honors and Awards

Rome News-Tribune Readers' Choice Award, 2009	*Recipient*

Professional Associations and Memberships

American Association for Justice	*Member*
Georgia Trial Lawyers Association	*Member*

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. Court of Appeals, 11th Circuit
U.S. Supreme Court

D. Associate Profiles

Amy Lin Hadra

Amy Lin Hadra, an associate with Bird Law Group, P.C., practices civil litigation, with a focus on federal and appellate work. Ms. Hadra has successfully represented a wide variety of clients at all stages of litigation, including local governmental agencies. Following a hearing at which she argued the motion for summary judgment as counsel before the court, Ms. Hadra obtained summary judgment and effectively negotiated a settlement on behalf of the local governmental agency. She now focuses her practice primarily on litigation against OTCs.

Ms. Hadra received her law degree from the University of Georgia in 2006, where she was recognized as a Bryant T. Castellow Scholar and received a seat on the 2005-2006 UGA Law School Mock Trial Board. Ms. Hadra attended Yale University, where she attained dual Bachelor of Arts degrees in History of Art and East Asian Studies. While an

undergraduate, Ms. Hadra was recognized as a GM Corporate Scholar, and she was selected to serve as co-chair of Yale's Asian Pacific American Heritage Month celebration. Recently, Ms. Hadra was selected from over 200 applicants to participate in the Georgia Bar Leadership Academy.

Education

The University of Georgia School of Law, Athens, Georgia, 2006	*Juris Doctor*
Yale University, New Haven, CT, 2001	*B.A. in East Asian Studies*
	B.A. in History of Art

Honors and Awards

Bryant T. Castellow Scholarship	*Recipient*
UGA Law Mock Trial Board	*Board Member*, 2005-2006
J. Melvin England Mock Trial Competition	*Quarter-Finalist*, 2004
Phi Alpha Delta Law School Fraternity	*President/Justice*, 2004-2005
GM Corporation Full Scholarship	*Recipient*

Professional Associations and Memberships

Georgia Bar Leadership Academy	*Participant*, 2008
Yale Alumni Association	*Interviewer,* 2007-2008
Georgia Mock Trial Association	*Coach*, 2007
Georgia Bar Association	*Member*
Atlanta Bar Association	*Member*
Georgia Trial Lawyers Association	*Member*

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. District Court Middle District of Georgia
U.S. Court of Appeals, 11th Circuit

Micah Ray Alexander

Micah Ray Alexander, an associate at Holm Wright Hyde & Hays PLC, graduated in 2001 from Kansas State University with a bachelor's degree in civil engineering. He received his law degree from the University of Kansas in 2004, where he served as an Editor of the Kansas Journal of Law and Public Policy. Mr. Alexander also earned a master's degree in public administration from the University of Missouri in 2009.

Mr. Alexander served for more than five years in state government (the Missouri Department of Transportation) as in-house counsel, focusing on transportation,

construction, and contract law. He provided counsel and guidance on day-to-day legal matters, advised in the development of policies and programs, drafted administrative rules, prepared contracts and project procurement documents, and represented state employees in legal proceedings.

Bar/Court Admissions
2010, Arizona and United States District Court for the District of Arizona
2005, Missouri, United States District Court for the Western District of Missouri and United States District Court for the Eastern District of Missouri
2004, Kansas and United States District Court for the District of Kansas

3. FEE PROPOSAL

Our team proposes a contingency fee of 27.5% of the total recovery in the case.

The team proposes to advance litigation costs. If we lose the case, the municipalities will *not* be liable to pay costs. Our team will bear them. This disposition is permitted by Arizona Ethical Rule 1.8.

If the E.R. is revised, and the municipalities must bear costs, we will divide and allocate the total costs among the municipalities in the proportion that each city's claim bears to the municipalities' total claim. So if Tempe's claim were 10% of the total of all the cities' claims, Tempe would bear 10% of the total costs.

If we win the case, the team will first reimburse itself for costs advanced. Next, the team will calculate the municipalities' recovery (72.5%) and the contingent fee.

4. APPROACH TO LITIGATION

Our litigation team is comprised of three principal firms or groups with significant experience in this kind of litigation. Our proposed litigation plan is based on that experience.

First, our team will counsel with Phoenix, Tucson, and Scottsdale the other participating Arizona local governments to ensure that we have at our disposal all pertinent ordinances, rules, and regulations. We will simultaneously begin to preserve, collect, and process all relevant paper and electronic documents and other evidence.

Second, we will draft the complaint against the OTCs. The complaint will plead the common practices that OTCs employ nationally. But we will also tailor it to address the

specific language—in and the application of—the Arizona Model Tax Code and other local codes.

The complaint will be drafted in anticipation of the OTCs' motion to dismiss. This is typically their first litigation move. Our team's past success in defeating OTCs' motions to dismiss is based on our own experience and the wealth of discovery we have obtained. Though litigation results cannot be guaranteed, we believe we can defeat the motion.

Third, after defeating the OTCs' motion to dismiss, and depending on our forum (federal or state), we will propound written discovery to the defendants. To enhance our success in the case, we will also move the court to allow us to use discovery previously obtained in other cases. This is done by seeking a discovery sharing order/protocol. If successful, we would be entitled to use discovery materials we have amassed over the last 6 years.

These documents are comprised of between 600,000 and 1,000,000 pages, including depositions, corporate memos, e-mail, letters, and crucial business materials that demonstrate and support our clients' claims. This substantial discovery has resulted in victories around the country, both through summary judgment, trial, and settlement.

But to supplement the existing discovery, we will aggressively seek additional information from the OTCs in this case. We would coordinate with all of the municipalities to determine the information they already have by way of communications with OTCs and financial data relating to the OTCs' conduct in Arizona.

We will propound discovery for updated documents and data specific to Arizona. Additional depositions will be taken. One of our lead attorneys has previously deposed corporate representatives from major OTC defendants, including Expedia, Hotels.com, Orbitz, and Hotwire. This experience will help guide and inform the deposition strategy developed in this case.

Fourth, depending on the evidentiary record and court rulings, our team will draft a summary-judgment motion. We will also respond to the OTCs' motion for summary judgment. Members of our team have been involved not only in drafting summary-judgment motions (such as in Baltimore), but also in defending against the OTCs' motions (e.g., in Baltimore and Georgia).

Many cases have been resolved at the summary-judgment stage, either by settlement or court ruling. Members of our team have participated in mediations, settlement conferences, and other informal resolution efforts.

To assist us and the court or jury, we have retained forensic accounting experts who are familiar with the defendants' hotel-transaction data. These experts know how to

calculate damages, penalties, and interest. Once we obtain location-specific data, we can begin to refine damage estimates and prepare the case accordingly.

If the case is not resolved by motion, we will try the remaining issues. Collectively, the trial experience of Holm Wright, Schneider Wallace, and the Litigation Group's attorneys is extensive—with literally hundreds of jury trials and arbitrations. But the reality is there have been more than 80 OTC cases filed nationally, and only one has required a trial. Although trial is unlikely given this record, we will prepare for this contingency.

The lead attorneys in our litigation team are not just proposing to work on this litigation. They will actually be handling the case on a day-to-day, month-to-month basis over the long haul. We will argue the motions, take the depositions, coordinate the strategy, and personally try the case. We believe this separates us from other teams that market for these cases nationally.

CONCLUSION

Our litigation team offers the City of Tempe and the other municipalities a team of dedicated attorneys, experienced helping government pursue hotel tax revenues wrongfully withheld by OTCs. The team has both strong national experience with hotel tax litigation and sophisticated local expertise in complex litigation and state and local government law. Importantly, our team has been involved in several litigation milestones against OTCs nationally. And we have achieved several key victories on our clients' behalf.

With experience in complex litigation practice and comprehensive discovery, our team of lead attorneys, associates, and staff has the organizational capability to effectively and aggressively pursue the municipalities' claims. We ask you to engage our team and allow us the privilege of bringing our expertise and dedication to work on your behalf.

We are available to provide any information you may need to clarify any information provided in this proposal. We look forward to working with you and your representatives in Arizona.

The contact person for further information is Brad Holm, Holm Wright Hyde & Hays PLC, 10429 South 51st Street, Suite 285, Phoenix, AZ 85044; telephone number 480-961-0422; e-mail bholm@holmwright.com.

Dated March 8, 2012.

HOLM WRIGHT HYDE & HAYS PLC

By: _____

Brad Holm
10429 S. 51st Street, Suite 285
Phoenix, Arizona 85044

2. Additional Copies.

Our team provides eight additional copies of our response to Tempe's request for proposal. *See* attached CDs.

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

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3. Proposal Questionnaire.

Our team includes the following, completed questionnaire for our proposal. *See* attached questionnaire.

Proposal Questionnaire

Return this Section with your Response

Bidder shall submit answers to the following questions. Responses will be utilized in determination of contract award. The City of Tempe may consider other information, whether or not specifically provided by the bidder, in response to this RFP.

1. **Provide the address of the office that will supply services to the participating cities.**

   Holm Wright Hyde & Hays PLC
   10429 S. 51st Street, Suite 285
   Phoenix, AZ 85044

   Schneider Walace Cottrell
   180 Montgomery Street, Suite 2000
   San Francisco, California 94104

   The National Online Travel Litigation Group, consisting of lawyers from:

   Bird Law Group, P.C.
   2170 Defoor Hills Road, NW
   Atlanta, Georgia 30318

   Crongeyer Law Firm, P.C.
   2170 Defoor Hills Road, NW
   Atlanta, Georgia 30318

   Finnell Firm, P.C.
   1 West 4th Avenue, Suite 200
   Rome, Georgia 30161

2. **Describe your firm and its history**

   In this section, we describe Holm Wright Hyde & Hays PLC and our litigation team. First, Holm Wright.

   Firm size and experience.

   Recognized for high professional standards and ethics, Holm Wright Hyde & Hays PLC has been repeatedly listed in Martindale-Hubbell's Bar Register of Preeminent Lawyers. The Martindale-Hubbell Bar Register™ recognizes only the most distinguished law practices. Holm Wright's AV® rating signifies the highest level of legal ability and

very high adherence to the professional standards of conduct, ethics, reliability, and diligence.

Founded in 1999, Holm Wright is a multi-service law firm dedicated to providing our clients aggressive, uncompromising legal representation. The firm presently has 12 attorneys, three paralegals, and a talented support staff. We are a firm of established attorneys who previously practiced with one of the largest law firms in Arizona. Holm Wright is committed to a practice that emphasizes quality legal services provided by the firm's principals. More detailed information about our experience is set forth below.

Type of firm organization.

Holm Wright is a professional limited liability company, chartered under Arizona law.

Overall firm practice areas.

Holm Wright is a multi-service construction, litigation, business, and education law firm dedicated to providing our clients aggressive, uncompromising legal representation.

Holm Wright's representative clients.

Arizona Diamondbacks; Arizona School Risk Retention Trust, Inc; City of Chandler, Arizona; Empire Renewable Energy, LLC; Encompass Electrical Technologies; Ericsson, Inc.; Farm Bureau Insurance Companies; Gilbert Unified School District No. 41; Grand Canyon University; The Hunt Construction Group; Malcolm Pirnie, Inc.; Town of Marana; City of El Mirage; City of Phoenix; City of St. George, Utah; Tucson Electric Power Company; Unisource Energy Corporation; Valley Metro Rail, Inc.; Western Agricultural Insurance; and Wigwam Joint Venture L.P.

Our practice and future plans.

We are a boutique professional service firm of experienced attorneys with a commitment that emphasizes quality legal services provided by the firm's principals. Because the Phoenix metropolitan area and Arizona continue to grow and the needs of our clients are increasing, we expect continuing growth in the next few years.

We turn now to the litigation team proposed for this engagement.

The OTC litigation team.

Our litigation team is comprised of trusted local and national counsel with a wealth of experience in complex litigation, governmental agency representation, and hotel tax

litigation. The team's capacity to pursue the municipalities' claims and effectively respond to the OTCs' defenses is enhanced by the fact that the team's attorneys have worked together previously on litigation against OTCs around the country. This collaboration has given our team the unique experience, knowledge, and resources necessary to provide the municipalities with a distinct advantage over other counsel.

Specifically, members of our team have represented cities, counties, and states around the country for more than six years. We have experience in more states than any other team, nationally, with cases in Colorado, Montana, Georgia, Indiana, Michigan, Maryland, Missouri, and California. And the team has filed or is preparing litigation on behalf of Houston, Pittsburg, Adelanto, Reno, Modesto, Winter Park, and the state of Utah.

Members of our team include the first attorneys to successfully resist the OTCs' motion to dismiss in federal court. Specifically, in May 2006, Judge Harold Murphy in the Northern District of Georgia denied the OTCs' dismissal motion and wrote the seminal opinion since followed by more than a dozen other federal and state courts.

Several recent victories in Maryland have added to our team's reputation and success. Specifically, on behalf of the City of Baltimore, we steered around a negative federal court decision in the Fourth Circuit and defeated the OTCs' motion to dismiss. Following our team's performance at a critical hearing on cross-motions for summary judgment, two of the OTC defendants settled with Baltimore for millions of dollars on previously disputed claims. A partial summary judgment was then obtained against the remaining defendants.

Our efforts have achieved outstanding results at all stages of litigation. And these efforts have accomplished tangible results for clients. Our team has also obtained OTC settlements in Michigan and Missouri.

Besides victories for current clients, our team has access to a wealth of invaluable information to assist new clients. *The team has the most substantial database of documents and substantive discovery of any lawyers in the country working these cases.* This database includes collection data and documents pertaining to hundreds of thousands of hotel bookings by OTCs.

The team even has access to discovery from other teams representing governments, although these teams do not have access to our discovery. The discovery—sharing orders obtained from Maryland, Michigan, and Georgia courts—provide our team with a unique competitive advantage over all other attorneys.

3. **Please provide contact information for the primary account representative and a backup contact.**

Name	Phone	Cell Phone	E-Mail
Brad Holm	(480) 961-0422	(602) 538-3471	bholm@holmwright.com
Scott Andersen	(480) 477-8595	(480) 221-7657	sandersen@holmwright.com

4. **Who would make up the team that would be assigned to this case? Provide resumes**

Lead Attorney Profiles (Partners)

Brad Holm, Holm Wright Hyde & Hays PLC

Brad Holm concentrates his practice in commercial litigation, with particular emphasis on construction, architect/engineer liability, and environmental matters.

His recent experience includes:

- A $19.1 million recovery against a national architectural firm and its insurers for design errors and omissions on a $130 million construction-manager-at-risk project in Phoenix, Arizona.
- The successful procurement of a contractor to supply the Automated Train Operating System for the new PHX Sky Train at Phoenix Sky Harbor International Airport. This $1 billion project is currently under construction.
- The successful defense of an Arizona municipality in a $200 million dispute involving construction of a unified plant at one of the largest wastewater treatment facilities in the United States.
- The successful defense of a commercial client in a significant business dispute that involved a covenant not to compete and pitted one of the nation's largest business-forms manufacturers against a local commercial printer.
- A $16-million recovery against a national engineering firm and its insurers for design errors and omissions on the Arizona Air National Guard Fuel Storage and Distribution Project.
- The successful procurement of a contractor to build a new reach of the San Antonio River Walk in San Antonio, Texas.
- The successful defense of a national engineering firm in Superfund litigation involving the Phoenix/Goodyear North site. TCE from the old Unidynamics production facility had seeped down to groundwater.
- The privilege of serving as counsel to the Arizona Diamondbacks Major League Baseball team during construction of Bank One Ballpark (now Chase Field) in

Phoenix, Arizona. Mr. Holm worked on procurement, arbitrated disputes during construction, and litigated construction claims following substantial completion.

- In 2005-2007, Mr. Holm simultaneously handled two cases *each* involving over 10 million pages of documents. In the two cases, he and his partners took about 100 depositions. One of those was a plaintiff's case in which his client recovered $19.1 million; the other was a defense case settled at mediation for $0.

Court Admissions

- 1981, Utah and U.S. District Court, District of Utah
- 1984, U.S. Court of Appeals, Tenth Circuit
- 1987, Arizona, U.S. District Court, District of Arizona, and U.S. Court of Appeals, Ninth Circuit
- 2001, United States Supreme Court

Education

- J. Reuben Clark Law School, Brigham Young University, UT, 1981, Juris Doctor
  Honors: *cum laude*; J. Reuben Clark Scholar (top 10% of law class); BYU Law Review; Moot Court
- Brigham Young University, Provo, UT, 1978, Bachelor of Arts
  Honors: *summa cum laude*

Professional Activities and Memberships

- Adjunct Professor, Sandra Day O'Connor College of Law, Arizona State University (2011-2012), teaching electronic discovery and digital evidence
- Maricopa County Superior Court Judge Pro Tem (1989-1993)
- Member, Construction Section, State Bar of Arizona (former member of Executive Council of Construction Section)
- Instructor of Business Law, Stevens Henager College (Provo, Utah)
- American Bar Association (member of Forum on the Construction Industry and Litigation Section)
- Maricopa County Bar Association
- Frequent seminar speaker on construction-related topics (including presentations at Construction SuperConference in San Francisco)

Professional Recognition and Awards

- Southwest Super Lawyers® (2011-2012)
- Harry S. Truman Scholarship, 1977
- Edwin S. Hinckley Scholarship, 1977

Representative Presentations

- *Mastering Construction Law 2011: Arizona's Construction Anti-Indemnity Statutes,* State Bar of Arizona (February 2011)
- *Arizona Construction Law 2010: Compliance with Notice Provisions in Your Construction Contract,* Mock Appellate Advocate, State Bar of Arizona (February 2010)
- *A Close Inspection of Recent Arizona Construction Law Decisions, Enforceability of Oral Change Orders on Public Projects,* State Bar of Arizona (February 2009)
- *Construction SuperConference, Point/Counterpoint: Is there Life Before and After Termination,* Presenter (December 2008)

Scott Andersen, Holm Wright Hyde & Hays PLC

Mr. Anderson graduated from Arizona State University with an economics degree in 1997. He received his law degree from California Western School of Law in 1999. He is admitted to practice before all Arizona state courts, the U.S. District Court for the District of Arizona and the United States Court of Appeals for the Ninth Circuit.

He primarily practices commercial litigation, construction law, and insurance-defense litigation, representing corporations, municipalities, and individuals in all phases of litigation.

Garett Woytkins, Schneider Wallace Cottrell

Garrett Woytkins is the head of Schneider Wallace's financial services practice and its consumer class action practice. Mr. Woytkins is a frequent writer, speaker, and continuing legal education ("CLE") instructor concerning complex litigation. He has served as a faculty member during the past two years for the Practicing Law Institute's ("PLI") consumer Financial Services Institute, and he has contributed articles to the textbooks that the PLI generates incident to that project. He has served as a CLE instructor at CLE events sponsored by the State Bar of Arizona, Legal Assistance for Seniors in California, Bridgeport, Strafford and Mass Torts Made Perfect.

In 2008, the Arizona Volunteer Lawyers Program have Mr. Woytkins its "For Love of Justice" award in recognition of hs volunteer work assisting Arizona homeowners fighting foreclosure. Mr. Woytkins is currently an officer of the Business Torts Section of the American Association for Justice. He currently represents a number of public entities as plaintiffs against insurance companies, investment banks and pharmaceutical companies; among them are the cities of Phoenix and Adelanto, California, the state of Louisiana and hospitals and hospital financing districts in West Virginia and Texas.

Mr. Woytkins received his Bachelor of Arts Degree from Rice University, where he graduated magna cum laude, and received his law degree from the University of Chicago Law School, where he was a staff member of The University of Chicago Law Review. Following law school, Mr. Woytkins served for a year as a law clerk to the Honorable John M. Duhe, Jr., of the United States Court of Appeals for the Fifth Circuit, and worked for five years in the Washington, DC, office of O'Melveny & Myers LLP.

Mr. Woytkins received his Bachelor of Arts Degree from Rice University, where he graduated magna cum laude, and received his law degree from the University of Chicago Law School, where he was a staff member of The University of Chicago Law Review. Following law school, Mr. Woytkins served for a year as a law clerk to the Honorable John M. Duhe, Jr., of the United States Court of Appeals for the Fifth Circuit, and worked for five years in the Washington, DC, office of O'Melveny & Myers LLP.

Michael McKay, Schneider Wallace Cottrell

Michael McKay represents plaintiffs in complex commercial disputes and class actions. His experience includes litigating securities claims, consumer fraud claims, antitrust allegations, racketeering claims and business torts. He has recovered over $500 million in the last five years for his clients. Mr. McKay, along with other lawyers, represented a nationwide class in In re Conseco Life Ins. Co. Cost of Ins. Litig., MDL No. 1610 AHM (C.D. Cal.), which settled for over $400 million. He represented a nationwide class in *In re Ins. Brokerage Antitrust Litig.*, MDL No. 1663 GEB (D. New Jersey), which settled for over $121 million.

Mr. McKay is admitted to practice before the U.S. Supreme Court, Ninth Circuit Court of Appeals, U.S. District Court, District of Arizona, U.S. District Court, District of Colorado, and the Arizona Supreme Court. Prior to joining Schneider Wallace, he served as a law clerk for The Honorable Gordon J. Low, Utah First District Court, and as a law clerk for the United States Attorney's Office, N.D.N.Y. He graduated with honors from Syracuse University College of Law.

John W. Crongeyer, M.D., The National Online Travel Litigation Group

John W. Crongeyer of Crongeyer Law Firm, P.C. has extensive experience in prosecuting and defending complex litigation cases. Dr. Crongeyer has served as lead or co-lead counsel in more than 30 complex litigation matters, including initiating and leading litigation efforts on behalf of counties and cities in Georgia, Missouri, Indiana, and Michigan to collect hotel taxes owed by online travel companies. Dr. Crongeyer also represents the cities of Baltimore and Oakland in their respective efforts to obtain back taxes, penalties, and interest.

Dr. Crongeyer was valedictorian at the University of Mississippi, graduating *summa cum laude*, before obtaining his medical degree at the Johns Hopkins School of Medicine, where he served as the Commencement Speaker. After completing his internship in neurosurgery, Dr. Crongeyer elected to continue his education and pursue a law degree from Yale Law School.

Dr. Crongeyer and his firm's legal work have been cited in the national media, including the Wall Street Journal, USA Today, the New York Times, the Atlanta Journal Constitution, Chicago Tribune, Washington Post, and ABC Primetime. Dr. Crongeyer has also appeared live on —Good Morning Americal to discuss one of his complex litigation cases with Diane Sawyer.

Education

Yale University Law School, New Haven, CT, 2002	*Juris Doctor*
Johns Hopkins School of Medicine, Baltimore, MD, 1998	*M.D.*
	Commencement Speaker
University of Mississippi, Oxford, MS, 1994	*B.S.,*
	Valedictorian

Professional Associations and Memberships

State Bar of Georgia	*Member*
American Bar Association	*Member*
Atlanta Bar Association	*Member*
Lawyers Club of Atlanta	*Member*

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. District Court Eastern District of Michigan
U.S. Patent Bar

William Q. Bird, The National Online Travel Litigation Group

William Q. Bird has been practicing law in Atlanta for over 38 years, having handled complex civil litigation matters throughout his career. The managing partner of Bird Law Group, P.C., Mr. Bird enjoys an outstanding reputation as an honest and uncompromising trial attorney. Mr. Bird was elected to and served in the position of past president of the

Georgia Trial Lawyers Association. He currently serves as an esteemed member of the American College of Trial Lawyers.

Mr. Bird has been consistently named one of The Best Lawyers in America and honored as one of Georgia's Legal Elite. Additionally, he has been voted by his peers as of one of Georgia's Super Lawyers and named as one of Georgia's Top 100 Attorneys. Recently, Mr. Bird was awarded the prestigious Tradition of Excellence Award by the State Bar of Georgia.

Mr. Bird is well-known throughout the legal community for his ability to handle complex cases and to fight hard to recover adequate compensation for his clients.

Education

The University of Texas School of Law, Austin, TX, 1972	*Juris Doctor*
Wabash College, Crawfordsville, IN, 1969	*B.A.*
Brunel University, Uxbridge, England	

Honors and Awards

State Bar of Georgia Tradition of Excellence Award, 2009	*Recipient*
Insurance Counsel Journal Award, 1971	*Recipient*
Best Lawyers in America	
Atlanta's Top 100 Super Lawyers	
Georgia Elite Lawyers	
National Institute of Trial Advocacy	*Fellow*
American College of Trial Lawyers	*Fellow*

Professional Associations and Memberships

Atlanta Bar Association	*Member*
American Bar Association	*Member*
State Bar of Georgia	*Member*
Georgia Trial Lawyers Association	*President*, 1989 – 1990
Georgia Trial Lawyers Association	*President-Elect,* 1988 - 1989
Georgia Trial Lawyers Association	*Executive Vice-President,* 1987 - 1988
American Association for Justice	*Board of Governors,* 1991 - 1996
American Board of Trial Advocates	*Member*
Lawyers Club of Atlanta	*Member*
Roscoe-Pound American Trial Lawyers Foundation	*Member*
Georgia Bar Foundation	

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. Court of Appeals, 11th Circuit
U.S. Supreme Court

Robert K. Finnell, The National Online Travel Litigation Group

Robert "Bob" Finnell has over 35 years of experience in civil litigation, with substantial experience in class action and complex litigation. He heads the Finnell Firm, P.C. in Rome, Georgia. He has been involved in multiple suits brought against the online travel companies.

Education

Cumberland School of Law, Birmingham, AL	*Juris Doctor*
The University of Kentucky, Lexington, KY	*B.A.*

Honors and Awards

Rome News-Tribune Readers' Choice Award, 2009	*Recipient*

Professional Associations and Memberships

American Association for Justice	*Member*
Georgia Trial Lawyers Association	*Member*

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. Court of Appeals, 11th Circuit
U.S. Supreme Court

Associate Profiles

Amy Lin Hadra, The National Online Travel Litigation Group

Amy Lin Hadra, an associate with Bird Law Group, P.C., practices civil litigation, with a focus on federal and appellate work. Ms. Hadra has successfully represented a wide variety of clients at all stages of litigation, including local governmental agencies. Following a hearing at which she argued the motion for summary judgment as counsel before the court, Ms. Hadra obtained summary judgment and effectively negotiated a settlement on behalf of the local governmental agency. She now focuses her practice primarily on litigation against OTCs.

Ms. Hadra received her law degree from the University of Georgia in 2006, where she was recognized as a Bryant T. Castellow Scholar and received a seat on the 2005-2006 UGA Law School Mock Trial Board. Ms. Hadra attended Yale University, where she attained dual Bachelor of Arts degrees in History of Art and East Asian Studies. While an undergraduate, Ms. Hadra was recognized as a GM Corporate Scholar, and she was selected to serve as co-chair of Yale's Asian Pacific American Heritage Month celebration. Recently, Ms. Hadra was selected from over 200 applicants to participate in the Georgia Bar Leadership Academy.

Education

The University of Georgia School of Law, Athens, GA, 2006	*Juris Doctor*
Yale University, New Haven, CT, 2001	*B.A. in East Asian Studies*
	B.A. in History of Art

Honors and Awards

Bryant T. Castellow Scholarship	*Recipient*
UGA Law Mock Trial Board	*Board Member*, 2005-2006
J. Melvin England Mock Trial Competition	*Quarter-Finalist*, 2004
Phi Alpha Delta Law School Fraternity	*President/Justice*, 2004-2005
GM Corporation Full Scholarship	*Recipient*

Professional Associations and Memberships

Georgia Bar Leadership Academy	*Participant*, 2008
Yale Alumni Association	*Interviewer,* 2007-2008
Georgia Mock Trial Association	*Coach*, 2007
Georgia Bar Association	*Member*
Atlanta Bar Association	*Member*
Georgia Trial Lawyers Association	*Member*

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. District Court Middle District of Georgia
U.S. Court of Appeals, 11th Circuit

Micah Ray Alexander

Micah Ray Alexander, an associate at Holm Wright Hyde & Hays PLC, graduated in 2001 from Kansas State University with a bachelor's degree in civil engineering. He received his law degree from the University of Kansas in 2004, where he served as an Editor of the Kansas Journal of Law and Public Policy. Mr. Alexander also earned a master's degree in public administration from the University of Missouri in 2009.

Mr. Alexander served for more than five years in state government (the Missouri Department of Transportation) as in-house counsel, focusing on transportation, construction, and contract law. He provided counsel and guidance on day-to-day legal matters, advised in the development of policies and programs, drafted administrative rules, prepared contracts and project procurement documents, and represented state employees in legal proceedings.

Bar/Court Admissions
2010, Arizona and United States District Court for the District of Arizona
2005, Missouri, United States District Court for the Western District of Missouri and United States District Court for the Eastern District of Missouri
2004, Kansas and United States District Court for the District of Kansas

5. What resources would participating cities need to provide?

Our team needs help with preserving the municipalities' documents. This entails identifying and issuing litigation holds to all key custodians. We must also collect all relevant documents and databases—both hardcopy and electronic—that the municipalities possess. These documents and electronically stored information include related tax assessment, collection, and other financial records. The municipalities must also monitor the preservation efforts to ensure compliance with legal requirements. We will assist in this effort.

Our team also needs the municipalities' assistance in identifying witnesses and other key personnel. We will interview these representatives to effectuate the litigation hold and prepare our disclosure statement and discovery responses. We will also need their

help to prepare for depositions. Some of these representatives will testify at trial and may represent the municipalities at trial.

6. Describe your anticipated legal approach to the issues outline in this RFP?

Our litigation team is comprised of three principal firms or groups with significant experience in this kind of litigation. Our proposed litigation plan is based on that experience.

First, our team will counsel with Phoenix, Tucson, and Scottsdale the other participating Arizona local governments to ensure that we have at our disposal all pertinent ordinances, rules, and regulations. We will simultaneously begin to preserve, collect, and process all relevant paper and electronic documents and other evidence.

Second, we will draft the complaint against the OTCs. The complaint will plead the common practices that OTCs employ nationally. But we will also tailor it to address the specific language—in and the application of—the Arizona Model Tax Code and other local codes.

The complaint will be drafted in anticipation of the OTCs' motion to dismiss. This is typically their first litigation move. Our team's past success in defeating OTCs' motions to dismiss is based on our own experience and the wealth of discovery we have obtained. Though litigation results cannot be guaranteed, we believe we can defeat the motion.

Third, after defeating the OTCs' motion to dismiss, and depending on our forum (federal or state), we will propound written discovery to the defendants. To enhance our success in the case, we will also move the court to allow us to use discovery previously obtained in other cases. This is done by seeking a discovery sharing order/protocol. If successful, we would be entitled to use discovery materials we have amassed over the last 6 years.

These documents are comprised of between 600,000 and 1,000,000 pages, including depositions, corporate memos, e-mail, letters, and crucial business materials that demonstrate and support our clients' claims. This substantial discovery has resulted in victories around the country, both through summary judgment, trial, and settlement.

But to supplement the existing discovery, we will aggressively seek additional information from the OTCs in this case. We would coordinate with all of the municipalities to determine the information they already have by way of communications with OTCs and financial data relating to the OTCs' conduct in Arizona.

We will propound discovery for updated documents and data specific to Arizona. Additional depositions will be taken. One of our lead attorneys has previously deposed

corporate representatives from major OTC defendants, including Expedia, Hotels.com, Orbitz, and Hotwire. This experience will help guide and inform the deposition strategy developed in this case.

Fourth, depending on the evidentiary record and court rulings, our team will draft a summary-judgment motion. We will also respond to the OTCs' motion for summary judgment. Members of our team have been involved not only in drafting summary-judgment motions (such as in Baltimore), but also in defending against the OTCs' motions (e.g., in Baltimore and Georgia).

Many cases have been resolved at the summary-judgment stage, either by settlement or court ruling. Members of our team have participated in mediations, settlement conferences, and other informal resolution efforts.

To assist us and the court or jury, we have retained forensic accounting experts who are familiar with the defendants' hotel-transaction data. These experts know how to calculate damages, penalties, and interest. Once we obtain location-specific data, we can begin to refine damage estimates and prepare the case accordingly.

If the case is not resolved by motion, we will try the remaining issues. Collectively, the trial experience of Holm Wright, Schneider Wallace, and the Litigation Group's attorneys is extensive—with literally hundreds of jury trials and arbitrations. But the reality is there have been more than 80 OTC cases filed nationally, and only one has required a trial. Although trial is unlikely given this record, we will prepare for this contingency.

The lead attorneys in our litigation team are not just proposing to work on this litigation. They will actually be handling the case on a day-to-day, month-to-month basis over the long haul. We will argue the motions, take the depositions, coordinate the strategy, and personally try the case. We believe this separates us from other teams that market for these cases nationally.

7. How will you verify the soundness of the audit data?

Collectively, our group has substantial experience and expertise in guiding and assisting all aspects of the audit process in this exact litigation. For instance, in the State of Georgia, our group assisted in the pursuit of administrative remedies and handled more than fifty (50) requests for information (including transactional data), notices, and assessments. Similarly, our group assisted the State of Montana's Department of Revenue (DOR) in their administrative pursuit of information and data on a pre-litigation basis.

Over the last 6-7 years in this litigation, we have assisted various other cities, counties and states in estimating damages and in evaluating obtained financial data to correctly

calculate damages. That experience has given our group detailed, first-hand knowledge of the applicable market shares, not just of the OTC industry as a whole but of the specific individual companies within that industry. This knowledge has assisted us in the past in recognizing incomplete productions of data and transactions from the OTCs.

Furthermore, our work with forensic accountants over the years in this litigation allows us to efficiently calculate damages from large data sets. In short, we can bring all of this experience to bear so as to benefit Tempe and the other Arizona local governments owed taxes by the OTCs.

8. **Provide disclosures of actual and potential conflicts of interest, if any, including but not limited to identifying each and every matter in which Counsel has represented any entity or individual with an interest adverse to the participating Cities, its Council, or its employee(s).**

   No conflicts.

9. **Will you require the City to sign a separate agreement upon acceptance?**

   Yes _____ No __X__.

   If Yes, include a copy with your submission.

   N/A

10. **Have you litigated similar cases?**

    Yes__X__ No _____.

    If Yes, provide information and outcome.

The team's experience and resources are self-evident in a list of our recent cases. These cases comprise some of the current hotel tax litigation with which members of the team are involved.

- *Town of Breckenridge, Colorado v. Colorado Travel Company, LLC*, Case Number 2011CV420 (Summit County District Court, 5th J.D., CO);

- *Montana Dep't of Revenue v. Priceline.com*, Cause No. CDV-2010-1056 (Mont. 1st Jud. Dist.);

- *City of Rome, Georgia v. Hotels.com,* 2006 U.S. Dist. LEXIS 56369 (N.D. Ga.);

- *City of Oakland, California v. Hotels.com*, Civil Action No. C07-03432 (N.D. Ca.);

- *Baltimore County, Maryland v. Priceline.com, Inc.*, Civil Action No. MJG-10-1104 (D. Md.);

- *Mayor & City Council of Baltimore v. Priceline.com, Inc.*, Civil Action No. MJG-08-3319 (D. Md.);

- *Montgomery County, Maryland v. Priceline.com, Inc.*, Civil Action No. MJG-10-3558 (D. Md.); and

- *County of Genesee, et al. v. Hotels.com, L.P., et al.*, Civil Action File No. 09-276-CZ (Cir. Ct. for Ingham County) (action on behalf of multiple Michigan local governments).

Several team members proposing to represent the municipalities have devoted the majority of their practice (more than 75%) to representing plaintiffs in complex litigation, running the gamut from actions against online travel companies to class actions against manufacturers. The outcomes of these cases are reflected in the attached proposal and white papers.

Litigation is the primary area of practice for our proposed lead and other attorneys. Specifically, Holm Wright's trial lawyers have appeared in federal and state courts at all levels, and they routinely handle complex matters encompassing all substantive areas of law. Brad Holm recently obtained a $19.1 million recovery against a national architectural firm and its insurers for design errors and omissions on a $130 million construction-manager-at-risk project in Phoenix, Arizona. Additionally, he and his firm recovered $16 million against a national engineering firm and its insurers for design errors and omissions on the Arizona Air National Guard Fuel Storage and Distribution Project.

11. Do you agree to the Terms and Conditions of this RFP?

Yes__X__ No _____.

If No, explain below.

N/A

12. List three (3) references for which you have provided similar services.

Firm	Contact	Number	Date of Engagement
Crongeyer Law Firm	TERESA G. WHITNEY Attorney, Acting Spec. Asst. Atty. Gen. Montana Department of Revenue Legal Services Office 125 North Roberts Street P.O. Box 7701 Helena, Montana 59604-7701	406-444-1763	June 2010 (for recovery from OTCs)
Crongeyer Law Firm	GEORGE A. NILSON City Solicitor, City of Baltimore City Hall, Room 101 100 North Holliday Street Baltimore, Maryland 21202 e-mail: george.nilson@baltimorecity.gov	410-396-3297	July 2008 (for recovery from OTCs)
Crongeyer Law Firm	JOHN C. SCHLINKER Chief Deputy Treasurer Ingham County, State of Michigan P.O. Box 215 Mason, Michigan 48854	517-676-7235	June 2010 (for recovery from OTCs)

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4. Fee and Costs Information.

Our team proposes a contingency fee of 27.5% of the total recovery in the case.

The team proposes to advance litigation costs. If we lose the case, the municipalities will *not* be liable to pay costs. Our team will bear them. This disposition is permitted by Arizona Ethical Rule 1.8.

If the E.R. is revised, and the municipalities must bear costs, we will divide and allocate the total costs among the municipalities in the proportion that each city's claim bears to the municipalities' total claim. So if Tempe's claim were 10% of the total of all the cities' claims, Tempe would bear 10% of the total costs.

If we win the case, the team will first reimburse itself for costs advanced. Next, the team will calculate the municipalities' recovery (72.5%) and the contingent fee.

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

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5. No Required Contract Agreements.

Our team does not require a particular form of contract for this proposal. We do not take any exceptions to the municipalities' standard terms and conditions or their special terms and conditions, as provided at RFP, pp. 8-20.

6. Addendum.

Our team acknowledges receipt of Addendum No. 1. *See* attached, signed addendum.

Addendum to Solicitation

Tempe

City Procurement Office/City of Tempe • PO Box 5002 • 20 East 6th Street • Tempe, AZ 85280 • (480) 350-8324 • www.tempe.gov/purchasing

This addendum will modify and/or clarify: Solicitation No.: 12-096

and is Addendum No. 1

Date: 2/29/2012

Procurement Description: Legal Representation for Statewide Effort to Collect Unpaid Taxes

Following are questions that have been submitted and the City's response:

The Non-Program Cities (NPC) claim is based on the OTCs liability "for municipal transaction privilege taxes.....and any interest and penalties accrued on this amount" (page 23, 4th para).

These are under Sec.__-444. Although Tucson is in the list of NPCs (pg 23), it does not have a transaction privilege tax (TPT).

Please clarify that Tucson is not intending to make a claim under this RFP?

Tucson has adopted City Code Sections 19.1 and 19-66 et seq. which it believes will allow it to participate in the claim.

Please clarify that the RFP doesn't contemplate claims for TOT under Sec.__-447.

The multi-jurisdictional audit contemplated claims under either Section _444 or _447.

To better evaluate the extent of the claims of the cities, can you send me the TPT revenues of the 11 cities with TPT? Otherwise, can you direct me to where I can find it?

As for the TPT revenues of the eleven cities, refer to the Comprehensive Annual Financial Reports (CAFT) of each City. These reports are generally available at each City's website, usually in the finance and accounting section.

When is the anticipated contract start date?

No fixed date can be given – the contract will begin after internal review is completed and a recommendation approved by Council. The likely start will be in May 2012.

To how many vendors are you seeking to award a contract?

We are anticipating awarding to a single firm.

Can a copy of the audit report referenced in this proposal be obtained prior to submission of an offer?

The City will not release this information prior to award of a contact.

The balance of the specifications and bid solicitation instructions to remain the same. Bidders/Proposal Offerors are to acknowledge receipt and acceptance of this addendum by returning of signed addendum with bid/proposal response. Failure to sign and return an addendum prior to bid/proposal opening time and date may make the bid/proposal response non-responsive to that portion of the solicitation as materially affected by the respective addendum.

Holm, Wright Hyde & Hays	Brad Holm
NAME OF COMPANY	BY NAME (please print) TITLE
10429 S. 51st Street, Suite 285	(480) 961-0422
ADDRESS (or PO Box)	TELEPHONE
Phoenix, Arizona 85044	Brad Holm
CITY STATE ZIP	AUTHORIZED SIGNATURE

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Ladd Vagen, Information Technology Director

Co-Submitter: Candace Schroeder, CPPB, Sr. Proc. Specialist

Date: 03/28/2013

Meeting Date: 04/02/2013

TITLE:

Consideration and Approval of Purchase under Maricopa County Contract: Aerial Photography and Digital Terrain Model (DTM) Acquisition.

RECOMMENDED ACTION:

Approve the purchase under Maricopa County Contract Aerial Imaging services in the amount of $98,188.30. Please see Page 2 (Key Considerations) for further discussion on possible motions.

Policy Decision or Reason for Action:

The reason for the action is the City's need to replace aerial imagery taken in 2007 with newer, up-to-date, imagery utilized by several City divisions.

Financial Impact:

- The Division of Information Technology has budgeted $75,000.00 in Fiscal Year 2013 for the purchase of aerial imagery in account number 001-0833-502-2006.
- The Stormwater Section will fund $17,019.00 from savings related to the drainage maintenance program in Fiscal Year 2013 account number 040-3206-601-2105.
- The Utilities Division will fund $2,900.00 from savings related to the ADWR Fees that are not required in Fiscal Year 2013 due to changes in state law in account number 201-4201-700-2811.
- The Landfill Section has budgeted $40,000.00 in Fiscal Year 2013 for the purchase of aerial imagery in account umber 280-4104-790-4104.

Connection to Council Goal:

Effective governance

Has There Been Previous Council Decision on This:

This item was discussed at the Flagstaff City Council Regular Meeting of March 19, 2013. At that time several questions were raised, which have been addressed in the attached CCR. This CCR was also circulated to the Council prior to the meeting. As directed by the motion made at the March 19, 2013, meeting, this item has been placed on a Special Meeting agenda for March 26, 2013, should the Council wish to move forward at that time since time is of the essence with this project.

Options and Alternatives:

- Option A: Utilize Maricopa County's contract with Sanborn as the lowest, responsive and responsible bidder for the amount of $98.188.30 for Aerial Photography and Digital Terrain services.
- Option B: Conduct our own formal competitive bid process.
- Option C: Continue to use existing Aerial Photography and Digital Terrain from 2007.

Background/History:

The City has been purchasing aerial photographs for decades to support the efforts of many divisions. Historically, the City purchased aerials by quarter section tiles, a few quarter sections every year. At the time, this was more economical, but left the City with a patchwork of photos and Digital Terrain Models (DTMs) from many different years. One quarter section photo may have been taken in 1995, and the next quarter section may have been from 1988. Newer roads, subdivisions, and other developments would often disappear when moving from a newer quarter section photo to an older one. Because of major improvements in computer technology, digital photography and other equipment used in the acquisition of aerial photography, the price has come down considerably while the quality has gone up. Today we can purchase seamless high resolution color aerial photography (including near infrared) for the entire City plus a two mile buffer area for the same price of a few black and white quarter sections in the 1990's.

Key Considerations:

- Aerial photographs are used by the GIS section to update and maintain many GIS data layers.
- Aerial photographs and the accompanying DTM update will be used by Storm Water for their master plan and to share with FEMA floodplain mapping.
- The DTM update will be used by Public Works to update landfill usage calculations.
- NIR (Near Infrared) from the photographs could be used to do a forest health study showing the effects of drought on our forests and assist with thinning projects.
- Buying new Citywide images every few years makes it possible to show how the City changes and grows over time. The last set of aerial photographs were taken in the fall of 2007. The optimal time of year to take aerial photos for the City's purposes is in the spring just before the trees begin producing leaves.
- The aerial photographs, DTM updates and resulting GIS data are used by the public for a variety of purposes.

FURTHER CONSIDERATION RE MOTIONS: Section 10.09 of the Council's adopted *Rules of Procedure* it indicates that if there is a tie vote on an item any member of the Council may move to reconsider the item at the mext meeting. Therefore, if either of the motions made at the March 26, 2013, Special Meeting are to be considered, the first issue to address would be a Motion to Reconsider. If a majority of the Council approves the reconsideration, then one off those two motions could be made. If a new motion is to be made, outside of the two made at the prior meeting, there is no need for a Motion to Reconsider and the motion could be made at that time.

Community Benefits and Considerations:

The aerial photographs, DTM data and resulting GIS data updates are used by developers, engineers, real estate agents and other businesses for a variety of purposes beneficial to the City.

Community Involvement:

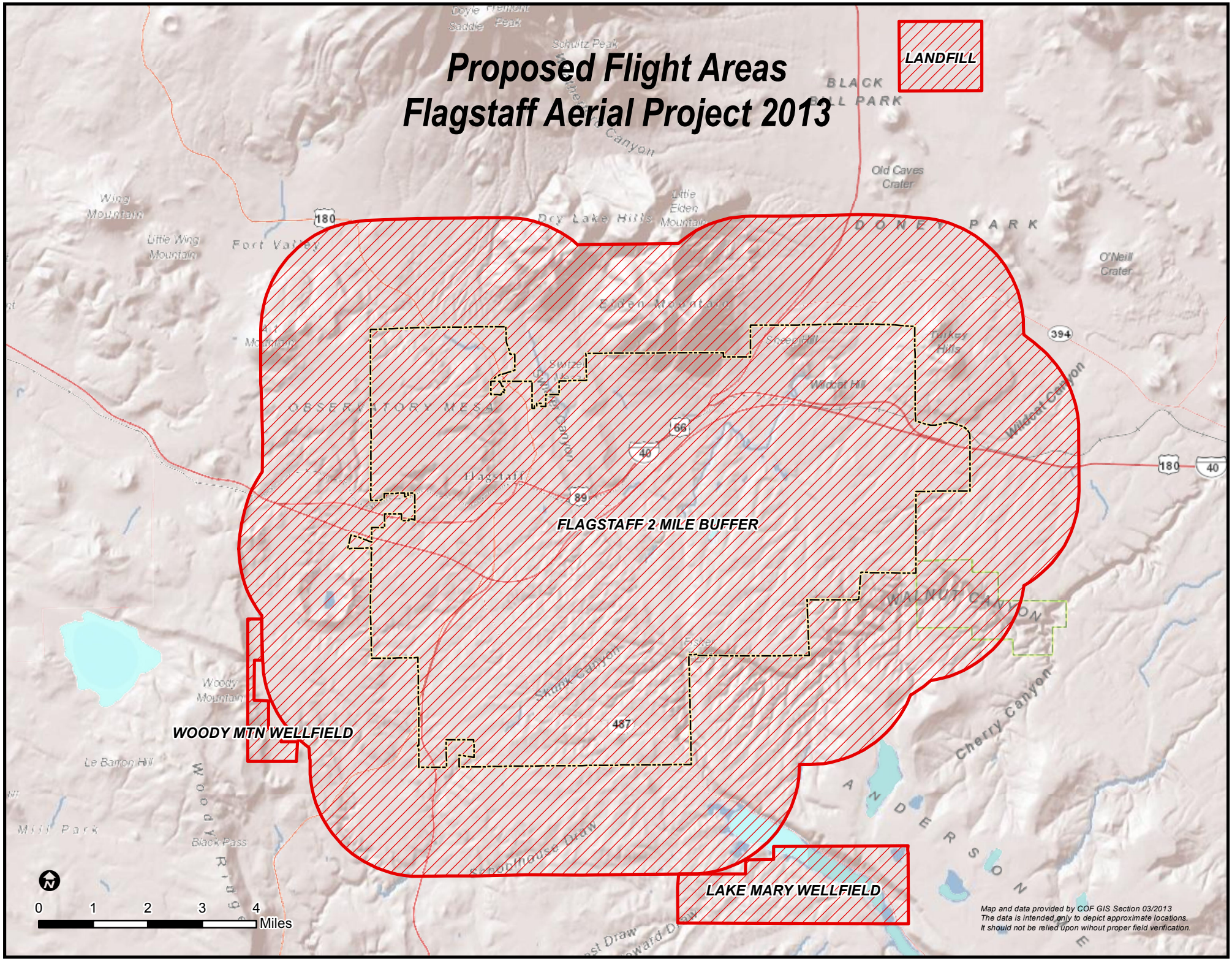
Inform

Expanded Options and Alternatives:

- Option A: Utilize Maricopa County's contract from Sanborn as the lowest, responsive and responsible bidder for the amount of $98,188.30 for Aerial Photography and Digital Terrain services.
- Option B: Conduct our own formal competitive bid process.
- Option C: Continue to use existing Aerial Photography and Digital Terrain from 2007

Attachments: Map of proposed aerial photography
Draft Service Agreement
CCR

Proposed Flight Areas
Flagstaff Aerial Project 2013



ATTACHMENT A

DRAFT AGREEMENT FOR AERIAL IMAGERY SERVICES

CITY OF FLAGSTAFF

and

SANBORN COMPANY, INC.

This Agreement for a City of Flagstaff Aerial Imagery 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 Sanborn Company, Inc, with an office at 1935 Jamboree Drive Ste 100, Colorado Springs, Colorado ("Provider"), effective as of the date written below.

RECITALS

A. The City desires to enter into this Agreement for Aerial Imagery Services for the City of Flagstaff; and

B. Provider has available and offers to provide the personnel necessary to organize and provide said services in accordance with the Scope of Work, attached to this Agreement as Exhibit A;

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 provide the services, as set forth in detail in Maricopa County RFP 12071 attached hereto and hereby incorporated as part of this Agreement and adopted by reference.

2. COMPENSATION OF PROVIDER

The City agrees to make payment, in the amount of $ 98,188.30 for Aerial Imagery services set forth in.

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. Provider is not obligated to accept all requests for services, depending on circumstances with other work being performed for other clients.

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 if requested by the City to be provided by Provider to the City and the right of the City, 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:	To Provider:
Candace Schroeder, CPPB Sr. Procurement Specialist City of Flagstaff 211 W. Aspen Flagstaff, Arizona 86001	Jason Caldwell, Regional Manager Business Development Sanborn Company, Inc. 1935 Jamboree Drive Ste 100 Colorado Springs, CO 80920

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 (hereinafter 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) (hereinafter referred to as "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, if any, shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Provider, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Provider from liabilities that may arise out of the performance of the work under this Agreement by Provider, its agents, representatives, employees or subcontractors and Provider is free to purchase additional insurance as may be determined necessary.

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

1. Automobile Liability - Any Auto 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

2. Professional Liability — $1,000,000

B. SELF-INSURED RETENTIONS/DEDUCTIBLES: Any self-insured retentions and deductibles must be noted to the City. However, the Proposer shall be solely responsible for any self-insured and/or deductibles associated with the Proposer's insurance coverage.

C. OTHER INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages:

    a. The City of Flagstaff, its officers, officials, and employees are additional insureds with respect to liability arising out of: activities performed by, or on behalf of, the Provider; including the City's general supervision of the Provider; products and completed operations of the Provider: and automobiles owned, leased, hired or borrowed by the Provider.

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

    c. The Provider's insurance coverage shall be primary insurance with respect to the City, its, officers, officials, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess to the coverage of the Provider's insurance and shall not contribute to it.

    d. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

    f. The policies shall contain a waiver of subrogation (not including auto) against the City, its officers, officials, and employees for losses arising from work performed by the Provider for the City.

2. Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Provider for the City.

6.1 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 or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then at least ten (10) days prior notice shall be given to the City. Such notice shall be sent directly to:

6.2

Rick Compau, C.P.M., CPPO, CPPB
Purchasing Director

City of Flagstaff, Purchasing Division

211 W. Aspen Ave.

Flagstaff, Arizona 86001

6.3 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII, or receiving prior approval by the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency.

6.4 Verification of Coverage. Prior to commencing work or services**,** Provider shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) 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.

All certificates and any required endorsements shall be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of contract.

All certificates required by this Agreement shall be sent directly to **Candace Schroeder, CPPB, Sr. Procurement Specialist, City of Flagstaff, Purchasing Division, 211 W. Aspen Ave., Flagstaff, AZ**. **86001.** The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to request and receive within ten (10) days, complete, certified copies of all insurance policies required by this Agreement at any time**.** The City shall not be obligated, however, to review same or to advise Provider of any deficiencies in such policies and endorsements, and such receipt 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.

6.5 Subcontractors. Providers' 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.

6.5 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the City Attorney's office, whose decision shall be final. Such action shall not require a formal amendment to this Agreement, 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;

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

7.1.2.7 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 and any intention of the City to terminate this Agreement. Upon the giving of notice, the City may invoke any or all of the following remedies:

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

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

7.2.1.3The right to monetary damages;

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

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

7.2.1.6The 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 Any excess costs incurred by the City in the event of termination of this Agreement for default, or in the event the City exercises any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before termination of this Agreement for 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.

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. 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 may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

8.4 Severability. If any part of this Agreement is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

8.5 Assignment. This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be assigned by either the City or Provider without prior written consent of the other.

8.6 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.

8.7 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.

8.8 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. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.

8.9 Non-appropriation. In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, the City shall notify Provider of such occurrence, and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. No payments shall be made or due to Provider under this Agreement beyond these amounts appropriated and budgeted by the City to fund payments under this Agreement.

8.10 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.

8.11 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 Federal Immigration

laws and regulations that relate to its employees and A.R.S. §23-214(A) (hereinafter "Provider Immigration Warranty").
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.

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.

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.

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.

8.12 Subcontractors. This Agreement or any portion thereof shall not be sub-contracted without the prior written approval of the City. No Subcontractor shall, under any circumstances, relieve Provider of its liability and obligation under this Agreement. The City shall deal through Provider and any Subcontractor shall be dealt with as a worker and representative of Provider. Provider assumes responsibility to the City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

8.13 Waiver. No failure to enforce any condition or covenant of this Agreement by the City shall imply or constitute a waiver of the right of the City to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor shall any waiver by the City of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

8.14 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 for an initial term of three (3) years, beginning [, 2013 through , 2016], unless sooner terminated as provided above. Upon mutual agreement between the City and Provider, this Agreement may be renewed for a maximum of two (2) additional one (1) year terms, upon mutual agreement from both parties. The Purchasing Director of the City has authority to bind the City only for the purpose of renewing the term of this Agreement as described in this section.

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City of Flagstaff	**Provider**
_____	_____
Kevin Burke, City Manager	
Attest:	
_____	
City Clerk	
Approved as to form:	
_____	
City Attorney	Date of Execution:_____

CITY COUNCIL REPORT

DATE: March 21, 2013

TO: Mayor and Councilmembers

FROM: Ladd Vagen

CC: Kevin Burke, Josh Copley, Jerene Watson, Leadership Team

SUBJECT: Aerial Photography

This is in response to the request from Mayor and Council.

DISCUSSION

The following list of questions came from the Council meeting on March 19th, 2013 – the answers are in italics below:

1) (a) Why does Yavapai County's interface allow iPhone and iPad to call up the maps, but the Coconino County GIS does not? (b) Could we make that available on the system the public can access here?
   a) *Yavapai's Parcel viewer is available for use on mobile devices via a web browser, but it is a desktop version, compatible with mobile devices, not a mobile app. Coconino's Parcel viewer is powered by Silverlight (a Microsoft product) and is incompatible with mobile devices, except possibly a mobile device powered by Windows Mobile Operating System. Although Yavapai's parcel viewer is available on-line, it is an old component of the ESRI software which has been discontinued and is no longer supported.*
   b) *The City has the same GIS software (ESRI Software) as do Yavapai County, Coconino County, the City of Sedona, and virtually all government entities using GIS. The ESRI software which the City currently owns is the most current version available. Included with the software at no additional cost is the ESRI web development kit. Therefore, from a software perspective, the City currently has the software necessary to develop and maintain a publicly accessible GIS website. Where we <u>are</u> constrained is with budget and personnel. We would need to fund and hire a GIS web developer to develop and maintain the web interface – approximately $84,000 ongoing in the general fund and purchase and configure a public facing web server along with appropriate network security to host the web system – approximately $8,000 one-time, but refreshed every 4-5 years. This project would enable the City to have and maintain a public facing GIS website. A separate project would be the development of a true City*

of Flagstaff mobile GIS app which would require additional development tools.

2) (a) Is Yavapai using Bing and getting updated material annually rather than securing photography themselves? (b) Are they seeing more accuracy due to this?
   a) *Yavapai is using ESRI World Imagery which is currently hosted and provided by ESRI. The imagery is a mash-up of different sources 'stitched' and stretched together, some from Landsat (satellite), some from Bing, some from Aerials Express, and some from USGS Digital Ortho Quarter Quad imagery. Updates are unpredictable and intermittent, spatial accuracy is not guaranteed, and spatial resolution is random.*
   b) *When the user zooms in as close as the online application allows, the best spatial resolution provided is one foot. Features such as manholes, catch basins, fire hydrants, traffic signals, traffic signal poles, light poles, or utility poles are not reliably distinguishable on a one foot resolution image from ESRI Worldwide Imagery.*

      The Bing mapping service as it exists now, is freely available to licensed users of ArcGIS (which includes the City). However a recent statement from ESRI revealed that this will change soon:

      > *"Complimentary use of Microsoft's Bing Maps with ArcGIS will begin to be phased out as of February 28, 2013, and will be phased out completely by September 30, 2013. ArcGIS will continue to be Bing Maps ready, but you will have to obtain your own Bing Maps key directly from Microsoft and input the key into your ArcGIS products. Once you input the new key, you will be able to use Bing Maps in your ArcGIS products"*

      Pricing is not listed on Microsoft's website and for info on licensing and obtaining an Enterprise Key, a representative from Microsoft would need to be directly contacted.

3) (a) Would like you to ask them (Yavapai) if they are seeing more accuracy due to annual updates and (b) whether they also secure photos for internal-only use like we do.
   a) *As stated previously, updates to the Bing and ESRI World Imagery services are unpredictable, sporadic, and not guaranteed.*
   b) *Yavapai County GIS (YCGIS) commissioned an aerial flight in 2007 which included imagery and LiDAR ((LiDAR = Light Detection and Ranging) - two foot contour topographic data is produced from LiDAR) as related to floodplain mapping within the Verde River Lower Oak Creek, and Aqua Fria watersheds. In 2009 they purchased 1 foot resolution images of the northern half of the County from APS. APS does not have a predictable flying schedule or area of interest, and just happened to be flying during 2009. As far as can be determined, no other APS-sponsored flights have occurred in that area since 2009.*

      The reason we do not see this 2009 Imagery option on the YCGIS website is due to the nature of the purchase agreement. The data APS provided is restricted only to internal use for YCGIS and cannot be served or distributed externally. In addition to the APS data, Yavapai County has no-charge access to imagery acquired by the Sedona, Prescott, and Prescott

Valley GIS departments, but again, it is restricted to internal use only. From what we have learned in speaking with GIS personnel from these agencies, imagery and LiDAR acquisition occurred during the following time frames:

i) City of Prescott March 2012 by Cooper Aerial
ii) City of Sedona Fall 2011 by Cooper Aerial
iii) Prescott Valley 2008 by Sanborn

All of these projects yielded:

i) images with 6 inch spatial resolution, and guaranteed 1 meter spatial accuracy (all features are within 1 meter of the actual location)
ii) two foot contour topographic data which satisfies FEMA standards for digital flood insurance rate mapping.

4) Why do they (Yavapai) have 4 options for map layers and do they contract for the layering?
   a) These 4 layers are served by YCGIS.
      i) The NAIP, acquired in 2010, refers to the National Agriculture Imagery Program and is administered by the USDA's Farm Service Agency (FSA) through the Aerial Photography Field Office (APFO). Since its primary use is intended for agricultural applications, NAIP is acquired during the summer when plants have their leaves. It has low spatial resolution (1 meter) but is effective and available at no cost to the user. It is used primarily for studies of vast croplands or expansive forest stands.
      ii) The digital Digital Globe layer is satellite imagery from 2007 purchased by YCGIS and is most likely intended to show change over time in relation to the dates of the other layers. It has a one foot spatial resolution and YCGIS hosts this data locally.
      iii) Similarly, the Aerials Express layer from 2009 was purchased by YCGIS a has a spatial resolution of one foot, and is also hosted locally.
      iv) The fourth layer on the YCGIS website is ESRI World Imagery which is currently hosted and provided by ESRI at no charge
5) Who provides their (Yavapai) digital images, and do they pull them in off a product that is out there for anyone to use (such as Google, Bing)?
   a) Same answer as number 4
6) If we need to spend $98k to update the photos, OK, but if we can do that and update our system, too, would like to know about that option, too. Can we use something that is already out there for the imagery and spend the money on an updated system?
   a) The system/software does not need to be updated as it is already the most current version available from ESRI. Our constraints are:
      i) Personnel – the GIS section is small – currently 2 positions, with a 3rd position to hopefully be filled in April to replace a staff member the City lost to the Coconino County. Prior to 2008, the GIS section consisted of 5 staff members. Additionally, the GIS staff does not currently have the expertise to develop and maintain the web interface;
      ii) Time – the current GIS staff are fully assigned with tasks and projects and, besides not having the necessary expertise, do not have available time for additional projects;

iii) *Money – the aerial request is a one-time expense; the funding required to hire a GIS web developer is on-going; the purchase of the necessary server and network infrastructure would reoccur every 4-5 years.*

7) (a) Do we coordinate with Coconino County in securing aerials? (b) Do they need photos and should we be sharing the cost and project with them?
   a) *The City coordinates with the County whenever possible – there are no IGAs in place that guarantees the County's participation.*
   b) *The County has updated aerial imagery when someone gives it to them. Sources include:*
      i) *State-wide aerial imagery (2007)*
      ii) *Outlying areas (Blue Ridge, Mormon Lake – 2004)*
      iii) *City of Page (~2010)*
      iv) *City of Sedona (2011)*
      v) *City of Flagstaff (2007)*

      The County has updated specific areas when needed (Bellmont, Doney Park, Elk Park Meadows, Kachina Village – 2009, and the Shultz burn area – 2012). The County has no plans for future flights at this time, and may never have had aerial photos taken of the entire county (Coconino County is 18,618 square miles in size – the second largest county in the United States);
8) We haven't had a Work Session so I would be interested in knowing more about the comparison of Yavapai County to Coconino County GIS program that the public can access.
   a) *The answer is the same as question 1. Additionally, we will have a short presentation on GIS at the work session/special council meeting scheduled for March 26th.*
9) Would like to know the County's perspective and if we could switch off paying for this every other update if they shared photo data.
   a) *The County does seek funding for these types of events now only on an as-needed basis and they are not scheduling reoccurring data acquisitions.*
10) Funding Sources:
   a) ***General Fund** – The Division of Information Technology has budgeted $75,000.00 in Fiscal Year 2013 for the purchase of aerial imagery in account number 001-0833-502-2006.*
   b) ***Enterprise Fund** – The Stormwater Section will fund $17,019.00 from savings related to the drainage maintenance program in Fiscal Year 2013 account number 040-3206-601-2105.*
   c) ***Enterprise Fund** – The Utilities Division will fund $2,900.00 from savings related to the ADWR Fees that are not required in Fiscal Year 2013 due to changes in state law in account number 201-4201-700-2811.*
   d) ***Enterprise Fund** – The Landfill Section has budgeted $40,000.00 in Fiscal Year 2013 for the purchase of aerial imagery in account umber 280-4104-790-4104.*
11) Are the aerial photos independent from the system/software?
   a) *Yes. The photos are JPG files; the system/software provides the delivery method for those photo files.*

RECOMMENDATION / CONCLUSION

This report is for information only.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Jessica Cortes, Deputy Court Administrator

Submitted For: Don Jacobson, Court Administrator

Date: 03/28/2013

Meeting Date: 04/02/2013

TITLE:

Consideration of Appointments: On-Call Judges for the Flagstaff Municipal Court.

RECOMMENDED ACTION:

Approve the appointment as recommended by Hon. Thomas L. Chotena, Presiding Magistrate of the Flagstaff Municipal Court.

Policy Decision or Reason for Action:

- Appointment of all magistrates is required to be completed by Flagstaff City Council under both the City Charter and FCC **SECTION 1-15-001-0002(C)(1)**.
- Appointment of On-Call judges allows for ongoing coverage of cases that other judges have a conflict of interest in as well as to cover initial appearances as required by law within 24 hours following arrest (including weekends and holidays), provides for coverage for absences of other judges due to illness or planned absences and allows for additional operations to be performed as the court calendar allows.

Financial Impact:

- None outside of budgeted amounts.

Connection to Council Goal:

Effective governance - Improving public safety by providing coordinated coverage for the Municipal Court with other courts within the county and provides for continuous coverage for all case types and filings.

Has There Been Previous Council Decision on This:

- On-Call judges are critical to cover absences of judges due to illness, vacation or conflict of interest.
- For numerous years we have been coordinating our initial appearance calendar with other courts in the areas to reduce duplication of effort and costs associated with jail time and transportation of prisoners. Recently we have added the coordination of after-hour search warrants as well, this provides law enforcement a single contact point to get search warrant approval when no court is open to provide it. Our On-Call judges have been a key to be able to provide these services.
- When an individual is arrested they can only be held for up to 24 hours before they must appear before a magistrate who will determine if there is probable cause for the arrest and set release conditions. Should they not appear in this time they must be immediately released. Having On-Call judges perform our weekend and holiday initial appearances guarantees that those

accused of a crime will have an appearance before a magistrate and have release conditions set in accordance to the violation charged.

Options and Alternatives:

- Approve the appointment as recommended by the Presiding Judge.
- Don't approve appointment as recommended by the Presiding Judge and request additional candidates for Council consideration.
- Don't approve the appointment for an On-Call judge.

Community Involvement:

Inform

Attachments: Julien Resume
Appointment

Paul Daniel Julien

Arizona Supreme Court
1501 West Washington
Phoenix, Arizona 85007
(602) 452-3021
pjulien@courts.az.gov

SUMMARY

Effective goal-oriented leader with 40 years combined experience as a judge, executive, attorney, faculty member and community representative, in Arizona and across the nation. Leadership experience reflects high level of performance and accomplishment of objectives, and demonstrated skill in problem solving, long-term planning, and coalition building. Record of success achieved through determination, planning, communication, effective operation under pressure, and use of good judgment in professional and personal endeavors.

PROFESSIONAL EXPERIENCE

Judicial Education Officer, Arizona Supreme Court 2003 - present

Train Arizona state and tribal court judges. Preside over and serve as mentor and faculty for key sessions of New Judge Orientation and other Judicial College of Arizona educational programs. Mentor new judges and oversee a pool of mentors who assist judges around the state with one-on-one, hands-on assistance. Answer Judicial Hotline -- a resource for judges to ask law-related questions. Serve as a Judge *Pro Tempore* in city and county courts in civil and criminal matters throughout the state of Arizona.

LEGAL SERVICES CORPORATION, Washington, DC 2003

As a consultant, conduct on-site reviews of federally funded non-profit LSC grantees to assess compliance with Federal law and regulations; write reports documenting violations and suggesting corrective action.

SOUTHERN ARIZONA LEGAL AID, INC., Tucson, Arizona

Chief Executive Officer 1994-2003

Managed all aspects of an LSC-funded legal services program; merged 4 separate LSC-funded legal services programs into a single entity with 10 offices spread across 1 urban and 8 large rural counties, 13 independent Tribal Nations, and the Mexican border; supervised 80 employees (40 attorneys) who, along with 850 volunteer attorneys, served 25,000 poor people each year; increased program revenue by developing multiple new and diverse sources of private and government funding; established efficient intake and compliance systems that met or exceeded federal grant requirements, integrated diverse client delivery systems into program-wide system which improved overall client access and service delivery; implemented staff training and other program and client service improvement through continuous visits to 10 office sites. During tenure as CEO, program received 4 LSC visits: Technical Assistance Review, Office of Compliance and Enforcement Case Service Report/Case Management Review, Office of Program Performance assessment, and OIG review of client trust accounts. All reviews received federal grantor acknowledgment and approval of improvements made under my leadership.

PAUL D. JULIEN, P.C., Tucson, Arizona 1990-1994

As President and Attorney of the law firm, argued cases in all levels of state courts, U.S. District Court of Arizona and Ninth Circuit Court of Appeals with emphasis in employment and election law; incorporated and represented small businesses.

MOLLOY, JONES & DONAHUE, P.C., Tucson, Arizona 1986-1990

Litigated in state courts and bankruptcy courts; drafted commercial documents.

NORTHERN ARIZONA UNIVERSITY, Flagstaff, Arizona 1980-1984, 1989-1990

In College of Education and Department of Speech Communication, taught graduate and undergraduate students with emphasis on communication in the classroom; developed outreach program for Native American students.

FLAGSTAFF PUBLIC SCHOOLS, Flagstaff, Arizona 1973-1980

Taught K-9 students; developed program for gifted children with emphasis on Native American children.

GOVERNANCE – PROFESSIONAL AND COMMUNITY LEADERSHIP

STATE BAR OF ARIZONA

Chairman and Member, Professionalism Committee	2002-Present
Member, Legal Services Committee	1994-2011
Member, Landlord/Tenant Task Force Task Force	2006-2007
Member, Professionalism Task Force	2003-2005
Member, Arizona Access to Justice Task Force	2002-2006

PIMA COUNTY BAR ASSOCIATION

Member, Board of Directors	1998-2004
President, Board of Directors	2002-2003

AMERICAN DIABETES ASSOCIATION

National Legal Advocacy Committee 2000-2005

Chairman (2002-2004), Coordinate a team of more than 250 volunteer attorneys to fight discrimination in schools, workplace, and prisons; coordinate litigation in courts across the country including amicus curiae briefs to the U.S. Supreme Court. cases include *Kapche v. City of San Antonio* 5th Circuit Court of Appeals which eliminated a blanket ban on hiring law enforcement officers with diabetes and *Rosen v. Philadelphia,* a consent agreement which forced Philadelphia to improve treatment of persons with diabetes in jails.

Chairman, Volunteer and Community Development Committee	1998-2000
National Board of Directors	1996-1999
Member and Chairman, National Audit Committee	1997-2000
National Future Directions Strategic Planning Committee	1997-1999
Past Chair Mountain States Region, Arizona Affiliate, and Tucson Chapter	1985-2000

GOVERNOR'S COMMISSION TO STOP VIOLENCE AGAINST WOMEN 1995-2003

Co-Chair (2000-2003); Implemented statewide database of law enforcement statistics; chaired legislative committee; appointed by two Arizona Governors, Symington and Hull.

GRAND CANYON ASSOCIATION 1994-2000

Chairman- Board of Directors (1999-2000); Presided over not-for-profit organization affiliated with the Grand Canyon National Park; significantly increased Association Revenues; developed strategic, long-range plan; attended Harvard Business School Not-For-Profit Management Program for two consecutive years.

BOY SCOUTS OF AMERICA 1973-2000

Board Member, Boy Scouts of America, Grand Canyon and Catalina Council
Chair Strategic Planning 1998-1999
Executive Board Member 1984-2000
Scoutmaster (youngest scoutmaster in America at 19 years old) 1973-1980

CATALINA FOOTHILLS SCHOOL DISTRICT BOARD OF EDUCATION 1985-1988

MARSHALL FOUNDATION BOARD OF DIRECTORS 1985-1986

Distributed thousands of dollars to women's scholarships, University of Arizona programs, and social service organizations in Tucson.

ARIZONA BOARD OF REGENTS 1984-1985

Regent, Appointed by Governor Bruce Babbitt to govern three universities in Arizona with more than $1 billion annual expenditures.

OTHER PART-TIME WORK AND MILITARY EXPERIENCE

Pima Community College, Faculty: taught prospective paralegals 1990
Coconino County Attorney, Law Clerk, criminal and civil divisions 1984
University of Arizona, College of Law Library, Library Assistant 1984
Partner of small beekeeping business 1980-2000
Consultant, Conducted in-service teacher training in Arizona and New Mexico 1980-1984
Presenter, Presented to teachers at educational conferences in Arizona and national conference in Oregon 1976-1973
Quality Control Technician in limestone quarries in Kentucky 1979
United States Forest Service, Youth Conservation Corps, Program Director 1978
Self-employed firewood and pulpwood cutting 1976-1978
United States Naval Reserve, Seaman Apprentice, honorable discharge 1971-1972

OTHER VOLUNTARY COMMUNITY AND PROFESSIONAL SERVICE

Republican Precinct Committeeman, active in local and state politics 1976-2003
Member, **Arizona Bar Foundation, Arizona Community Legal Assistance Committee**; Provided free legal assistance for not-for-profit corporations 1986-2001

Coordinator, Volunteer Lawyer Advice-Only Clinic	1990-1994
Coordinator, Pima County Law-Related Education Projects	1990-1993
Arizona Coordinator, National Student Mock Election	1990-1992
Member, Tucson City Magistrate Merit Selection Commission	1989-1992
Member, Arizona Academy: Town Hall Participant	1985, 1989, 1995, 2000, 2002

HONORS AND RECOGNITION

Arizona Administrative Office of the Courts – "CAN DO" Award
Arizona Supreme Court – Administration of Justice Award
Outstanding Service Award, Sunnyside School District
Father of the Year, Broadway Southwest
Law-Related Education Award, State Bar of Arizona
Outstanding Service Award, Pima County Bar Association
Outstanding Young Lawyer, State Bar of Arizona
Centennial Award of Merit, Arizona State University
Distinguished Citizen Award, University of Arizona
Outstanding Oral Advocate, 1st Year Moot Court Competition, O'Connor, Cavanagh, Award
Phi Kappa Phi
District Award of Merit: Adult Leadership in Boy Scouts of America
Youngest Graduate of University of Utah (age 19)
Naval Reserve Officer Training Corp Scholarship

PROFESSIONAL MEMBERSHIPS

State Bar of Arizona
American Bar Association
Pima County Bar Association
Admitted and Qualified to practice law in the United States Court of Appeals for the Ninth Circuit, United States District Court, Arizona Supreme Court and all other Courts of Arizona
Phi Delta Kappa

PUBLICATIONS

1981 Doctoral Dissertation: ***Behavioral Characteristics as Correlated with Intellectual Ability and Creativity of Navajo Students***;
1989 and 1992: Editor: ***Arizona Supplement to STREET LAW: A COURSE IN PRACTICAL LAW***, two editions;
2003-present: Editor for sections of Arizona Supreme Court publications – ***Limited Jurisdiction Reference Manua***l and ***Benchbook***;

EDUCATION

Juris Doctor, University of Arizona	1986
Doctor of Education: Northern Arizona University, Curriculum, Instruction, and Administration	1981
Master of Arts: Northern Arizona University, Early Childhood Education	1974
Bachelor of Science: University of Utah, Major: Elementary Education; Composite Minor: Math, Physics and Chemistry.	1973

FLAGSTAFF MUNICIPAL COURT

Presiding Judge Thomas L. Chotena

MEMORANDUM

TO: Mayor and City Council

FROM: Hon. Thomas L. Chotena, Presiding Judge of the Flagstaff Municipal Court

DATE: March 12, 2013

RE: Appointment of Paul Julien as an On-Call Magistrate

Mayor and Council:

I respectfully request that the City Council appoint Paul Julien as a Judge Pro Tempore for the Flagstaff Municipal Court.

We currently have a matter for which it would be appropriate to use a judge not previously serving on the court.

Paul is an attorney in good standing, licensed to practice in the State of Arizona; is well qualified; and has many years of legal experience. He has served other courts within the State as a Judge Pro Tempore. He currently is employed as the Judicial Education Officer with the Arizona Supreme Court and participates in the education and training of judge at all levels.

Thank you for your consideration of this request. Paul has agreed to serve, if appointed.

Thomas L. Chotena
Presiding Magistrate

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Barbara Goodrich, Management Services Director

Co-Submitter: Nicole Woodman, Sustainability Manager

Date: 03/28/2013

Meeting Date: 04/02/2013

TITLE:

Consideration and Approval of Financing: Capital Financing for Solar Photovoltaic Systems

RECOMMENDED ACTION:

Consider awarding a contract to Banc of America Public Capital under RFP No. 2013-24 to authorize capital financing for the installation of up to four (4) solar photovoltaic electric energy generating systems on City property including the Airport, Aquaplex, Rio de Flag Wastewater Treatment Facility, and Wildcat Wastewater Treatment Facility.

Policy Decision or Reason for Action:

To commit the City to the generation of safe, reliable, and long-term affordable power that achieves a balance between high quality, long-term, low-cost energy, and the environmental impacts of energy resources.

Financial Impact:

Arizona Public Service energy incentives, capital financing interest rates, and construction costs are leveraged to make the project cash flow positive within the first two (2) years. The projected cash flow is attached. The cost of the financed structures will be paid through energy savings and there is no annual cost increase to the City.

Connection to Council Goal:

Effective governance.

Has There Been Previous Council Decision on This:

Yes. On March 15, 2010 the Council awarded a contract to Ameresco for the installation of solar services.

Options and Alternatives:

- Approve the recommended financing to continue the City's commitment to green energy sources
- Reject all bids and direct staff to research other financing mechanisms for this project.
- Reject all bids and return renewable energy incentives to Arizona Public Service

Background/History:

In November 2009, staff was directed to develop renewable energy systems on City properties. In March 2010, a solar installation contract was awarded to Ameresco (formerly APS Energy Services). Phase 1 and 2 installed three (3) solar systems to date totaling 862 kilowatts. Phase 3 proposes up to four additional solar systems at the Airport, Aquaplex, Rio de Flag Wastewater Treatment Facility, and Wildcat Wastewater Treatment Facility totaling 927 kilowatts. The City received incentives from the Arizona Public Service Schools and Government and Performance Based Incentive Programs ranging between $0.06 - $0.12 per kilowatt hour of renewable energy generation. This initiative supports the City's commitment to achieve the goals set forth in Resolution 2010-16 (Increased Energy Efficiencies and Renewable Energy Production and Purchase).

Key Considerations:

Collectively the proposed systems will generate approximately 1,549,688 kilowatt hours per year. The information by site is:

Airport:	125 kilowatt system	213,561 kilowatt hours annually	55% of current energy use offset
Aquaplex	270 kilowatt system	433,047 kilowatt hours annually	37% of current energy use offset
Rio de Flag	301 kilowatt system	504,133 kilowatt hours annually	27% of current energy use offset
Wildcat	231 kilowatt system	398,947 kilowatt hours annually	23% of current energy use offset

Additionally, the incentives expire in October 2013 and future Arizona Public Service renewable energy incentives are unavailable for an indeterminate amount of time.

Expanded Financial Considerations:

The City received four (4) responses to the RFP including Alliance Bank, Banc of America, Green Campus Partners, and Holman Capital. These four (4) were evaluated and the summary rating sheet is attached.

Holman Capital was subsequently disqualified as they were lacking multiple documents required by the RFP including the Non-Collusion Affidavit, Exceptions, Confidential and Additional Materials, Proposer Questionnaire, and Addendum's.

Other firms expressed interest including:
BBVA Compass: Their proposal was four (4) hours late and it was returned to them, sealed.
National Bank of Arizona was unable to meet the terms of the RFP so they did not submit a proposal.
Sovereign Bank was also unable to meet the terms of the RFP so they did not submit a proposal.
Carlyle Capital Markets submitted a letter of "no bid" at the bid due date and time.

The City evaluated four areas including:
Experience and Qualifications - 10%
Presented Approach - 30%
Fixed Interest Rate - 50%
References - 10%
as quantified on a 0 to 5 rating scale.

With an aggregate score of 2150, Banc of America received the highest total score per the 'Total Criteria Ranking'.

The fixed rate for this project is critical for the City to meet and/or exceed the projections as shown on the pro forma cash flow. The pro forma anticipated a 3% interest rate so the City should realize savings in excess of what is depicted to date. The City will also refine the amount financed as projects are

finalized. It is anticipated the City will be borrowing something less than $4 million, most likely in the $3.6 million dollar range.

Approving the financing will not add cost to the City's overall budget. Rather, this will be paid from the projected savings per site after allowing for the additional operational, maintenance, insurance, and interest costs. The financing and the pro-forma are predicated on a fifteen (15) year term, however the City anticipates the life of the equipment will be a minimum of 20 and it is during this time period (between years sixteen (16) and twenty (20) that the City will realize the greatest savings.

This action awards the contract. A second action will come forward that includes the resolution authorizing the execution and delivery of the lease purchase agreement.

Community Benefits and Considerations:

The Flagstaff community will benefit from the City utilizing a safe, reliable, and long-term affordable energy source. Additionally, the City can increase awareness of renewable energy technologies by implementing projects that include educational components.

Community Involvement:

Inform

Expanded Options and Alternatives:

- Approve the recommended financing to continue the City's commitment to green energy sources
- Reject all bids and direct staff to research other financing mechanisms for this project.
- Reject all bids and return renewable energy incentives to Arizona Public Service

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Attachments: Scoring Tabulation
Pro Forma
Kw Savings by Site
PowerPoint

CITY OF FLAGSTAFF
PURCHASING DIVISION
FINANCING FOR RENEWABLE ENERGY, RFP NO. 2013-24

SCORING TABULATION

Evaluation Criterion #1-- (10% value) Experience & Qualifications				
	Alliance Bank	***Banc of America***	***Green Campus Partners***	***Holman Capital***
Evaluator #1	40	45	40	40
Evaluator #2	45	50	40	35
Evaluator #3	40	50	50	50
Evaluator #4	40	50	50	30
Evaluator #5	30	30	40	30
Subtotal:	**195**	**225**	**220**	**185**
Criteria Ranking:	3	1	2	4

Evaluation Criterion #2-- (30% value) Presented Approach				
	Alliance Bank	***Banc of America***	***Green Campus Partners***	***Holman Capital***
Evaluator #1	135	135	90	135
Evaluator #2	135	90	112.5	120
Evaluator #3	90	120	120	0
Evaluator #4	120	120	90	0
Evaluator #5	105	120	120	120
Subtotal:	**585**	**585**	**532.5**	**375**
Criteria Ranking:	1	1	3	4

Evaluation Criterion #3-- (50% value) Fixed Interest Rate				
	Alliance Bank	***Banc of America***	***Green Campus Partners***	***Holman Capital***
Evaluator #1	125	250	150	250
Evaluator #2	225	250	225	250
Evaluator #3	100	200	150	100
Evaluator #4	150	250	200	250
Evaluator #5	175	225	225	200
Subtotal:	**775**	**1175**	**950**	**1050**
Criteria Ranking:	4	1	3	2

Evaluation Criterion #4-- (10% value) References				
	Alliance Bank	***Banc of America***	***Green Campus Partners***	***Holman Capital***
Evaluator #1	30	30	30	25
Evaluator #2	45	35	45	40
Evaluator #3	50	30	50	50
Evaluator #4	50	30	50	50
Evaluator #5	35	40	40	35
Subtotal:	**210**	**165**	**215**	**200**
Criteria Ranking:	2	4	1	3
TOTAL SCORE:	**1765**	**2150**	**1917.5**	**1810**
Total Criteria Ranking:	**4**	**1**	**2**	**3**

CITY OF FLAGSTAFF, ARIZONA

Table 1.1: Financial Summary

Project Cost	$ 3,541,140.00	**TOTAL REVENUE**	**$ 6,255,597**
Costs of Issuance	$ 39,000.00	**TOTAL COSTS**	**$ 4,919,302**
Other Rebates	$ -		
Total Principal	$ 3,580,140.00		
Term (yrs)	15.00	**20 YEAR NET CASH FLOW**	**$ 1,166,767**
	Tax Exempt		
Interest Rate (%)	3.00%	**ESTIMATED FAIR MARKET VALUE OF PURCHASING SOLAR PROJECT WHICH WOULD BE REQUIRED UNDER A SSA**	**$ 708,228**
SAVINGS SUMMARY			
Electricity Savings	$ 168,251		
		TOTAL POTENTIAL SAVINGS OVER AN 11 cent SSA	**$ 1,874,995**
Escalation - Electricity (%)	2.00%		
Escalation - O&M (%)	2.00%		
Escalation - Insurance (%)	1.50%		

KW Installed	**Avoided Cost**
927.00	0.110
Price per Watt	**PBI**
$ 3.82	0.112
KWH Output	**Maximum Incentive**
1,650	$ 2,500,132
Degradation	
0.50%	

Year	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	Total
System Output		1,529,550	1,521,902	1,514,293	1,506,721	1,499,188	1,491,692	1,484,233	1,476,812	1,469,428	1,462,081	1,454,771	1,447,497	1,440,259	1,433,058	1,425,893	1,418,763	1,411,669	1,404,611	1,397,588	1,390,600	
Revenue																						
Avoided Cost		0.1100	0.1122	0.1144	0.1167	0.1191	0.1214	0.1239	0.1264	0.1289	0.1315	0.1341	0.1368	0.1395	0.1423	0.1451	0.1480	0.1510	0.1540	0.1571	0.1602	
Electricity Savings		$ 168,251	$ 170,757	$ 173,302	$ 175,884	$ 178,505	$ 181,164	$ 183,864	$ 186,603	$ 189,384	$ 192,205	$ 195,069	$ 197,976	$ 200,926	$ 203,919	$ 206,958	$ 210,042	$ 213,171	$ 216,347	$ 219,571	$ 222,843	$3,886,740
Production Based Incentives [1]		170,569	169,716	168,867	168,023	167,183	166,347	165,515	164,688	163,864	163,045	162,230	161,419	160,611	159,808	56,973						2,368,857
Total Revenue	**$0**	**$338,819**	**$340,473**	**$342,169**	**$343,907**	**$345,687**	**$347,511**	**$349,379**	**$351,291**	**$353,248**	**$355,250**	**$357,299**	**$359,394**	**$361,537**	**$363,728**	**$263,930**	**$210,042**	**$213,171**	**$216,347**	**$219,571**	**$222,843**	**$ 6,255,597**
Operating Costs																						
O&M Annual Amount		$ 12,200	$ 12,444	$ 12,693	$ 12,947	$ 13,206	$ 13,470	$ 13,739	$ 14,014	$ 14,294	$ 14,580	$ 14,872	$ 15,169	$ 15,473	$ 15,782	$ 16,098	$ 16,420	$ 16,748	$ 17,083	$ 17,425	$ 17,773	$ 296,428
My Energy Pro		$ 4,200	$ 4,263	$ 4,327	$ 4,392	$ 4,458	$ 4,525	$ 4,592	$ 4,661	$ 4,731	$ 4,802	$ 4,874	$ 4,947	$ 5,022	$ 5,097	$ 5,173	$ 5,251	$ 5,330	$ 5,410	$ 5,491	$ 5,573	
Property & Liab. Insurance		$ 8,853	$ 8,986	$ 9,120	$ 9,257	$ 9,396	$ 9,537	$ 9,680	$ 9,825	$ 9,973	$ 10,122	$ 10,274	$ 10,428	$ 10,585	$ 10,743	$ 10,905	$ 11,068	$ 11,234	$ 11,403	$ 11,574	$ 11,747	$ 204,710
Total Operating Costs	**$ -**	**$ 25,253**	**$ 25,693**	**$ 26,140**	**$ 26,596**	**$ 27,059**	**$ 27,531**	**$ 28,012**	**$ 28,501**	**$ 28,998**	**$ 29,505**	**$ 30,020**	**$ 30,545**	**$ 31,079**	**$ 31,622**	**$ 32,176**	**$ 32,739**	**$ 33,312**	**$ 33,895**	**$ 34,489**	**$ 35,094**	**$ 501,138**
Financing Costs																						
Tax Exempt Principal		189,207	196,098	203,229	210,608	218,243	226,142	234,314	242,767	251,509	260,550	269,900	279,568	289,563	299,897	208,544						**$ 3,580,140**
Tax Exempt Interest		107,404	101,728	95,845	89,748	83,430	76,883	70,098	63,069	55,786	48,241	40,424	32,327	23,940	15,253	6,256						**$ 910,433**
Net Financing Costs	**$0.00**	**$296,612**	**$297,826**	**$299,074**	**$300,356**	**$301,673**	**$303,025**	**$304,412**	**$305,835**	**$307,295**	**$308,791**	**$310,324**	**$311,895**	**$313,504**	**$315,151**	**$214,800**	**$0**	**$0**	**$0**	**$0**	**$0**	**$ 4,490,573**
Total Costs	**$ -**	**$ 321,864**	**$ 323,519**	**$ 325,214**	**$ 326,952**	**$ 328,733**	**$ 330,556**	**$ 332,424**	**$ 334,336**	**$ 336,293**	**$ 338,296**	**$ 340,344**	**$ 342,440**	**$ 344,582**	**$ 346,773**	**$ 246,976**	**$ 32,739**	**$ 33,312**	**$ 33,895**	**$ 34,489**	**$ 35,094**	**$ 4,919,302**
Net Cash Flow	0	16,955	16,955	16,955	16,955	16,955	16,955	16,955	16,955	16,955	16,955	16,955	16,955	16,955	16,955	16,955	177,303	179,859	182,452	185,082	187,749	**$ 1,166,767**
Cumulative Cash Flow	0	16,955	33,910	50,864	67,819	84,774	101,729	118,683	135,638	152,593	169,548	186,503	203,457	220,412	237,367	254,322	431,625	611,484	793,936	979,018	1,166,767	

FOOTNOTES:

1 Rebates are not Guaranteed

2 See annual electric rate projection below.

Projected Utility Rate Increases	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Electricity	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%

AMERESCO

Green • Clean • Sustainable

City of Flagstaff
Project Overview

	Annual kWh	Annual $/kWh 2012*	Annual Electric Spent*	Solar kWdc	Solar kWh Year 1*	Solar Offset Year 1*	PPA $/kWh Offer*
Rio De Flag	1,876,400	$ 0.0882	$ 165,498.48	299.86	494,769	$ 43,638.63	$ 0.1180
Wildcat Expansion	1,689,840	$ 0.0851	$ 143,805.38	223.30	368,445	$ 31,354.67	$ 0.1180
Airport	410,410	$ 0.1103	$ 45,268.22	143.55	236,858	$ 26,125.38	$ 0.1410
Aquaplex	1,288,320	$ 0.0956	$ 123,163.39	261.58	431,607	$ 41,261.63	$ 0.1390

*Approximations

Solar Photovoltaic Financing Proposal

City of Flagstaff

Council Meeting

April 2, 2013

Background

- Contract awarded to Ameresco 3/15/2010 to provide solar services
- Phase 1 & 2
  - 862 kilowatts (kW)
  - Wildcat, City Hall, Aquaplex
  - PPA financing for 20 years
  - Installations not City owned; buyout available
  - Provides for level rate
  - Risk and maintenance on system owner
  - Overall breakeven projected

Phase 3

- Aquaplex – 270 kW
- Rio de Flag – 301 kW
- Wildcat – 231 kW
- Airport – 125 kW*
  - Total kW = 927
  - Without Airport = 802 kW

City Owned System

- Incentives retained by City
- 15 year term
- Estimated financed amount $2.9M - $3.6 M
- Estimated equipment life – 20 – 25 years
- 20 year positive cash flow $1.2M - $1.4M

Why Lease to Own?

- Taking advantage of low cost financing
- Removing 3rd party
- Higher APS incentives received ($0.12/kWh)
- No sales tax paid on energy generated
- Transfers risk back to City
  - O & M and insurance included in cash flow projections
- Changes to tax credit

RFP Responses

- 7 banks/lending institutions expressed interest
- 4 responded
  - 3 eligible for consideration
  - 1 disqualified as not responsive
  - 1 received late and was returned, sealed
  - 2 unable to meet terms of RFP

Scoring results

- **Bank of America – 2150 points**
- Green Campus Partners – 1917.5 points
- Holman Capital – 1810 points (disqualified as not responsive)
- Alliance Bank – 1765 points

Evaluation Criteria

- Experience and Qualifications – 10%
- Presented Approach – 30%
- Fixed Interest Rate – 50%
- References – 10%

Rated on a 0 – 5 scoring scale

Thank you! Questions?

- Amy Hagin, Procurement Specialist
  - 213-2276
- Nicole Woodman, Sustainability Manager
  - 213-2149
- Barbara Goodrich, Management Services Director
  - 213-2205

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Mike Gouhin, FHA Director
Date:	03/28/2013
Meeting Date:	04/02/2013

TITLE:

Consideration of Resolution No. 2013-05: Approval of the City of Flagstaff Housing Authority's Annual Plan

RECOMMENDED ACTION:

1) Read Resolution No. 2013-05 by title only
2) City Clerk reads Resolution No. 2013-05 (if approved above)
3) Adopt Resolution 2013-05

Policy Decision or Reason for Action:

Adoption of Resolution 2013-05 will provide approval of the City of Flagstaff Housing Authority's ("CFHA") Annual Plan and authorize submission of the Plan to the United States Department of Housing and Urban Development ("HUD") for the fiscal year beginning July 1, 2013.

Financial Impact:

Each year HUD provides Capital Funds to be used for operations, management improvements, administration, physical improvements to the public housing units and grounds, and maintenance equipment.

Connection to Council Goal:

Effective governance

Previous Council Decision on This:

Yes. Council approval is required each year prior to submission of the Annual Plan to HUD. Council approved the 2012-2013 Plan last year before its submission in April 2012.

Options and Alternatives:

I. Approve the CFHA Annual Plan
II. Amend and approve the CFHA Annual Plan

Background/History:

The Quality Housing and Work Responsibility Act of 1998 (QHWRA) requires the submission of a 5-Year Plan to HUD. Subsequent to the submission of the 5-Year Plan, HUD requires the submission of an Annual Plan containing any significant changes to the Goals and Objectives; progress reports of outstanding Capital Fund Program Grants; Capital Fund Grant for the fiscal year of the Annual Plan; and amendments to the Five Year Capital Fund Action Plan.

The 5-Year Plan was submitted in 2010 covering the fiscal years 2010 through 2014. The Annual Plan before Council is the fourth year of the 5-Year Plan for the fiscal year beginning July 1, 2013.

Each year HUD provides Capital Funds to be used for operations, management improvements, administration, physical improvements to public housing units and grounds, and maintenance equipment. CFHA has two years to commit and four years to expend the funds. Because of this, there could be two or three Capital Fund Programs running at the same time. It is also requires that a 5-Year Capital Fund Action Plan accompany the submission of the 5-Year Plan that is used to determine the use of Capital Funds for each of the subsequent Annual Plan Years. The Siler Resident Management Corporation, an Arizona non profit whose membership is all of the public housing residents, provides input on the use of the Capital Funds and recommends additional needs.

The Annual Plan need to be approved by the City Coundil and submitted to HUD by no later than April 17, 2013.

Key Considerations:

Section 10.0 of the 5-Year Plan, Strategy for Addressing Housing Needs, sets forth the CFHA's eight goals which include working with the City's Land Trust to provide additional houisng (Goal Four), working with the Guidance Center to plan additional housing for the homeless seriously mentally ill (Goal Seven), and continuing to partner with the Guidance Center to apply for additional Seriously Mentally Ill Section 8 special purpose funding (Goal Eight). There are no significant changes to the goals and objectives originally submitted in the 2010 5-Year Plan.

CFHA has one open Capital Fund Program from 2012. $360,994 was awarded by HUD on February 10, 2012. The funds must be obligated by March 12, 2014 and expended by March 12, 2016.

Fiscal Year 2013 Capital Funds have not yet been determined by HUD but it is estimated the amount will be approximately $360,000.

Expanded Financial Considerations:

There are no General Fund monies involved in the Plan. The use of Capital Funds was explained in Key Considerations, and in Community Benefits and Considerations. In addition, the Capital Funds are being used for energy conservation and green retrofit items that will reduce energy costs.

Community Benefits and Considerations:

The QHWRA was adopted by Congress to improve the living environment of Public Housing Residents. The Capital Fund Program is used to improve the Public Housing Units for comfort, safety and energy efficiency. The use of the FY2012 Captial Funds are as follows:

Physical Improvements:

Roof Replacement on 47 units at Brannen Homes	$141,000
Parking Lot Repairs at Siler Homes	$ 81,697

Management Improvements:

Operation - 20%	$ 72,198
Managemetn Imrovements (Visioning Training, Software IT)	$ 30,000
Administration - 10% of grant	$ 36,099

Although the FY2013 Capital Fund Program has not been determined by HUD suggested uses of funds that will be available are to begin a kitchen faucet replacement program; replace damaged countertops as needed; paint kitchen cupboards; additional roof replacement; water line upgrades; replace office and maintenance computers and printers.

Community Involvement:

Inform

The Public Housing Residents are kept informed of unit improvements through the Siler Resident Management Corporation (SRMC), monthly housing authority newsletters, and resident meetings.

The QHWRA requires resident participation through a Resident Advisory Board (RAB). Since the SRMC represents all of the Public Housing Residents they are considered the RAB and provide necessary input.

Attachments: agendaitem_537

RESOLUTION NO. 2013-05

A RESOLUTION APPROVING THE CITY OF FLAGSTAFF HOUSING AUTHORITY'S ANNUAL PLAN AND AUTHORIZING ITS SUBMISSION TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RECITALS:

WHEREAS, the Flagstaff City Council is committed to the welfare of its low-income residents; and

WHEREAS, the Quality Housing and Work Responsibility Act of 1998 requires the Housing Authority of the City of Flagstaff submit a 5-year Plan to the United States Department of Housing and Urban Development ('HUD'); and

WHEREAS, the 5-year Plan was submitted to HUD in 2010; and

WHEREAS, HUD requires the submission of an Annual Plan containing status updates and any significant changes to the Goals and Objectives; progress reports of outstanding Capital Fund Program Grants; Capital Fund Grant for the fiscal year of the Annual Plan; and amendments to the Five Year Capital Fund Action Plan; and

WHEREAS, the Board of Commissioners of the City's Housing Authority reviewed and approved the Annual Plan; and

WHEREAS, the Flagstaff City Council reviewed the Annual Plan.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the City of Flagstaff Housing Authority's 2013-2014 Annual Plan is approved.

SECTION 2. That the City of Flagstaff Housing Authority is authorized to submit the Annual Plan to HUD.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this _____day of _____, 2013.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

NOTICE OF PUBLIC HEARING CITY OF FLAGSTAFF HOUSING AUTHORITY

FISCAL YEAR 2013 ANNUAL PLAN

The City of Flagstaff Housing Authority is developing its Fiscal Year 2013 Annual Public Housing Agency Plan for the period July 1, 2013 to June 30, 2014 in accordance with the Quality Housing and Work Responsibility Act of 1998. The draft Plan will be available for review beginning March 1, 2013 at the City of Flagstaff Housing Authority, 3481 N. Fanning Dr., Flagstaff, AZ. The Authority's hours of operation are 8:00 a.m. to 5:00 p.m., Monday through Friday. Anyone wishing to comment on the Plan must provide written comments with name and address so that the Authority can respond to any and all comments.

In addition, a public hearing will be held on Tuesday, March 19, 2013 at 5:00 p.m. in the Conference/Board Room of the City of Flagstaff Housing Authority, 3481 N. Fanning Dr., Flagstaff, AZ 86004.

For anyone needing special accommodations, please contact Michael A. Gouhin, Executive Director, at (928) 526-0002X213 at least three business days prior to the public hearing.

PHA 5-Year and Annual Plan	U.S. Department of Housing and Urban Development Office of Public and Indian Housing	OMB No. 2577-0226 Expires 4/30/2011

1.0 PHA Information

PHA Name: CITY OF FLAGSTAFF HOUSING AUTHORITY PHA Code: AZ006

PHA Type: ☐ Small ☒ High Performing ☐ Standard ☐ HCV (Section 8)

PHA Fiscal Year Beginning: (MM/YYYY): 07/2013

2.0 Inventory (based on ACC units at time of FY beginning in 1.0 above)

Number of PH units: 265 Number of HCV units: 358

3.0 Submission Type

☐ 5-Year and Annual Plan ☒ Annual Plan Only ☐ 5-Year Plan Only

4.0 PHA Consortia ☐ PHA Consortia: (Check box if submitting a joint Plan and complete table below.)

Participating PHAs	PHA Code	Program(s) Included in the Consortia	Programs Not in the Consortia	No. of Units in Each Program	
				PH	HCV
PHA 1:					
PHA 2:					
PHA 3:					

5.0 5-Year Plan. Complete items 5.1 and 5.2 only at 5-Year Plan update.

5.1 Mission. State the PHA's Mission for serving the needs of low-income, very low-income, and extremely low income families in the PHA's jurisdiction for the next five years:

N/A for Annual Plan

5.2 Goals and Objectives. Identify the PHA's quantifiable goals and objectives that will enable the PHA to serve the needs of low-income and very low-income, and extremely low-income families for the next five years. Include a report on the progress the PHA has made in meeting the goals and objectives described in the previous 5-Year Plan.

Goal Six, Objective 2 has been accomplished. Objective 2 now reads: Maintain our web page so that the public has access to the history of the Flagstaff Housing Authority and the programs that are available. The web page has been incorporated into the City of Flagstaff web site. The web site also includes information on the Siler Resident Management Corporation explaining their purpose and contact information.

PHA Plan Update

(a) Identify all PHA Plan elements that have been revised by the PHA since its last Annual Plan submission:

Section 10.2, Assignment of Bedroom Size, and Section 11.2 (14) Income Exclusions, of the ACOP were amended in October 2012.

Section 9.3, Exclusions From Income, of the Section 8 Administrative Plan was amended in January 2013.

(b) Identify the specific location(s) where the public may obtain copies of the 5-Year and Annual PHA Plan. For a complete list of PHA Plan elements, see Section 6.0 of the instructions.

The public may obtain a copy of the 5-Year/Annual Plan at the Flagstaff Housing Authority, 3481 N. Fanning Dr., Flagstaff, AZ 86004. The PHA Plans are posted at the Flagstaff Housing Authority Central Office, 3481 N. Fanning Dr., Flagstaff, AZ 86004; Brannen Homes Office, One Brannen Circle, Flagstaff, AZ 86001; and the Siler Resident Management Corporation, 3330 Elder, Flagstaff, AZ 86004.

PHA Plan Elements:

Financial Resources:

6.0

• Public Housing Operating Fund	680,000	PH Operations
• Section 8 Housing Choice Vouchers	3,250,000	HAP & Administration
• Capital Fund 112	68,000	PH Operations
• Capital Fund 112	223,000	Capital Improvements
• Capital Fund 113	97,500	PH Operations
• Capital Fund 113	195,000	Capital Improvements
• Public Housing Dwelling Rental Income	900,000	PH Operations
• Other Income – Resident Charges	40,000	PH Operations
• Port Fees Earned/Misc	10,000	S8 HCV Administration
• Non-Profit Management Fee	42,000	PH Operations
• ROSS Grant	64,000	PH Operations
• SRO Mod Rehab	70,000	HAP & Administration
Total Resources	**5,811,500**	

Violence Against Women Act (VAWA
VAWA PROTECTIONS:
Under the Violence Against Women Act (VAWA), public housing residents have the following specific protections, which will be observed by the City of Flagstaff Housing Authority.
An incident or incidents or actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence, and shall not in itself be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.
The Housing Authority may terminate the assistance to remove a lawful occupant or tenant who engages in criminal acts or threatened acts of violence or stalking to family members or others without terminating the assistance or evicting victimized lawful occupants. This is also true even if the household member is not a signatory to the lease. Under VAWA, the City of Flagstaff Housing Authority is granted the authority to bifurcate the lease.
The Housing Authority will honor court orders regarding the rights of access or control of the property.
There is no limitation on the ability of the Housing Authority to evict for other good cause unrelated to the incident or incidents of domestic violence, dating violence or stalking, other than the victim may not be subject to a "more demanding standard" than non-victims.
There is no prohibition on the Housing Authority evicting if it "can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's (victim's) tenancy is not terminated. ***An actual and imminent threat consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.***
The City of Flagstaff Housing Authority shall require verification in all cases where an individual claims protection against an action involving such individual proposed to be taken by the Housing Authority. Types of acceptable verifications are outlined below, and must be submitted within 14 business days after receipt of the Housing Authority's written request for verifications.
VERIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE OR STALKING
The City of Flagstaff Housing Authority shall require verification in all cases where an individual claims protection against an action involving such individual proposed to be taken by the Housing Authority.

A. **REQUIREMENTS FOR VERIFICATION.** The law allows, but does not require, the City of Flagstaff Housing Authority to verify than an incident or incidents of actual or threatened domestic violence, dating violence, or stalking claimed by a tenant or other lawful occupant is bona fide and meets the requirements of the applicable definitions set forth in the policy. The Housing Authority shall require verification in all cases where an individual claims protection against an action involving such individual proposed to be taken by the Housing Authority.
Verification of a claimed incident or incidents of actual or threatened domestic violence, dating violence, or stalking may be accomplished in one of the following three ways:
1. **HUD-approved form (HUD-50066)** – By providing to the Housing Authority a written certification, on the form approved by

HUD, that the individual is a victim of domestic violence, dating violence or stalking that the incident or incidents in question are bona fide incidents or actual or threatened abuse meeting the requirements of the applicable definition(s) set forth in this policy. The incident or incidents in question may be described in reasonable detail as required in the HUD-approved form, and the completed certification must include the name of the perpetrator.

2. **Other Documentation** – by providing to the Housing Authority documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing the domestic violence, dating violence or stalking, or the effects of the abuse, described in such documentation. The professional providing the documentation must sign and attest under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse meeting the requirements of the applicable definition(s) set forth in this policy. The victim of the incident or incidents of domestic violence, dating violence or stalking described in the documentation must also sign and attest to the documentation under penalty of perjury.
3. **Police or court record** - by providing to the Housing Authority a Federal, State, tribal, territorial, or local police or court record describing the incident or incidents in question.
4. ***The submission of false information maybe the basis for termination of assistance or for eviction.***

B. **TIME ALLOWED TO PROVIDE VERIFICATION/FAILURE TO PROVIDE.** An individual who claims protection against adverse action based on an incident or incidents of actual or threatened domestic violence, dating violence or stalking, and who is requested by the Housing Authority to provide verification, must provide such verification within 14 business days after receipt of the written request for verification. Failure to provide verification, in proper form within such time will result in loss of protection under VAWA and this policy against a proposed adverse action.

C. ***MANAGING CONFLICTING DOCUMENTATION. In cases where the Housing Authority receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the Housing Authority may determine which is the true victim by requiring third-party documentation as described in 24 CFR 5.2007 and in accordance with any HUD guidance as to how such determinations will be made. The Housing Authority shall honor any court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household.***

D. **CONFIDENTIALITY** – All information provided under VAWA including the fact that an individual is a victim of domestic violence, dating violence or stalking shall be retained in confidence and shall not be entered into any shared database or provided to any related entity except to the extent that the disclosure is:

1. Requested or consented to by the individual in writing;
2. Required for use in an eviction proceeding; or
3. Otherwise required by applicable law.

The City of Flagstaff Housing Authority shall provide its tenants notice of their rights under VAWA including their right to confidentiality and the limits thereof.

7.0

6.0.11 Fiscal Year Audit

There were no audit findings or recommendations.

Hope VI, Mixed Finance Modernization or Development, Demolition and/or Disposition, Conversion of Public Housing, Homeownership Programs, and Project-based Vouchers. *Include statements related to these programs as applicable.*

N/A

8.0 **Capital Improvements.** Please complete Parts 8.1 through 8.3, as applicable.

8.1 **Capital Fund Program Annual Statement/Performance and Evaluation Report.** As part of the PHA 5-Year and Annual Plan, annually complete and submit the *Capital Fund Program Annual Statement/Performance and Evaluation Report*, form HUD-50075.1, for each current and open CFP grant and CFFP financing.

8.2 **Capital Fund Program Five-Year Action Plan.** As part of the submission of the Annual Plan, PHAs must complete and submit the *Capital Fund Program Five-Year Action Plan*, form HUD-50075.2, and subsequent annual updates (on a rolling basis, e.g., drop current year, and add latest year for a five year period). Large capital items must be included in the Five-Year Action Plan.

8.3 **Capital Fund Financing Program (CFFP).**
☐ Check if the PHA proposes to use any portion of its Capital Fund Program (CFP)/Replacement Housing Factor (RHF) to repay debt incurred to finance capital improvements.

9.0 **Housing Needs**. Based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data, make a reasonable effort to identify the housing needs of the low-income, very low-income, and extremely low-income families who reside in the jurisdiction served by the PHA, including elderly families, families with disabilities, and households of various races and ethnic groups, and other families who are on the public housing and Section 8 tenant-based assistance waiting lists. The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location.

This section is only for the Annul Plan submitted in 2010 and not due until 2015.

9.1	**Strategy for Addressing Housing Needs**. Provide a brief description of the PHA's strategy for addressing the housing needs of families in the jurisdiction and on the waiting list in the upcoming year. **Note: Small, Section 8 only, and High Performing PHAs complete only for Annual Plan submission with the 5-Year Plan.** **Our 5-Year Plan was submitted in 2010 and is not due until 2015**
10.0	**Additional Information**. Describe the following, as well as any additional information HUD has requested. (a) Progress in Meeting Mission and Goals. Provide a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year Plan. **CFHA is a High Performer and is required only to submit this in the 5-Year Plan which was submitted in 2010.** (b) Significant Amendment and Substantial Deviation/Modification. Provide the PHA's definition of "significant amendment" and "substantial deviation/modification" 1. **"Substantial Deviation:** from the 5-Year/Annual Plan is an overall change in the direction of the FHA pertaining to Goals and Objectives. This includes changing the Authority's Goals and Objectives. 2. **"Significant Amendment or Modification" to the Annual Plan** is a change in policy of policies pertaining to the operation of FHA. This includes the following: • Changes to rent or admissions policies or organizing the waiting list. • Addition of non-emergency work items (items not included in the current Annual Statement or 5-Year Plan) or change in use of replacement reserve funds under the Capital Fund. • Any changes with regard to demolition or disposition, designation, homeownership programs or conversion activities.

11.0	**Required Submission for HUD Field Office Review**. In addition to the PHA Plan template (HUD-50075), PHAs must submit the following documents. Items (a) through (g) may be submitted with signature by mail or electronically with scanned signatures, but electronic submission is encouraged. Items (h) through (i) must be attached electronically with the PHA Plan. **Note:** Faxed copies of these documents will not be accepted by the Field Office. (a) Form HUD-50077, *PHA Certifications of Compliance with the PHA Plans and Related Regulations* (which includes all certifications relating to Civil Rights) (b) Form HUD-50070, *Certification for a Drug-Free Workplace* (PHAs receiving CFP grants only) (c) Form HUD-50071, *Certification of Payments to Influence Federal Transactions* (PHAs receiving CFP grants only) (d) Form SF-LLL, *Disclosure of Lobbying Activities* (PHAs receiving CFP grants only) (e) Form SF-LLL-A, *Disclosure of Lobbying Activities Continuation Sheet* (PHAs receiving CFP grants only) (f) Resident Advisory Board (RAB) comments. Comments received from the RAB must be submitted by the PHA as an attachment to the PHA Plan. PHAs must also include a narrative describing their analysis of the recommendations and the decisions made on these recommendations. (g) Challenged Elements **"NO CHALLENGED ELEMENTS FROM RAB"** (h) Form HUD-50075.1, *Capital Fund Program Annual Statement/Performance and Evaluation Report* (PHAs receiving CFP grants only) (i) Form HUD-50075.2, *Capital Fund Program Five-Year Action Plan* (PHAs receiving CFP grants only)

Annual Statement/Performance and Evaluation Report
Capital Fund Program, Capital Fund Program Replacement Housing Factor and
Capital Fund Financing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB No. 2577-0226
Expires 4/30/2011

Part I: Summary

PHA Name: FLAGSTAFF	**Grant Type and Number** Capital Fund Program Grant No: AZ20P00650112 Replacement Housing Factor Grant No: Date of CFFP:	**FFY of Grant: 2012** **FFY of Grant Approval: 2012**

Type of Grant
☐ **Original Annual Statement** ☐ **Reserve for Disasters/Emergencies** ☐ **Revised Annual Statement (revision no:)**
☒ **Performance and Evaluation Report for Period Ending: 03/31/2013** ☐ **Final Performance and Evaluation Report**

Line	Summary by Development Account	Total Estimated Cost		Total Actual Cost [1]	
		Original	Revised[2]	Obligated	Expended
1	Total non-CFP Funds				
2	1406 Operations (may not exceed 20% of line 21) [3]	72,198		72,198	-0-
3	1408 Management Improvements	30,000		15,800	1,064
4	1410 Administration (may not exceed 10% of line 21)	36,099		36,099	4,000
5	1411 Audit				
6	1415 Liquidated Damages				
7	1430 Fees and Costs				
8	1440 Site Acquisition				
9	1450 Site Improvement	81,697		-0-	-0-
10	1460 Dwelling Structures	141,000		-0-	-0-
11	1465.1 Dwelling Equipment—Nonexpendable				
12	1470 Non-dwelling Structures				
13	1475 Non-dwelling Equipment				
14	1485 Demolition				
15	1492 Moving to Work Demonstration				
16	1495.1 Relocation Costs				
17	1499 Development Activities [4]				

[1] To be completed for the Performance and Evaluation Report.

[2] To be completed for the Performance and Evaluation Report or a Revised Annual Statement.
[3] PHAs with under 250 units in management may use 100% of CFP Grants for operations.
[4] RHF funds shall be included here.

Annual Statement/Performance and Evaluation Report
Capital Fund Program, Capital Fund Program Replacement Housing Factor and
Capital Fund Financing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB No. 2577-0226
Expires 4/30/2011

Part I: Summary

PHA Name: FLAGSTAFF	**Grant Type and Number** Capital Fund Program Grant No: AZ20P00650112 Replacement Housing Factor Grant No: Date of CFFP:	**FFY of Grant:2012** **FFY of Grant Approval: 2012**

Type of Grant

☐ **Original Annual Statement** ☐ **Reserve for Disasters/Emergencies** ☐ **Revised Annual Statement (revision no:)**

☒ **Performance and Evaluation Report for Period Ending: 03/31/2013** ☐ **Final Performance and Evaluation Report**

Line	Summary by Development Account	Total Estimated Cost		Total Actual Cost [1]	
		Original	Revised [2]	Obligated	Expended
18a	1501 Collateralization or Debt Service paid by the PHA				
18ba	9000 Collateralization or Debt Service paid Via System of Direct Payment				
19	1502 Contingency (may not exceed 8% of line 20)				
20	Amount of Annual Grant:: (sum of lines 2 - 19)	360,994		124,097	5,064
21	Amount of line 20 Related to LBP Activities				
22	Amount of line 20 Related to Section 504 Activities				
23	Amount of line 20 Related to Security - Soft Costs				
24	Amount of line 20 Related to Security - Hard Costs				
25	Amount of line 20 Related to Energy Conservation Measures	141,000	-0-	-0-	-0-

Signature of Executive Director	**Date**	**Signature of Public Housing Director**	**Date**

[1] To be completed for the Performance and Evaluation Report.
[2] To be completed for the Performance and Evaluation Report or a Revised Annual Statement.
[3] PHAs with under 250 units in management may use 100% of CFP Grants for operations.
[4] RHF funds shall be included here.

Annual Statement/Performance and Evaluation Report
Capital Fund Program, Capital Fund Program Replacement Housing Factor and
Capital Fund Financing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB No. 2577-0226
Expires 4/30/2011

Part II: Supporting Pages

PHA Name: FLAGSTAFF	**Grant Type and Number** Capital Fund Program Grant No: AZ20P00650112 CFFP (Yes/ No): Replacement Housing Factor Grant No:	**Federal FFY of Grant: 2012**

Development Number Name/PHA-Wide Activities	General Description of Major Work Categories	Development Account No.	Quantity	Total Estimated Cost		Total Actual Cost		Status of Work
				Original	Revised [1]	Funds Obligated[2]	Funds Expended[2]	
PHA-WIDE	OPERATIONS	1406		72,198		72,198	-0-	In Process
PHA-WIDE	MANAGEMENT IMPROVEMENTS	1408		30,000		15,800	1,064	In Process
PHA-WIDE	ADMINISTRATION	1410		36,099		36,099	4,000	In Process
AZ006000001	ROOF REPLACEMENT	1460	47	141,000		-0-	-0-	In Process
AZ006000002	PARKING LOT REPAIR	1450		81,697		-0-	-0-	In Process

[1] To be completed for the Performance and Evaluation Report or a Revised Annual Statement.

[2] To be completed for the Performance and Evaluation Report.

Annual Statement/Performance and Evaluation Report
Capital Fund Program, Capital Fund Program Replacement Housing Factor and
Capital Fund Financing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB No. 2577-0226
Expires 4/30/2011

Part III: Implementation Schedule for Capital Fund Financing Program					
PHA Name: FLAGSTAFF					**Federal FFY of Grant: 2012**
Development Number Name/PHA-Wide Activities	All Fund Obligated (Quarter Ending Date)		All Funds Expended (Quarter Ending Date)		Reasons for Revised Target Dates [1]
	Original Obligation End Date	Actual Obligation End Date	Original Expenditure End Date	Actual Expenditure End Date	
HA-WIDE	03/12/2014		03/12/2016		
AZ006000001	03/12/2014		03/12/2016		
AZ006000002	03/12/2014		03/12/2016		

[1] Obligation and expenditure end dated can only be revised with HUD approval pursuant to Section 9j of the U.S. Housing Act of 1937, as amended.

Annual Statement/Performance and Evaluation Report
Capital Fund Program, Capital Fund Program Replacement Housing Factor and
Capital Fund Financing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB No. 2577-0226
Expires 4/30/2011

Part I: Summary

PHA Name: FLAGSTAFF	**Grant Type and Number** Capital Fund Program Grant No: AZ20P00650113 Replacement Housing Factor Grant No: Date of CFFP:	**FFY of Grant: 2013** **FFY of Grant Approval: 2013**

Type of Grant
☒ **Original Annual Statement** ☐ **Reserve for Disasters/Emergencies** ☐ **Revised Annual Statement (revision no:)**
☐ **Performance and Evaluation Report for Period Ending:** ☐ **Final Performance and Evaluation Report**

Line	Summary by Development Account	Total Estimated Cost		Total Actual Cost [1]	
		Original	Revised[2]	Obligated	Expended
1	Total non-CFP Funds				
2	1406 Operations (may not exceed 20% of line 21)	72,000			
3	1408 Management Improvements	30,000			
4	1410 Administration (may not exceed 10% of line 21)	36,000			
5	1411 Audit				
6	1415 Liquidated Damages				
7	1430 Fees and Costs				
8	1440 Site Acquisition				
9	1450 Site Improvement				
10	1460 Dwelling Structures	133,000			
11	1465.1 Dwelling Equipment—Nonexpendable				
12	1470 Non-dwelling Structures	45,000			
13	1475 Non-dwelling Equipment	44,000			
14	1485 Demolition				
15	1492 Moving to Work Demonstration				
16	1495.1 Relocation Costs				
17	1499 Development Activities [4]				

[1] To be completed for the Performance and Evaluation Report.
[2] To be completed for the Performance and Evaluation Report or a Revised Annual Statement.
[3] PHAs with under 250 units in management may use 100% of CFP Grants for operations.
4 RHF funds shall be included here.

Annual Statement/Performance and Evaluation Report
Capital Fund Program, Capital Fund Program Replacement Housing Factor and
Capital Fund Financing Program

U.S. Department of Housing and Urban Development
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Part I: Summary

PHA Name: FLAGSTAFF	**Grant Type and Number** Capital Fund Program Grant No: AZ20P00650113 Replacement Housing Factor Grant No: Date of CFFP:	**FFY of Grant:2013** **FFY of Grant Approval: 2013**

Type of Grant

☒ **Original Annual Statement** ☐ **Reserve for Disasters/Emergencies** ☐ **Revised Annual Statement (revision no:)**

☐ **Performance and Evaluation Report for Period Ending:** ☐ **Final Performance and Evaluation Report**

Line	Summary by Development Account	Total Estimated Cost		Total Actual Cost [1]	
		Original	Revised [2]	Obligated	Expended
18a	1501 Collateralization or Debt Service paid by the PHA				
18ba	9000 Collateralization or Debt Service paid Via System of Direct Payment				
19	1502 Contingency (may not exceed 8% of line 20)				
20	Amount of Annual Grant:: (sum of lines 2 - 19)	360,000			
21	Amount of line 20 Related to LBP Activities				
22	Amount of line 20 Related to Section 504 Activities				
23	Amount of line 20 Related to Security - Soft Costs				
24	Amount of line 20 Related to Security - Hard Costs				
25	Amount of line 20 Related to Energy Conservation Measures	179,000			

Signature of Executive Director	**Date**	**Signature of Public Housing Director**	**Date**

[1] To be completed for the Performance and Evaluation Report.
[2] To be completed for the Performance and Evaluation Report or a Revised Annual Statement.
[3] PHAs with under 250 units in management may use 100% of CFP Grants for operations.
[4] RHF funds shall be included here.

Annual Statement/Performance and Evaluation Report
Capital Fund Program, Capital Fund Program Replacement Housing Factor and
Capital Fund Financing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
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Expires 4/30/2011

Part II: Supporting Pages

PHA Name: FLAGSTAFF	**Grant Type and Number** Capital Fund Program Grant No: AZ20P00650113 CFFP (Yes/ No): Replacement Housing Factor Grant No:	**Federal FFY of Grant: 2013**

Development Number Name/PHA-Wide Activities	General Description of Major Work Categories	Development Account No.	Quantity	Total Estimated Cost		Total Actual Cost		Status of Work
				Original	Revised [1]	Funds Obligated[2]	Funds Expended[2]	
PHA-WIDE	OPERATIONS	1406		72,000				
PHA-WIDE	MANAGEMENT IMPROVEMENTS	1408		30,000				
PHA-WIDE	ADMINISTRATION	1410		36,000				
PHA-WIDE	REPLACE COMPUTERS/PRINTERS	1475		43,000				
AZ006000001	REPLACE KITCHEN SINKS, FAUCETS AND COUNTERTOPS 6-3	1460	40	16,000				
	REPLACE KITCHEN FAUCETS	1460	87	7,000				
AZ006000002	REPLACE KITCHEN FAUCETS	1460	100	8,000				
	REPAIR/REPLACE ROOFS	1460	25	103,000				
	REPLACE SILER OFFICE AND VAN SICKLE COMMUNITY BLDG ROOF	1470		45,000				

[1] To be completed for the Performance and Evaluation Report or a Revised Annual Statement
[2] To be completed for the Performance and Evaluation Report.

Annual Statement/Performance and Evaluation Report
Capital Fund Program, Capital Fund Program Replacement Housing Factor and
Capital Fund Financing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB No. 2577-0226
Expires 4/30/2011

Part III: Implementation Schedule for Capital Fund Financing Program					
PHA Name: FLAGSTAFF					**Federal FFY of Grant: 2013**
Development Number Name/PHA-Wide Activities	All Fund Obligated (Quarter Ending Date)		All Funds Expended (Quarter Ending Date)		Reasons for Revised Target Dates [1]
	Original Obligation End Date	Actual Obligation End Date	Original Expenditure End Date	Actual Expenditure End Date	
HA-WIDE	06/30/2015		06/30/2017		
AZ006000001	06/30/2015		06/30/2017		
AZ006000002	06/30/2015		06/30/2017		

[1] Obligation and expenditure end dated can only be revised with HUD approval pursuant to Section 9j of the U.S. Housing Act of 1937, as amended.

PART I: SUMMARY

PHA Name/Number FLAGSTAFF AZ006			Locality FLAGSTAFF, COCONINO, AZ		☐Original 5-Year Plan ☒Revision No: 3	
A.	Development Number and Name AZ006000001	Work Statement for Year 1 FFY 2013	Work Statement for Year 2 FFY 2014	Work Statement for Year 3 FFY 2015	Work Statement for Year 4 FFY 2016	Work Statement for Year 5 FFY 2017
B	Physical Improvements Subtotal	Annual Statement	60.900			120.000
C.	Management Improvements					
D.	PHA-Wide Non-dwelling Structures and Equipment					
E	***ADMINISTRATION***					
F.	Other					
G.	Operations					
H.	Demolition					
I.	Development					
J.	Capital Fund Financing – Debt Service					
K.	Total CFP Funds		60.900	-0-	-0-	120.000
L.	Total Non-CFP Funds					
M.	Grand Total		60.900	-0-	-0-	120.000

PART I: SUMMARY (CONTINUATION)

PHA Name/Number FLAGSTAFF AZ006			Locality FLAGSTAFF, COCONINO, AZ		☐Original 5-Year Plan ☒Revision No: 3	
A.	Development Number and Name AZ006000002	Work Statement for Year 1 FFY 2013	Work Statement for Year 2 FFY 2014	Work Statement for Year 3 FFY 2015	Work Statement for Year 4 FFY 2016	Work Statement for Year 5 FFY 2017
	Physical Improvements	Annual Statement	315,000	51,500	262,500	
	Management Improvements					
	TOTAL CFP FUNDS		315,000	51,500	262,500	
	HA-WIDE					
	Physical Improvements		220,000	391,500		
	Administration		50,000	50,000	50,000	50,000
	Operations		90,000	90,000	90,000	90,000
	Management Improvements		30,000	30,000	46,000	30,000
	TOTAL CFP FUNDS		390,000	561,500	186,000	170,000

Part II: Supporting Pages – Physical Needs Work Statement(s)

Work Statement for Year 1 FFY 2013	Work Statement for Year 2 FFY 2014			Work Statement for Year: 3 FFY 2015		
	Development Number/Name General Description of Major Work Categories	Quantity	Estimated Cost	Development Number/Name General Description of Major Work Categories	Quantity	Estimated Cost
	HA-WIDE			***HA-WIDE***		
Statement						
	Water Line Upgrade		120,000	Replace Stoves/Refrigerators	265	291,500
	Replace/Paint Siding		100,000	Repair/Paint Siding		100,000
	AZ006000001			**AZ006000001**		
	Replace Kitchen Counter Tops	87	60,900			
	AZ006000002			**AZ006000002**		
	Replace Roofing	75 units	315,000	Repair/Replace Parking at Dortha, East, Lockett		51,500
	Subtotal of Estimated Cost		595,900	Subtotal of Estimated Cost		443,000

Part II: Supporting Pages – Physical Needs Work Statement(s)

Work Statement for Year 1 FFY __2013____	Work Statement for Year _____4_____ FFY 2016			Work Statement for Year: _____5_____ FFY 2017_____		
	Development Number/Name General Description of Major Work Categories	Quantity	Estimated Cost	Development Number/Name General Description of Major Work Categories	Quantity	Estimated Cost
	HA-WIDE			**HA-WIDE**		
Statement						
	AZ006000002					
	Replace Roofing	100	262,500			
				AZ006000001		
				Replace Roofing	40	120,000
	Subtotal of Estimated Cost		262,500	Subtotal of Estimated Cost		120,000

Part III: Supporting Pages – Management Needs Work Statement(s)

Work Statement for Year 1 FFY 2013	Work Statement for Year 2 FFY 2014		Work Statement for Year: 3 FFY 2015	
	Development Number/Name General Description of Major Work Categories	Estimated Cost	Development Number/Name General Description of Major Work Categories	Estimated Cost
Statement				
	HA-WIDE		HA-WIDE	
	Annual Software Maintenance Agreement	13,500	Annual Software Maintenance Agreement	13,500
	Annual Software Cloud Agreement	9,600	Annual Software Cloud Agreement	9,600
	Annual Software Training	6,900	Annual Software Training	6,900
	Subtotal of Estimated Cost	30,000	Subtotal of Estimated Cost	30,000

Part III: Supporting Pages – Management Needs Work Statement(s)

Work Statement for Year 1 FFY __2013____	Work Statement for Year _____4_____ FFY __2016_____		Work Statement for Year: ____5_____ FFY ____2017_____	
	Development Number/Name General Description of Major Work Categories	Estimated Cost	Development Number/Name General Description of Major Work Categories	Estimated Cost
Statement				
	HA-WIDE		HA-WIDE	
	Annual Software Maintenance Agreement	13,500	Annual Software Maintenance Agreement	13,500
	Annual Software Cloud Agreement	9,600	Annual Software Cloud Agreement	9,600
	Annual Software Training	6,900	Annual Software Training	6,900
	Replace Phone System	16,000		
	Subtotal of Estimated Cost	46,000	Subtotal of Estimated Cost	30,000

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Michelle D'Andrea, Deputy City Attorney
Date:	03/28/2013
Meeting Date:	04/02/2013

TITLE:

Authorization for Legal Action: Against American Contractor's Indemnity Company (ACIC) to enforce the provisions of the Presidio in the Pines landscaping bond.

RECOMMENDED ACTION:

Authorize the Interim City Attorney to bring a legal action against American Contractor's Indemnity Company (ACIC) to enforce the provisions of the Presidio in the Pines landscaping bond.

Policy Decision or Reason for Action:

This will be discussed in Executive Session on March 26, 2013.

Financial Impact:

The City will incurr legal fees, but may be able to recover them. This will be discussed in Executive Session on March 26, 2013.

Connection to Council Goal:

This lawsuit is connected to the Council goal of effective governance.

Previous Council Decision on This:

This will be discussed in Executive Session on March 26, 2013.

Options and Alternatives:

This will be discussed in Executive Session on March 26, 2013.

Background/History:

The City required the former developer of Presidio in the Pines subdivision to post a landscaping bond at the time that the subdivision plat was recorded. The former developer purchased the required bond from ACIC. After the former developer defaulted on the project, the City called the landscape bond . ACIC has acknowledged that it is liable to the City under the bond and has partially performed under the bond but is now refusing to pay on the bond or construct the landscaping. The lawsuit will demand payment on the remainder of the bond ($1,390,100) or construction of the landscaping.

Attachments:

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Paul Summerfelt, Wildland Fire Manager

Date: 03/28/2013

Meeting Date: 04/02/2013

TITLE:

Consideration and Approval of Agreement: With State of Arizona (Forestry and Land Board) for Flagstaff Watershed Protection Project (FWPP).

RECOMMENDED ACTION:

Approve the Agreement, to include signature of Mayor.

Policy Decision or Reason for Action:

This agreement initiates, on State of AZ lands within the City boundary, the planning, operations, and monitoring required to successfully implement forest treatments, per Forest Bond #405 as approved by 73.6% of the voters in the Nov 2012 general election. This Agreement has been jointly developed by City - State of AZ (State Forestry and Land Dept).

Specifics of this Agreement include:

- Joint efforts that will reduce the risk of severe wildfire and protect critical watersheds;
- Identification of State Forestry as the lead State agency;
- Development and mutual approval of a one-time *Summary of Current Conditions* (SCC) report by June 30th, 2013. The SCC will identify what treatments are required on each parcel to reduce wildfire risk and protect watersheds, to include maps, acres, and priority of treatment;
- For the duration of the Agreement, the annual development of a mutually-agreed upon *Annual Work Plan* (AWP), based upon the result of the SCC. The AWP will detail what activity(s) will occur on what parcels in that given year, to include costs, work force, and responsible party. The first AWP - FY14 - will be due July 31st, 2013;
- At the end of each calendar year, the development of an *Adaptive Management Review* (AMR), designed to identify challenges, opportunities, accomplishments, and means to improve operational aspects of this Agreement; and
- Principal contacts for both the City and State Forestry.

Financial Impact:

The Agreement does not obligate the City to expend any of the voter-approved $10 million bond funds. It simply sets the framework for future obligation for specific activities through the mutually-agreed upon AWP, which will be developed each year the Agreement is in-force. The AWP will be based upon the SCC report identified previously.

The first AWP will be developed by July 31st, 2013.

Connection to Council Goal:

The Flagstaff Watershed Protection Project (FWPP) - Forest Bond #405 - intersects with the following Council Goals:

4. Complete Rio de Flag;
5. Retain, expand, and diversify economic base;
6. Complete Water Policy; and
11. Effective governance.

In addition, the FWPP seeks to improve public safety by reducing the threat of destructive wildfire and it's secondary effects, and leverage our impact and funds by engaging the public and key partners in addressing the threat, restoring our forests, and ensuring community well-being.

Has There Been Previous Council Decision on This:

In July 2012, Council approved this measure for the Nov 2012 general election ballot. The measure was subsequently approved by the voters with a 73.6% Yes vote. In Jan 2013, Council approved three agreements with the US Forest Service for forest treatments on federal lands covered by the FWPP, and was briefed at that time regarding the involvement of the State and future development of this Agreement.

Options and Alternatives:

1. Approve the Agreement as written, thus allowing work to commence on the SCC report, first year AWP, and initial implementation efforts;
2. Modify the Agreement, thus requiring additional effort to revise the existing agreement and/or anticipated scope of work; or
3. Reject the Agreement, thus removing State Lands from the forest treatment process as set forth in the Forest Bond question.

Background/History:

In July 2012, Council approved this measure for inclusion on the Nov 2012 general election ballot. Subsequently, a citizen advocacy group formed to support the issue and urge approval. In Nov 2012, the bond was approved by a 73.6% Yes vote.

Since that time, City-US Forest Service agreements have been presented and approved by Council, an organization of City-Agency (US Forest Service and State of AZ)-Key Partners (Greater Flagstaff Forests Partnership and NAU-Ecological Restoration Institute) has formed and is meeting regularly, various Work Groups are working diligently (Communications, Monitoring, Planning, and Implementation), a website and other social media sites have been created and are active, and numerous public outreach and engagement events have either occurred and/or are planned for the near future.

Key Considerations:

Recent planning efforts by the US Forest Service have identified slightly over 11,000 acres of federal lands within the overall project area (Rio de Flag and Lake Mary watersheds). In addition, there are approximately 3,000 acres of State Lands within the City/Rio de Flag watershed. This Agreement is the springboard for making this bond issue an on-the-ground reality on these State Lands.

This Agreement has no expiration date - it will be terminated by written notice at the conclusion of any needed forest treatment work (or earlier if either party deems it necessary). We anticipate that all work on State Lands, as identified in the SCC, will be finished within five (5) years of initial implementation of forest treatment activity.

Expanded Financial Considerations:

The first AWP will be developed by July 31st, 2013, with subsequent development of new ones throughout the life of the project. Each AWP, not yet developed or approved, will obligate city funds.

Community Benefits and Considerations:

Several activities will occur concurrent with project planning, operations, and monitoring. In addition to reducing the threat of destructive wildfire and associated secondary events, they include:

- Engagement of volunteers and students in project monitoring;
- Use of a community-based collaborative (Greater Flagstaff Forests Partnership) to review, comment, and assist with crafting forest treatment options;
- Synergy with the Four Forest Restoration Initiative (4FRI);
- Engagement of NAU's Ecological Restoration Institute, School of Forestry, and other professional staff, as needed; and
- In partnership with the above groups, and the State's Forest Health Council, elevating this unique project among regional and national audiences.

Community Involvement:

Inform;
Involve; and
Collaborate

Expanded Options and Alternatives:

By engaging the State of AZ and other partners in this effort, we have the ability to protect at-risk neighborhoods throughout the community, show other at-risk communities what can be done to avoid the agony of catastrophic wildfire and damaging flood events, and expand the impact of these treatments with other actions that have already occurred, or will occur as a result of this project. In addition, we will be able to demonstrate viable, community-supported actions, thus increasing the potential of securing additional outside funds to treat other adjacent at-risk sites in the area.

Attachments: State Agreement
State Agreement - Exhibit A

INTERGOVERNMENTAL AGREEMENT
FOR FOREST HEALTH AND WATERSHED PROTECTION PROGRAM
between
the City of Flagstaff,
the Arizona State Land Department,
and the Arizona State Forestry Division

This intergovernmental agreement ("Agreement") is entered into this ___ day of _____, 2013, between the City of Flagstaff ("CITY"), an Arizona municipal corporation, with offices at 211 W. Aspen Avenue, Flagstaff, Arizona, the Arizona State Land Department ("STATE LAND") and the Arizona State Forestry Division ("STATE FORESTRY").

RECITALS

A. The CITY, STATE LAND, and STATE FORESTRY (which may be referred to herein as a "PARTY" or the "PARTIES") enter into this Agreement pursuant to A.R.S. § 11-951. STATE LAND's specific authority to enter this Agreement is A.R.S. §§ 37-102(B) and 37-132(A). STATE FORESTRY's specific authority to enter into this Agreement is A.R.S. §§ 37-623(A), (C) and (F) and 37-642. The CITY's specific authority to enter into this Agreement is A.R.S. § 11-952.

B. The CITY desires to enter into this Agreement for implementation of the Flagstaff Watershed Protection Project ("FWPP"), a voter-approved forest health and watershed protection program on Arizona State Land parcels within the City of Flagstaff that are within or impact the Rio de Flag watershed.

C. The CITY operates, manages, and maintains Wildland Fire Management, including Hazard Mitigation operations, and fire services within the City of Flagstaff and the surrounding area.

D. The PARTIES recognize the benefits of a forest restoration, program, including reduction of the risk of severe wildfires.

E. The CITY recognizes that forest restoration includes the benefit of reduction in post-fire flooding that will protect the CITY's water supply.

F. The PARTIES have a long-standing and successful partnership regarding land management, resource protection, and wildfire management, and wish to continue that partnership.

G. The PARTIES intend to work together to develop plans and other operating documents that will describe in detail the work to be performed pursuant to this Agreement.

NOW, THEREFORE, pursuant to A.R.S. §11-952, authorizing agreements among two or more public agencies, and in consideration of the mutual covenants contained in this Agreement, the PARTIES agree as follows:

1. Duration and Termination of Agreement

This Agreement shall be effective from the date of execution by the PARTIES and shall remain in effect for a period of five (5) years. This Agreement may be renewed by the PARTIES for additional one year periods upon mutual written agreement of the PARTIES, as required to complete all needed work.

2. Purpose of Agreement

The purpose of this Agreement shall be to plan, conduct, monitor, and maintain forest treatment field operations on designated parcels of Arizona State Land Department land within the City of Flagstaff by conducting hazard mitigation work, to include modifying ground, ladder, and canopy fuels, and taking other useful actions in order to reduce the risk of severe wildfire and protect critical watershed(s) from fire and flood damage.

2.1 The work carried out pursuant to this Agreement shall include planning, environmental analysis, forest treatments (to include site set-up, field operations, and administration), monitoring, and maintenance efforts.

2.2 The Arizona State Trust Land parcels subject to this Agreement are identified in Exhibit A, attached. STATE LAND retains the right to lease, sell, transfer or permit the use of all or part of the lands in Exhibit A in order to fulfill its trust responsibilities under the Enabling Act, the Arizona Constitution and Title 37, Arizona Revised Statutes. In the event of sale, lease, or other disposition of land or products or other authorized use of state land in Exhibit A, such lands are automatically withdrawn from this agreement.

3. Method of Funding

Specific actions that will occur, and require funding to accomplish, will be specified in an Annual Operating Plan.

3.1 STATE FORESTRY may utilize available federal grant forest treatment funds, in kind services, and other available funds to leverage funds provided by the CITY.

3.2 The PARTIES may provide their own work crews including CITY work crews and State Inmate Fire Crews to complete some or all of the work required pursuant to this Agreement, or they may elect to use other providers.

3.3 STATE LAND and STATE FORESTRY shall provide the CITY a complete list of all permits or other types of approvals required for performing work pursuant to this Agreement on State Trust Land parcels, and will secure those permits prior to any work being undertaken.

3.4 Revenue Projects –State Trust Beneficiaries

The forest treatment projects envisioned under this agreement are not envisioned to produce revenue due to the current low wood values and high treatment costs. In general, small diameter non-commercial material will be removed. If, during any project planning, any Trust Land parcel project implementation has potential to provide revenue to the State Trust, then STATE LAND shall be consulted for disposition requirements.

4. Plan Development

The PARTIES shall work jointly to produce two specific planning documents:

4. 1 **Summary of Current Conditions** ("SCC"). Prior to June 30, 2013, for all State designated lands covered by this Agreement, a SCC shall be developed by STATE FORESTRY, reviewed by the CITY, revised if necessary, and mutually approved by all PARTIES signatory to this Agreement.

4.1.a The SCC shall identify what treatments are needed on each parcel, to include acreage, maps, actions needed to develop the project, and a priority of treatment by parcel.

4.2 **Annual Work Plan** ("AWP"). Each year in which this Agreement remains in effect, the PARTIES shall jointly prepare an AWP. The AWP shall set forth the specific details of the work to be carried out and will include specific details concerning parcels, acreage, activities, responsible entity, expected costs and which party will fund what activities, timing of work, and any other necessary and proper matters.

4.2.a The first AWP shall be completed and approved by all PARTIES at the time the SCC is completed/approved. Thereafter, it will be completed no later than February 1st each year, to be effective July 1st. Each AWP shall extend for the following twelve (12) months.

4.2.b The AWP shall identify any services requiring a payment from one PARTY to another pursuant to paragraph 3.1. The payment of funds from either entity to the other shall occur as follows:

4.2.b.1 All billed services provided will be in accordance with the AWP.

4.2.b.2 The invoice will clearly identify locations, timeframes, final accomplishments and what personnel (State employees, crews, or contractors) were used to accomplish the task.

4.2.b.3 All invoicing will occur within 30 days of final site approval (to be done by the paying entity) with payment to occur within 30 days of receipt of the invoice.

4.3 The extent of work performed in the AWP shall be limited by the amount of funding available to conduct the work.

4.4 It is the intent of the PARTIES to complete the SCC and the AWP in a timely manner, however in the event that the deadlines are not met the PARTIES will work cooperatively to complete the SCC and AWP.

5. Oversight and Review

5.1 All operations carried out pursuant to this Agreement shall be undertaken at the direction of, and with approval and oversight from the PARTIES.

5.2 STATE FORESTRY shall provide field operations management and act as the liaison between the CITY and STATE LAND concerning operations carried out pursuant to this Agreement.

5.3 At the end of each calendar year, the PARTIES shall conduct an Adaptive Management Review ("AMR"). The purpose of the AMR shall be to determine and document whether elements of the AWP were successfully completed, with the goal of improving efficiency.

6. Protection of Resources

6.1 The PARTIES shall make all reasonable efforts to avoid damage to the resources associated with the Arizona State Trust parcels.

6.2 To the extent practicable, activities carried out pursuant to this Agreement shall not result in the removal of commercial products, unless such removal is identified in the AWP, and is consistent with applicable Arizona Revised Statutes provisions and any related administrative procedures required by STATE LAND.

7. Indemnification

Each PARTY (as "Indemnitor") agrees to indemnify, defend, and hold harmless each other PARTY (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

8. Dispute Resolution

8.1 Mediation
The PARTIES to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes.

8.2 Litigation and Attorney's Fees
Except as otherwise agreed upon by the PARTIES, any litigation brought by either PARTY against the other PARTY to enforce the provisions of this Agreement shall be filed in Coconino County Superior Court, Flagstaff, Arizona. In the event that any action at law, or in equity, is instituted between the PARTIES in connection with this Agreement, the prevailing PARTY in the action shall be entitled to an award of costs, including reasonable attorney's fees and court costs, from the non-prevailing PARTY.

9. Principal Contacts.

Individuals listed below are authorized to act in their respective areas for matters related to this Agreement, and to receive notices or other information from the other PARTIES.

CITY Project Manager Contact	STATE FORESTRY Project Manager Contact
Paul Summerfelt	Kevin Boness
Wildland Fire Management Officer	District Forester
City of Flagstaff	AZ State Forestry Division
211 W. Aspen Avenue	3950 Lake Mary Rd
Flagstaff, AZ 86001	Flagstaff AZ 86001
Phone: 928.213-2509	Phone: 928-774-1425
FAX: 928.213.2599	FAX: 928-779-2143
Email: psummerfelt@flagstaffaz.gov	Email: kevinboness@azsf.gov

CITY Administrative Contact

Stacey Brechler-Knaggs
Grants Manager
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001
Phone: 928.213-3227
FAX: 928.779.7656
Email: sknaggs@flagstaffaz.gov

STATE FORESTRY ADMINISTRATIVE Contact

Tina Waddell
Financial Administrator
AZ State Forestry Division
1110 W. Washington, Suite 100
Phoenix AZ 85007
Phone: 602-771-1400
FAX: 602-771-1421
Email: tinawaddell@azsf.gov

STATE LAND Contacts

Vanessa Hickman
State Land Commissioner
1616 W, Adams
Phoenix, Arizona 85007
Phone: 602-542-4621
FAX: 602-542-2590
Email: vhickman@azland.gov

Stephen Williams
Natural Resources Director
1616 W, Adams
Phoenix, Arizona 85007
Phone: 602-542-4621
FAX: 602-542-2590
Email: swilliams@azland.gov

10. Authorization to Contract

Each PARTY represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations under this Agreement and has taken all required acts or actions necessary to authorize the same.

11. Integration; Modification

Each PARTY acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except as expressed in this Agreement, and that this Agreement constitutes the PARTIES' entire agreement with respect to the matters addressed in this document. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Agreement. This Agreement may be modified or amended only by written agreement, signed by or for all PARTIES, and any modification or amendment will become effective on the date so specified.

12. Cancellation for Conflict of Interest

Pursuant to A.R.S. §38-511, a PARTY may cancel this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a PARTY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other PARTY of the Agreement in any capacity or as a consultant to the other PARTY of the Agreement with respect to the subject matter of this Agreement.

13. Waiver

No failure to enforce any condition or covenant of this Agreement will imply or constitute a waiver of the right of a PARTY to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor will any waiver by a PARTY of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

14. Termination

Either PARTY may terminate this Agreement by giving the other PARTY sixty (60) days written notice.

15. No Third Party Beneficiaries

This Agreement is solely for the benefit of the PARTIES. The PARTIES do not intend by any provision of this Agreement to create any rights in any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the PARTIES.

16. Records Retention and Audit

Pursuant to A.R.S. § 35-214, the PARTIES shall retain and shall contractually require any subcontractor to retain all data, books and other records ("records") relating to this Agreement for a period of five years after completion of this Agreement. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the PARTIES shall produce the original of any or all such records.

17. Non-Appropriation

Every payment obligation of the State under this Agreement is conditioned upon the availability of funds continuing to be appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed as of the day and year first written above.

City of Flagstaff

_____

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Arizona State Land Department

By:
Name: _____
Its: _____

Approved as to Form:

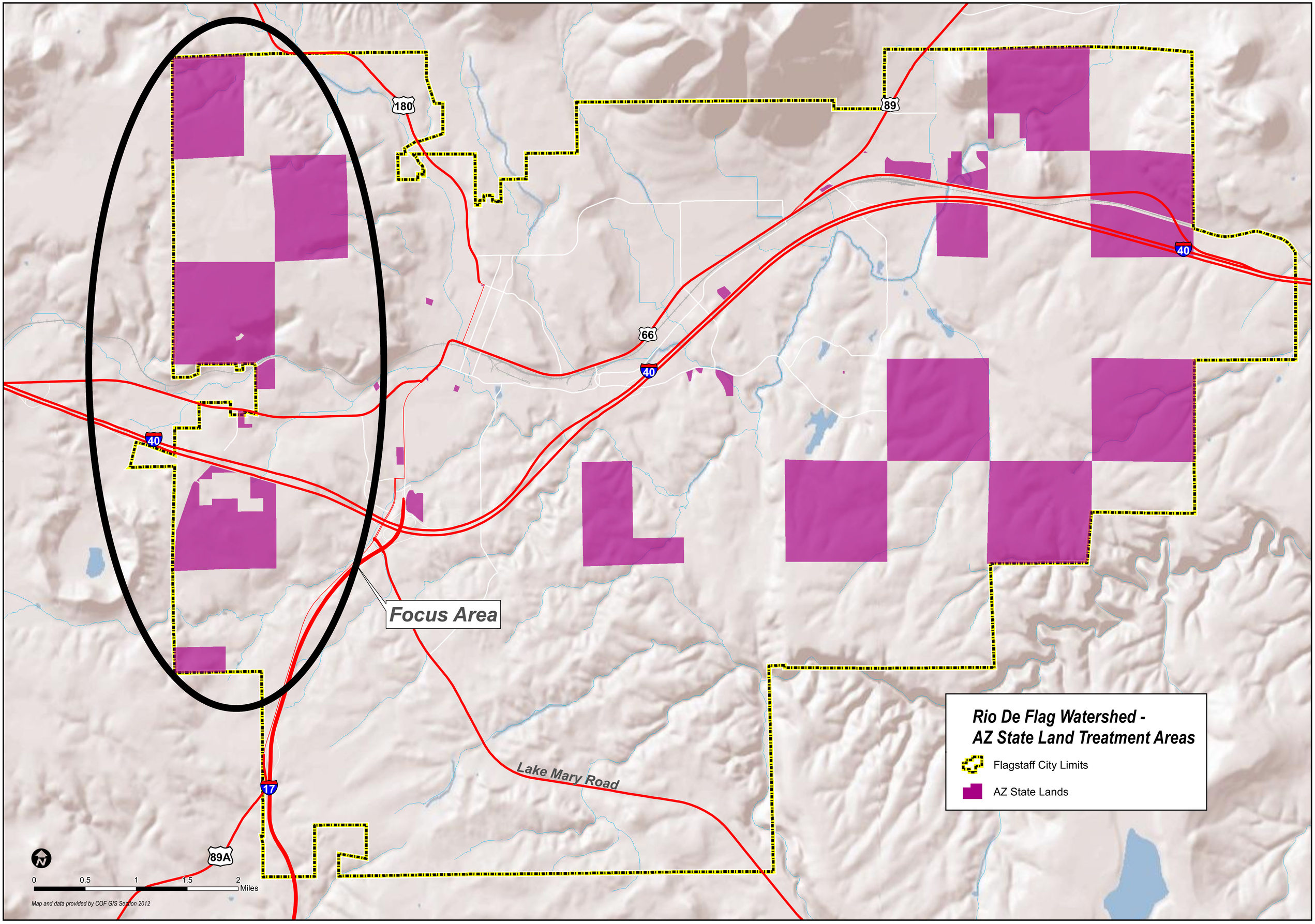
_____
Assistant Attorney General

Arizona State Forestry Division

By:
Name: _____
Its: _____

Approved as to Form:

_____
Assistant Attorney General


Rio De Flag Watershed -
AZ State Land Treatment Areas
Flagstaff City Limits
AZ State Lands
Focus Area
Lake Mary Road
180
89
66
40
17
89A
0
0.5
1
1.5
2
Miles
Map and data provided by COF GIS Section 2012

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Paul Summerfelt, Wildland Fire Manager

Date: 03/25/2013

Meeting Date: 04/02/2013

TITLE:

Consideration and Approval of Agreement: With Greater Flagstaff Forests Partnership (GFFP) for Flagstaff Watershed Protection Project (FWPP).

RECOMMENDED ACTION:

Approve the Scope of Work Amendment to the existing City-GFFP Professional Forest Restoration Initiative Services Agreement (July 1, 2011), including the attached Amendment Work Plan - FY13, to include signature by the City Manager.

Policy Decision or Reason for Action:

This Amendment, and attached Work Plan, recognizes and initiates/continues specific services to be performed by GFFP in support of forest treatment planning, operations, and monitoring efforts required to implement Forest Bond #405 as approved by 73.6% of the voters in the Nov 2012 general election. This amendment, and work plan, have been jointly developed by City staff - GFFP members. ~~Activities detailed in this Amendment, and Work Plan, are shown on the following page and include:~~

Financial Impact:

This Amendment does ~~not~~ obligate the City to ***a maximum of $13,750, from Forest Bond #405 funds, during FY13 (Jan-June, 2013) for services underway and/or planned to occur in support of the Flagstaff Watershed Protection Project.*** ~~expend any of the voter-approved $10 million bond funds. However, the attached FY13 (Jan-Jun, 2013) Work Plan DOES commit the City to a maximum payment of **$13,750** for services underway and planned to occur in the coming months.~~ Each FY, a new Work Plan will be jointly developed by City staff - GFFP members, which will obligate new funds to specific activities identified as critical to implementation of the FWPP. The FY14 (Jul 14 - Jun 15) Work Plan will be completed and presented to Council for review/approval soon after the beginning of FY14.

Connection to Council Goal:

The Flagstaff Watershed Protection Project (FWPP) - Forest Bond #405 - intersects with the following Council Goals:

4. Complete Rio de Flag;
5. Retain, expand, and diversify economic base;
6. Complete Water Policy; and
11. Effective governance.

In addition, the FWPP seeks to improve public safety by reducing the threat of destructive wildfire and its secondary effects, and leverage our impact and funds by engaging the public and key partners in addressing the threat, restoring our forests, and ensuring community well-being.

Has There Been Previous Council Decision on This:

In July 2012, Council approved this measure for the Nov 2012 general election ballot. The measure was subsequently approved by the voters with a 73.6% Yes vote. In Jan 2013, Council approved three agreements with the US Forest Service for forest treatments on federal lands covered by the FWPP, and was briefed at that time regarding the involvement of GFFP and future development of this Amendment and associated Work Plan. Council also earlier considered an Agreement with the State of AZ (State Forestry and Land Dept) for State lands within the City that will also be treated as part of the FWPP.

Options and Alternatives:

1. Approve the Amendment, and associated Work Plan, as written, thus allowing specific activities to commence/continue;
2. Modify the Amendment, and/or associated Work Plan, thus requiring slowing planning and delivery of critical tasks; or
3. Reject the Amendment, and associated Work Plan, thus removing GFFP from the project, and requiring City Staff and/or other sources to undertake needed activities.

Background/History:

In July 2012, Council approved this measure for inclusion on the Nov 2012 general election ballot. Subsequently, a citizen advocacy group formed to support the issue and urge approval. In Nov 2012, the bond was approved by a 73.6% Yes vote.

Since that time, City-US Forest Service agreements have been presented and approved by Council, a City-State agreement has been presented for consideration, an organization of City-Agency (US Forest Service and State of AZ)-Key Partners (GFFP and NAU-Ecological Restoration Institute) has formed and is meeting regularly, various Work Groups are working diligently (Communications, Monitoring, Planning, and Implementation), a website and other social media sites have been created and are active, and numerous public outreach and engagement events have either occurred and/or are planned for the near future.

Amendment/Work Plan Details:

- Public Engagement: Facilitate public involvement during the planning efforts -

Scoping - host efforts to build project awareness and build support; and
Review - collect and funnel comments to City regarding planned activities/impacts

- Public Outreach and Reporting: Foster on-going transparency and understanding of project intent and goals, funding allocations and partner matches, treatment plans, accomplishments, and current status.
- Tribal Relations: Approach, listen, seek common-ground, identify concerns and goals that need to be considered, encourage involvement, and keep tribal representatives apprised of project status.
- Financial Leverage: Seek, receive, and manage, if appropriate, other non-city funds to enhance and/or expand activities that will meet the intent of the project.
- Monitoring: Engage needed parties to develop methodology, collect data, document results, and report findings, and recommendations in three areas -

Ecological - to include fire and hydrologic effects;
Social - to include understanding, emerging concerns, and support; and
Economic - to include road impacts.

Key Considerations:

Recent planning efforts by the US Forest Service have identified slightly over 11,000 acres of federal lands within the overall project area (Rio de Flag and Lake Mary watersheds). In addition, there are approximately 3,000 acres of State Lands within the City/Rio de Flag watershed.

This Amendment and associated Work Plan are in support of the planning, operations, and monitoring required to successfully implement the FWPP. Key aspects of this effort are financial and accomplishment transparency and public engagement throughout the process.

This Amendment has no expiration date - it will remain active as long as the existing City-GFFP *Professional Forest Restoration Initiative Services* Agreement remains in effect. Each FY, a new Work Plan will identify what specific activities will occur for that year, to include standards and costs. We anticipate that a Work Plan will exist each FY for the overall duration of the project (estimated 8-10 years).

Expanded Financial Considerations:

We estimate that if we were to do the work identified in this Amendment and associated Work Plan with city staff, it would require the addition of one full-time employee.

The FY14 (Jul 14 - Jun 15) Work Plan, to include costs, will be completed and presented to Council for review/approval soon after the beginning of FY14.

While this and future Work Plans will not necessarily approach or exceed the amount that would require Council review and approval, our intent here and in the future is to bring these items forward for Council review and discussion so that all may stay informed as to progress, plans, and accomplishments.

Community Benefits and Considerations:

Several activities will occur concurrent with project planning, operations, and monitoring. In addition to reducing the threat of destructive wildfire and associated secondary events, they include:

- Engagement of volunteers and students in project monitoring;
- Use of a community-based collaborative (GFFP) to review, comment, and assist with crafting forest treatment options;
- Synergy with the Four Forests Restoration Initiative (4FRI);
- Engagement of NAU's Ecological Restoration Institute, School of Forestry, and other professional staff, as needed; and
- In partnership with the above groups, and the State's Forest Health Council, elevating this unique project among regional and national audiences.

Community Involvement:

Inform;
Consult;
Involve; and
Collaborate

Expanded Options and Alternatives:

By engaging GFFP in this effort, we enable our ability to protect at-risk neighborhoods throughout the community, show other at-risk communities what can be done to avoid the agony of catastrophic wildfire and damaging flood events, and expand the impact of these treatments with other actions that have already occurred, or will occur as a result of this project. In addition, we will be able to demonstrate viable, cost-effective, and community supported actions, thus increasing the potential of securing additional outside funds to treat other adjacent at-risk sites in the area.

Attachments: Scope of Work Amendment #1
Work Plan

SCOPE OF WORK AMENDMENT #1

PROFESSIONAL FOREST RESTORATION INITIATIVE SERVICES AGREEMENT
CITY OF FLAGSTAFF
and
GREATER FLAGSTAFF FORESTS PARTNERSHIP

The following Amendment is incorporated into and made a part of the Agreement between the City of Flagstaff ("City") and Greater Flagstaff Forests Partnership ("GFFP"), dated July 1, 2011 (the "Agreement"), by mutual agreement of the Parties as set forth below.

RECITALS

A. The City desires to amend the existing Agreement in order to facilitate the planning, implementation, and monitoring of activities associated with Question 405, Forest Health and Water Supply Protection Project, a voter-approved bond proposal from the November 2012 general election;

B. The U.S. Forest Service (Coconino National Forest), State of Arizona (State Forestry and State Land Department), and the City have agreed that this project will henceforth be known as the Flagstaff Watershed Protection Project ("FWPP");

C. GFFP has an existing Professional Forest Restoration Initiative Services Agreement ("Agreement") with the City to provide specific forest restoration services as detailed in a FY13 Work Plan, Exhibit A);

D. Services required to support the FWPP per this Amendment, as described below and detailed in an FWPP Annual Work Plan, are in addition to, separate from, but consistent with actions undertaken pursuant to the Agreement; and

E. GFFP is able to perform the specific services required.

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

SERVICES TO BE PERFORMED BY GFFP

GFFP shall be responsible for the following tasks:

- Public Engagement: *Facilitate public involvement during planning efforts - Scoping - Host efforts to build project awareness and build support. Review - Collect and funnel comments to the City regarding planned activities and impacts.*
- Public Outreach and Reporting: *Foster ongoing transparency and understanding of project intent and goals, funding allocations and partner matches, treatment plans, accomplishments, and current status.*

- Tribal Relations: *Approach, listen, seek common ground, identify concerns and goals that need to be considered, encourage involvement, and keep tribal representatives apprised of project status.*
- Financial Leverage: Seek*, receive, and manage, if appropriate, other non-City funds to enhance and/or expand activities that will meet the intent of the project.*
- Monitoring: *Engage necessary parties to develop methodology, collect data, document results, and report findings and recommendations in three areas -*
  Ecological (to include fire and hydrologic effects);
  Social (to include understanding, emerging concerns, and support); and
  Economic (to include road impacts).

COMPENSATION OF GFFP

The City agrees to reimburse GFFP for services rendered for the tasks identified above, as documented in the mutually-agreed upon Annual Work Plan, Exhibit A.

GFFP shall provide as frequently as monthly, but not less than quarterly, requests for reimbursement. Reimbursements shall be submitted with the Reimbursement Form provided by the City staff. GFFP shall submit a final request for reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked “FINAL.”

The City shall disburse funds to GFFP on a reimbursement basis only, conditioned upon receipt of proof of payment and applicable, accurate and complete reimbursement documents, as deemed necessary by the City, to be submitted by GFFP. Payments will be contingent upon receipt of all reporting requirements of GFFP under this Agreement.

REPORTING

Progress Reports. GFFP shall provide quarterly programmatic reports to the City within five (5) working days of the last day of the month in which services are provided. The GFFP shall use the form provided by the City to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by the City. If the scope of the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked “FINAL” and should be inclusive of all information regarding the Project deemed necessary and pertinent by the City. Quarterly programmatic reports shall be submitted to the City until the entire scope of the project is completed.

TERM OF AGREEMENT, TERMINATION AND AMENDMENTS

This Amendment shall become effective on January 1, 2013, and shall terminate on June 30, 2013.

Except as modified by this Amendment One, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties hereby approve this Amendment as of the date set forth below.

City of Flagstaff	**Greater Flagstaff Forests Partnership**
_____	_____
Kevin Burke, City Manager	President Board of Directors
Attest:	
_____	
City Clerk	
Approved as to form:	
_____	
City Attorney	Date of Execution:

PROFESSIONAL FOREST RESTORATION INITIATIVE SERVICES AGREEMENT
CITY OF FLAGSTAFF and GREATER FLAGSTAFF FORESTS PARTNERSHIP
(JULY 1, 2011)

FLAGSTAFF WATERSHED PROTECTION PROJECT

AMENDMENT – FY13 WORK PLAN (Exhibit A)
Jan 1, 2013 - June 30, 2013

TASK	FOCUS	DELIVERABLE	DATE(S)	MAX COST ($50/HR)
Public Engagement	Outreach	Communication Team - Participate in Team, to include: • Periodic team meetings (three/month); • Development of Communication Plan, Talking Points, and various publications needed by the Project; • Project website to include: ➢ Scoping, design review, and training prior to going "live", and ➢ One review of site to evaluate material and appearance, to include a written recommendation to the City regarding revisions and material • Presence and assistance during briefing to City Council and County Board of Supervisors (minimum of one each); • Participation in Monthly Coordination Team meetings (six total) • Assist with set-up and hosting of Signing Ceremony	Jan -Jun Jan -Jun Feb-Mar Jun Jan -Jun Jan -Jun Mar-Jun	$5,400; $250; $300; $250; $300; $450; $250;
		Federal - Host and facilitate the following meetings and/or events, using a variety of forums and methods (ex: open house, presentations, workshops, field trips, etc.), to inform specific stakeholders and general public as to project status and Proposed Action (PA), and to solicit input and comment on scope, intent, and treatment plans: • 1 - Mt Elden/Schultz Pass Road property owners • 1 - Environmental groups (ex: F3, GCT, SC, TNC, others) • 1 - Users (ex: Runners, Motorized, Bikers, Devil's Head Communication tower owners/users) • 1 – Earth Day event • 1 - General public (not USFS NEPA roll-out meeting) Costs shown for each event includes all advertising and outreach: In addition, a summary report will be provided the City, to include, but not limited to, #'s attending (and group names), issues discussed, themes and concerns raised, items to follow-up on (and with whom), interest and support expressed. State - No activity expected/required in FY13	Apr Apr Apr Apr May-Jun	$500; $500; $500; $500; $500

TASK	FOCUS	DELIVERABLE	DATE(S)	MAX COST ($50/HR)
	Plan review & comment	Federal - As an entity, review PA and provide critical written comments to the City and USFS designed to clarify issues, articulate and refine alternatives, strengthen the overall process and final document, and support project intent. State - No activity expected/required in FY13	Apr-Jun	$500
Tribal Relations	Outreach	Federal - Co-host effort (with USFS designated staff member) toward the 13 designated Tribal groups in the Traditional Cultural Properties (TCP) area of the San Francisco Peaks, to include: • 1 - Initial letter notice and invitation to each; • As required, direct meetings, on the project site or elsewhere, with interested Tribal officials or representatives to describe project, answer questions, listen and identify needs or concerns, and establish a personal relationship for future exchanges. Any planned contact with any Tribal official or representative will be coordinated with the City. Following any meetings, a written report will be provided the City, to include, but not limited to: whom, what was discussed, issues raised, and items needing attention/resolution. State - No activity expected/required in FY13	Jan-Feb Mar-Jun As needed	$100; $500
Financial Leverage	Plan	Develop report: Research and identify potential grants, contracts, or donations that would facilitate Project outreach, planning, implementation, or monitoring, to include match requirements (if any), application cycle, funding availability and best target range (if any), application submittal requirements, date/timeframe application are required, any other issues associated with the specific grantor, and rank order as to recommended priority.	Mar-Jun	$500

TASK	FOCUS	DELIVERABLE	DATE(S)	MAX COST

				($50/HR)
Monitoring	Plan	To meet voter expectations and provide transparency, develop a community monitoring effort, centered on the areas of Fire Behavior (ex: modification following treatments), Ecological (ex: hydrology, wildlife, other), Social (ex: awareness, support, concerns/issues), and Economic (ex: impact avoidance following treatment, financial boost from workforce, product removal, business sustainability). The effort will include: • 1 - Monitoring Summit (involving key targeted individual/groups known to be interested and/or engaged in these type efforts), • 1 - Monitoring Summit Phase 2 (to refine outcomes of Summit), • 1 - Written report (outcomes will include, as minimum, specific issues/questions within each of the four areas listed above, to include opportunities, priorities within each area, partners able and willing to assist (and contact info), funding needs and venues, future schedule of meetings and field actions, and any other issues required for success. Costs included any expenses associated with printing and distribution.	Jan May Jun	$850 $850 $350

Report		Provide annual written report detailing all aspects of activities planned and undertaken, to include challenges, opportunities, and lessons learned. Costs include any expenses associated with printing and distribution.	Jun	$400

SUB-TOTAL (MAX):	**Public Engagement**	**$ 10,200**
	Tribal Relations	**$ 600**
	Financial Leverage	**$ 500**
	Monitoring	**$ 2,050**
	Report	**$ 400**

	TOTAL	$13,750

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Andy Wagemaker, Revenue Director
Date:	03/28/2013
Meeting Date:	04/02/2013

TITLE:

Consideration / Adoption of Ordinance No. 2013-02: An ordinance amending the Flagstaff City Code, Title 3, *Business Regulations*, Chapter 3-05, *Privilege and Excise Taxes*, Division 3-05-004, *Privilege Taxes*, by amending Section 3-05-004-0430 *Timbering and Other Extraction*, by deleting a tax exemption for felling, producing or preparing timber for sale or commercial use; amending Section 3-05-004-0475, *Transporting for Hire*, by deleting tax exemptions related to transporting by motor vehicle outside the City, towing and transportation by railroad, all in an effort to achieve a more uniform Model City Tax Code; and amending Section 3-05-006-0600, *Termination, Approval and Authority to Amend Chapter*, by making clerical revisions to clarify the history of tax code changes; providing for penalties, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date.

RECOMMENDED ACTION:

1) Read Ordinance No. 2013-02 by title only for the final time on April 2, 2013
2) City Clerk reads Ordinance No. 2013-02 by title only for the final time (if approved above)
3) Adopt Ordinance No. 2013-02

Policy Decision or Reason for Action:

By adopting the proposed ordinance, the City is doing its part to help in the Governor's efforts to make the Model City Tax Code more uniform. Subsidiary Decisions Points: None.

Financial Impact:

It is anticipated that the proposed changes will have a nominal effect on City transaction privilege tax revenues.

Connection to Council Goal:

Effective governance.

Has There Been Previous Council Decision on This:

Yes. The items referenced in this Staff Summary and Ordinance were discussed at the November Council retreat, and a public hearing and first reading of the Ordinance was held at the March 19, 2013, Council meeting.

Options and Alternatives:

1) Adopt the proposed ordinance. If the City adopts the proposed ordinance, the City of Flagstaff will do its part to make the Model City Tax Code more uniform.
2) Do not adopt the proposed ordinance. If the City chooses to not adopt the proposed ordinance, the City will continue to enforce the current tax code. Please note: If the City chooses this option, the City may still be forced to remove these specific items by the Model Tax Code Commission at some point in the future.

Background/History:

Model City Tax Code

In 1987 the City of Flagstaff and other Arizona cities and towns adopted the Model City Tax Code. The Model City Tax Code enables businesses to be taxed uniformly. Cities have the option of establishing the rate (%) of tax applied to gross income, and there are model and local options under the Model City Tax Code which cities may adopt. The City's base tax rate is currently 1.721% and there is an additional voter approved 2% BBB tax levied on the restaurant/bar and the hotel/motel classifications.

The City of Flagstaff is required to adopt all changes to the Model City Tax Code issued by the Model Tax Code Commission.

Governor's TPT Simplification Task Force

In May, 2012, Governor Jan Brewer issued Executive Order 2012-01 calling for the creation of a Transaction Privilege Tax Simplification Task Force. The Task Force was charged with:

> ...reviewing, identifying, or developing proposals that would simplify the TPT code and TPT practice in order to alleviate taxpayer frustration, improve compliance, and avoid redundancies. Specific areas of focus shall include, but not be limited to:
>
> a. options for a single point administration to avoid redundancies;
> b. identification of differences between state statute and the Model City Tax Code; and
> c. standardization of definitions of taxable transactions between taxing authorities.

In conjunction with the creation of the Task Force, the Arizona League of Cities and Towns asked all municipalities to eliminate all unique tax code provisions. City staff reviewed the adopted code and discussed recommended cleanup items with Council at the November Council retreat. The proposed ordinance is an attempt to eliminate tax code provisions unique to the City of Flagstaff, in an effort to further make the Model City Tax Code more uniform.

Proposed City Tax Code Changes

The City of Flagstaff has adopted the Model City Tax Code, but has a few provisions that are unique to the City. The proposed ordinance will have the effect of eliminating tax code provisions unique to the City. In particular, the following tax exemptions will be eliminated:

- Timbering and Other Extraction: tax exemption for felling, producing or preparing timber for sale or commercial use;
- Transporting for Hire: tax exemptions for: (1) transporting by motor vehicle outside the city; (2) towing and storage; (3) transportation by railroad.

In addition, clerical changes to Section 3-05-006-0600 Termination, Approval and Authority to Amend Chapter are being proposed to clarify the history of the tax code.

Notice of the proposed tax code changes were posted on the City website homepage on December 28, 2012.

Staff Outreach and Business Impacts

Staff attempted to contact all businesses affected by the proposed changes. The following section summarizes the outreach and impacts.

•Timbering and Other Extraction:
One current taxpayer is affected by the removal of this exemption. The taxpayer was contacted and does not feel that the removal of the exemption will affect the business in any way. Therefore, eliminating this exemption will not increase taxes on any current taxpayers within the City of Flagstaff. However, eliminating this exemption may affect future taxpayers.

•Transporting for Hire: (1) transporting by motor vehicle outside the city and (2) towing and storage
No current taxpayers are affected by the removal of these exemptions. Over the past few years, City staff has advised existing and new taxpayers that state regulations preempt the City from levying specific taxes under the transportation classification. However, these taxpayers are required to obtain an occupational business license with the City of Flagstaff. City staff will continue to advise taxpayers within this classification to obtain an occupational business license with the City and coordinate other requirements with the State of Arizona. Therefore, eliminating these exemptions will not increase taxes on any current or future taxpayers within the City of Flagstaff.

•Transporting for Hire: (3) transportation by railroad.
No current taxpayers are affected by the removal of this exemption. City staff contacted the Arizona Department of Revenue and other Cities throughout the state. No other jurisdictions levy a tax for transportation by railroad. Therefore, eliminating this exemption will not increase taxes on any current or future taxpayers within the City of Flagstaff.

Key Considerations:

A complaint of some businesses operating in Arizona is the complexity of filing tax returns at the State and local level. A uniform Model City Tax Code makes it easier for those businesses which engage in taxable business activities in multiple Arizona cities and towns to file tax returns.

Expanded Financial Considerations:

None.

Community Involvement:

Inform.

Specific businesses that could possibly be affected by the proposed tax code changes were contacted. At this point in time, none of those business feel that the proposed changes will affect them in any meaningful way.

Attachments: Ord. 2013-02

ORDINANCE NO. 2013-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, TITLE 3, *BUSINESS REGULATIONS*, CHAPER 3-05, *PRIVILEGE AND EXCISE TAXES*, DIVISION 3-05-004, *PRIVILEGE TAXES*, BY AMENDING SECTION 3-05-004-0430, *TIMBERING AND OTHER EXTRACTION*, BY DELETING A TAX EXEMPTION FOR FELLING, PRODUCING OR PREPARING TIMBER FOR SALE OR COMMERCIAL USE; AMENDING SECTION 3-05-004-0475, *TRANSPORTING FOR HIRE*, BY DELETING TAX EXEMPTIONS RELATED TO TRANSPORTING BY MOTOR VEHICLE OUTSIDE THE CITY, TOWING, AND TRANSPORTATION BY RAILROAD, ALL IN AN EFFORT TO ACHIEVE A MORE UNIFORM MODEL CITY TAX CODE; PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, Arizona cities and towns have traditionally enjoyed significant local control, including the authority to impose local transaction privilege taxes on businesses;

WHEREAS, local taxes help fund City government and services, including police and fire protection; street maintenance; water, sewage and solid waste; and other services that benefit businesses operating in the City;

WHEREAS, over 30 years ago the City adopted the Model City Tax Code, which has been adopted by cities and towns throughout Arizona ("City Tax Code");

WHEREAS, the City has adopted a few tax provisions unique to the City;

WHEREAS, Arizona municipalities have been requested by the League of Arizona Cities and Towns ("League") to eliminate unique tax provisions in order to increase tax uniformity in the Model City Tax Code;

WHEREAS, the City is willing to eliminate unique provisions in an effort to be responsive to taxpayers seeking a more uniform Model City Tax Code; and

WHEREAS, notice of the proposed changes to the City Tax Code have been published on the City website for at least 60 days prior to adoption of this ordinance.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Flagstaff City Code, Title 3, Business Regulations, Chapter 3-05, *Privilege and Excise Taxes*, is hereby amended as set forth below (deletions shown as stricken, and additions shown as capitalized text):

SECTION 3-05-004-0430 TIMBERING AND OTHER EXTRACTION:

(a) The tax rate shall be an amount equal to one and seven hundred, twenty-one thousandths percent (1.721%) of the gross income from the business activity upon every person engaging or continuing in the following businesses:

(1) Felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.

(2) Extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use.

(b) The rate specified in subsection A. above shall be applied to the value of the entire product extracted, refined, produced, or prepared for sale, profit, or commercial use, when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State.

(c) If any person engaging in any business classified in this Section ships or transports product, or any part thereof, out of the State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

~~(d) The tax prescribed by this Section shall not apply to the feeling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.~~

SECTION 3-05-004-0475 TRANSPORTING FOR HIRE:

The tax rate shall be at an amount equal to one and seven hundred, twenty-one thousandths percent (1.721%) of the gross income from the business activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this City to another point within the State.

(a) Reserved.

(b) Transporting of oil or natural or artificial gas through pipe or conduit.

(c) Transporting of property by aircraft.

(d) Transporting of persons or property by motor vehicle, including towing and the operation of private car lines, as such are defined in Article III, Chapter 4, Title 42, Arizona Revised Statutes; provided, however, that the tax imposed by this subsection shall not apply to:

(1) Gross income subject to the tax imposed by Article VI, Chapter 9, Title 28, Arizona Revised Statutes.

(2) Gross income derived from the operation of a governmentally adopted and controlled program to provide urban mass transportation.

(3) (RESERVED) ~~Gross income derived from the transporting of persons or property by motor vehicle to a point outside the City.~~

(4) (RESERVED) ~~Gross income derived from the towing of automobiles, trucks, and other motor vehicles or equipment by rental agencies, storage garages, services stations, parking lots, or other similar persons.~~

(e) (RESERVED) ~~Transporting of persons or property by railroad shall not be subject to the tax.~~

(f) Deductions or exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this section:

(1) Income that is specifically included as the gross income of a business activity upon which another section of Article IV imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.

(2) Income from arranging amusement or transportation when the amusement or transportation is conducted by another person not to exceed consideration paid to the amusement or transportation business.

(g) The tax imposed by this section shall not include arranging transportation as a convenience to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation.

SECTION 2. Penalties.

Any person convicted of a violation of this ordinance is guilty of a misdemeanor and shall be fined a sum not to exceed two thousand five hundred dollars ($2,500.00) and may be sentenced to confinement in the County jail for a period not to exceed ninety (90) days for any one offense, all in accordance with the Flagstaff City Code Chapter 1-04. Any violation which is continuing in nature shall constitute a separate offense on each successive date the violation continues, unless otherwise provided.

SECTION 3. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 5. Clerical Corrections.

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

SECTION 6. Effective Date.

This ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2013.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: McKenzie Jones, Sustainability Specialist

Date: 03/28/2013

Meeting Date: 04/02/2013

TITLE:

Consideration and Approval of Intergovernmental Agreement with Arizona State Parks: The purpose of the Intergovernmental Agreement with Arizona State Parks is to outline mutual responsibilities in implementing the Arizona Site Steward Program at Picture Canyon.

RECOMMENDED ACTION:

Approve the Intergovernmental Agreement (IGA) with Arizona State Parks to implement the Arizona Site Steward Program at Picture Canyon.

Policy Decision or Reason for Action:

Approval of the Intergovernmental Agreement is necessary to implement the Arizona Site Steward Program at Picture Canyon.

Financial Impact:

Approval of the Intergovernmental Agreement results in no cost to the City of Flagstaff and has the potential to reduce maintenance and security costs due to the presence of volunteer surveillance through the Arizona Site Steward Program.

Connection to Council Goal:

Fund existing and consider expanded recreational services.

As critical riparian habitat, a popular recreation corridor, and home to over 125 Northern Sinaguan petroglyph panels, the Picture Canyon Preserve is a natural and cultural recreation amenity for northern Arizona. Picture Canyon hosts a segment of the Arizona Trail and provides for future Flagstaff Urban Trail System segments that promote connectivity for non-motorized transportation and recreation. Arizona Game & Fish has identified Picture Canyon as an important wildlife habitat and a significant site in their Watchable Wildlife program. The Arizona Site Steward Program will increase informal surveillance of the Picture Canyon Preserve through the use of volunteers trained to inventory archaeological sites and report vandalism. Participating in the Site Steward Program will assist with cultural resources protection, which supports Resolution 2012-12 and helps fulfill the requirements of the State Parks conservation easement.

Has There Been Previous Council Decision on This:

In 2012, Council passed Resolution 2012-12, a resolution adopting a cultural resources policy for Picture Canyon. The resolution requires that the City comply with applicable federal, state, and local laws, regulations, rules, standards, procedures, and guidelines governing the protection of cultural resources at Picture Canyon.

Options and Alternatives:

· Option A – Approve the Intergovernmental Agreement with Arizona State Parks.
· Option B – Not approve the Intergovernmental Agreement with Arizona State Parks and utilize City staff to track vandalism of archaeological sites.

Community Involvement:

Involve

The public has been actively involved throughout the entire Picture Canyon Preserve acquisition process. On February 14, 2012, Arizona State Land Department held a public comment hearing on the reclassification of Picture Canyon for conservation purposes. Over 300 community members attended and all of the testimony received was in support of the conservation of Picture Canyon. Now that the City owns the Picture Canyon Preserve, staff have continued to involve the public in discussions about the long-term management of the property. As the citizen commission dedicated to open space management, the City Open Spaces Commission has been informed of the potential partnership with Arizona State Parks. In addition to the Open Spaces Commission, City staff meets monthly with the Picture Canyon Working Group, a group of citizens dedicated to the long-term management and conservation of Picture Canyon. With the assistance of the Picture Canyon Working Group, staff are currently working to develop the long-range management plan for the Picture Canyon Preserve.

Attachments: Arizona Site Steward IGA for Picture Canyon

Arizona State Parks
1300 W. Washington
Phoenix, AZ 85007
Phone: (602) 542-6925
Fax: (602) 542-4180

INTERGOVERNMENTAL AGREEMENT

Between
Arizona State Parks Board
And
City of Flagstaff

ASP No.: PR13-043

CITY Ref No.

Re: Site Steward Program

I. INTRODUCTION

A, This Agreement recognizes interests, concerns, and mutual responsibilities in the implementation of the volunteer Site Steward Program in the State of Arizona. This Intergovernmental Agreement, herein referred to as an "Agreement" is made and entered into between the following parties:

1. Arizona State Parks Board, on behalf of the State Historic Preservation Officer (SHPO), hereafter referred to as ASP, and
2. City of Flagstaff, hereafter referred to as City.
3. Together, these entities shall be identified as "PARTY" or the "PARTIES".

II. PARTIES TO THIS AGREEMENT

A. The parties hereby agree to cooperate in implementing a volunteer program to be called the Site Steward Program that will be under the direction of the ASP, as the agency in charge of coordination and training, and the Arizona Archaeology Advisory Commission. Assumption of this leadership role shall not impose any additional liabilities on the ASP arising from these duties.

B. To the extent that funding is available, a full-time Resource Protection Specialist or State Program Coordinator shall be hired by the ASP, and assisted by appointed volunteer Regional Coordinators.

C. Local volunteers will act as Arizona Site Stewards or Site Stewards to assist the Regional Coordinators by visiting specific archaeological sites. The Site Stewards will report their observations to designated authorities, but will not act in any law enforcement capacity.

E. The ASP will issue a training certificate to Site Stewards who have successfully completed the required training. After this certificate is issued, the City will execute separate Volunteer Agreements with Site Stewards to enable the visitation of archaeological sites and to assist in other activities related to the preservation and protection of archaeological resources including, but not limited to, inventory, stabilization and recordation, on lands under their jurisdiction. After being certified as a Site Steward and upon accepting a site assignment, the volunteer must sign a separate Volunteer Agreement with each local Land Manager for which they volunteer.

III. AUTHORITY

A. Arizona State Parks authorities:

1. A.R.S. § 11-952 authorizes public agencies to enter into Intergovernmental Agreements for the joint exercise of common powers.
2. A.R.S. §41-511.04(A)(7) and (A)(8). Authorizes ASP to administer a state historic preservation program established pursuant to the National Historic Preservation Act of 1966, 16 U.S.C.A. section 470 et seq. A.R.S. §41-511.05 (2). Authorizes ASP to enter into such contracts as are reasonably necessary or desirable to perform its duties.
3. A.R.S. § 41-511.02(B); A.R.S. § 41-511.04(D)(4). Authorizes the SHPO to administer the state historic preservation program and advise, assist, and monitor state and federal agencies in carrying out their historic preservation duties.
4. National Historic Preservation Act of 1966, 16 U.S.C. section 470 et seq.
5. The Archaeology Advisory Commission Act, A.R.S. § 41-847. Establishes the Archaeology Advisory Commission to aid the State Historic Preservation Officer by providing expert advice in the areas of archaeological education, protection of

archaeological sites, and archaeological activities and by developing a volunteer program to prevent destructive activities on archaeological sites.

B. CITY authorities:

1. A.R.S. § 11-951 et seq. Authorizes public agencies to enter into Intergovernmental Agreements for the joint exercise of common powers.
2. Arizona Antiquities Act, A.R.S. § 41-841 et seq; A.R.S. § 13-3702; A.R.S. § 13-3702.01. Prohibits excavation or defacement of state-owned prehistoric and historic sites and collection of archaeological specimens from the sites without a permit issued by the director of the Arizona State Museum, and duty to report discoveries on lands owned and controlled by state, county, or municipality.
3. A.R.S. § 9-240(B)(12) authorizes a city or town to appoint and remove watchmen and to prescribe their powers and duties.
4. A.R.S. § 9-494 authorizes a city or town to establish and maintain public parks and to acquire, hold and improve real property for that purpose.

IV. PURPOSE

The archaeological resources of the State of Arizona are deemed a valuable and non-renewable resource of the people of Arizona and the people of the United States of America. Many archaeological sites throughout Arizona are currently being subjected to vandalism and other forms of permanent destruction. This illegal activity continues, in part, due to a lack of understanding by the public of the true value of the resources and a lack of regular surveillance of these locations. State and Federal laws encourage cooperation among State and Federal agencies, local governmental entities, and private citizens. The undersigned parties have determined that a program of regular, volunteer visitation of locations of archaeological resources diminishes the rate of their destruction and leads to an improved attitude among local citizens toward archaeological resources in their region. The undersigned parties also agree that as the Site Steward program evolves, it is appropriate for Stewards to assist in other activities related to the preservation and protection of archaeological resources including, but not limited to, inventory, stabilization and recordation.

V. STATEMENT OF MUTUAL BENEFIT AND INTERESTS

A. One representative of both parties to this Agreement will continue to serve as a participating member of the Volunteer Site Steward Committee.

B. Members of the Committee will meet as necessary to review and discuss proposals and plans.

C. At least annually, members of the Committee shall meet to evaluate the effectiveness of the Site Steward Program, make recommendations, and acknowledge superior performances; and meet more often if requested by either the SHPO or any of the participating Site Steward Coordinators.

D. Members of the Committee shall work together to monitor the activities of the program.

VI. RESPONSIBILITIES

A. With the advice of the Arizona Archaeology Advisory Commission and in consultation with all parties to this Agreement, Arizona State Parks shall:

1. Select and train volunteer coordinators.
2. Formulate a set of procedures for training and administration of the volunteers.
3. Create and oversee the conduct of a training program.
4. Oversee public information on a statewide level.

5. Prepare an annual report on the activities and accomplishments of the Site Steward Program for submission to member parties and the public.

B. **CITY** shall:

1. Identify and assign a Site Steward Coordinator (SSC) to supervise volunteer Site Steward activities on lands under its jurisdiction (refer to *Arizona Site Steward Handbook*, Item 16, under Program participants: Their Roles and Responsibilities). The SSC shall be a member of the Volunteer Site Steward Committee (VSSC). The SSC, who works directly with the Regional Coordinator, is responsible for nominating sites to be monitored, developing local operating procedures on scheduling, reporting methods and priorities, and providing support to the local region. The VSSC advises the SHPO, reviews program procedures, standards and overall operations, and makes recommendations for commendations for outstanding performance by the Site Stewards in their Regions.
2. Identify priority projects for implementation and identify priority sites, which have been listed on the National Register of Historic Places or have been deemed eligible to be listed, on its lands to be monitored, inventoried, stabilized or recorded under the terms of the Site Stewardship Program.
3. Execute individual or group Volunteer Agreements with volunteer Site Stewards working on lands under its jurisdiction.
4. Identify law enforcement officers to be contacted and reporting procedures to be followed when vandalism of archaeological resources is identified on its lands.

VII. NOTICES, PAYMENT, REPORTS, AND CORRESPONDENCE:

Arizona State Parks	**City of Flagstaff**
Nicole Armstrong	McKenzie Jones
Volunteer Resources Planner	Sustainability Specialist
1300 West Washington	211 W. Aspen Ave.
Phoenix, Arizona 85007	Flagstaff, AZ 86001
Phone: 602-542-7389	Phone: 928-213-2153
Fax: 602-542-4180	Fax: 928-213-3636
Email: narmstrong@azstateparks.gov	Email: mjones@flagstaffaz.gov

VIII. FINANCE

A. Each party executing a Volunteer Agreement with Site Stewards shall be responsible for payment of all expenses so identified in that volunteer agreement, as authorized by law.

B. Each party assumes the salary and other administrative costs which are attributable to its own employees and volunteers who perform duties under this Agreement.

C. Nothing herein shall be construed as obligating either party to expend funds in excess of appropriations authorized by law and administratively allocated to this program as set forth in this Agreement.

IX. DURATION AND TERMINATION

A. Duration: This Agreement is entered into and is effective as of the date of the last signature to this Agreement and shall continue for five (5) years from that date ("Initial Term"). Unless terminated earlier by the parties, this Agreement shall be renewed at expiration for one additional five- year term.

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Re: Site Steward Program

B. Termination: This Agreement may be terminated at any time by mutual consent of all Parties or can be terminated by either Party by giving (60) days written notice to the other Party.

C. Default: In the event that either party is in default of its obligations under this Agreement, and such default shall continue un-remedied for a period of 30-calendar days after written notice thereof, the other party to this Agreement (in addition to any other remedies existing at law or in equity) may elect, upon not less than sixty 60-calendar days prior written notice, to terminate this Agreement.

X. IT IS MUTUALLY UNDERSTOOD THAT

A. The Parties recognize and encourage a continued commitment to the enhancement and protection of the natural resources of the State of Arizona as well the goals of public recreation.

B. This Agreement establishes an enduring basis for cooperation and assistance between the Parties to achieve common statewide goals and objectives that are sensitive to our natural resources.

XI. GENERAL TERMS AND CONDITIONS

A. Arizona Law: This Agreement shall be governed and interpreted by the laws of the State of Arizona.

B. Amendment: The terms, conditions and representations of the Parties contained in this Agreement may not be orally amended, modified or altered. Any amendment or modification of this Agreement must be in writing and shall be effective only after the authorized signature of both Parties. Amendments must be approved with the same formality as with this Agreement.

C. Successors and Assigns: This Agreement will be binding upon the Parties and upon their successors. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the parties hereto and any purported assignment without such consent shall be void and of no effect.

D. Relationship of Parties: No partnership, joint venture or other business relationship is established among the Parties to this Agreement. Except as expressly provided in this Agreement, no Party is liable for any acts, omissions or negligence on the part of any other Party or the other Party's employees, agents, independent contractors, or successors-in-interest resulting in either personal injury, economic loss, or property damage to any individual or entity.

E. Arbitration: The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes.

F. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

G. Non-Discrimination: The Parties shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

H. Conflict of Interest: All Parties are put on notice that this Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

I. Records and Audit: Under A.R.S. §35-214 and A.R.S. §35-215, the City shall retain and shall contractually require each subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State and where applicable the Federal Government at reasonable times. Upon request, the City shall produce a legible copy of any or all such records.

J. Limitations: Nothing in this Agreement shall be construed as limiting or expanding the statutory responsibilities of the Parties.

K. Indemnification: To the extent permitted by law each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

In addition, City shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter 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) (hereinafter referred to as "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 City's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. 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 contractor 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 such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

L. Other provision: This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreement and understandings related to such subject matter.

M. Severability: The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Agreement.

Arizona State Parks
1300 W. Washington
Phoenix, AZ 85007
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Fax: (602) 542-4180

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And
City of Flagstaff

ASP No.: PR13-043

CITY Ref No.

Re: Site Steward Program

XII. SIGNATURE AUTHORITY:

A. This Agreement is entered into and is effective as of the date of the last signature to this Agreement and appropriate action pursuant to A.R.S. § 11-952.

B. By signing below, the signer certifies the authority to enter into this Agreement and has read the foregoing and agrees to accept the provisions herein.

C. This Agreement may be executed in counterpart.

RESERVED FOR ARIZONA STATE PARKS	RESERVED FOR CITY OF FLAGSTAFF
Signature Date Bryan Martyn, Director	Signature Date Gerald W. Nabours, Mayor
Typed Name and Title Arizona State Parks Board	Typed Name and Title City of Flagstaff
Entity Name 1300 W. Washington	Entity Name 211 W. Aspen Ave.
Address Phoenix, AZ 85007	Address Flagstaff, AZ 86001
City / State / Zip	City / State / Zip

RESERVED FOR THE ATTORNEY GENERAL	RESERVED FOR CITY ATTORNEY
This Agreement has been reviewed pursuant to A.R.S. 11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General. **Dated this _____day of _____, 2013** *Assistant Attorney General* *Date*	This agreement has been reviewed by the undersigned attorney for the City and has been determined to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. **Approved as to Form:** City Attorney Date
	RESERVED FOR CITY CLERK

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Attest:

City Clerk Date

DEFINITIONS

Arizona Archaeology Advisory Commission (AAAC)	The AAAC advises the SHPO o a variety of important archaeological matters.
Arizona Site Steward or Site Steward (SS)	A certified volunteer appointed by the SHPO and the AAAC.
Arizona State Parks Board (ASPB)	Charged by the legislature to administer the SHPO program through the State Historic Preservation Officer.
Program Coordinator Committee (PCC)	The PCC is a committee of all the Regional Coordinators, charged by the Program Coordinator, that may meet as a whole or by geographic areas.
Region	Identifies a boundary usually within a 50-mile radius from the community where the SS have been trained, certified, and a Regional Coordinator has been identified.
Regional Coordinator (RC)	The RC work with local land managers to determine site monitoring priorities and frequency, establish a site inventory and a program of to other preservation activities, etc. The RC is a member of the Program Coordinators' Committee.
Site Steward Coordinator (SSC)	Designed by the Land Manager or Local Land Manager, as appropriate, to coordinate Site Steward activities on the lands under their jurisdiction.
State Historic Preservation Office (SHPO)	The SHPO is under the direction of the State Historic Preservation Officer who is an employee of ASPB and designed by the Governor.
State Program Coordinator (SPC)	Hired by the State Historic Preservation Officer and works out of the SHPO to coordinate the statewide operations of the Arizona Site Steward Program.

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Volunteer Site Steward Committee (VSSC)

Made up of representative of each signatory of the Intergovernmental Agreement and one member of the Archaeology Advisory Commission. The VSSC is the "user group" of the Site Steward Program.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Shannon Anderson, Human Resources Manager

Date: 03/28/2013

Meeting Date: 04/02/2013

TITLE:

Discussion: Ordinance No. 2013-09 and Resolution No. 2013-08 - A resolution declaring the *2013 Addendum 5 of the Flagstaff Employee Handbook of Regulations* a Public Document, and an Ordinance adopting said Public Document by reference.

RECOMMENDED ACTION:

Discuss the documents on April 2, 2013.

Policy Decision or Reason for Action:

Update to Article 1-50 of the Employee Handbook of Regulations related to leaves. Some changes are required due to changes in state law or federal laws. For example, the federal Family Medical Leave Act has been amended to provide for leaves to take care of certain matters when a service member is deployed to a foreign country, and to provide leave to take care of injured service members or veterans. Other changes such as the proposed Purchase Day Program are being requested by City employees. Many of the changes simply incorporate existing practiices and procedures. Also, many of the changes simply are an effort to make the Handbook easier to read, such as centralizing general definitions in one location.

Financial Impact:

The employee leaves are part of the total compensation package offered to employees.

Connection to Council Goal:

Effective Governance.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

Option 1: Adopt recommended changes
Option 2: Provide alternate language for adoption
Option 3: Recommend different types of leave
Option 4: Recommend changes to existing types of leave

Background/History:

The Addendum 5 draft was sent out to all employees for comment on October 5, 2012, reviewed with Leadership on October 17, 2012 and the Employee Advisory Committee on October 24, and November 7, 2012. The draft was also reviewed by outside employment counsel and the City's Civil Legal staff.

The Human Resources staff conducted a comparison of leave benefits with the other Arizona benchmark organizations using the 2013 League of Arizona Cities and Towns survey and found the following:

- The City Holidays are equal to 39% of the benchmark organizations. There are 44% organizations that provide less holidays (e.g. one floating holiday) and 17% of organizations that provide more holidays. This calculation does not account for the special holidays the other organizations may provide to certain groups within their organization such as Police or Executives.
- The City non-exempt vacation leave is less than 93% of the benchmark organizations. This is consistent until 20 to 24 years of service when many of the benchmark organizations max out for vacation. At the 20 to 24 years of service the City is less than 50% of the benchmark organizations. At 30 years or more of service the City is less than 29% of the benchmark organizations. The benchmark organizations vacation leave accrual is more comparable to the exempt vacation leave.
- The City sick leave is equal to 79% of the benchmark organizations. There are 14% of organizations that provide more sick leave accrual and 7% that provide less. 71% of the benchmark organizations provide a higher number of hours to be carried over and 21% allow an equal amount when compared to the City. 58% of benchmark organizations provide a better pay out when compared to the City. These other organizations provide payouts to employee groups other than retirees and those employees who have completed 20 years of service. There are 14% of organizations that provide an equal payout benefit.

Key Considerations:

Changes to the Employee Handbook of Regulations ("Handbook") Article 1-50 regarding leaves are highlighted in yellow. The highlights capture City practices that had not been memorialized in the Handbook and suggested changes. The following is a summary of the changes:

1-10-011 General Definitions: This is a new section that will be added to Article 1-10 General Provisions and it contains definitions for terms found throughout the Handbook.

1-50-010 Holiday Leave: This policy has been revised to include specific definitions; changed holiday pay to holiday leave to be more consistent with other leaves; added language on part-time pro-ration, use of leave in fifteen minute increments, need for a leave of absence form, the floating holiday is forfeited upon termination and holiday compensatory time is paid out at termination in order to memorialize current City practices; recommend that employees may use floating holiday after submitting a notice of resignation with supervisor approval; and provide a link the Arizona Revised Statute that list the holidays for all subdivisions of the state of Arizona.

1-50-020 Vacation Leave: The policy has been revised to include the percent of vacation accrued each pay period; the maximum vacation hours; the vacation accrual rates for Commissioned Fire employees; added language on part-time pro-ration, use of leave in fifteen minute increments, and the need for a leave of absence form in order to memorialize current City practices; and recommend that employees may use vacation leave after submitting a notice of resignation with supervisor approval.

1-50-030 Sick Leave: The policy has been revised to state the maximum of sick leave in hours; added language on part-time pro-ration, use of leave in fifteen minute increments, the need for a leave of absence form and allowing an employee to change vacation to sick leave when becoming injured or ill

during vacation in order to memorialize current City practices; aligned one hour notice for all City employees rather than having one standard for shift personnel and another standard for non-shift personnel; clarified when the City would request an employee provide medical documentation for the use of sick leave; and included information about Family Medical Leave and the Americans with Disability Act policies.

1-50-031 Dependent Sick Leave: The policy has been revised to align one hour notice for all City employees rather than having one standard for shift personnel and another standard for non-shift personnel; added language regarding light duty, use of leave in fifteen minute increments, the need for a leave of absence form and confirmed dependent sick leave is a part of sick leave accrual to memorialize current City practices and clarified when the City would request an employee provide medical documentation for the use of dependent sick leave.

1-50-032 Personal Leave: The policy has been revised to align one hour notice for all City employees rather than having one standard for shift personnel and another standard for non-shift personnel; added language regarding use of leave in fifteen minute increments, the need to notify the next level of supervision if the immediate supervisor is not available, the need for a leave of absence form and confirmed personal leave is a part of sick leave accrual to memorialize current City practices.

1-50-033 Purchase Day Program: This is a new policy that allows full-time benefit eligible employee to purchase ten additional days of paid time off. The employee commits to purchasing additional time off during open enrollment through a Section 125 election and the cost is deducted from the employee's pay check for the 24 pay period of the fiscal year. Employees must use the additional time by June 30th or will lose it.

1-50-050 Family Medical Leave: This policy was an employee directive and is being added to the Handbook to replace the previous Maternity Leave policy. There has been some additions to the policy to reflect the most recent changes made by the Department of Labor such as language regarding covered active duty, covered veterans, and covered adult son or daughter. Domestic Partner has also been added to align with the City's policy. Added language regarding the use of leave in fifteen minutes increments, the need for documentation when returning to work, thirty one days to complete re-enrollment paperwork and clarification of ability to convert voluntary life insurance to memorialize current City practices. Included language regarding short-term disability since it's a new voluntary benefit and FMLA leave effects benefit eligibility.

1-50-060 Military Leave: This policy has been revised to include additional Uniformed Services Employment and Reemployment Rights Act (USERRA) information; clarify the need for a leave of absence form, the effects of leave on the employee 's benefits and the requirement of a personnel action form to memorialize the current City's practices. Included links to USERRA Act of 1994 and to the Arizona Revised Statutes concerning military leave.

1-50-061 Military Training Leave: The policy has been updated to match revisions to the Arizona Revised Statutes and a link has been added.

1-50-070 Jury Duty Leave: This policy has been revised to clarify employees may use accrued leave to attend to personal matters, use jury duty leave in fifteen minutes increments and the need for a leave of absence form to memorialize current City practices. Added a link to Arizona Revised Statute regarding jury duty leave.

1-50-071 Crime Victim Leave: This is a new policy regarding an unpaid leave for employees who are a victim of crime or juvenile offense per Arizona Revised Statutes. Added links to the Arizona Revised Statutes concerning crime victim leave.

1-50-072 Voting Day Leave: This is a new policy that memorializes the current City's practice for voting day leave and a link to the Arizona Revised Statute has been added.

1-50-080 Paid Leave of Absence: This is a new policy that memorializes the current City's practices for an employee who wishes to use their accrued leave to go on a paid leave of absence.

1-50-081 Leave Without Pay: This policy has been updated to allow Deputy City Managers to approve leaves without pay, clarifies the need for a leave of absence form and a personnel action form to memorialize current City practices, and explains that key employees may not be returned to the same or equivalent position upon the return to work.

1-50-100 Donated Leave: This policy has been updated to allow a benefit eligible employee to request donated leave for any reason, clarifies the donated leave is paid at the receiving employee's regular rate of pay, recommends employees may use the donated time for a full-time or intermittent leave, and removes statutory required compensatory time as a leave type that may be donated.

1-50-200 Inclement Weather: This is a new policy moving the employee directive language into the Handbook.

Community Involvement:

Attachments: Ord. No. 2013-09
Res. No. 2013-08
Addendum 5 - with track changes
Addendum 5 - no track changes

ORDINANCE NO. 2013-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF AMENDING THE FLAGSTAFF CITY CODE, TITLE 1, *ADMINISTRATIVE,* , *PERSONNEL SYSTEM*, SECTION 1-14-001-0001, *PERSONNEL SYSTEM ADOPTED,* AMENDING THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS BY ADOPTING "THE 2013 ADDENDUM 5 FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS" BY REFERENCE, RELATING TO POLICIES AND PROCEDURES, AMENDING OR ADOPTING SECTIONS RELATING TO GENERAL DEFINITIONS, HOLIDAY LEAVES, VACATION LEAVE, SICK LEAVE, DEPENDENT SICK LEAVE, PERSONAL LEAVE, PURCHASE DAY PROGRAM, BEREAVEMENT LEAVE, FAMILY MEDICAL LEAVE, MILITARY LEAVE, MILITARY TRAINING LEAVE, JURY DUTY LEAVE, CRIME VICTIM LEAVE, VOTING DAY LEAVE, PAID LEAVE OF ABSENCE, LEAVE WITHOUT PAY, UNAUTHORIZED LEAVE WITHOUT PAY, DONATED LEAVE, AND INCLEMENT WEATHER; PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

ENACTMENTS:

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

The Flagstaff City Code, Title 1, *Administrative*, Chapter 14, *Personnel System*, Section 1-14-001-0001 *Personnel System Adopted,* relating to the Flagstaff Employee Handbook of Regulations, is hereby amended by adopting those changes as set forth in that certain document known as "2013 Addendum 5 of the Flagstaff Employee Handbook of Regulations" of the City of Flagstaff, three copies of which are on file in the office of the City Clerk, which document was made a public record by Resolution No. 2013-08 of the City of Flagstaff, and which is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

SECTION 2. Penalties.

Any person found in violation of any provision of the Flagstaff Employee Handbook of Regulations may be subject to discipline, as set forth in such Handbook.

SECTION 3. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 5. Clerical Corrections.

The Human Resources Director is hereby authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary related to the City of Flagstaff Employee Handbook of Regulations as amended herein, and to make formatting changes needed for purposes of clarity and form, or consistency.

SECTION 6. Effective Date.

This ordinance shall become effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2013.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
ATTORNEY

RESOLUTION NO. 2013-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK ENTITLED "*THE 2013 ADDENDUM 5 TO THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS*"

ENACTMENTS:

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

That certain document entitled *"The 2013 Addendum 5 of the Flagstaff Employee Handbook of Regulations*," three copies of which are on file in the office of the City Clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the City Clerk.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2013.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

2013 ADDENDUM 5 OF THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS

1-10-011. GENERAL DEFINITIONS

General Definitions apply to the entire Employee Handbook of Regulations; however if there is a conflicting specific definition found within a section, then the specific definition will apply to that section.

"Benefit Eligible Employees" are employees who are tenure eligible, tenure granted and Exempt employee who works twenty (20) hours or more per week.

"Classified Employees" shall have the same meaning as Non-Exempt employees.

"Commissioned" means the employee is an active member of the Public Safety Retirement System and the City Police or Fire Department.

"Domestic Partner" shall have the same meaning as set forth in Section 1-70-010.B.

"Employee Dependents" shall consist of the employee's parents, spouse or domestic partner, dependent child(ren), step-child(ren), domestic partner's dependent child(ren) and any other similar close relationship if approved upon petition by the employee to the Human Resources Director through his or her immediate supervisor, Section Head and Division Director.

"Exempt Employees" are employees who are exempt from the overtime pay requirements of the Fair Labor Standards Act (FLSA).

"Fire Suppression Employees" are Commissioned, Non-Exempt employees who engage in fire protection activities as defined by the Fair Labor Standards Act 29 U.S.C. § 203(y) and who work over one hundred eighty-two (182) hours in a twenty-four (24) day work period.

"Full-Time" is considered forty (40) hours per week.

"Key Employee" is defined as a salaried, Benefit Eligible Employee who is among the highest paid ten (10) percent of all the employees working for the employer within seventy-five (75) miles of the employee's worksite.

"Light Duty" means an employee is able to perform restricted duties and/or schedule per the employee's treating physician. Light duty may include telecommuting or other types of alternate work schedules per policy 1-20-053.

"Non-Exempt Employees" are employees who are paid wages subject to the overtime pay requirements of the Fair Labor Standards Act.

"Part-Time" is considered twenty (20) hours to thirty-nine (39) hours per week.

"Shift Employees" are employees assigned to a position which is staffed at least six (6) days a week, or twenty-four (24) hours a day, and is assigned a designated work schedule that can be either rotating or permanently assigned.

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"Temporary Employees" are employees hired by the City for a temporary period and who work less than 20 hours per week. Temporary Employees are not Benefit Eligible Employees.

"Tenured Employees" are Non-Exempt employees who have completed their probationary period.

"Unclassified Employees" shall have the same meaning as Exempt employees.

"Working Day" shall be considered equal to 0.38461 percent of the number of working or duty hours in the established work year for each employee.

1-50-010. HOLIDAY~~S~~ LEAVE

~~A.~~Benefit Eligible employees are eligible to receive paid time off or compensatory time for City Holidays and a Floating Holiday each calendar year. ~~The following days shall be recognized as holidays; and all benefit eligible employees shall have those holidays off with pay:~~

A. DEFINITIONS

~~A~~1. "City Holidays" include the following holidays: New Years Day, January 1st; Martin Luther King Day, Third Monday in January; President's Day, Third Monday in February; Memorial Day, Last Monday in May; Independence Day, July 4th; Labor Day, First Monday in September; Veteran's Day, November 11th; Thanksgiving Day, Fourth Thursday in November; Day After Thanksgiving, Fourth Friday in November; and Christmas Day, December 25th.

2. ~~Floating Holiday,~~ "Floating Holiday" ~~which~~ is paid time off equal to one (1) Working Day each calendar year. ~~in January and must be used by December 31st of each calendar year.~~, ~~with prior approval from the Division Director. The Floating Holiday, if not used by December 31st, may not be carried over into the next calendar year.~~

3. "Holiday Compensatory Time" is compensatory hours accrued by an employee in lieu of Holiday Leave pursuant to this policy.

4. "Holiday Leave" is ~~hours paid at the regular hourly rate for non-shift and shift employees.~~paid leave entitling the employee to receive his or her regular rate of compensation on a City Holiday.

5. "Holiday Time Worked" is the hours worked on a City Holiday that are compensated at one and half times the employee's regular rate of compensation.

B. ELIGIBILITY

1. Holiday Schedules and Holiday Leave

a. Benefit Eligible Employees who are not ~~considered~~ Shift Employees observe City Holidays that fall on a Sunday the following Monday and holidays that fall on a Saturday the preceding Friday. Benefit Eligible Employees receive Holiday Leave for City Holidays observed, except as provided below.

b. Benefit Eligible Shift Employees observe the day of the City Holiday. Benefit Eligible Shift Employees receive Holiday Leave for City Holidays observed, except as provided below.

c. If a City Holiday falls on an employee's regularly scheduled Working Day and the employee does not work, they will receive Holiday Leave.

d. Holiday Leave will be pro-rated for Part-time Benefit Eligible Employees by dividing the number of hours worked in the week by five (5) and rounding up to the next whole number.

e. Temporary Employees receive regular pay for hours worked on a City Holiday.

2. Holiday Compensatory Time and Holiday Time Worked

a. If a City Holiday falls on a Fire Suppression Employee's regularly scheduled Working Day and the employee does not work, the employee will accrue 3.73 hours of Holiday Compensatory Time for the City Holiday worked in lieu of Holiday Leave.

b. If a City Holiday falls on an employee's regularly scheduled day off and the employee does not work, the employee will accrue one (1) Working Day of Holiday Compensatory Time. Fire Suppression Employees will accrue 3.73 hours of Holiday Compensatory Time.

c. If a City Holiday falls on an employee's regularly scheduled day off and the employee does work, the employee will accrue one (1) Working Day as Holiday Compensatory Time plus Holiday Time Worked.

d. If a City Holiday falls on a Fire Suppression Employee's regularly scheduled day off and the employee does work, the employee will accrue 3.73 hours of Holiday Compensatory Time plus Holiday Time Worked.

e. If a City Holiday falls on an employee's regularly scheduled Working Day and the employee does work, the employee will receive Holiday Leave plus will be paid Holiday Time Worked.

f. If a City Holiday falls on a Fire Suppression Employee's regularly scheduled Working Day and the employee does work, the employee will accrue 3.73 hours of Holiday Compensatory Time plus will be paid Holiday Time Worked.

g. Employees may accrue up to three (3) Working Days of Holiday Compensatory Time, except Fire Suppression Employees may accrue up to five (5) Working Days.

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h. Holiday Compensatory Time may be used in fifteen (15) minute increments.

3. Exception from Holiday Leave or Holiday Compensatory Time: Any employee who is suspended or on unpaid leave on either the regularly scheduled Working Day immediately preceding or immediately following the City Holiday shall not receive Holiday Leave or Holiday Compensatory Time. Unpaid leave includes when the employee does not have sufficient paid leave time to cover the entire scheduled Working Day.

~~1. Holiday Pay will be pro-rated for part-time Benefit Eligible Employees.~~

4. Floating Holidays

a. Each Full-Time Benefit Eligible Employee accrues one (1) Floating Holiday annually. The Floating Holiday is pro-rated for Part-Time Benefit Eligible Employees by dividing the number of hours worked in the week by five (5) and rounding up to the next whole number.

b. Floating Holiday may be used in fifteen (15) minute increments.

c. Floating Holiday accrues in January and must be used by December 31st.. A Floating Holiday ~~not used~~ shall not carry over into the next calendar year.

d. Floating Holiday may not be donated per Section 1-50-100.

C. PROCEDURES

1. All Holiday Pay and Holiday Compensatory Time shall be recorded through the City's payroll procedures.

~~Employees may accrue up to three (3) working days of Holiday Compensatory Time, except Fire Suppression Commissioned Non-Exempt Employees who may accrue up to five (5) working days.~~

2. Employees may use Holiday Compensatory Time hours accrued with the advance~~d~~ written approval of their immediate supervisor.

3. An employee shall submit a leave of absence form to the immediate supervisor to record the ~~their~~ leave through the City's payroll procedures.

~~Temporary Employees receive regular pay for hours worked on a City Holiday.~~

D. EFFECTS OF TERMINATION OF EMPLOYMENT

1. ~~And every day designated as a holiday by the City Council.~~ Employees may take the F~~f~~loating H~~h~~oliday after submitting a notice of resignation with approval from the immediate supervisor, except for the last day of the notice period.

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2. Floating Holiday is forfeited and is not paid out upon termination of employment.

3. Holiday Compensatory Time is paid out upon termination of employment.

~~Holidays that fall on a Sunday shall be observed on the following Monday. Holidays that fall on a Saturday shall be observed the preceding Friday.~~

~~This Section does not apply to employees who are engaged in shift work. Procedures for shift work holidays are outlined in section B of this policy. Shift work is defined as the work schedule of a position which is staffed at least six days a week, or 24 hours a day, and is assigned a designated work schedule that can be either rotating or permanently assigned.~~

~~B.The following are the procedures governing holiday pay and time off for shift employees working forty (40) hours per week:~~

~~1.If the holiday falls on an employee's regularly scheduled workday and the employee does not work, they will receive regular wages for the holiday taken.~~

~~2.If the holidays falls on an employee's regularly scheduled workday and the employee does work, they will receive regular wages for the holiday plus time and one-half for the actual hours worked.~~

~~3.If the holiday falls on an employee's regularly scheduled day off and the employee does not work, they will accrue the equivalent of one (1) working day as defined in Section 1-20-030-F as holiday time. This time shall be used at the discretion of the appropriate Division Head.~~

~~4.If the holiday falls on an employee's regularly scheduled day off and the employee does work, they will receive time and one-half for the actual hours worked only and will accrue the equivalent of one (1) working day as defined in Section 1-20-030-F as holiday time. This time shall be used at the discretion of the appropriate Division Head.~~

~~C.The following are the procedures for Fire Department employees who work a fifty-six (56) hour work week:~~

~~1.If the holiday falls on an employee's regularly scheduled workday and the employee does not work, they will receive 3.73 hours of holiday comp time.~~

~~2.If the holiday falls on an employee's regularly scheduled work day and the employee does work, they will receive 3.73 hours holiday comp time plus time and one-half for the actual hours worked.~~

~~3.If the holiday falls on an employee's regularly scheduled day off and the employee does not work, they will receive 3.73 hours holiday comp time. This time shall be used at the discretion of the appropriate Division Head.~~

~~4.If the holiday falls on an employee's regularly scheduled day off and the employee does work, they will receive time and one-half for the actual hours worked only and will receive 3.73 hours holiday comp time. This time shall be used at the discretion of the appropriate Division Head.~~

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~~All hours accrued in lieu of a holiday missed, as defined in Section 1-50-010, B.3 and B.4, and C.3 and C.4 shall be accruedbe recorded through the City's payroll procedures and the official record shall be maintained by the Finance Division.~~

~~No employee shall be allowed to accrue in excess of the equivalent of three (3) working days of holiday time, as "working day" is defined by Section 1-20-030 F, except for shift employees of the Flagstaff Fire Department who may accrue a maximum of fifty-six (56) hours.~~

~~E.Any employee who is on suspension without pay or unpaid leave of absence (even partial leave without pay) on either the regularly scheduled workday immediately preceding or immediately following the holiday or day observed in lieu of the holiday shall not receive compensation for said holiday or day observed in lieu of the holiday.~~

~~F.Temporary employees are not paid for holidays unless actuallyworked.~~

Link(s):
Arizona Revised Statute Section 38-608

1-50-020. VACATION LEAVE

Benefit Eligible Employees are eligible to receive paid time off for vacation leave after six (6) months of continuous service.

~~The purpose of annual Vvacation leave with pay is available to eligible employees to provide opportunities for rest, relaxation and personal persuits. to enable each eligible employee to return to work mentally refreshed. Eligible employees are tenured regular employees in the classified service; all exempt employees; and any other employee designated by the City Manager. Employees must have served more than six (6) months in the service of the City to be eligible to take vacation.~~

A. ELIGIBILITY

1. ~~Employees working twenty (20) hours or more per week, earn vacation on a pro-rated basis.~~ The City Manager or designee may authorize an employee, upon hire, to ~~earn~~ accrue vacation at any rate within the Table A or Table B below, based on years of experience.
2. Employees may use vacation leave in fifteen (15) minute increments.
3. Full-Time Benefit Eligible Employees will accrue vacation as set forth in Table A. Part-Time Benefit Eligible Employees will accrue vacation leave pro-rated by multiplying the number of hours worked during a pay period times the percent accrued per pay period listed in Table A.

TABLE A

~~Classified~~ Non-Exempt Employees Years of Service	Exempt Employees Years of Service	Days Accrued Per Year of Service	Percent Accrued Per Pay Period	Hours Accrued Per Pay Period	Vacation Hou Maximum
1-4		11	4.24%	3.39	132

5-9		13	5.01%	4.01	156
10-14	1-4	16	6.16%	4.93	192
15-19	5-9	18	6.92%	5.54	216
20-24	10-14	21	8.08%	6.46	252
25-29	15-19	23	8.85%	7.08	276
30+	20-24	26	10.00%	8.00	312
	25-29	28	10.77%	8.62	336
	30+	31	11.92%	9.54	372

4. Fire Suppression Employees will accrue vacation leave as set forth in Table B:

TABLE B

Fire Suppression Commissioned Non-Exempt Employees Years of Service	Fire Suppression Commissioned Exempt Employees Years of Service	Days Accrued Per Year of Service	Percent Accrued Per Pay Period	Hours Accrued Per Pay Period	Vacation Hou Maximum
1-4		11	4.24%	4.75	185
5-9		13	5.01%	5.61	219
10-14	1-4	16	6.16%	6.90	269
15-19	5-9	18	6.92%	7.75	302
20-24	10-14	21	8.08%	9.05	353
25-29	15-19	23	8.85%	9.91	386
30+	20-24	26	10.00%	11.20	437
	25-29	28	10.77%	12.06	470
	30+	31	11.92%	13.35	521

~~B.Tenured classified employees earn the following number of paid vacation (working) days:~~

~~Years of Service~~	~~Number of Days~~	~~Hours Earned Per Pay Period~~
~~1-4~~	~~11~~	~~3.39~~
~~5-9~~	~~13~~	~~4.01~~
~~10-14~~	~~16~~	~~4.93~~
~~15-19~~	~~18~~	~~5.54~~
~~20-24~~	~~21~~	~~6.46~~
~~25-29~~	~~23~~	~~7.08~~
~~30+~~	~~26~~	~~8.00~~

~~C.Exempt employees earn the following number of paid vacation (working) days as follows:~~

~~Years of Service~~	~~Number of Days~~	~~Hours Earned Per Pay Period~~
~~1-4~~	~~16~~	~~4.93~~

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5-9	18	5.54
10-14	21	6.46
15 - 19	23	7.08
20 -24	26	8.00
25-29	28	8.62
30+	31	9.54

5. Employees may accrue vacation hours up to the maximum set forth in the tables above, which reflect the maximum vacation hours than can be accrued in eighteen (18) months of continuous service. All vacation hours over the maximum allowed that are not used by June 30th shall be forfeited, unless carryover is approved as set forth in the Procedures below.

6. New employees may not use accrued vacation leave within the first six (6) months of employment for the City.

7. Employees may donate vacation leave per Section 1-50-100.

B. PROCEDURES

D.1.Employees wishing to utilize leave shall submit a leave of absence form to the immediate supervisor must request andto obtain approval in advance of leave. The supervisor is responsible for authorizing and scheduling employee time off requests while balancing the work program. Scheduling an authorization of vacation time will be the responsibility of the supervisor with due regard for the wishes of the employee and particular regard for the needs of the service. If the requirements of the service are such that an employee cannot take part or all of their annual vacation in a particular calendar year, such vacation shall be taken during the following calendar year. Length of service shall be used to resolve conflicts over vacation periods between employees of the same classification.

2. All vacation leave shall be recorded through the City's payroll procedures.

3. An employee may submit a written request to carryover his or her vacation hours in excess of the maximum past June 30th with approval from the immediate supervisor, Section Head, Division Director and Human Resources. Human Resources will notify the employee of the final decision. If approved, the employee may not request to carryover vacation hours in excess of the maximum again for two years.

E.Employees may not carry over more hours than can be earned in eighteen (18) months of continuous service. Earned vacation hours in excess of the maximum must be used no later than June 30 of each fiscal year. All hours over the maximum allowed and not used by June 30 of the current fiscal year shall be forfeited.

1.In the event of extenuating or unforeseen circumstances, an employee may exceed his or her vacation maximum past June 30 by submitting a written request to the Department Head through the immediate supervisor. The Department Head, in conjunction with the Human Resources Director, will make a determination and notify the employee of the decision. Employees may not be allowed this option for two consecutive years.

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~~F.~~4.In the event one or more ~~municipal holidays~~City Holidays fall within ~~an annual~~a period of vacation leave, such holiday shall not be charged as vacation leave, and the vacation leave shall be extended or credited accordingly.

C. EFFECTS OF TERMINATION OF EMPLOYMENT

1. Employees may take vacation leave after submitting a notice of resignation with approval from the immediate supervisor, except for the last day of the notice period.

~~G.~~2.Employees who have satisfactorily completed ~~probation~~ six (6) months of service and who terminate employment shall be paid in a lump sum for all unused vacation leave ~~earned~~ accrued prior to the effective date of termination.

Forms: Leave of Absence Form

1-50-030. SICK LEAVE

Benefit Eligible Employees are eligible to receive paid time off for sick leave when work time is missed due to the employee's personal injury and/or illness.

A. ELIGIBILITY

~~Benefit eligible employees shall be granted sick leave. Temporary employees will not accrue sick leave. Sick leave shall not be considered as a right that an employee may use at their discretion but shall be allowed only in case of actual personal or dependent sickness or injury. (See Dependent Sick Leave, Section 1-50-030.10).~~

1. Full-Time Benefit Eligible Employees shall accrue sick leave at the rate of one workday for each calendar month of service, not to exceed one thousand and forty (1,040) hours.

2. Benefit Eligible Employees may use up to six (6) days of sick leave during the first six (6) months of employment, regardless of the number of hours accrued. Sick leave hours not yet accrued that are used during the first six (6) months of employment will be deducted from the final paycheck should an employee leave City service during the first six (6) months.

3. In the case of personal sickness or injury where employees are capable of performing ~~l~~Light ~~d~~Duty, the~~y~~ employee shall ~~so~~ advise their ~~Division Head~~immediate supervisor, Section Head or Division Director who may make arrangements, provided ~~l~~Light ~~d~~Duty is available. ~~Unnecessary use of sick leave shall be cause for disciplinary action.~~

4. Employees may use sick leave in fifteen (15) minute increments.

5. Sick leave will be accrued on a pro-rated basis for Part-Time Benefit Eligible employees by multiplying the number of hours worked during a pay period times 4.62%.

6. Employees may not donate sick leave per Section 1-50-100.

B. PROCEDURE

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2013 ADDENDUM 5 OF THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS

1. To use sick leave, the employee shallEmployees may request sick leave by notifying his/herthe employee's immediate supervisor, or division Section Hhead, or Department HeadDivision Director one hour prior to, or within one hour after, the time set for beginning of their daily dutiesscheduled work shift.

2. In cases when the immediate supervisor cannot be reached, notice shall be given to the next level of supervision.

3. An employee shall submit a leave of absence form to the immediate supervisor to record their employee's leave through the City's payroll procedures.

4. The immediate supervisor, Section Head, Division Director, Human Resources Director or designee, may require employee may be required by the Department Head or designee to file a physician's medical certificatione or a personal affidavit stating the cause of absenceto document the illness and/or injury of the employee when an employee's absence is negatively impacting the efficiency or effectiveness of the program or the employee is suspected of abusing sick leave.

5. Employees diagnosed with a serious and/or ongoing medical condition may have additional coverage under the Family Medical Leave policy 1-50-050 and/or Americans with Disability Act policy 1-10-014.

C. Tenure-eligible and exempt employees shall accrue sick leave at the rate of one workday for each calendar month of service, not to exceed 130 workdays

(part-time tenure-eligible employees will accrue sick leave on a pro-rated basis).

D. All new tenure-eligible and exempt employees will be allowed to use up to six (6) days of sick leave at anytime during the first six (6) months of employment, regardless of the number of hours accrued. Sick leave hours not yet earned that are used during the first six (6) months of employment will be deducted from the final paycheck should an employee leave the City service during the first six (6) months.

E6. Unused Employees who have accrued more than 1,040 maximum sick sick leave accrued in excess of the maximum shallleave hours shall be paid one (1) Working Day for each two (2) Working Days of unused sick leave accrued in excess of the maximum to the employee on the first pay period in December. and The accrual amount shall include leave accrued through the last pay period in November. at the rate of one (1) day's pay for each two (2) days' unused sick leave accrued in excess of the maximum.

Employees leaving the service shall be paid for unused sick leave at the rate of one (1) day's pay for each two (2) days of unused sick leave under the following conditions;

1. Employees retiring from City employment and receiving retirement benefits from Public Safety Retirement System or the Arizona State Retirement System; or

2. Employees terminating City employment with a minimum of twenty (20) years of service.

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F7. In the event that anyone or more paidCity hHolidays occurs during a period when an employee is on paidfall within a period of sick leave, the such holiday shall not be charged against the employee's accruedas sick leave. The only sick leave hours that shall be charged to any employee's accrued sick leave shall be those hours that the employee is regularly scheduled to work.

8. In the event an employee is on vacation leave and becomes sick or is injured, with proper medical documentation, the work time missed may be changed to sick leave for the date of illness and/or injury.

GC. EFFECTS OF TERMINATION OF EMPLOYMENT

1. Employees will be required to provide the appropriate Division Headtheir immediate supervisor with a medical certification of illness and/or injury for any use of sick leave within two weeks of their termination of employmentafter submitting a notice of resignation. The employee must work the last day of the notice period.

2. The following categories of employees leaving City service shall be paid for unused sick leave at the rate of one (1) Working Day for each two (2) Working Days of unused sick leave:

   a. Employees retiring from City employment and receiving retirement benefits from Public Safety Retirement System or the Arizona State Retirement System; or

   b. Employees terminating resigning or terminated from City employment, with a minimum of twenty (20) years of service as a City employee.

H. At any time a supervisor believes there is reason to question the capacity of an employee to perform the essential functions of the employee's position, the supervisor may require the employee to provide a physician's statement certifying that the employee is capable of performing the defined essential functions. The City may require the employee to be examined by a physician of the City's choosing for a "fitness for duty" examination. Failure to attend a "fitness for duty" examination will lead to disciplinary action, up to and including termination. The City will pay the full cost of the "fitness for duty" examination. The time spent taking the examination will be considered work time and will not be charged against the employee's vacation or sick leave. Records and/or reports of such examination will be maintained separately from the employee's 201 file. The City will keep the results of examinations confidential and will maintain medical information in a locked cabinet separate and apart from the 201 file[sa1].

I. For the purpose of computing sick leave, a workday shall be considered equal to .38461 percent of the number of working or duty hours in the established work year for each employee.

J. Non-Job Related Injury or Illness

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~~In the event that an employee becomes sick or is injured during paid time off for vacation, with proper medical documentation, the time may be charged to accrued sick leave.~~

Forms: Leave of Absence Form

1-50-~~030.20~~031. DEPENDENT SICK LEAVE

Benefit Eligible Employees are eligible to use paid time off for dependent sick leave when work time is missed due to their dependent's injury and/or illness.

A. ELIGIBILITY

1. Benefit Eligible Employee~~s~~ may use accrued sick leave hours ~~for~~ to care for the employee's Dependents' injury and/or illness.

~~A.~~2. ~~In the case of dependent sick leave w~~When employees are capable of performing Light Duty while caring for their Dependents, they shall advise their immediate supervisor, Section Head or Division Director who may make arrangements, provided Light Duty is available.

3. Employees may use dependent sick leave in fifteen (15) minute increments.

B. PROCEDURE

~~A.All benefit eligible employees will be allowed to utilize earned sick leave to care for dependents in the case of an emergency situation or a serious health condition that has resulted in an extended medical illness or injury.~~

1. ~~To receive compensation for~~Employees may request dependent sick ~~leave, employees shall~~ leave by notifying ~~their~~ the employee's immediate supervisor, Section Head, or Division Director one hour prior ~~to, or within two hours after, the~~to the ~~time set for~~ beginning of their ~~daily routine~~scheduled work shift.

~~2.All shift work personnel shall be required to make notification one hour prior to start of their shift.~~

2. In cases when the immediate supervisor cannot be reached, notice shall be given to the next level of supervision.

3. An employee shall submit a leave of absence form to the immediate supervisor to record the~~ir~~ employee's leave through the City's payroll procedures.

~~3.~~4. The immediate supervisor, Section Head, Division Director, Human Resources Director or designee, may require ~~a~~ medical certification to document the illness and/or injury of the employee's Dependent~~s~~ when an employee's absence is negatively impacting the efficiency or effectiveness of the program or the employee is suspected of abusing dependent sick leave.

~~Dependents shall consist of the employee's parents, spouse or domestic partner, dependent children, step- children, domestic partner's dependent child(ren) and anyone else petitioned by the employee to the Human Resources Director through his/her immediate supervisor, Section Head and Division Director.~~

C. EFFECTS OF TERMINATION OF EMPLOYMENT

1. Employees will be required to provide their immediate supervisor with medical certification of illness and/or injury for any use of dependent sick leave after submitting a notice of resignation. The employee must work the last day of the notice period.
2. Dependent sick leave is part of an employee's sick leave accrual and paid out in accordance with the Sick Leave policy.

Forms: Leave of Absence Form

1-50-~~030.30~~032 PERSONAL LEAVE

Benefit Eligible Employees are eligible to use paid time off for personal leave when work time is missed due to personal reasons.

A. ELIGIBILITY

1. ~~All b~~Benefit ~~e~~Eligible ~~e~~Employees ~~will be allowed to~~may use up to ~~one~~two (~~1~~2) ~~w~~Working ~~d~~Days of accrued sick leave per calendar year for matters of personal business.
2. Personal Leave is accrued on a pro-rated basis for Part-Time Benefit Eligible Employees by dividing the number of hours worked in the week by five (5) and rounding up to the next whole number.
3. Employees may use personal leave in fifteen (15) minute increments.

B. PROCEDURE

1. ~~To receive compensation for personal leave, the e~~Employees ~~shall~~ may request personal leave by notifying ~~his/her~~the employee's immediate supervisor one hour prior to~~, or within two hour(s) after,~~ the ~~time set for~~ beginning of their ~~daily routine~~scheduled work shift.

~~1.~~2. In cases when the immediate supervisor cannot be reached, notice shall be given to the next level of supervision.

~~1.~~3. An employee shall submit a leave of absence form to the immediate supervisor to record their leave through the City's payroll procedures

~~1.~~

~~5. All shift work personnel shall be required to make notification one hour prior to the start of their shift.~~

~~2.~~5. Personal leave cannot be accumulated or carried over into another calendar year.

C. EFFECTS OF TERMINATION OF EMPLOYMENT

~~3.~~1. Employees ~~will not be allowed to~~may take personal leave after submitting a notice of resignation with the approval of the immediate supervisor, but must work the last day of the notice period.

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~~3.~~2. Personal leave is part of an employee's sick leave accrual and paid out in accordance with section C.2. of the Sick Leave policy.

Forms: Leave of Absence Form

1-50-033. PURCHASE DAY PROGRAM

Benefit Eligible Employees may purchase additional paid time off by participating in the purchase day program.

A. DEFINITIONS

1. "Purchase Days" are paid time off the employee may purchase through a pre-tax payroll deduction. A Purchase Day is equal to one (1) Working Day.

B. ELIGIBILITY

1. A Full-Time Benefit Eligible Employee may purchase up to ten (10) Purchase Days per fiscal year after completing six (6) months of continuous service, if a timely request is submitted.

2. Employees may not purchase partial Purchase Days.

3. Employees may use Purchase Days in fifteen (15) minute increments.

C. PROCEDURE

1. Employees must submit a request to participate between May 1st and May 31st in order to be eligible to participate the following fiscal year. Employees must re-elect each fiscal year to participate in the purchase day program.

2. The Benefit Eligible Employee may request to participate in the purchase day program by submitting a Purchase Day Program Request form to the employee's immediate supervisor, Section Head, Division Director, Deputy City Manager, Human Resources Director or designee and City Manager or designee.

3. Human Resources will notify the employee of the final approval and the cost of the paid time off the employee wishes to purchase. The cost is based on the employee's current hourly rate of pay times the number of Purchase Days at the time of the request. The total purchase amount is then divided by twenty-four (24) pay periods over the fiscal year.

   a. In the event the employee's salary or hourly rate changes during the fiscal year, the cost of the Purchase Days shall not be adjusted.

   b. The cost may not jeopardize an employee's minimum wage earnings.

4. The deductions will be pre-tax from the employee's paycheck per Section 125 under the Internal Revenue Service code. The pre-tax election may not be changed during the fiscal year. When the Purchase Day (or approved increments) are used, the cost will be reflected as income in the employee's paycheck and subject to applicable withholdings and deductions.

5. Purchase Days must be used within the fiscal year by June 30th or they will be forfeited.

6. Employees wishing to utilize Purchase Days must request and obtain approval in advance. The supervisor is responsible for authorizing and scheduling employee time off requests while balancing the work program, and may deny use of Purchase Days if not requested sufficient time in advance.

7. An employee shall submit a leave of absence form to the immediate supervisor to record the employee's Purchase Day leave through the City's payroll procedures.

8. Purchase Days are paid at the employee's regular pay rate excluding any type of additional pay.

C. EFFECTS OF TERMINATION OF EMPLOYMENT

1. Employees who leave City service will receive a refund for any Purchase Days not used, which will be reflected as income in the employee's paycheck and subject to applicable withholdings and deductions.

2. Employees who leave City service and who have used Purchase Days not yet paid for will pay for the amount owed from their last paycheck. The last paycheck will show the cost deducted. Any balance not deducted from the employee's last paycheck will be paid to the City within six (6) months after leaving the City's employment. After six (6) months, any unpaid balances will be forwarded to collection and the employee will be responsible for the cost of the collection, including any attorney fees and court costs.

Form(s): Purchase Day Program Request Form

1-50-040. BEREAVEMENT LEAVE

Benefit Eligible Employees are eligible for paid time off for bereavement leave in the event of the death of an ~~employee's~~ immediate family member.

A. DEFINITIONS

~~A.Benefit eligible employees may be granted bereavement leave (whether they are on probation or not) in the event of the death of a member of an employee's immediate family~~.

~~B.~~1.~~The City of Flagstaff defines~~ "i"Immediate ~~f~~Family~~'~~ ~~as shall consist of~~ Members" are the employee's spouse or Domestic Partner; ~~,~~and any of their ~~-~~parents, child~~(~~ren~~)~~, step-child~~(~~ren~~)~~, brother~~(~~s~~)~~ or sister~~(~~s~~)~~, grandparent~~(~~s~~)~~, and grandchild~~(~~ren~~)~~ and any other similar close relationship if approved upon petition by the employee to the Human

Resources Director through the employee's immediate supervisor, Section Head and Division Director., brothers, sisters, or the employee's spouse's or domestic partner's parent, child, brother, sister, grandparents, grandchildren, brother, sister. and the employee's child's spouse,immediate family members or other family members as petitioned. An Immediate Family Member may include a person approved upon special petition.2. An employee may petition for Sspecial consideration will also to be given to any other person whose association with the employee is similar to any of the above relationships.

A.B. ELIGIBILITY

1. Benefit Eligible Employees may receive up to five (5) Working Days of bereavement leave for an Immediate Family Member's death, subject to City operational needs as determined by the immediate supervisor.

A.2. Bereavement leave will be pro-rated for Part-Time Benefit Eligible Employees by dividing the number of hours worked in the week by five (5) and rounding up to the next whole number.

1.3. Non-Tenured and Temporary Employees may receive up to five (5) Working Days of unpaid time off for bereavement.

C. PROCEDURE

1. An employee may petition his immediate supervisor to allow bereavement leave for any person whose relationship to the employee, spouse or domestic partner was similar to an Immediate Family Member.

A.2. If an employee wishes to take time off due to the death of an Immediate Family Member, the employee should notify his or her supervisor immediately.

D.3.A Leave Request form must be submitted to the employee'sAn employee shall submit a Leave of Absence Form to the immediate supervisor, Section Head and Division Director substantiating the need for bereavement leave to record the employee's bereavement leave through the City's payroll procedures.

E.4.For each occurrence, up to five (5) wWorking dDays of bereavement leave may be granted for an immediate family member's death in the absence of unusual operating requirements. A working day shall be considered equal to 0.38461 percent of the number of working or duty hours in the established work year for each employee.

1-50-050. MATERNITY LEAVEFAMILY MEDICAL LEAVE

I.PURPOSE

The Family and Medical Leave Act of 1993 (FMLA) and subsequent amendments as amended provides eligible employees with up to 12 work weeks of job protected unpaid leave in a single 12twelve (12) month period for the birth or adoption of a child; care of a child, spouse, or parent who has a serious medical condition; or the employee's own serious health condition; or to take care of military related "qualifying exigencies" of a family member. The Act requires health benefits to be maintained during the leave of absence for a qualifying event. A covered

employer is required to maintain group health insurance coverage, including family coverage if premiums are paid, for an employee on Family and Medical Leave on the same terms as if the employee continued working.

The Family Medical Leave Act was amended in 2009 to include Military Caregiver Leave which also provides eligible employees a one-time entitlement with up to twenty-six (26) workweeks of job protected unpaid leave in a single 12-month period, including traditional FMLA leave, to care for a covered member of the Armed Forces or covered veteran with a serious injury or illness. An employer is not required to provide in excess of twenty-six (26) workweeks unpaid job protected leave within a 12-month period, regardless of the type of FMLA leave taken, and leave for a "qualifying exigency" which provides eligible employees twelve (12) workweeks in a single twelve-month period. to care for a member of the Armed Forces, National Guard, or Reserves who suffers from an injury or illness incurred during active duty that may render the service member unfit to perform the duties of office, rank, or rating. The member must be undergoing medical treatment, recuperation, or therapy; in outpatient status, or on the temporary disability retired list as a result of the serious injury or illness. This provision also extends FMLA protection to additional family members (i.e., next of kin).

The Family Medical Leave Act was amended in 2009 to also include Leave for a "Qualifying Exigency" which provides eligible employees 12 workweeks in a 12-month period to manage affairs while the service member is on active duty in support of a contingency operation. Employees may use FMLA leave for short-notice deployment; military events and related activities; childcare and school activities; financial and legal arrangements; counseling, rest and recuperation; post-deployment activities; and additional activities not encompassed in the other categories, but agreed to by the employer and employee.

2. SCOPE

9.A. DEFINITIONS

1. "Covered Active Duty" means duty during deployment of the Armed Forces, National Guard or Reserves member to a foreign country, including deployment to international waters.

10.2. "Covered Service Member" is a current member of the Armed Forces, (including a member of the National Guard or Reserves), who is undergoing medical treatment, recuperation, or therapy is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a Serious Injury or Illness.

1.3. "Covered Veteran" is a veteran of the Armed Forces (including a member of the National Guard or Reserves) who is discharged within the 5-year period before the family member first takes Military Caregiver Leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a Veteran Serious Injury or Illness. A veteran who was dishonorably discharged is not a Covered Service Member.

4. 1. "FMLA Eligible Employee" means an employee who meets all of the following conditions:

a. Benefit Eligible Employee who has worked for the City of Flagstaff for at least twelve (12) months, which need not be consecutive; and

b. The employee has worked at least one thousand two hundred and fifty (1,250) hours during the twelve (12) months prior to the start of FMLA leave. Regular and overtime hours are counted as hours worked; however, any type of paid or unpaid leave hours are excluded.

5. "Health Care Provider" is a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices or any other person determined by the U.S. Secretary of Labor to be capable of providing health care services, or any health care provider who is accepted by the City's group health plan including clinical social workers.

6. 2. "In Loco Parentis" is a person who helped raise and had~~s~~ day-to-day responsibilities to care for and financially support the employee as a child, assuming the role of a parent ~~without going through the formalities necessary to legal adoption~~.

7. 3. "Intermittent Leave" is taking leave in separate blocks of time. ~~for a single qualifying reason~~.

8. 4.. "Key Employee" is defined as a salaried, FMLA ~~e~~Eligible E~~e~~mployee who is among the highest paid ten (10) percent of all the employees working for the employer within seventy-five (75) miles of the employee's worksite.

~~Military Caregiver Leave applies to a spouse, son, daughter, parent or next of kin of a covered service member with a serious injury or illness. A serious injury or illness is one that was incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.~~

9. "Military Caregiver Leave" means FMLA leave taken to care for a Covered Service Member or Covered Veteran with a Serious Illness or Injury.

10. "Next of Kin of a Covered Veteran" is the nearest blood relative, other than the veteran's spouse, Parent, Son or Daughter, designated in writing by the veteran or in the order of priority set forth in FMLA regulations.

11. ~~6.~~ "Parent" means a biological, adoptive step or foster father or mother, or any other individual who stood in L~~l~~oco P~~p~~arentis to the employee when the employee was a child ~~son or daughter~~. This term does not include parents "in law".

~~7. Qualifying Exigency leave means the eligible employee's spouse, son, daughter or parent is on active duty in the National Guard or Reserves, or has been notified of an impending call or order to active duty in the National Guard or Reserves, in support of a contingency operation.~~

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12. "Qualifying E~~e~~xigency" is a need for an employee to take care of certain matters arising out of the fact that the employee's spouse, Son or Daughter, or Parent is a Covered Service Member on Covered Active Duty (military deployment to a foreign country) and includes (1) short-notice deployment, (2) military events and related activities, (3) childcare and school activities, (4) care of the military member's parent who is incable of self-care, ~~(4)~~ (5) financial and legal arrangements, ~~(5)~~ (6) counseling, (7~~6~~) up to fifteen (15) days rest and recuperation, (8~~7~~) post-deployment activities, (~~8~~9) additional activities not encompassed in the other categories, but agreed to by the employer and employee.

13. "Qualifying Exigency Leave" means leave taken by a FMLA Eligible Employee as a result of a Qualifying Exigency.

14~~8~~. "Qualifying Reasons" are ~~for FMLA are one or more of the following reasons~~:

a. for the birth of a Son or Daughter and to care for a newborn child within one year of birth;

b. for the placement with the employee of a child for adoption or foster care, or to care for a newly placed child within one year of placement;

c. to care for ~~an immediate family member~~ (the employee's spouse, ~~child,~~ Son or Daughter, or Parent, but not a "parent-in-law, and in addition Domestic Partner per City policy~~") with~~ who has a Serious Health Condition;

d. when the employee is unable to work because of a Serious Health Condition that prohibits the employee from performing any of the essential functions of the job; or

e. any Qualifying Exigency arising out of the fact that the employee's spouse, Son~~,~~ or Daughter, or Parent is a Covered ~~military~~ Service Member on Covered Active Duty. ~~"covered active duty"; or~~

f. ~~to care for a covered service member with a serious injury or illness, if the eligible employee is the service member's spouse, son, daughter, parent or next of kin (military caregiver leave).~~

15. ~~9~~. "Reduced Scheduled" is ~~decreasing~~ a reduced number of hours in the employee's usual weekly or daily work schedule.

16. ~~10~~. "Serious Health Condition" is an illness, injury, impairment, or physical or mental condition that involves either:

a. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such impatient care; or

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b. Continuing treatment by a health care provider, which includes a period of incapacity lasting more than fourteen (14) consecutive full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also includes:

i. Treatment two or more times by or under the supervision of a health care provider (i.e., in-person visits) the first within seven (7) days and both within thirty (30) days of the first day of incapacity; or

ii. Treatment by a health care provider (i.e., an in-person visit) within seven (7) days of the first day of incapacity with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or

ii. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or

iii. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or

iv. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or

v. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days it not treated.

17. "Serious Injury or Illness" is:

a. One that was incurred by a Covered Service Member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating; or

b. One that was incurred by a Covered Veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, regardless of when such injury or illness became manifested, and that is either:

i. A continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank or rating; or

ii. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Raring (VASRD) of 50 percent or greater, and the need for military caregiver leave is related to that condition; or

iii. A physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or

iv. An injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

~~Service Member iscurrent member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.~~

18. "Son or Daughter" means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. Incapable of self-care because of mental or physical disability requires active assistance or supervision to provide daily self-care in three or more activities of daily living or instrumental activities of daily living.

19. "Twelve Month Period" is defined as a rolling twelve (12) month period measured backward from the date an employee uses any ~~family and medical~~ FMLA leave.

B. ELIGIBILITY

~~1. In order to be considered an eligible employee for family and medical leave the employee must meet all of the following conditions:~~

~~Benefit eligible employee who has worked for the City of Flagstaff for at least twelve (12) months, which need not be consecutive; and~~

~~The employee has worked at least one thousand two hundred and fifty (1,250) hours during the twelve (12) months prior to the start of FMLA leave. Regular and overtime hours are counted as hours worked; however, any type of paid or unpaid leave hours are excluded.~~

1. A FMLA Eligible Employee may take unpaid, job-protected leave for any Qualifying Reason, for up to twelve (12) workweeks within a 12-month period.

2. A FMLA Eligible Employee who is the spouse, Domestic Partner, Son or Daughter, Parent, or Next of Kin of a Covered Veteran with a Serious Injury or Illness may take unpaid, job-protected leave, for up to twenty-six (26) workweeks within a 12-month period to provide care for the veteran.

3. A FMLA Eligible Employee who is the spouse, Domestic Partner, Son or Daughter, Parent, or Next of Kin of a Covered Service Member with a Serious Injury or Illness may

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take unpaid, job-protected leave for up to twenty-six (26) weeks within a 12-month period to care for the Covered Service Member.

4. A FMLA Eligible Employee is limited to a combined twenty-six (26) weeks of unpaid, job-protected leave in any 12-month period, regardless of whether leave is taken for a Qualifying Reason or as Military Caregiver Leave.

~~2.~~ 5. FMLA leave may be taken intermittently or on a Reduced Schedule. When FMLA leave is taken intermittently or on a Reduced Schedule, only the amount of leave actually taken will be counted against an employee's FMLA leave entitlement. ~~When FMLA leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation. When leave is needed for birth and care, or placement for adoption or foster care, use of intermittent leave is subject to the immediate supervisor's approval.~~

6~~3~~. Spouses or Domestic Partners both employed by the City of Flagstaff may be limited to a combined total of twelve (12) workweeks of FMLA for the following reasons:

a. for the birth and care of a child;

b. for the placement of a child for adoption or foster care, and to care for a newly placed child; and

c. to care for an employee's parent who has a Serious Health Condition.

7. A Parent is entitled to take FMLA leave to care for a Son or Daughter eighteen (18) years of age or older, if the adult Son or Daughter:

a. has a disability as defined by the Americans with Disabilities Act;

b. is incapable of self-care due to that disability;

c. has a Serious Health Condition; and

d. is in need of care due to the Serious Health Condition.

8. FMLA leave may be taken in 15 minute increments.

9. Under FMLA a Key Employee may be exempt from reinstatement to their current or equivalent position. For determination contact the Human Resources Director or designee.

10. FMLA Eligible employees may use any accrued leave during FMLA leave ~~or may take leave without pay~~ instead of taking unpaid leave. Donated leave may be requested during FMLA leave per Section 1-50-100 when all accrued leave has been exhausted. Sick Industrial and Workers' Compensation may be substituted for paid leave when applicable per Article 1-80.

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11. Employees who are not eligible for FMLA leave or who have exhausted FMLA may be eligible for a Leave of Absence per Section 1-50-080 or a Leave Without Pay per Section 1-50-081.

An eligible employee may take up to a total of 12 workweeks or 26 workweeks of unpaid leave in a 12-month period for one or more of the following reasons:

A. for the birth of a son or daughter and to care for the newborn child;

B. for the placement with the employee of a child for adoption or foster care, or to care for a newly placed child;

C. to care for an immediate family member (spouse, child, or parent, but not a "parent-in-law") with a serious health condition;

D.when the employee is unable to work because of a serious health condition that prohibits him or her from performing the essential functions of the job;

E. to care for a service member who has been injured in the line of duty; and

F. to manage affairs while a service member of the National Guard or Reserves is on active duty in support of a contingency operation.

The 12-month period is defined as a rolling twelve (12) month period measured backward from the date an employee uses any Family and Medical Leave.

3. DEFINITIONS:

"Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such impatient care; or

- Continuing treatment by a health care provider, which includes:

(1) A period of incapacity lasting more than fourteen consecutive, full calendar days, and any subsequent treatment of period of incapacity relating to the same condition, that also includes:

- Treatment two or more times by or under the supervision of a health care provider;
- One treatment by a health care provider with a continuing regimen of treatment; or

(2) Any period of incapacity related to pregnancy or for prenatal care; or

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(3) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visit (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity; or

(4)A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective; or

(5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days it not treated.

3. EMPLOYEE ELIGIBILITY

Benefit-eligible employees who have worked for the City of Flagstaff for at least 12 months (the 12 months need not be consecutive) **and** have worked at least 1250 hours during the 12 months prior to the start of FMLA leave are eligible. Regular and overtime hours are counted as hours worked towards the 1250-hour requirement, however, paid vacation, sick leave, holidays, or any type of unpaid leave hours are excluded.

Under FMLA some key management employees may be exempt from reinstatement to their current or equivalent position. For determination, contact the Human Resources Director.

Spouses both employed by the City of Flagstaff may be limited to a combined total of 12 workweeks of FMLA for the following reasons:

a.for the birth and care of a child;

b.for the placement of a child for adoption or foster care, and to care for a newly placed child;

C. to care for an employee's parent who has a serious health condition;

C.4. NOTIFICATION TO EMPLOYERPROCEDURE

1.A. Planned AbsenceWhen a FMLA Eligible eEmployees knows in advance they that he or she will be off work for more than fourteen (14) calendar days (such as childbirth, adoption, or planned medical treatment)for a Qualifying Reason or for Military Care Giver Leave, a Family and Medical Leave Request Form, including medical the appropriate certification of a qualifying event, must be submitted to Human Resourceswithin thirty (30) calendar days prior to the event. Human Resources will have five (5) working days from notification to designate leave, paid or unpaid, as FMLA-qualifying and notify the immediate supervisor. A request for a Personnel Action Form (PAF) will be requested for final processing.

2. When FMLA leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

3. When leave is needed for birth and care, or placement for adoption or foster care, use of Intermittent leave is subject to the immediate supervisor's approval.

4.B. Unplanned Absence4. When the need to take FMLA leave is not foreseeable, the employee must provide at minimum (1) one working day of verbal notice to the immediate supervisor, followed by submission of an Family and Medical LeaveA rRequest Form within three (3) working days. However, the employee has fifteen (15) calendar days to provide medical the appropriate certification. of the qualifying event. Human Resources will have five (5) working days from notification to designate leave, paid or unpaid, as FMLA-qualifying, pending receipt of medical certification. A request for a Personnel Action Form (PAF) will be requested for final processing.

5.C. Medical CertificationAll FMLA requests shall be supported by the appropriate documentation., other than a Qualifying Exigency leave,

a. All FMLA requests, other than a Qualifying Exigency Leave and Military Caregiver Leave, must be supported by medical certification from a hHealth cCare pProvider or a state or federal child placement agency. The term "health care" provider means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices or any other person determined by the U.S. Secretary of Labor to be capable of providing health care services, or any health care provider who is accepted by the City's group health plan including clinical social workers.

The medical certification will be used to determine if the request for absence qualifies as a "serious health condition."

Should the City have reason to doubt the validity of the statement provided by the physician, the City may require (at the City's expense) that the eligible employee obtain a second opinion from a physician designated or approved by the City.

b.D. Qualifying Exigency LeaveAll FMLA requests for Qualifying Exigency Leaves must be supported by completion of a certification explaining specific frequency or duration of the leave neededQualifying Exigency Leave requests must be supported by a copy of the cCovered military Service mMember's active duty orders and certification providing the appropriate facts related to the particular Qqualifying Eexigency for which leave is sought, including contact information if the leave involves meeting with a third party.

c. Military Caregiver Leave requests must be supported by a certification completed by an authorized Health Care Provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the Ccovered Sservice Mmember's or Covered Veteran's family.

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d. All certifications will be authenticated or clarified by Human Resources, not the employee's immediate supervisor, and used to determine if the request for absence is supported.~~a Qualifying Reason~~.

e. Human Resources may contact the individual or entity named in a certification for purposes of verifying the statement provided. In cases when the City has reason to doubt the statement provided by a Health Care Provider, the City may require at their own expense a second opinion from a physician designated or approved by the City.

6. Human Resources will designate leave as FMLA qualifying within five (5) days of receiving the Family and Medical Leave Request Form and appropriate documentation.

7. Human Resources will notify the supervisor of the FMLA leave and request a Personnel Action Form (PAF) is completed.

8. An employee shall submit a leave of absence form to the immediate supervisor to record paid leave through the City's payroll procedures.

9. Paid time off, sick industrial and or workers compensation benefits, and short term disability will run concurrently with FMLA leave.

~~**5. LEAVE ENTITLEMENT/ELIGIBLITY**~~

~~**A. Full-time FMLA Leave**~~

~~Employees may choose to use accrued vacation, sick leave, dependent sick leave (if leave is to care for child(ren), spouse, and/or parent), compensatory time, floating holiday, or holiday compensatory time during their absence while on FMLA, or may take leave without pay. If the leave is due to an emergency situation or an extended illness or injury, donated leave may be requested when all paid leave has been exhausted (per Employee Handbook Policy 1-50-100). Sick Industrial Leave or Workers' Comp may be substituted for paid leave when applicable.~~

~~**B. Intermittent/Reduced Schedule Leave**~~

~~Employees may take FMLA on an intermittent basis or work a reduced schedule under the following circumstances:~~

~~1. when medically necessary to care for a seriously ill family member or because of the employee's serious health condition;~~

~~2. to care for a newborn or newly placed adopted or foster child only with the supervisor's approval. The entitlement to leave for the birth or placement of a child shall expire at the end of a 12-month period beginning on the date of such birth or placement.~~

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3. Only the amount of leave actually taken while on an intermittent/reduced schedule will be charged as FMLA leave. (Example: An employee whose work schedule has been reduced from 40 to 20 hours per week, will be charged FMLA leave for any hours taken during their scheduled work period.)
4. Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider. In such cases, the employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodates recurring periods of leave better than the employee's regular job.

c.Leave of Absence

When employees have exhausted the authorized 12 weeks of FMLA and need to continue their absence, they must complete a Leave of Absence request form five (5) working days prior to the end of the FMLA to allow sufficient time for approval by the Supervisor, Section Head and Division Head.

While on leave, employees must use earned vacation, sick leave, dependent sick leave (if leave is to care for child(ren), spouse and/or parent, compensatory time, floating holiday or holiday compensatory time during their absence. If the leave is due to an emergency situation or an extended illness or injury, donated leave may be requested when all paid leave has been exhausted (per Employee Handbook Policy 1-50-100). Donated leave may only be requested once per event.

D. Leave Without Pay

When employees have exhausted the authorized 12 weeks of FMLA and all earned vacation, sick leave, dependent sick leave, compensatory time, floating holiday or holiday compensatory time, they may request Leave Without Pay. Leave may be granted by the Division Head for up to two (2) weeks per calendar year. If the request is for a longer period of time, it must be approved by the Division Head, Department Head, Human Resources Director and the City Manager or Designee. Leave Without Pay *may* be granted for a maximum of twelve (12) months (per Employee Handbook Policy 1-50-080).

Employees on Leave Without Pay are not eligible to earn vacation or sick leave. A new merit review date will be established by delaying the previous merit date by the number of days the employee was on leave.

If you are on Leave Without Pay, you will not be eligible to continue group health benefits provided by the City and coverage will cease at the end of the month. If you wish to continue your group coverage, you must elect COBRA.

6. D. RETURN TO WORK

1. An eEmployees must communicate with Human Resources and their employee's immediate supervisors regarding their employee's intent to return to work before returning to work. An employee will return to the employee's former position or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

2. If the FMLA leave was for an employee's own health condition, a full release statement from a physician, certifying that the employee can perform all the essential functions of the position with or without a reasonable accommodation, shall be submitted to Human Resources prior to returning to work. An employee may not return to work without providing the appropriate documentation.

3. Human Resources will notify the supervisor of the return from FMLA leave and request a Personnel Action Form (PAF) is completed.

4. If the employee's position is required to have a Ffitness for Dduty Eexam completed before returning to work, Human Resources will schedule the exam upon receipt of the employee's release to work. The employee will not be scheduled to regular duty until they have successfully passed all fitness for duty exams as required for their position. The examination will relate to the employee's ability to perform the essential functions of the employee's job.

When an employee returns to work, the Division will initiate a Personnel Action Form (PAF) indicating the effective date of the employee' return. An employee will return to his/her former position or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

If the leave was for an employee's own health condition, a full release statement from a physician, certifying that the employee can perform all the essential functions of the position with or without a reasonable accommodation, is required prior to returning to work. The return to work notice must be submitted to Human Resources. An employee may be subject to a fitness-for-duty physical before being allowed to return-to-work. The examination must relate to the employee's ability to perform the essential functions of his/her job. A request for a Personnel Action Form will be requested for final processing.

Under limited circumstances where restoration employment will cause "substantial and grievous economic injury" to its operations, the City may refuse to reinstate certain highly-paid, salaried "key" employees. The Human Resources Director will notify the employee in writing of his/her status as a "key" employee, the reasons for denying job restoration, and provide the employee a reasonable opportunity to return to work after notifying the employee.

7.D.EFFECTS ON GROUP BENEFITS WHILE ON FMLAE. EFFECTS OF LEAVE ON BENEFITS

1.A. Group Health InsuranceThe City shall maintain group benefit coverage under any "group health plan" for the duration of such the FMLA leave at the level and under the

conditions coverage would have been provided if the Benefit Eligible eEmployee had been employed continuously for the duration of the FMLA leave.

If the employee elects to continue dependent health coverage, the City will continue paying the subsidy, and the employee will be required to pay his/her portion of the premium regardless if they are on paid or unpaid leave. If the employee elects to discontinue dependent health care coverage while on FMLA, dependents may be re-enrolled upon the employee's return to work, at which time the employee must complete a new enrollment form to elect dependent coverage.the month

B.2. Basic Life and AD&D, Occupation BenefitThe City shall maintain coverage of the group life insurance provided to benefit eligible employees will be maintained for the duration of the FMLA leaveand continued at the City's expense, unless the group plan is terminated by the City.

3. If you haveThe Benefit Eligible Employee may elect to continue dependent health and or Bbasic Llife insurance coverage,. The Benefit Eligible Employee will be required to pay the employee's portion of the premium, regardless if the employee is on paid or unpaid leave.you may elect to continue coverage through payroll deduction while on paid leave during FMLA. If the Benefit Eligible eEmployee is not using paid time during FMLA, they mayelects to discontinue the dependent health or basic life insurance coverage while on FMLA, dependents may be re-enrolled upon the employee's return to work. The Benefit Eligible Employee must complete re-enrollment form(s) within thirty-one (31) days of returning to work to elect dependent coverage. The coverage will be reinstated the first day of the month following the completion of the appropriate form(s), if a timely request is submitted. and reinstate it upon returning to work or at the end of the 12 weeks of FMLA, whichever comes first. Employees may also have the option choose to convert the Bbasic Llife insurance coverage while on FMLA leave by completing the appropriate paperwork.

4.C. Voluntary Life InsuranceAn Benefit Eligible eEmployee who has purchased voluntary life insurance and or short term disability may elect to continue the coverage through payroll deduction while on paid leave during FMLA leave. The Benefit Eligible Employee will be required to pay the employee's premium, regardless if the employee is on paid or unpaid leave., or If the Benefit Eligible Employeemay elects to discontinue the voluntary life insurance coverage while on FMLA leave, andand the employee may reinstate it the coverage upon returning to work. or at the end of 12 weeks of FMLA, whichever comes first. The Benefit Eligible Employee must complete re-enrollment form(s) within thirty-one (31) days of returning to work to re-elect coverage. The coverage will be reinstated the first day of the month following the completion of the appropriate form(s), if a timely request is submitted. Benefit Eligible Employees may also choose to port or convert the voluntary life coverage while on unpaid FMLA leave by completing the appropriate paperwork. Please note that portability is only available for a non-medical leave.

5. D. Vacation and Sick LeaveA Benefit Eligible Employee will not earn accrue vacation and sickor City Hany leave while on unpaid FMLA leave.

6.~~E.~~ Retirement Service credits do not accrue during any period of unpaid FMLA leave ~~without pay~~ but will commence upon the employee's return to work. An active member may obtain service credit for up to a one year period when on an approved unpaid leave of absence from employment through the Arizona State Retirement System ~~or the Public Safety Retirement System~~. The purchase is subject to the one-year limitation on the amount of service that may be ~~earned~~ accrued in a fiscal year. ~~(ARS § 38-739), (ARS § 38-849 C)~~

7.~~F.~~ Continuous Service dates for continuous service, ~~vacation~~ accrual rates, seniority, and general pay adjustments will include FMLA leave (paid or unpaid) as creditable service, providing the employee returns to work on the first work day following the end of the authorized FMLA leave.

~~G~~F~~E~~. TERMINATION OF EMPLOYMENT

An employee will be considered to have voluntarily terminated employment if the employee:

1. Fails to return to work upon expiration of the period of leave to which the employee was entitled and has not requested an extended leave of absence or if the extended leave of absence is denied and the employee does not return to work.

2. Advises the City of ~~his/her~~the employee's inten~~tion~~ not to return to work.

3. Refuses comparable reemployment to an equivalent job~~, which means virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions~~ as defined by applicable law.

Links: U.S. Department of Labor
U.S. Department of Labor – FMLA Employee Guide
U.S. Department of Labor – FMLA FAQs
Arizona Revised Statute Section 38-739
Arizona Revised Statute Section 38-849 C

1-50-~~065~~060. MILITARY LEAVE

An employee who is a member of the United States Army, Navy, Air Force, Marines, Coast Guard, National Guard, Reserves or Public Health Service will be granted a leave of absence for military service, training or related obligations in accordance with applicable state and federal law. At the conclusion of the leave, upon the satisfaction of certain conditions, an employee generally has a right to return to the same position ~~he or she~~the employee held prior to the leave or to a position with like seniority, status and pay that the employee is qualified to perform. ~~Furthermore,~~ The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and state law prohibit discrimination and retaliation based on a person's membership

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or service (voluntary or involuntary) in the uniformed services with regard to any aspect of employment.

A. In compliance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), employees and/or applicants for employment will not be discriminated against with respect to hiring, reemployment, retention, promotion, or any other benefit of employment because of past or present military service obligation, or future application for or membership in a uniformed service.

B.

A. ELIGIBLITY

1. All regular classified Non-Exempt and Eexempt tenure eligible, tenured and exempt employees are eligible for an unpaid leave of absence to perform military service under the provisions of USERRA.
2. Some temporary employees may be eligible for such leave if the military service falls within a previously designated period of employment.

B. PROCEDURE

1. An employee, who is issued orders by a recognized military authority, shall provide notice to their employee's Department Headimmediate supervisor as soon as possible after receiving such ordersmilitary orders unless precluded by military necessity. If feasible, this notice should be in writing and accompanied by any military orders that the employee has received.

2.C. An employee may elect to use their earned accrued floating holiday, personal day, vacation leave, compensatory time,leave except sick and dependent sick and/or any portion of the paid Military Training Leave thirty (30) days of leave for military training (refer toper Section 1-50-060061) during periods of absence for military service leave or may take leave without pay. by submitting a leave request form and military orders to their immediate supervisor prior to commencing leave.

3. An employee shall submit a Leave of Absence Form to the immediate supervisor to record their employee's military leave through the City's payroll procedures.
4. The supervisor shall submit a Personnel Action Form (PAF) for the beginning and ending of the military leave.

C. RETURN TO WORK

1.4. Employees entering military duty shall be permitted to return to employment with all seniority, service credits, status, benefits, and pay the employee would have enjoyed had the employee not been absent, subject to the following conditions:

a. The employee must be absent from their his or her employment position due to

service in the uniformed services as defined by USERRA.

b. The employee must provide advance notice of the service to the City. The employee should make every effort to give notice of impending military service as far in advance as reasonable under the following circumstances:

i. The notice may be provided by the employee or an appropriate officer from the employee's branch of service.

ii. The notice may be verbal or in writing.

c. The employee on military leave retains for up to five (5) years his or her right to reemployment to the position he or she would have attained by remaining continuously employed.

d. The employee must return to work or apply for reemployment in a timely manner after conclusion of service, as defined below:

i. For military leave of absence of less than thirty-one (31) days, the employee must return to work on the next regular business day after discharge, his or her safe transportation home and a break of at least eight (8) hours;

ii. If the period of unpaid leave is greater than thirty (30) days but less than one hundred and eighty (180) days, the employee must provide written notification of his or her availability to return to work within fourteen (14) days after discharge; and

iii. If unpaid leave is greater than one hundred and eighty (180) days, the employee has ninety (90) days after discharge to provide written notification of his or her intention to return to work.

iv. Employees who are hospitalized or recovering from injuries caused by active duty may have up to two (2) years to return to work, as prescribed under applicable provisions of USERRA.

e. The employee must have been separated from service with an honorable discharge.

2.~~5.~~ An employee who does not comply with the return to work requirements may forfeit his or her reemployment rights pursuant to federal law and the City's established policies and procedures on returning from a leave of absence.

3.~~6.~~ Upon release from military service, the employee will be returned to City employment as follows:

a. To his or her former position. If the employee's job is of such a nature that it must be permanently filled, the City will attempt to return the employee to a comparable position, with all the rights and benefits the employee enjoyed before leave was taken. If no such position is available upon return, the City will offer the employee the first comparable position that becomes available. In the event the employee

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does not qualify for a comparable position, the City will provide reasonable efforts to qualify the individual.

b. The City will make reasonable efforts to accommodate person with a disability incurred or aggravated during military service.

i. If, despite reasonable accommodation efforts, the person is not qualified for the position due to his or her disability, the person must be employed in a vacant position of equivalent seniority, status, and pay, so long as the employee is qualified to perform the duties of the position or could become qualified to perform them with reasonable efforts by the City.

ii. If the person does not become qualified for the position, the City will reemploy the person in another vacant position he or she is qualified to perform and which is the "nearest approximation" of the position to which the person is otherwise entitled, in terms of status and pay, with full seniority.

4.~~7.~~ If an employee was eligible to take a promotional exam and missed it while performing military service, the City will provide the employee with an opportunity to take the missed promotional exam after a reasonable amount of time to adjust to reemployment. The following factors will be taken into account when determining what a reasonable amount of time is:

a. The length of time the returning employee was absent from work.

b. The level of difficulty of the promotional exam.

c. The typical time necessary to prepare or study for the exam.

d. The duties and responsibilities of the reemployment position and the promotional position.

e. The nature and responsibilities of the service member while serving in the uniformed service.

D~~B~~. EFFECTS OF LEAVE ON BENEFITS

1. Employees on military leave may elect to continue group benefit coverage for the employee and the employee's dependent's up to twenty-four (24) months of unpaid leave per USERRA, even if the employee is participating in the military health benefits coverage. The City's health plan must be the primary insurer when such dual coverage exists.

a. If unpaid military leave is less than thirty-one (31) days, the employee will pay the same share for coverage as any active employee.

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b. If unpaid military leave exceeds thirty (30) days, the employee will be offered COBRA and must pay the entire cost of coverage plus a two (2) percent administrative fee. This extended coverage may be terminated if the employee does not make timely payments or does not return to work after military service.

c. The employee may choose to port or convert life insurance coverage while on unpaid military leave by completing the appropriate paperwork.

2. Employees who elect to discontinue group benefit and/or voluntary coverage while on military leave may reinstate the coverage upon returning to work. The employee must complete the re-enrollment form(s) within thirty-one (31) days of returning to work to re-elect coverage.

3. ~~Upon the employee's return to work, t~~The City will reinstate the employee's ~~health care~~group benefit coverage immediately with no waiting periods and no conditions.

~~3. Upon the employee's return to work, the City will reinstate the employee's health care coverage immediately with no waiting periods and no conditions.~~

4. As mandated by ARS Section 38-745, if an employee is an active member of the Arizona State Retirement System (ASRS) and is a member of the Arizona National Guard, or is a member of the reserves of the United States military and volunteers or is ordered into active military services as part of a military call-up is eligible to received ASRS credited service time while on active duty. The same will apply to those employees participating in the PSPRS.

a. The employee must be honorably separated from active duty and return to the City within ninety (90) days of either discharge from active duty or release from service-related hospitalization, or have died as a result of active military service.

b. The employee can receive a maximum of sixty (60) months of ASRS and PSPRS credited service. The City will pay both the employee and the City's contributions in a lump sum upon return to work or receipt of death certificate. These contributions are based on the salary the member would have accrued if the member had not volunteered or been ordered into active service.

c. Should the employee serve more than sixty (60) months in the military call-up, the employee may purchase any of the months over the maximum of sixty (60) months by utilizing the standard procedure for purchasing active military service.

d. The employee must provide a DD-214 or its equivalent to the City. If the employee died as a result of active duty, a death certificate must be provided.

~~D. Employees entering military duty shall be permitted to return to employment with all seniority, service credits, status, benefits, and pay they would have enjoyed had they not been absent, subject to the following conditions:~~

~~1. The employee is absent from their employment position due to service in the uniformed~~

~~services.~~

~~2.~~

~~The employee must provide advance notice of the service to the City. The employee should make every effort to give notice of impending military service as far in advance as is reasonable under the following circumstances:~~

~~a.The notice may be provided by the employee or an appropriate officer from the employee's branch of service.~~
~~b.The notice may be verbal or in writing.~~

~~3. The employee on military leave retains for up to five (5) years his/her right to reemployment to the position he/she would have attained by remaining continuously employed.~~

~~4.~~

~~The employee must return to work or apply for reemployment in a timely manner after conclusion of service. For military leave of absence of less than 31 days, the employee must return to work on the next regular business day after discharge. If the period of unpaid leave is greater than 30 days but less than 180 days, the employee must provide written notification of his/her availability to return to work within 14 days after discharge, and if unpaid leave is greater than 180 days, the employee has 90 days after discharge to provide written notification of his/her intention to return to work. Employees who are hospitalized or recovering from injuries caused by active duty may have up to two (2) years to return to work, as prescribed under applicable provisions of USERRA.~~

~~5. The employee must have been separated from service with an honorable discharge.~~

~~E. Upon release from military service, the employee will be returned to his/her former position. If the employee's job is of such a nature that it must be permanently filled, the City will attempt to return the employee to a comparable position, with all the rights and benefits the employee enjoyed before leave was taken. If no such position is available upon return, the City will offer the employee the first comparable position that becomes available. In the event the employee does not qualify for a comparable position, the City will provide reasonable efforts to qualify the individual.the personF. If an employee was eligible to take a promotional exam and missed it while performing military service, the City will provide the employee with an opportunity to take the missed promotional exam after a reasonable amount of time to adjust to reemployment. The following factors will be taken into account when determining what a reasonable amount of time is:~~

~~1.The length of time the returning employee was absent from work.~~
~~2.The level of difficulty of the promotional exam.~~
~~3.The typical time necessary to prepare or study for the exam.~~
~~4.The duties and responsibilities of the reemployment position and the promotional position.~~
~~5.The nature and responsibilities of the service member while serving in the uniformed service.~~

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~~G. City-sponsored medical insurance coverage may be continued for up to 18 months of unpaid leave, even if the employee is participating in the military health benefits coverage. The City's health plan must be the primary payer when such dual coverage exists. If unpaid military leave is less than 31 days, the employee will pay the same share for coverage as any active employee. If more than 30 days, the employee will be offered COBRA and must pay the entire cost of coverage plus a 2% administrative fee. This extended coverage may be terminated if the employee does not make timely payments or does not return to work after military service.~~

~~H. The employee granted an unpaid leave of absence for military service shall be suspended from active participation in all other employee benefit programs during the leave of absence. Upon return to active employment status, the employee will be reinstated in these programs, with the seniority and status that would have been earned had the employee not entered military service.~~

~~I. As mandated by ARS 38-745, if an employee is an active member of the ASRS and is a member of the Arizona National Guard, or is a member of the reserves of the United States military and volunteers or is ordered into active military services as part of a military call-up is eligible to received ASRS credited service time while on active duty. The same will apply to those employees participating in the PSPRS.~~

~~1. The employee must be honorably separated from active duty and return to the City within 90 days of either discharge from active duty or release from service-related hospitalization, or have died as a result of active military service.~~

~~2. The employee can receive a maximum of 60 months of ASRS credited service. The City will pay both the employee and the City's contributions in a lump sum upon return to work or receipt of death certificate. These contributions are based on the salary the member would have earned if the member had not volunteered or been ordered into active service.~~

~~3. Should the employee serve more than 60 months in the military call-up, the employee may purchase any of the months over the maximum of 60 months by utilizing the standard procedure for purchasing active military service.~~

~~4. The employee must provide a DD-214 or its equivalent to the City. If the employee died as a result of active duty, a death certificate must be provided.~~

Link(s): Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
Arizona Revise Statute Section 26-167
Arizona Revised Statute Section 26-168

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2013 ADDENDUM 5 OF THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS

1-50-06~~0~~1. MILITARY TRAINING LEAVE

Employees shall be granted a paid military leave for training duty or to attend camps, maneuvers, formations or drills under orders with any branch or reserve of the armed forces of the United States.

A. DEFINITIONS

1. "Year" means the fiscal year of the United States government (i.e. October 1st through September 30th).
2. "Paid Military Leave" is paid leave entitling the employee to receive his or her regular rate of compensation.

B. ELIGIBILITY

1. All Non-Exempt and Exempt employees are eligible for military training leave.
2. Some temporary employees may be eligible for such leave if the military service falls within a previously designated period of employment.
3. Employees shall be granted a Paid ~~m~~Military ~~l~~Leave for training ~~or shall be granted~~ for a period not to exceed thirty (30) working days in any two consecutive ~~calendars~~ year**s** in accordance with the provisions of ARS ~~§~~Section 38-610. ~~A working day shall be based on the shift the employee would have been scheduled to work during the specified period of timeshall be considered equal to 0.38461 percent of the number of working or duty hours in the established work year. This leave may also be used for Military Leave as described in Section 1-50-065.~~
4. Paid Military Leave will be pro-rated for Part-Time Benefit Eligible Employees by dividing the number of hours worked per week by five (5) and rounding to the next whole number.
5. Employees may use Paid Military Leave in fifteen (15) minute increments.

C~~B~~. PROCEDURES

1. All employees eligible for paid military leave shall give their supervisors an opportunity, within the limits of military regulations, to determine when such leave shall be taken.
2. An employee shall submit a Leave of Absence Form to the immediate supervisor to record the employee's military training leave through the City's payroll procedures.
3. Valid evidence of orders must be submitted to the employee's supervisor along with a leave ~~request~~ of absence form.
4. The supervisor shall submit a Personnel Action Form for the beginning and ending of the military training leave.

Link(s): Arizona Revised Statute Section 38-610

1-50-070. JURY ~~LEAVE~~ DUTY LEAVE~~AND SUBPOENAS~~

Benefit Eligible Employees are eligible to receive paid time off for jury duty leave.

A. ELIGIBILITY

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1. Benefit Eligible Employees summoned to jury duty shall be paid the employee's regular hourly wage or salary provided the employee submits his or her jury fees to the City of Flagstaff.

   a. Jury fees shall be equal to the total amount of the check received from the Court minus pay received for travel and related child care expenses incurred due to jury duty.

   b. Jury fees shall be submitted to Payroll via personal check.

2. Jury duty leave does not apply when the employee is a party in the court case or such court appearance is in connection with the employee's personal matters (i.e. traffic court, divorce proceedings, etc.).

3. Employees may use other appropriate types of accrued leave such as vacation leave, personal leave, floating holiday leave or compensatory time to respond to personal matters.

4. Employees may use jury duty leave in fifteen (15) minute increments.

B. PROCEDURE

1. ~~An e~~Employees must inform their immediate supervisor if selected for jury duty or subpoenaed to appear in court by the United States, the State of Arizona, a County, or a Municipality. The employee must immediately present a copy of the official notice, summons, or subpoena to the~~ir~~ employee's immediate supervisor.

2. An employee shall submit a leave of absence form to the employee's immediate supervisor to record the~~ir~~ jury duty leave through the City's payroll procedures.

3. Employees are to report to work any day the Court is not in session, when the jury duty or summons period has ended or when excused by the Court.

4. Either the City of Flagstaff or the employee may request an excuse or postponement from jury duty, if in the City's judgment~~;~~ the employee's absence would create serious operational difficulties.

5. Jury duty and subpoena leave hours are not counted as hours worked for the purpose of calculating eligibility for overtime pay for N~~n~~on-E~~e~~xempt employees.

~~1.Tenured, tenure eligible, and EXEMPT employees of the City who are required to serve as a juror shall receive their normal rate of compensation, however, they are required to submit their jury duty pay to Payroll, except pay received for travel and additional child care expenses incurred directly due to jury duty. The employee must submit a copy of the jury duty notification letter or subpoena to the employee's supervisor upon receipt of the notice.~~

~~2.Employees who are required to appear as a witness in response to a properly served subpoena on behalf of the City or because of their position as a City employee will be granted leave sufficient to provide the service, and time off will be considered as regular hours worked, (is this correct? – counting toward overtime?) however, they are required to submit to payroll monies received by the court. An employee may use paid time off to respond to subpoenas regarding personal matters.~~

Link(s): Arizona Revised Statute Section 21-236

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1-50-071. CRIME VICTIM LEAVE

Benefit Eligible Employees are eligible to receive unpaid crime victim leave who is victim of a crime or juvenile offense.

A. ELIGIBILITY

1. An employee who is the victim of a crime or juvenile offense shall be granted leave to:

   a~~1~~. Attend a proceeding pursuant to Arizona Revised Statute Sections 8-420 or 13-4439; or

   b~~2~~. Appear in Court or meet with Legal Counsel to seek an order of protection, injunction, or other injunctive relief to help ensure the health, safety or welfare of the victim or victim's child.

2~~B~~. Employees on crime victim leave shall be entitled to an unpaid leave of absence for such time or may use other appropriate types of accrued leave such as vacation leave, personal leave, floating holiday leave or compensatory time while on crime victim leave.

3. Employees may use crime victim leave in fifteen (15) minute increments.

B. PROCEDURES

An employee shall submit a leave of absence form to the immediate supervisor to record the crime victim leave through the City's payroll procedures.

Link(s): Arizona Revised Statute Section 8-420
Arizona Revised Statute Section 13-4439

1-50-072. VOTING DAY LEAVE

Benefit Eligible Employees are eligible to receive paid time off for voting day leave.

A. DEFINITIONS

"Voting Day Leave" is paid leave entitling the employee to receive his or her regular rate of compensation.

B. ELIGIBILITY

1. Pursuant to Arizona Revised Statute Section 16-402, during primary or general state of Arizona elections, shall be granted leave to vote at the beginning or end of the work shift, if there are less than three (3) consecutive hours between the opening of the polls and the beginning of the employee's regular work shift or less than three (3) consecutive hours between the end of the employee's shift and the closing of the polls. The amount of leave granted shall be equal to three (3) hours minus the time difference between work hours and the opening or closing of the polls.

2. Voting day leave hours are not counted as hours worked for the purposes of calculating

overtime pay for Non-Exempt employee.

C. PROCEDURES

1. Employees must notify their immediate supervisor prior to the day of election, and the supervisor may specify the hours during which the employee may be absent for the purpose of voting.

2. An employee shall submit a leave of absence form to the immediate supervisor to record voting day leave through the City's payroll procedures.

Link(s): Arizona Revised Statue Section 16-402

1-50-080. PAID LEAVE OF ABSENCE

Benefit Eligible Employees are eligible to use appropriate accrued leave for a paid leave of absence.

A. ELIGIBILITY

1. Benefit ~~e~~Eligible Employees may request a paid leave of absence when the employee is not eligible for FMLA leave, has exhausted FMLA leave or for medical, educational or personal reasons as described in the Leave Without Pay policy Section 1-50-081.

2. Benefit Eligible Employees may only use sick and dependent sick accrued leave for a paid leave of absence request for medical leave or in lieu of FMLA leave. All other accrued leave types may be used for any type of paid leave of absence.

3. Employees may request a paid leave of absence intermittendly or on a Reduced Schedule. The employee should make a reasonable effort to schedule leave during times that will not unduly disrupt the employer's operations.

4. Employees may use approved leave in fifteen (15) minute increments.

B. PROCEDURES

1. Employees may request a leave of absence by submitting a Leave of Absence Request Form to the employee's immediate supervisor, Section Head, Division Director, Deputy City Manager and the Human Resources Director or designee including the type of leave being requested, the beginning and ending dates of the leave period and the type of accrued leave the employee would like to use.

2. Human Resources will notify the supervisor of the paid leave of absence and request a Personnel Action Form (PAF) is completed at the beginning of the leave period.

2. While on a leave of absence, employees must use all appropriate accrued leave during the employee's absence.

3. Employees on paid leave of absence for medical leave or in lieu of FMLA leave may submit a donated leave request per Section 1-50-100 or leave without pay request per Section 1-50-081 after they have exhausted all of his or her accrued leave.

4. The immediate supervisor shall submit a Personnel Action Form (PAF) at the end of the leave period to return the employee back to active duty.

C. EFFECTS OF TERMINATION OF EMPLOYMENT

Employees ~~will not be allowed to~~may take accrued leave after submitting a notice of resignation, but must work the last day of the notice period.

Form(s): Leave of Absence Request Form

1-50-080. LEAVE WITHOUT PAY

Benefit Eligible Employees are eligible for a leave without pay once all appropriate accrued leave including donated leave has been exhausted.

A. ELIGIBLITY

1.~~Department Head~~Benefit Eligible Employees who have exhausted all accrued leave including donated leave may request a leave without pay for medical, educational, or personal reasons as described below.

2. The Division Director may ~~grant~~ approve a ~~benefit eligible employee~~ leave without pay for ~~not more than~~up to two (2) ~~calendar~~ weeks per calendar year. ~~Employees may appeal denial of this leave to the City Manager. If the leave without pay is for two weeks or less, the employee is to complete a Leave of Absence Request form and submit it to his/her immediate supervisor for approval prior to take the time off.~~

~~B.~~3.The Deputy City Manager may ~~grant~~ approve ~~B~~benefit ~~E~~eligible ~~e~~Employees~~s~~a leave ~~of absence~~ without pay for a maximum of twelve (12) months. ~~under the following circumstances after all appropriate leaves have been exhausted, including floating holiday, vacation, compensatory time and sick leave (donated or regular):~~.

4. Employees may request a leave without pay intermittendly or on a Reduced Schedule. The employee should make a reasonable effort to schedule leave during times that will not unduly disrupt the employer's operations.

~~C.~~B. ~~TYPES OF~~ PROCEDURES ~~LEAVE WITHOUT PAY~~

1. Medical Leave

   a. Employees may request medical leave without pay if they are not eligible for ~~Family and Medical~~FMLA ~~L~~leave, ~~or~~ if the~~y~~ employee ~~have~~ has exhausted ~~their 12 weeks of Family and Medical~~FMLA ~~L~~leave and all ~~paid time off~~accrued leave has been used.

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b. The employee may request a medical leave without pay by submitting a Leave of Absence Request Form and Upon a written request of afrom the employee's licensed treating physician on the employee's behalf, medical leave without pay may be granted subject to approval ofto the immediate supervisor, Section Head, Division Director, Deputy City Manager,appropriate Department Head, Human Resources Director or designee, and City Manager prior to the effective date of the leave.

c. Confirmation of the extent of the medical problem and length of leave may be subject to consultation with a physician designated by the City prior to granting of the medical leave without payHuman Resources may contact the individual or entity named in the treating physician written request for purposes of verifying the statement provided. In cases when the City has reason to doubt the statement provided by the treating physician the City may require at the City's expense a second opinion from a physician designated or approved by the City.

2. Educational Leave

a. Employees must provide a written request that includes the length of time to be takenperiod of leave being requested, course or courses to be taken, and the benefit the employee will receive in relation to his/ or her job classification current position.

b. The employee may request an educational leave without pay by submitting a Leave of Absence Request Form and the written request to The educational leave without pay will be granted upon recommendation of the immediate supervisor, Section Head, Division Director, Deputy City Manager, appropriate Department Head, the Human Resources Director or designee, and the approval of the City Manager prior to the effective date of the leave.

3. Personal Leave

a. Employees must provide a written request that includes the length of time to be takenperiod of leave being requested and the reason for personal leave without pay. when requesting a leave without pay for personal reasons.

a.b. UponThe employee may request a personal leave without pay by submitting a Leave of Absence Form and the written request to recommendation of the immediate supervisor, Section Head, Division Director, Deputy City Manager, appropriate Department Head, the Human Resources Director or designee, and approval of the City Manager, the leave without pay may be granted prior to the effective date of the leave.

4. Upon approval of a leave without pay, Human Resources will request a Personnel Action Form (PAF) is completed at the beginning and at the end of the leave without pay.

C.5. Employees on leave without pay or a leave of absence shall receive no compensation and will not earn vacation or sick leave. The employee's evaluation date will be extended by the number of Working Days equal to the period of the leave taken. Employees who have taken leave without pay on a intermittent or Reduced Schedule the extension will be based on the number of hours.

6. Employees returning to work from approved leave without pay or leave of absence shall be returned to the same or equivalent position or equivalent position at the same salary step they held prior to their taking athe leave without pay of absence. Under leave

without pay a Key Employee may be exempt from reinstatement to their current or equivalent position. For determination contact the Human Resources Director or designee.

~~D. Failure of the employee to inform the employer of a change in circumstances during the leave period or to promptly report to work at the expiration of the leave may be cause for dismissal.~~

~~E.Upon returning from leave without pay or a leave of absence other than FMLA, Sick Industrial, or Military Leave, a new merit review date will be established by delaying the previous merit review date by the number of days the employee was on leave.~~

C. EFFECTS OF LEAVE ON BENEFITS

1. Employees on leave without pay shall receive no compensation and will not earn accrued leave.

2. Benefit Eligible Employees will lose group benefit coverage the last day of the month after the start of the leave without pay per Section 1-70-010. The Benefit Eligible Employee must complete re-enrollment form(s) within thirty-one (31) days of returning to work to elect coverage. The coverage will be reinstated the first day of the month following the completion of the appropriate form(s), if a timely request is submitted.

3. State Retirement service credits do not accrue during any period of leave without pay but will commence upon the employee's return to work. An active member may obtain service credit for up to a one (1) year period when on an approved unpaid leave of absence from employment through the Arizona State Retirement System or the Public Safety Retirement System. The purchase is subject to the one-year limitation on the amount of service that may be accrued in a fiscal year.

D. TERMINATION OF EMPLOYMENT

An employee will be considered to have voluntarily terminated employment if the employee:

1. Fails to return to work upon expiration of the period of leave to which the employee was entitled and has not requested an extended leave or if the extended leave is denied and the employee does not return to work.

2. Advises the City of his or her intention not to return to work.

4. Refuses comparable reemployment to an equivalent position.

Link(s): Arizona Revised Statute Section 38-739
Arizona Revised Statute Section 38-849 C

1-50-090. UNAUTHORIZED LEAVE WITHOUT PAY

~~A.~~ Any unauthorized absence for one (1) day or an assigned shift by an employee shall be deemed to be absent without pay and abandonment of his~~/~~ or her position. Employees who abandon their job in this manner shall be automatically deemed to have resigned.

1. Under extenuating circumstances the appropriate Department HeadDivision Director may rescind the assumed resignation and grant leave without pay.

1-50-100. DONATED LEAVE

A. Donated leave allows Bbenefit Eeligible employees to may donate leave to other requesting employees for any reason. in emergency situations and for extended medical illness or injury

A. ELIGIBILITY

1. Benefit Eligible Employee may donate leave to a providing the requesting employee that meets certain requirements:.

1.a. An The employee requesting donated time must be benefit eligible to earn vacation or sick leave and have completed his/her initial probationary period and/or have been employed for at least six (6) months.

2.b. An The employee may requesting donated leave after must have exhausted all appropriate leaves. have been exhausted, including floating holiday, sick leave, vacation, and compensatory time prior to receiving donated time.

B.1. Donated time may be requested by an employee, for the employee's dependents. Dependents shall consist of the employee's spouse, parents, dependent child(ren), step-child(ren), domestic partner and his or her dependent child(ren) and anyone else petitioned by the employee to the Human Resources Director or designee through his/ or her immediate supervisor, Section Head, and Department HeadDivision Director, Deputy City Manager and Human Resources Director or designee.

C.Medical documentation of the injury or illness must be submitted prior to donated leave being granted.

2. All donated leave will be transferred to the receiving employee as paid time off at the receiving employee's regular rate of pay.

3. Employees may use donated time in the following increments:

a. If the employee is able to return to work on a reduced schedule, the employee may use donated time in one (1) hour increments in order to remain benefit eligible (e.g. twenty hours per week) or maintain the employee's bi-weekly pay. Any accrued leave will be used prior to the employee using donated leave.

b. If the employee is unable to return to work, the employee may use donated time in hour increments in order toremain benefit eligible (e.g. twenty hours per week) or maintain the employee's bi-weekly pay.

4. Employees may request donated leave on more than one occasion for the same situation.

B. PROCEDURES

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1. Employees may request donated leave by submitting a Donated Leave Request Form to the immediate supervisor, Section Head, Division Director, Deputy City Manager, Human Resources Director or designee. The employee may specify if the leave is for medical or non-medical reasons, in which case such information will be provided to other employees. The employee also may not specify the reason for requesting leave.

~~D.~~ 2. Donated time will come from employees' accrued vacation balances~~,~~ or ~~compensatory time, or~~ holiday compensatory time, on a voluntary anonymous basis.

~~1.~~ 3. Donated ~~vacation, compensatory time, or holiday compensatory~~ time will be used on an hour-for-hour basis, not an hourly rate.

~~2.~~ 4. When multiple contributions are made, the hours will be given to the requesting employee in order of receipt ~~from the donors~~of the donation forms.

~~3.~~ 5. Unused donated time will be returned to the donor's leave accruals.

1-50-200. INCLEMENT WEATHER

The City shall provide municipal services to the maximum extent possible. Under severe inclement weather, the City Manager or designee may suspend City operations when the concern for the safety of employees overrides the value of continued work.

A. ELIGIBILITY

1. Emergency City operations may not be suspended and employees will continue to full-fill his or her assigned shift.

2. Non-emergency City operations may be suspended and the City Manager may authorize employees to arrive later than the beginning of or leave earlier than the end of his or her assigned shift.

B. PROCEDURES

1. The City Manager will notify employees of closure by the emergency telephone number, City website and/or City email.

2. When City operations are suspended the employee may choose to make up the hours in the current workweek or use accrued leave.

3. Upon approval of the employees' immediate supervisor an employee may be allowed to stay at work or offer to work in snow operations. Employees can contact Public Works Administration in order to work in snow operations.

4. Employees who report to work late or leave early on a day the City Manager does not suspend operations shall make up the hours in the current workweek or use accrued leave.

5. Employees who wish to use accrued leave will submit a Leave of Absence Request

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Form to the employee's immediate supervisor to record their leave through the City's payroll procedures.

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2013 ADDENDUM 5 OF THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS

1-10-011. GENERAL DEFINITIONS

General Definitions apply to the entire Employee Handbook of Regulations; however if there is a conflicting specific definition found within a section, then the specific definition will apply to that section.

"Benefit Eligible Employees" are employees who are tenure eligible, tenure granted and Exempt employee who works twenty (20) hours or more per week.
"Classified Employees" shall have the same meaning as Non-Exempt employees.

"Commissioned" means the employee is an active member of the Public Safety Retirement System and the City Police or Fire Department.

"Domestic Partner" shall have the same meaning as set forth in Section 1-70-010.B.

"Employee Dependents" shall consist of the employee's parents, spouse or domestic partner, dependent child(ren), step-child(ren), domestic partner's dependent child(ren) and any other similar close relationship if approved upon petition by the employee to the Human Resources Director through his or her immediate supervisor, Section Head and Division Director.

"Exempt Employees" are employees who are exempt from the overtime pay requirements of the Fair Labor Standards Act (FLSA).

"Fire Suppression Employees" are Commissioned, Non-Exempt employees who engage in fire protection activities as defined by the Fair Labor Standards Act 29 U.S.C. § 203(y) and who work over one hundred eighty-two (182) hours in a twenty-four (24) day work period.

"Full-Time" is considered forty (40) hours per week.

"Key Employee" is defined as a salaried, Benefit Eligible Employee who is among the highest paid ten (10) percent of all the employees working for the employer within seventy-five (75) miles of the employee's worksite.

"Light Duty" means an employee is able to perform restricted duties and/or schedule per the employee's treating physician. Light duty may include telecommuting or other types of alternate work schedules per policy 1-20-053.

"Non-Exempt Employees" are employees who are paid wages subject to the overtime pay requirements of the Fair Labor Standards Act.

"Part-Time" is considered twenty (20) hours to thirty-nine (39) hours per week.

"Shift Employees" are employees assigned to a position which is staffed at least six (6) days a week, or twenty-four (24) hours a day, and is assigned a designated work schedule that can be either rotating or permanently assigned.

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"Temporary Employees" are employees hired by the City for a temporary period and who work less than 20 hours per week. Temporary Employees are not Benefit Eligible Employees.

"Tenured Employees" are Non-Exempt employees who have completed their probationary period.

"Unclassified Employees" shall have the same meaning as Exempt employees.

"Working Day" shall be considered equal to 0.38461 percent of the number of working or duty hours in the established work year for each employee.

1-50-010. HOLIDAY LEAVE

Benefit Eligible employees are eligible to receive paid time off or compensatory time for City Holidays and a Floating Holiday each calendar year.

A. DEFINITIONS

1. "City Holidays" include the following holidays: New Years Day, January 1st; Martin Luther King Day, Third Monday in January; President's Day, Third Monday in February; Memorial Day, Last Monday in May; Independence Day, July 4th; Labor Day, First Monday in September; Veteran's Day, November 11th; Thanksgiving Day, Fourth Thursday in November; Day After Thanksgiving, Fourth Friday in November; and Christmas Day, December 25th.

2. "Floating Holiday" is paid time off equal to one (1) Working Day each calendar year.

3. "Holiday Compensatory Time" is compensatory hours accrued by an employee in lieu of Holiday Leave pursuant to this policy.

4. "Holiday Leave" is paid leave entitling the employee to receive his or her regular rate of compensation on a City Holiday.

5. "Holiday Time Worked" is the hours worked on a City Holiday that are compensated at one and half times the employee's regular rate of compensation.

B. ELIGIBILITY

1. Holiday Schedules and Holiday Leave

   a. Benefit Eligible Employees who are not Shift Employees observe City Holidays that fall on a Sunday the following Monday and holidays that fall on a Saturday the preceding Friday. Benefit Eligible Employees receive Holiday Leave for City Holidays observed, except as provided below.

   b. Benefit Eligible Shift Employees observe the day of the City Holiday. Benefit Eligible Shift Employees receive Holiday Leave for City Holidays observed, except as provided below.

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c. If a City Holiday falls on an employee's regularly scheduled Working Day and the employee does not work, they will receive Holiday Leave.

d. Holiday Leave will be pro-rated for Part-time Benefit Eligible Employees by dividing the number of hours worked in the week by five (5) and rounding up to the next whole number.

e. Temporary Employees receive regular pay for hours worked on a City Holiday.

2. Holiday Compensatory Time and Holiday Time Worked

a. If a City Holiday falls on a Fire Suppression Employee's regularly scheduled Working Day and the employee does not work, the employee will accrue 3.73 hours of Holiday Compensatory Time for the City Holiday worked in lieu of Holiday Leave.

b. If a City Holiday falls on an employee's regularly scheduled day off and the employee does not work, the employee will accrue one (1) Working Day of Holiday Compensatory Time. Fire Suppression Employees will accrue 3.73 hours of Holiday Compensatory Time.

c. If a City Holiday falls on an employee's regularly scheduled day off and the employee does work, the employee will accrue one (1) Working Day as Holiday Compensatory Time plus Holiday Time Worked.

d. If a City Holiday falls on a Fire Suppression Employee's regularly scheduled day off and the employee does work, the employee will accrue 3.73 hours of Holiday Compensatory Time plus Holiday Time Worked.

e. If a City Holiday falls on an employee's regularly scheduled Working Day and the employee does work, the employee will receive Holiday Leave plus will be paid Holiday Time Worked.

f. If a City Holiday falls on a Fire Suppression Employee's regularly scheduled Working Day and the employee does work, the employee will accrue 3.73 hours of Holiday Compensatory Time plus will be paid Holiday Time Worked.

g. Employees may accrue up to three (3) Working Days of Holiday Compensatory Time, except Fire Suppression Employees may accrue up to five (5) Working Days.

h. Holiday Compensatory Time may be used in fifteen (15) minute increments.

3. Exception from Holiday Leave or Holiday Compensatory Time: Any employee who is suspended or on unpaid leave on either the regularly scheduled Working Day immediately preceding or immediately following the City Holiday shall not receive Holiday Leave or Holiday Compensatory Time. Unpaid leave includes when the employee does not have sufficient paid leave time to cover the entire scheduled Working Day.

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4. Floating Holiday

   a. Each Full-Time Benefit Eligible Employee accrues one (1) Floating Holiday annually. The Floating Holiday is pro-rated for Part-Time Benefit Eligible Employees by dividing the number of hours worked in the week by five (5) and rounding up to the next whole number.

   b. Floating Holiday may be used in fifteen (15) minute increments.

   c. Floating Holiday accrues in January and must be used by December 31st. A Floating Holiday shall not carry over into the next calendar year.

   d. Floating Holiday may not be donated per Section 1-50-100.

C. PROCEDURES

1. All Holiday Pay and Holiday Compensatory Time shall be recorded through the City's payroll procedures.

2. Employees may use Holiday Compensatory Time hours accrued with the advance written approval of their immediate supervisor.

3. An employee shall submit a leave of absence form to the immediate supervisor to record the leave through the City's payroll procedures.

D. EFFECTS OF TERMINATION OF EMPLOYMENT

1. Employees may take the Floating Holiday after submitting a notice of resignation with approval from the immediate supervisor, except for the last day of the notice period.

2. Floating Holiday is forfeited and is not paid out upon termination of employment.

3. Holiday Compensatory Time is paid out upon termination of employment.

Link(s): Arizona Revised Statute Section 38-608

1-50-020. VACATION LEAVE

Benefit Eligible Employees are eligible to receive paid time off for vacation leave after six (6) months of continuous service.

A. ELIGIBILITY

1. The City Manager or designee may authorize an employee, upon hire, to accrue vacation at any rate within the Table A or Table B below, based on years of experience.

2. Employees may use vacation leave in fifteen (15) minute increments.

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3. Full-Time Benefit Eligible Employees will accrue vacation as set forth in Table A. Part-Time Benefit Eligible Employees will accrue vacation leave pro-rated by multiplying the number of hours worked during a pay period times the percent accrued per pay period listed in Table A.

TABLE A

Non-Exempt Employees Years of Service	Exempt Employees Years of Service	Days Accrued Per Year of Service	Percent Accrued Per Pay Period	Hours Accrued Per Pay Period	Vacation Hou Maximum
1-4		11	4.24%	3.39	132
5-9		13	5.01%	4.01	156
10-14	1-4	16	6.16%	4.93	192
15-19	5-9	18	6.92%	5.54	216
20-24	10-14	21	8.08%	6.46	252
25-29	15-19	23	8.85%	7.08	276
30+	20-24	26	10.00%	8.00	312
	25-29	28	10.77%	8.62	336
	30+	31	11.92%	9.54	372

4. Fire Suppression Employees will accrue vacation leave as set forth in Table B:

TABLE B

Fire Suppression Commissioned Non-Exempt Employees Years of Service	Fire Suppression Commissioned Exempt Employees Years of Service	Days Accrued Per Year of Service	Percent Accrued Per Pay Period	Hours Accrued Per Pay Period	Vacation Hou Maximum
1-4		11	4.24%	4.75	185
5-9		13	5.01%	5.61	219
10-14	1-4	16	6.16%	6.90	269
15-19	5-9	18	6.92%	7.75	302
20-24	10-14	21	8.08%	9.05	353
25-29	15-19	23	8.85%	9.91	386
30+	20-24	26	10.00%	11.20	437
	25-29	28	10.77%	12.06	470
	30+	31	11.92%	13.35	521

5. Employees may accrue vacation hours up to the maximum set forth in the tables above, which reflect the maximum vacation hours than can be accrued in eighteen (18) months of continuous service. All vacation hours over the maximum allowed that are not used by June 30th shall be forfeited, unless carryover is approved as set forth in the Procedures below.

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6. New employees may not use accrued vacation leave within the first six (6) months of employment for the City.

7. Employees may donate vacation leave per Section 1-50-100.

B. PROCEDURES

1. Employees wishing to utilize leave shall submit a leave of absence form to the immediate supervisor to obtain approval in advance of leave. The supervisor is responsible for authorizing and scheduling employee time off requests while balancing the work program. Length of service shall be used to resolve conflicts over vacation periods between employees of the same classification.

2. All vacation leave shall be recorded through the City's payroll procedures.

3. An employee may submit a written request to carryover his or her vacation hours in excess of the maximum past June 30th with approval from the immediate supervisor, Section Head, Division Director and Human Resources. Human Resources will notify the employee of the final decision. If approved, the employee may not request to carryover vacation hours in excess of the maximum again for two years.

4. In the event one or more City Holidays fall within a period of vacation leave, such holiday shall not be charged as vacation leave, and the vacation leave shall be extended or credited accordingly.

C. EFFECTS OF TERMINATION OF EMPLOYMENT

1. Employees may take vacation leave after submitting a notice of resignation with approval from the immediate supervisor, except for the last day of the notice period.

2. Employees who have satisfactorily completed six (6) months of service and who terminate employment shall be paid in a lump sum for all unused vacation leave accrued prior to the effective date of termination.

Form(s): Leave of Absence Form

1-50-030. SICK LEAVE

Benefit Eligible Employees are eligible to receive paid time off for sick leave when work time is missed due to the employee's personal injury and/or illness.

A. ELIGIBILITY

1. Full-Time Benefit Eligible Employees shall accrue sick leave at the rate of one workday for each calendar month of service, not to exceed one thousand and forty (1,040) hours.

2. Benefit Eligible Employees may use up to six (6) days of sick leave during the first six (6) months of employment, regardless of the number of hours accrued. Sick leave hours not yet accrued that are used during the first six (6) months of employment will be deducted from the final paycheck should an employee leave City service during the first six (6) months.

3. In the case of personal sickness or injury where employees are capable of performing Light Duty, the employee shall ~~so~~ advise their immediate supervisor, Section Head or Division Director who may make arrangements, provided Light Duty is available.

4. Employees may use sick leave in fifteen (15) minute increments.

5. Sick leave will be accrued on a pro-rated basis for Part-Time Benefit Eligible employees by multiplying the number of hours worked during a pay period times 4.62%.

6. Employees may not donate sick leave per Section 1-50-100.

B. PROCEDURE

1. Employees may request sick leave by notifying the employee's immediate supervisor, ~~or~~ Section Head, or Division Director one hour prior to the beginning of their scheduled work shift.

2. In cases when the immediate supervisor cannot be reached, notice shall be given to the next level of supervision.

3. An employee shall submit a leave of absence form to the immediate supervisor to record the employee's leave through the City's payroll procedures.

4. The immediate supervisor, Section Head, Division Director, Human Resources Director or designee, may require a medical certification to document the illness and/or injury of the employee when an employee's absence is negatively impacting the efficiency or effectiveness of the program or the employee is suspected of abusing sick leave.

5. Employees diagnosed with a serious and/or ongoing medical condition may have additional coverage under the Family Medical Leave policy 1-50-050 and/or Americans with Disability Act policy 1-10-014.

6. Employees who have accrued more than 1,040 maximum sick leave hours shall be paid one (1) Working Day for each two (2) Working Days of unused sick leave accrued in excess of the maximum on the first pay period in December. The accrual amount shall include leave accrued through the last pay period in November.

7. In the event one or more City Holidays fall within a period of sick leave, such holiday shall not be charged as sick leave.

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8. In the event an employee is on vacation leave and becomes sick or is injured, with proper medical documentation, the work time missed may be changed to sick leave for the date of illness and/or injury.

C. EFFECTS OF TERMINATION OF EMPLOYMENT

1. Employees will be required to provide their immediate supervisor with a medical certification of illness and/or injury for any use of sick leave after submitting a notice of resignation. The employee must work the last day of the notice period.

2. The following categories of employees leaving City service shall be paid for unused sick leave at the rate of one (1) Working Day for each two (2) Working Days of unused sick leave:

   a. Employees retiring from City employment and receiving retirement benefits from Public Safety Retirement System or the Arizona State Retirement System; or

   b. Employees resigning or terminated from City employment, with a minimum of twenty (20) years of service as a City employee.

Form(s): Leave of Absence Form

1-50-031. DEPENDENT SICK LEAVE

Benefit Eligible Employees are eligible to use paid time off for dependent sick leave when work time is missed due to their dependent's injury and/or illness.

A. ELIGIBILITY

1. Benefit Eligible Employee may use accrued sick leave hours to care for the employee's Dependents' injury and/or illness.

2. When employees are capable of performing Light Duty while caring for their Dependents, they shall advise their immediate supervisor, Section Head or Division Director who may make arrangements, provided Light Duty is available.

3. Employees may use dependent sick leave in fifteen (15) minute increments.

B. PROCEDURE

1. Employees may request dependent sick leave by notifying the employee's immediate supervisor, Section Head, or Division Director one hour prior to the beginning of their scheduled work shift.

2. In cases when the immediate supervisor cannot be reached, notice shall be given to the next level of supervision.

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3. An employee shall submit a leave of absence form to the immediate supervisor to record the employee's leave through the City's payroll procedures.

4. The immediate supervisor, Section Head, Division Director, Human Resources Director or designee, may require medical certification to document the illness and/or injury of the employee's Dependent when an employee's absence is negatively impacting the efficiency or effectiveness of the program or the employee is suspected of abusing dependent sick leave.

C. EFFECTS OF TERMINATION OF EMPLOYMENT

1. Employees will be required to provide their immediate supervisor with medical certification of illness and/or injury for any use of dependent sick leave after submitting a notice of resignation. The employee must work the last day of the notice period.

2. Dependent sick leave is part of an employee's sick leave accrual and paid out in accordance with the Sick Leave policy.

Form(s): Leave of Absence Form

1-50-032 PERSONAL LEAVE

Benefit Eligible Employees are eligible to use paid time off for personal leave when work time is missed due to personal reasons.

A. ELIGIBILITY

1. Benefit Eligible Employees may use up to two (2) Working Days of accrued sick leave per calendar year for matters of personal business.

2. Personal Leave is accrued on a pro-rated basis for Part-Time Benefit Eligible Employees by dividing the number of hours worked in the week by five (5) and rounding up to the next whole number.

3. Employees may use personal leave in fifteen (15) minute increments.

B. PROCEDURE

1. Employees may request personal leave by notifying the employee's immediate supervisor one hour prior to the beginning of their scheduled work shift.

2. In cases when the immediate supervisor cannot be reached, notice shall be given to the next level of supervision.

3. An employee shall submit a leave of absence form to the immediate supervisor to record their leave through the City's payroll procedures

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4. Personal leave cannot be accumulated or carried over into another calendar year.

C. EFFECTS OF TERMINATION OF EMPLOYMENT

1. Employees may take personal leave after submitting a notice of resignation with the approval of the immediate supervisor, but must work the last day of the notice period.

2. Personal leave is part of an employee's sick leave accrual and paid out in accordance with the Sick Leave policy.

Form(s): Leave of Absence Form

1-50-033. PURCHASE DAY PROGRAM

Benefit Eligible Employees may purchase additional paid time off by participating in the purchase day program.

A. DEFINITIONS

"Purchase Days" are paid time off the employee may purchase through a pre-tax payroll deduction. A Purchase Day is equal to one (1) Working Day.

B. ELIGIBILITY

1. A Full-Time Benefit Eligible Employee may purchase up to ten (10) Purchase Days per fiscal year after completing six (6) months of continuous service, if a timely request is submitted.

2. Employees may not purchase partial Purchase Days.

3. Employees may use Purchase Days in fifteen (15) minute increments.

C. PROCEDURE

1. Employees must submit a request to participate between May 1st and May 31st in order to be eligible to participate the following fiscal year. Employees must re-elect each fiscal year to participate in the purchase day program.

2. The Benefit Eligible Employee may request to participate in the purchase day program by submitting a Purchase Day Program Request form to the employee's immediate supervisor, Section Head, Division Director, Deputy City Manager, Human Resources Director or designee and City Manager or designee.

3. Human Resources will notify the employee of the final approval and the cost of the paid time off the employee wishes to purchase. The cost is based on the employee's current hourly rate of pay times the number of Purchase Days at the time of the request. The total purchase amount is then divided by twenty-four (24) pay periods over the fiscal year.

a. In the event the employee's salary or hourly rate changes during the fiscal year, the cost of the Purchase Days shall not be adjusted.

b. The cost may not jeopardize an employee's minimum wage earnings.

4. The deductions will be pre-tax from the employee's paycheck per Section 125 under the Internal Revenue Service code. The pre-tax election may not be changed during the fiscal year. When the Purchase Day (or approved increments) are used, the cost will be reflected as income in the employee's paycheck and subject to applicable withholdings and deductions.

5. Purchase Days must be used within the fiscal year by June 30th or they will be forfeited.

6. Employees wishing to utilize Purchase Days must request and obtain approval in advance. The supervisor is responsible for authorizing and scheduling employee time off requests while balancing the work program, and may deny use of Purchase Days if not requested sufficient time in advance.

7. An employee shall submit a leave of absence form to the immediate supervisor to record the employee's Purchase Day leave through the City's payroll procedures.

8. Purchase Days are paid at the employee's regular pay rate excluding any type of additional pay.

C. EFFECTS OF TERMINATION OF EMPLOYMENT

1. Employees who leave City service will receive a refund for any Purchase Days not used, which will be reflected as income in the employee's paycheck and subject to applicable withholdings and deductions.

2. Employees who leave City service and who have used Purchase Days not yet paid for will pay for the amount owed from their last paycheck. The last paycheck will show the cost deducted. Any balance not deducted from the employee's last paycheck will be paid to the City within six (6) months after leaving the City's employment. After six (6) months, any unpaid balances will be forwarded to collection and the employee will be responsible for the cost of the collection, including any attorney fees and court costs.

Form(s): Purchase Day Program Request Form

1-50-040. BEREAVEMENT LEAVE

Benefit Eligible Employees are eligible for paid time off for bereavement leave in the event of the death of an immediate family member.

A. DEFINITIONS

1. "Immediate Family Members" are the employee's spouse or Domestic Partner; and any of their parents, children, step-children, brothers or sisters, grandparents, and grandchildren and any other similar close relationship if approved upon petition by the employee to the Human Resources Director through the employee's immediate supervisor, Section Head and Division Director.

B. ELIGIBILITY

1. Benefit Eligible Employees may receive up to five (5) Working Days of bereavement leave for an Immediate Family Member's death, subject to City operational needs as determined by the immediate supervisor.

2. Bereavement leave will be pro-rated for Part-Time Benefit Eligible Employees by dividing the number of hours worked in the week by five (5) and rounding up to the next whole number.

3. Non-Tenured and Temporary Employees may receive up to five (5) Working Days of unpaid time off for bereavement.

B. PROCEDURE

1. An employee may petition his immediate supervisor to allow bereavement leave for any person whose relationship to the employee, spouse or domestic partner was similar to an Immediate Family Member.

2. If an employee wishes to take time off due to the death of an Immediate Family Member, the employee should notify his or her supervisor immediately.

3. An employee shall submit a Leave of Absence Form to the immediate supervisor to record the employee's bereavement leave through the City's payroll procedures.

1-50-050. FAMILY MEDICAL LEAVE

The Family and Medical Leave Act of 1993 (FMLA) as amended provides eligible employees with up to 12 work weeks of job protected unpaid leave in a single twelve (12) month period for the birth or adoption of a child; care of a child, spouse, or parent who has a serious medical condition; or the employee's own serious health condition; or to take care of military related "qualifying exigencies" of a family member. A covered employer is required to maintain group health insurance coverage, including family coverage if premiums are paid, for an employee on Family and Medical Leave on the same terms as if the employee continued working.

The Family Medical Leave Act also provides eligible employees with up to twenty-six (26) workweeks of job protected unpaid leave in a single 12-month period, to care for a covered member of the Armed Forces or covered veteran with a serious injury or illness. An employer is not required to provide in excess of twenty-six (26) workweeks unpaid job protected leave within a 12-month period, regardless of the type of FMLA leave taken

2013 ADDENDUM 5 OF THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS

A. DEFINITIONS

1. "Covered Active Duty" means duty during deployment of the Armed Forces, National Guard or Reserves member to a foreign country, including deployment to international waters.

2. "Covered Service Member" is a current member of the Armed Forces (including a member of the National Guard or Reserves), who is undergoing medical treatment, recuperation, or therapy is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a Serious Injury or Illness.

3. "Covered Veteran" is a veteran of the Armed Forces (including a member of the National Guard or Reserves) who is discharged within the 5-year period before the family member first takes Military Caregiver Leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a Veteran Serious Injury or Illness. A veteran who was dishonorably discharged is not a Covered Service Member.

4. "FMLA Eligible Employee" means an employee who meets all of the following conditions:

   a. Benefit Eligible Employee who has worked for the City of Flagstaff for at least twelve (12) months, which need not be consecutive; and

   b. The employee has worked at least one thousand two hundred and fifty (1,250) hours during the twelve (12) months prior to the start of FMLA leave. Regular and overtime hours are counted as hours worked; however, any type of paid or unpaid leave hours are excluded.

5. "Health Care Provider" is a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices or any other person determined by the U.S. Secretary of Labor to be capable of providing health care services, or any health care provider who is accepted by the City's group health plan including clinical social workers.

6. "In Loco Parentis" is a person who helped raise and had day-to-day responsibilities to care for and financially support the employee as a child, assuming the role of a parent.

7. "Intermittent Leave" is taking leave in separate blocks of time..

8. "Key Employee" is defined as a salaried, FMLA Eligible Employee who is among the highest paid ten (10) percent of all the employees working for the employer within seventy-five (75) miles of the employee's worksite.

9. "Military Caregiver Leave" means FMLA leave taken to care for a Covered Service Member or Covered Veteran with a Serious Illness or Injury.

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10. "Next of Kin of a Covered Veteran" is the nearest blood relative, other than the veteran's spouse, Parent, Son or Daughter, designated in writing by the veteran or in the order of priority set forth in FMLA regulations.

11. "Parent" means a biological, adoptive step or foster father or mother, or any other individual who stood in Loco Parentis to the employee when the employee was a child. This term does not include parents "in law".

12. "Qualifying Exigency" is a need for an employee to take care of certain matters arising out of the fact that the employee's spouse, Son or Daughter, or Parent is a Covered Service Member on Covered Active Duty (military deployment to a foreign country) and includes (1) short-notice deployment, (2) military events and related activities, (3) childcare and school activities, (4) care of the military member's parent who is incable of self-care, (5) financial and legal arrangements, (6) counseling, (7) up to fifteen (15) days rest and recuperation, (8) post-deployment activities, (9) additional activities not encompassed in the other categories, but agreed to by the employer and employee.

13. "Qualifying Exigency Leave" means leave taken by a FMLA Eligible Employee as a result of a Qualifying Exigency.

14. "Qualifying Reasons" are:

    a. for the birth of a Son or Daughter and to care for a newborn child within one year of birth;

    b. for the placement with the employee of a child for adoption or foster care, or to care for a newly placed child within one year of placement;

    c. to care for the employee's spouse, Son or Daughter, or Parent, but not a "parent-in-law, and in addition Domestic Partner per City policy who has a Serious Health Condition;

    d. when the employee is unable to work because of a Serious Health Condition that prohibits the employee from performing any of the essential functions of the job; or

    e. any Qualifying Exigency arising out of the fact that the employee's spouse, Son or Daughter, or Parent is a Covered Service Member on Covered Active Duty.

15. "Reduced Scheduled" is a reduced number of hours in the employee's usual weekly or daily work schedule.

16. "Serious Health Condition" is an illness, injury, impairment, or physical or mental condition that involves either:

    a. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such impatient care; or

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b. Continuing treatment by a health care provider, which includes a period of incapacity lasting more than fourteen (14) consecutive full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also includes:

i. Treatment two or more times by or under the supervision of a health care provider (i.e., in-person visits) the first within seven (7) days and both within thirty (30) days of the first day of incapacity; or

ii. Treatment by a health care provider (i.e., an in-person visit) within seven (7) days of the first day of incapacity with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or

ii. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or

iii. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or

iv. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or

v. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days it not treated.

17. "Serious Injury or Illness" is:

a. One that was incurred by a Covered Service Member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating; or

b. One that was incurred by a Covered Veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, regardless of when such injury or illness became manifested, and that is either:

i. A continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank or rating; or

ii. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Raring (VASRD) of 50

percent or greater, and the need for military caregiver leave is related to that condition; or

iii. A physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or

iv. An injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

18. "Son or Daughter" means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. Incapable of self-care because of mental or physical disability requires active assistance or supervision to provide daily self-care in three or more activities of daily living or instrumental activities of daily living.

19. "Twelve Month Period" is defined as a rolling twelve (12) month period measured backward from the date an employee uses any FMLA leave.

B. ELIGIBILITY

1. A FMLA Eligible Employee may take unpaid, job-protected leave for any Qualifying Reason, for up to twelve (12) workweeks within a 12-month period.

2. A FMLA Eligible Employee who is the spouse, Domestic Partner, Son or Daughter, Parent, or Next of Kin of a Covered Veteran with a Serious Injury or Illness may take unpaid, job-protected leave, for up to twenty-six (26) workweeks within a 12-month period to provide care for the veteran.

3. A FMLA Eligible Employee who is the spouse, Domestic Partner, Son or Daughter, Parent, or Next of Kin of a Covered Service Member with a Serious Injury or Illness may take unpaid, job-protected leave for up to twenty-six (26) weeks within a 12-month period to care for the Covered Service Member.

4. A FMLA Eligible Employee is limited to a combined twenty-six (26) weeks of unpaid, job-protected leave in any 12-month period, regardless of whether leave is taken for a Qualifying Reason or as Military Caregiver Leave.

5. FMLA leave may be taken intermittently or on a Reduced Schedule. When FMLA leave is taken intermittently or on a Reduced Schedule, only the amount of leave actually taken will be counted against an employee's FMLA leave entitlement.

6. Spouses or Domestic Partners both employed by the City of Flagstaff may be limited to a combined total of twelve (12) workweeks of FMLA for the following reasons:

   a. for the birth and care of a child;

b. for the placement of a child for adoption or foster care, and to care for a newly placed child; and

c. to care for an employee's parent who has a Serious Health Condition.

7. A Parent is entitled to take FMLA leave to care for a Son or Daughter eighteen (18) years of age or older, if the adult Son or Daughter:

   a. has a disability as defined by the Americans with Disabilities Act;

   b. is incapable of self-care due to that disability;

   c. has a Serious Health Condition; and

   d. is in need of care due to the Serious Health Condition.

8. FMLA leave may be taken in 15 minute increments.

9. Under FMLA a Key Employee may be exempt from reinstatement to their current or equivalent position. For determination contact the Human Resources Director or designee.

10. FMLA Eligible employees may use any accrued leave during FMLA leave instead of taking unpaid leave. Donated leave may be requested during FMLA leave per Section 1-50-100 when all accrued leave has been exhausted. Sick Industrial and Workers' Compensation may be substituted for paid leave when applicable per Article 1-80.

11. Employees who are not eligible for FMLA leave or who have exhausted FMLA may be eligible for a Leave of Absence per Section 1-50-080 or a Leave Without Pay per Section 1-50-081.

C. PROCEDURE

1. When a FMLA Eligible Employee knows in advance that he or she will be off work for more than fourteen (14) calendar days for a Qualifying Reason or for Military Care Giver Leave, a Family and Medical Leave Request Form, including the appropriate certification, must be submitted to Human Resources within thirty (30) calendar days prior to the event.

2. When FMLA leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

3. When leave is needed for birth and care, or placement for adoption or foster care, use of Intermittent leave is subject to the immediate supervisor's approval.

4. When the need to take FMLA leave is not foreseeable, the employee must provide at minimum (1) one Working Day of verbal notice to the immediate supervisor, followed by

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submission of a Family and Medical Leave Request Form within three (3) Working Days. However, the employee has fifteen (15) calendar days to provide the appropriate certification.

5. All FMLA requests shall be supported by the appropriate documentation.

    a. All FMLA requests, other than a Qualifying Exigency Leave and Military Caregiver Leave, must be supported by medical certification from a Health Care Provider or a state or federal child placement agency.

    b. Qualifying Exigency Leave requests must be supported by a copy of the Covered Service Member's active duty orders and certification providing the appropriate facts related to the particular Qualifying Exigency for which leave is sought, including contact information if the leave involves meeting with a third party.

    c. Military Caregiver Leave requests must be supported by a certification completed by an authorized Health Care Provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the Covered Service Member's or Covered Veteran's family.

    d. All certifications will be authenticated or clarified by Human Resources, not the employee's immediate supervisor, and used to determine if the request for absence is supported.

    e. Human Resources may contact the individual or entity named in a certification for purposes of verifying the statement provided. In cases when the City has reason to doubt the statement provided by a Health Care Provider, the City may require at their own expense a second opinion from a physician designated or approved by the City.

6. Human Resources will designate leave as FMLA qualifying within five (5) days of receiving the Family and Medical Leave Request Form and appropriate documentation.

7. Human Resources will notify the supervisor of the FMLA leave and request a Personnel Action Form (PAF) is completed.

8. An employee shall submit a leave of absence form to the immediate supervisor to record paid leave through the City's payroll procedures.

9. Paid time off, sick industrial and or workers compensation benefits, and short term disability will run concurrently with FMLA leave.

D. RETURN TO WORK

1. Employees must communicate with Human Resources and the employee's immediate supervisor regarding the employee's intent to return to work before returning to work. An employee will return to the employee's former position or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

2. If the FMLA leave was for an employee's own health condition, a full release statement from a physician, certifying that the employee can perform all the essential functions of the position with or without a reasonable accommodation, shall be submitted to Human Resources prior to returning to work. An employee may not return to work without providing the appropriate documentation.

3. Human Resources will notify the supervisor of the return from FMLA leave and request a Personnel Action Form (PAF) is completed.

4. If the employee's position is required to have a Fitness for Duty Exam completed before returning to work, Human Resources will schedule the exam upon receipt of the employee's release to work. The employee will not be scheduled to regular duty until they have successfully passed all fitness for duty exams as required for their position. The examination will relate to the employee's ability to perform the essential functions of the employee's job.

E. EFFECTS OF LEAVE ON BENEFITS

1. The City shall maintain group benefit coverage for the duration of the FMLA leave at the level and under the conditions coverage would have been provided if the Benefit Eligible Employee had been employed continuously for the duration of the FMLA leave.

2. The City shall maintain coverage of the group life insurance for the duration of the FMLA leave, unless the group plan is terminated by the City.

3. The Benefit Eligible Employee may elect to continue dependent health and or basic life insurance coverage. The Benefit Eligible Employee will be required to pay the employee's portion of the premium, regardless if the employee is on paid or unpaid leave. If the Benefit Eligible Employee elects to discontinue the dependent health or basic life insurance coverage while on FMLA, dependents may be re-enrolled upon the employee's return to work. The Benefit Eligible Employee must complete re-enrollment form(s) within thirty-one (31) days of returning to work to elect dependent coverage. The coverage will be reinstated the first day of the month following the completion of the appropriate form(s), if a timely request is submitted. Employees may also have the option to convert the basic life insurance coverage while on FMLA leave by completing the appropriate paperwork.

4. A Benefit Eligible Employee who has voluntary life insurance and or short term disability may elect to continue the coverage while on FMLA leave. The Benefit Eligible Employee will be required to pay the employee's premium, regardless if the employee is on paid or unpaid leave. If the Benefit Eligible Employee elects to discontinue the voluntary life insurance coverage while on FMLA leave, and the employee may reinstate the coverage upon returning to work. The Benefit Eligible Employee must complete re-enrollment form(s) within thirty-one (31) days of returning to work to re-elect coverage. The coverage will be reinstated the first day of the month following the completion of the appropriate form(s), if a timely request is submitted. Benefit Eligible Employees may also choose to port or convert the voluntary life coverage while on unpaid FMLA leave

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by completing the appropriate paperwork. Please note that portability is only available for a non-medical leave.

5. A Benefit Eligible Employee will not accrue any leave while on unpaid FMLA leave.

6. Retirement Service credits do not accrue during any period of unpaid FMLA leave but will commence upon the employee's return to work. An active member may obtain service credit for up to a one year period when on an approved unpaid leave of absence from employment through the Arizona State Retirement System. The purchase is subject to the one-year limitation on the amount of service that may be accrued in a fiscal year.

7. Continuous Service dates for continuous service, accrual rates, seniority, and general pay adjustments will include FMLA leave (paid or unpaid) as creditable service, providing the employee returns to work on the first work day following the end of the authorized FMLA leave.

F. TERMINATION OF EMPLOYMENT

An employee will be considered to have voluntarily terminated employment if the employee:

1. Fails to return to work upon expiration of the period of leave to which the employee was entitled and has not requested an extended leave of absence or if the extended leave of absence is denied and the employee does not return to work.

2. Advises the City of the employee's inten not to return to work.

3. Refuses comparable reemployment to an equivalent job as defined by applicable law.

Link(s): U.S. Department of Labor
U.S. Department of Labor – FMLA Employee Guide
U.S. Department of Labor – FMLA FAQs
Arizona Revised Statute Section 38-739
Arizona Revised Statute Section 38-849 C

1-50-060. MILITARY LEAVE

An employee who is a member of the United States Army, Navy, Air Force, Marines, Coast Guard, National Guard, Reserves or Public Health Service will be granted a leave of absence for military service, training or related obligations in accordance with applicable state and federal law. At the conclusion of the leave, upon the satisfaction of certain conditions, an employee generally has a right to return to the same position the employee held prior to the leave or to a position with like seniority, status and pay that the employee is qualified to perform. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and state law prohibit discrimination and retaliation based on a person's membership or service (voluntary or involuntary) in the uniformed services with regard to any aspect of employment.

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In compliance with USERRA, employees and/or applicants for employment will not be discriminated against with respect to hiring, reemployment, retention, promotion, or any other benefit of employment because of past or present military service obligation, or future application for or membership in a uniformed service.

A. ELIGIBLITY

1. All Non-Exempt and Exempt employees are eligible for an unpaid leave of absence to perform military service under the provisions of USERRA.

2. Some temporary employees may be eligible for such leave if the military service falls within a previously designated period of employment.

B. PROCEDURE

1. An employee shall provide notice to the employee's immediate supervisor as soon as possible after receiving military orders unless precluded by military necessity. If feasible, this notice should be in writing and accompanied by any military orders that the employee has received.
2. An employee may use accrued leave except sick and dependent sick and/or any portion of the paid Military Training Leave per Section 1-50-061 during military leave or may take leave without pay.

3. An employee shall submit a Leave of Absence Form to the immediate supervisor to record the employee's military leave through the City's payroll procedures.

4. The supervisor shall submit a Personnel Action Form (PAF) for the beginning and ending of the military leave.

C. RETURN TO WORK

1. Employees entering military duty shall be permitted to return to employment with all seniority, service credits, status, benefits, and pay the employee would have enjoyed had the employee not been absent, subject to the following conditions:

   a. The employee must be absent from his or her employment position due to service in the uniformed services as defined by USERRA.

   b. The employee must provide advance notice of the service to the City. The employee should make every effort to give notice of impending military service as far in advance as reasonable under the following circumstances:

      i. The notice may be provided by the employee or an appropriate officer from the employee's branch of service.

      ii. The notice may be verbal or in writing.

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c. The employee on military leave retains for up to five (5) years his or her right to reemployment to the position he or she would have attained by remaining continuously employed.

d. The employee must return to work or apply for reemployment in a timely manner after conclusion of service, as defined below:

   i. For military leave of absence of less than thirty-one (31) days, the employee must return to work on the next regular business day after discharge, his or her safe transportation home and a break of at least eight (8) hours;

   ii. If the period of unpaid leave is greater than thirty (30) days but less than one hundred and eighty (180) days, the employee must provide written notification of his or her availability to return to work within fourteen (14) days after discharge; and

   iii. If unpaid leave is greater than one hundred and eighty (180) days, the employee has ninety (90) days after discharge to provide written notification of his or her intention to return to work.

   iv. Employees who are hospitalized or recovering from injuries caused by active duty may have up to two (2) years to return to work, as prescribed under applicable provisions of USERRA.

e. The employee must have been separated from service with an honorable discharge.

2. An employee who does not comply with the return to work requirements may forfeit his or her reemployment rights pursuant to federal law and the City's established policies and procedures on returning from a leave of absence.

3. Upon release from military service, the employee will be returned to City employment as follows:

   a. To his or her former position. If the employee's job is of such a nature that it must be permanently filled, the City will attempt to return the employee to a comparable position, with all the rights and benefits the employee enjoyed before leave was taken. If no such position is available upon return, the City will offer the employee the first comparable position that becomes available. In the event the employee does not qualify for a comparable position, the City will provide reasonable efforts to qualify the individual.

   b. The City will make reasonable efforts to accommodate person with a disability incurred or aggravated during military service.

      i. If, despite reasonable accommodation efforts, the person is not qualified for the position due to his or her disability, the person must be employed in a vacant position of equivalent seniority, status, and pay, so long as the employee is

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qualified to perform the duties of the position or could become qualified to perform them with reasonable efforts by the City.

ii. If the person does not become qualified for the position, the City will reemploy the person in another vacant position he or she is qualified to perform and which is the "nearest approximation" of the position to which the person is otherwise entitled, in terms of status and pay, with full seniority.

4. If an employee was eligible to take a promotional exam and missed it while performing military service, the City will provide the employee with an opportunity to take the missed promotional exam after a reasonable amount of time to adjust to reemployment. The following factors will be taken into account when determining what a reasonable amount of time is:

   a. The length of time the returning employee was absent from work.

   b. The level of difficulty of the promotional exam.

   c. The typical time necessary to prepare or study for the exam.

   d. The duties and responsibilities of the reemployment position and the promotional position.

   e. The nature and responsibilities of the service member while serving in the uniformed service.

D. EFFECTS OF LEAVE ON BENEFITS

1. Employees on military leave may elect to continue group benefit coverage for the employee and the employee's dependent's up to twenty-four (24) months of unpaid leave per USERRA, even if the employee is participating in the military health benefits coverage. The City's health plan must be the primary insurer when such dual coverage exists.

   a. If unpaid military leave is less than thirty-one (31) days, the employee will pay the same share for coverage as any active employee.

   b. If unpaid military leave exceeds thirty (30) days, the employee will be offered COBRA and must pay the entire cost of coverage plus a two (2) percent administrative fee. This extended coverage may be terminated if the employee does not make timely payments or does not return to work after military service.

   c. The employee may choose to port or convert life insurance coverage while on unpaid military leave by completing the appropriate paperwork.

2. Employees who elect to discontinue group benefit and/or voluntary coverage while on military leave may reinstate the coverage upon returning to work. The employee must

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complete the re-enrollment form(s) within thirty-one (31) days of returning to work to re-elect coverage.

3. The City will reinstate the employee's group benefit coverage immediately with no waiting periods and no conditions.

4. As mandated by ARS Section 38-745, if an employee is an active member of the Arizona State Retirement System (ASRS) and is a member of the Arizona National Guard, or is a member of the reserves of the United States military and volunteers or is ordered into active military services as part of a military call-up is eligible to received ASRS credited service time while on active duty. The same will apply to those employees participating in the PSPRS.

   a. The employee must be honorably separated from active duty and return to the City within ninety (90) days of either discharge from active duty or release from service-related hospitalization, or have died as a result of active military service.

   b. The employee can receive a maximum of sixty (60) months of ASRS and PSPRS credited service. The City will pay both the employee and the City's contributions in a lump sum upon return to work or receipt of death certificate. These contributions are based on the salary the member would have accrued if the member had not volunteered or been ordered into active service.

   c. Should the employee serve more than sixty (60) months in the military call-up, the employee may purchase any of the months over the maximum of sixty (60) months by utilizing the standard procedure for purchasing active military service.

   d. The employee must provide a DD-214 or its equivalent to the City. If the employee died as a result of active duty, a death certificate must be provided.

Link(s): Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
Arizona Revise Statute Section 26-167
Arizona Revised Statute Section 26-168

1-50-061. MILITARY TRAINING LEAVE

Employees shall be granted a paid military leave for training duty or to attend camps, maneuvers, formations or drills under orders with any branch or reserve of the armed forces of the United States.

A. DEFINITIONS

1. "Year" means the fiscal year of the United States government (i.e. October 1st through September 30th).

2. "Paid Military Leave" is paid leave entitling the employee to receive his or her regular rate of compensation.

B. ELIGIBILITY

1. All Non-Exempt and Exempt employees are eligible for military training leave.

2. Some temporary employees may be eligible for such leave if the military service falls within a previously designated period of employment.

3. Employees shall be granted a Paid Military Leave for training for a period not to exceed thirty (30) working days in any two consecutive year**s** in accordance with the provisions of ARS Section 38-610.

4. Paid Military Leave will be pro-rated for Part-Time Benefit Eligible Employees by dividing the number of hours worked per week by five (5) and rounding to the next whole number.

5. Employees may use Paid Military Leave in fifteen (15) minute increments.

C. PROCEDURES

1. All employees eligible for paid military leave shall give their supervisors an opportunity, within the limits of military regulations, to determine when such leave shall be taken.

2. An employee shall submit a Leave of Absence Form to the immediate supervisor to record the employee's military training leave through the City's payroll procedures.

3. Valid evidence of orders must be submitted to the employee's supervisor along with a leave of absence form.

4. The supervisor shall submit a Personnel Action Form for the beginning and ending of the military training leave.

Link(s): Arizona Revised Statute Section 38-610

1-50-070. JURY DUTY LEAVE

Benefit Eligible Employees are eligible to receive paid time off for jury duty leave.

A. ELIGIBILITY

1. Benefit Eligible Employees summoned to jury duty shall be paid the employee's regular hourly wage or salary provided the employee submits his or her jury fees to the City of Flagstaff.

   a. Jury fees shall be equal to the total amount of the check received from the Court minus pay received for travel and related child care expenses incurred due to jury duty.

   b. Jury fees shall be submitted to Payroll via personal check.

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2. Jury duty leave does not apply when the employee is a party in the court case or such court appearance is in connection with the employee's personal matters (i.e. traffic court, divorce proceedings, etc.).

3. Employees may use other appropriate types of accrued leave such as vacation leave, personal leave, floating holiday leave or compensatory time to respond to personal matters.

4. Employees may use jury duty leave in fifteen (15) minute increments.

B. PROCEDURE

1. Employees must inform their immediate supervisor if selected for jury duty or subpoenaed to appear in court by the United States, the State of Arizona, a County, or a Municipality. The employee must immediately present a copy of the official notice, summons, or subpoena to the employee's immediate supervisor.

2. An employee shall submit a leave of absence form to the employee's immediate supervisor to record the jury duty leave through the City's payroll procedures.

3. Employees are to report to work any day the Court is not in session, when the jury duty or summons period has ended or when excused by the Court.

4. Either the City of Flagstaff or the employee may request an excuse or postponement from jury duty, if in the City's judgment the employee's absence would create serious operational difficulties.

5. Jury duty and subpoena leave hours are not counted as hours worked for the purpose of calculating eligibility for overtime pay for Non-Exempt employees.

Link(s): Arizona Revised Statute Section 21-236

1-50-071. CRIME VICTIM LEAVE

Benefit Eligible Employees are eligible to receive unpaid crime victim leave who is victim of a crime or juvenile offense.

A. ELIGIBILITY

1. An employee who is the victim of a crime or juvenile offense shall be granted leave to:

   a. Attend a proceeding pursuant to Arizona Revised Statute Sections 8-420 or 13-4439; or

   b. Appear in Court or meet with Legal Counsel to seek an order of protection, injunction, or other injunctive relief to help ensure the health, safety or welfare of the victim or victim's child.

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2. Employees on crime victim leave shall be entitled to an unpaid leave of absence for such time or may use other appropriate types of accrued leave such as vacation leave, personal leave, floating holiday leave or compensatory time while on crime victim leave.

3. Employees may use crime victim leave in fifteen (15) minute increments.

B. PROCEDURES

An employee shall submit a leave of absence form to the immediate supervisor to record the crime victim leave through the City's payroll procedures.

Link(s): Arizona Revised Statute Section 8-420
Arizona Revised Statute Section 13-4439

1-50-072. VOTING DAY LEAVE

Benefit Eligible Employees are eligible to receive paid time off for voting day leave.

A. DEFINITIONS

"Voting Day Leave" is paid leave entitling the employee to receive his or her regular rate of compensation.

B. ELIGIBILITY

1. Pursuant to Arizona Revised Statute Section 16-402, during primary or general state of Arizona elections, shall be granted leave to vote at the beginning or end of the work shift, if there are less than three (3) consecutive hours between the opening of the polls and the beginning of the employee's regular work shift or less than three (3) consecutive hours between the end of the employee's shift and the closing of the polls. The amount of leave granted shall be equal to three (3) hours minus the time difference between work hours and the opening or closing of the polls.

2. Voting day leave hours are not counted as hours worked for the purposes of calculating overtime pay for Non-Exempt employee.

C. PROCEDURES

1. Employees must notify their immediate supervisor prior to the day of election, and the supervisor may specify the hours during which the employee may be absent for the purpose of voting.

2. An employee shall submit a leave of absence form to the immediate supervisor to record voting day leave through the City's payroll procedures.

Link(s): Arizona Revised Statue Section 16-402

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2013 ADDENDUM 5 OF THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS

1-50-080. PAID LEAVE OF ABSENCE

Benefit Eligible Employees are eligible to use appropriate accrued leave for a paid leave of absence.

A. ELIGIBILITY

1. Benefit Eligible Employees may request a paid leave of absence when the employee is not eligible for FMLA leave, has exhausted FMLA leave or for medical, educational or personal reasons as described in the Leave Without Pay policy Section 1-50-081.

2. Benefit Eligible Employees may only use sick and dependent sick accrued leave for a paid leave of absence request for medical leave or in lieu of FMLA leave. All other accrued leave types may be used for any type of paid leave of absence.

3. Employees may request a paid leave of absence intermittently or on a Reduced Schedule. The employee should make a reasonable effort to schedule leave during times that will not unduly disrupt the employer's operations.

4. Employees may use approved leave in fifteen (15) minute increments.

B. PROCEDURES

1. Employees may request a leave of absence by submitting a Leave of Absence Request Form to the employee's immediate supervisor, Section Head, Division Director, Deputy City Manager and the Human Resources Director or designee including the type of leave being requested, the beginning and ending dates of the leave period and the type of accrued leave the employee would like to use.

2. Human Resources will notify the supervisor of the paid leave of absence and request a Personnel Action Form (PAF) is completed at the beginning of the leave period.

2. While on a leave of absence, employees must use all appropriate accrued leave during the employee's absence.

3. Employees on paid leave of absence for medical leave or in lieu of FMLA leave may submit a donated leave request per Section 1-50-100 or leave without pay request per Section 1-50-081 after they have exhausted all of his or her accrued leave.

4. The immediate supervisor shall submit a Personnel Action Form (PAF) at the end of the leave period to return the employee back to active duty.

C. EFFECTS OF TERMINATION OF EMPLOYMENT

Employees may take accrued leave after submitting a notice of resignation, but must work the last day of the notice period.

Form(s): Leave of Absence Request Form

2013 ADDENDUM 5 OF THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS

1-50-081. LEAVE WITHOUT PAY

Benefit Eligible Employees are eligible for a leave without pay once all appropriate accrued leave including donated leave has been exhausted.

A. ELIGIBLITY

1. Benefit Eligible Employees who have exhausted all accrued leave including donated leave may request a leave without pay for medical, educational, or personal reasons as described below.

2. The Division Director may approve a leave without pay for up to two (2) weeks per calendar year.

3. The Deputy City Manager may approve a leave without pay for a maximum of twelve (12) months.

4. Employees may request a leave without pay intermittently or on a Reduced Schedule. The employee should make a reasonable effort to schedule leave during times that will not unduly disrupt the employer's operations.

B. PROCEDURES

1. Medical Leave

   a. Employees may request medical leave without pay if they are not eligible for FMLA leave, if the employee has exhausted FMLA leave and all accrued leave has been used.

   b. The employee may request a medical leave without pay by submitting a Leave of Absence Request Form and a written request from the employee's treating physician to the immediate supervisor, Section Head, Division Director, Deputy City Manager, and Human Resources Director or designee prior to the effective date of the leave.

   c. Human Resources may contact the individual or entity named in the treating physician written request for purposes of verifying the statement provided. In cases when the City has reason to doubt the statement provided by the treating physician the City may require at the City's expense a second opinion from a physician designated or approved by the City.

2. Educational Leave

   a. Employees must provide a written request that includes the period of leave being requested, course or courses to be taken, and the benefit the employee will receive in relation to his or her current position.

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b. The employee may request an educational leave without pay by submitting a Leave of Absence Request Form and the written request to the immediate supervisor, Section Head, Division Director, Deputy City Manager, and Human Resources Director or designee prior to the effective date of the leave.

3. Personal Leave

a. Employees must provide a written request that includes the period of leave being requested and the reason for personal leave without pay.

b. The employee may request a personal leave without pay by submitting a Leave of Absence Form and the written request to the immediate supervisor, Section Head, Division Director, Deputy City Manager, and Human Resources Director or designee, prior to the effective date of the leave.

4. Upon approval of a leave without pay, Human Resources will request a Personnel Action Form (PAF) is completed at the beginning and at the end of the leave without pay.

5. The employee's evaluation date will be extended by the number of Working Days equal to the period of the leave taken. Employees who have taken leave without pay on a intermittent or Reduced Schedule the extension will be based on the number of hours.

6. Employees returning to work from approved leave without pay shall be returned to the same or equivalent position held prior to taking the leave without pay. Under leave without pay a Key Employee may be exempt from reinstatement to their current or equivalent position. For determination contact the Human Resources Director or designee.

C. EFFECTS OF LEAVE ON BENEFITS

1. Employees on leave without pay shall receive no compensation and will not earn accrued leave.

2. Benefit Eligible Employees will lose group benefit coverage the last day of the month after the start of the leave without pay per Section 1-70-010. The Benefit Eligible Employee must complete re-enrollment form(s) within thirty-one (31) days of returning to work to elect coverage. The coverage will be reinstated the first day of the month following the completion of the appropriate form(s), if a timely request is submitted.

3. State Retirement service credits do not accrue during any period of leave without pay but will commence upon the employee's return to work. An active member may obtain service credit for up to a one (1) year period when on an approved unpaid leave of absence from employment through the Arizona State Retirement System or the Public Safety Retirement System. The purchase is subject to the one-year limitation on the amount of service that may be accrued in a fiscal year.

D. TERMINATION OF EMPLOYMENT

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An employee will be considered to have voluntarily terminated employment if the employee:

1. Fails to return to work upon expiration of the period of leave to which the employee was entitled and has not requested an extended leave or if the extended leave is denied and the employee does not return to work.

2. Advises the City of his or her intention not to return to work.

4. Refuses comparable reemployment to an equivalent position.

Link(s): Arizona Revised Statute Section 38-739
Arizona Revised Statute Section 38-849 C

1-50-090. UNAUTHORIZED LEAVE WITHOUT PAY

Any unauthorized absence for one (1) day or an assigned shift by an employee shall be deemed to be absent without pay and abandonment of his or her position. Employees who abandon their job in this manner shall be automatically deemed to have resigned.

Under extenuating circumstances the appropriate Division Director may rescind the assumed resignation and grant leave without pay.

1-50-100. DONATED LEAVE

Benefit Eligible employees may donate leave to other requesting employees for any reason.

A. ELIGIBILITY

1. Benefit Eligible Employee may donate leave to a requesting employee that meets certain requirements:

   a. The employee requesting donated time must be benefit eligible and been employed for at least six (6) months.
   b. The employee requesting donated leave must have exhausted all appropriate leaves.

2. All donated leave will be transferred to the receiving employee as paid time off at the receiving employee's regular rate of pay.

3. Employees may use donated time in the following increments:

   a. If the employee is able to return to work on a reduced schedule, the employee may use donated time in one (1) hour increments in order to remain benefit eligible (e.g. twenty hours per week) or maintain the employee's bi-weekly pay. Any accrued leave will be used prior to the employee using donated leave.

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b. If the employee is unable to return to work, the employee may use donated time in hour increments in order toremain benefit eligible (e.g. twenty hours per week) or maintain the employee's bi-weekly pay.

4. Employees may request donated leave on more than one occasion for the same situation.

B. PROCEDURES

1. Employees may request donated leave by submitting a Donated Leave Request Form to the immediate supervisor, Section Head, Division Director, Deputy City Manager, Human Resources Director or designee. The employee may specify if the leave is for medical or non-medical reasons, in which case such information will be provided to other employees. The employee also may not specify the reason for requesting leave.

2. Donated time will come from employees' accrued vacation balances or holiday compensatory time, on a voluntary anonymous basis.

3. Donated time will be used on an hour-for-hour basis, not an hourly rate.

4. When multiple contributions are made, the hours will be given to the requesting employee in order of receipt of the donation forms.

5. Unused donated time will be returned to the donor's leave accruals.

1-50-200. INCLEMENT WEATHER

The City shall provide municipal services to the maximum extent possible. Under severe inclement weather, the City Manager or designee may suspend City operations when the concern for the safety of employees overrides the value of continued work.

A. ELIGIBILITY

1. Emergency City operations may not be suspended and employees will continue to full-fill his or her assigned shift.

2. Non-emergency City operations may be suspended and the City Manager may authorize employees to arrive later than the beginning of or leave earlier than the end of his or her assigned shift.

B. PROCEDURES

1. The City Manager will notify employees of closure by the emergency telephone number, City website and/or City email.

2. When City operations are suspended the employee may choose to make up the hours in the current workweek or use accrued leave.

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3. Upon approval of the employees' immediate supervisor an employee may be allowed to stay at work or offer to work in snow operations. Employees can contact Public Works Administration in order to work in snow operations.

4. Employees who report to work late or leave early on a day the City Manager does not suspend operations shall make up the hours in the current workweek or use accrued leave.

5. Employees who wish to use accrued leave will submit a Leave of Absence Request Form to the employee's immediate supervisor to record their leave through the City's payroll procedures.

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14. C.

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Elizabeth A. Burke, City Clerk
Date:	03/28/2013
Meeting Date:	04/02/2013

TITLE

Discussion: Rio de Flag Path Forward.

RECOMMENDED ACTION:

Council direction.

INFORMATION

This item has been placed on the agenda for discussion to allow an opportunity for those who visited Washington, DC to report on the Rio de Flag project and its path forward.

Attachments: Memo

MEMORANDUM
CITY MANAGER'S OFFICE

DATE: **Friday, March 29, 2013**

TO: **Mayor and City Council**

FROM: **Kevin Burke, City Manager**

RE: **Rio de Flag Flood Control Project – Next Steps**

The purpose of this memo is to provide an update on the Rio de Flag Flood Control Project as it relates to the objectives for the Mayor and Council's recent DC lobbying trip, outcomes of the meetings and proposed next steps for this critical project.

DC Lobbying Trip – Objectives

Mayor and Council took a two prong approach in its meetings. When meeting with representatives from OMB and Army Corps of Engineers, we stressed the need for the completion of the Limited Re-evaluation Report (LRR) and $3.9 million in funding in the FY2013 Work Plan. ($2.9 million for repairs on the Clay Wash Detention Basin and $1 million to complete 100% design for the Project.)

The second prong could be termed the "it's broken" approach. We talked to our legislators (Kirkpatrick, Gosar, Flake and McCain) and congressional staff (House Transportation and Infrastructure Subcommittee and Senate Energy and Water Appropriations Subcommittee) about the problems we have had on this project and the desire for self-administration. Self-administration will allow the City to take the lead in the planning, design, and construction of the project rather than the Corps' taking the lead role. Beyond this discussion, our efforts were also focused on the need for the completion of the LRR and in the case of the House Representatives, $3.9 million of funding in the FY2013 Work Plan.

DC Lobby Trip – Outcomes

Overall, the meetings went very well and the Mayor and Council were very well-received. We learned that self-administration may be possible without an Act of Congress via the Water Resources Development Act (WRDA). Since our trip, Congress

has passed a continuing resolution for a budget that will fund the Federal government through September 2013. Consequently, the Corps must submit a work plan to the OMB of how they will spend their appropriations. Any expenditure by the Corps requires the Corps to place it in their work plan and for OMB to approve it. Our discussions with the Corps and OMB focused on importance of this appropriation. Representatives from the Corps stated that the City was doing all of the right things and that we needed to keep pressing forward. We know that the $3.9 million request is in the Corps LA District Work Plan, but it must be approved at the Division and Headquarter level before proceeding to OMB.

All legislators and their staff expressed frustration and disbelief and pledged to help in different ways.

Congressman Paul Gosar pledged to continue his support for this project. He vowed to continue pressing on the Rio de Flag issue as far as funding and the LRR are concerned. He has already sent a letter to Assistant Secretary for the Corps (Civil Works), Jo-Ellen Darcy, asking why the LRR has not been completed.

Congresswoman Ann Kirkpatrick now sits on the influential House Transportation and Infrastructure Committee that will have jurisdiction over the WRDA bills. She agreed to send letters in support of expediting the LRR and $3.9 million in funding for the Rio project. She is also meeting with the Assistant Secretary for the Corps (Civil Works), Jo-Ellen Darcy, in the near future to push for funding the Rio project and completing the LRR in a timely fashion.

Senators Flake and McCain both committed to sending letters to the Corps in support of expediting the LRR.

Next Steps

The following is a proposed strategy for the City to engage in over the next four months. The following strategies are not mutually exclusive nor are they sequential.

Strategy 1: Continue to lobby the Corps for the City's $3.9 million request in the FY2013 Work Plan. This effort will focus on fixing the Clay Avenue Detention Basin as a "life and safety" issue which should be considered by the Corps a high priority in the Work Plan. The other priority is 100% completion of design work.

Strategy 2: City will continue to lobby for self-administration. This includes the following sub actions:

a) Reach out to communities with demonstrated success in self-administration.
b) Seek ruling from Division to determine if self-administration is an option within Section 211 of the current WRDA. If it is not an option, work with Division to provide self-administration enabling language in the WRDA that will be applicable to all projects.

c) Lobby our Congressional delegation for inclusion of that language in the final WRDA bill.

Strategy 3: If self-administration is not allowed in the WRDA bill, which may not be known until late fall, staff will approach Council about authorizing a contract for the preparation of a preliminary engineering study. The study will determine the feasibility of the City to design and construct the project to FEMA standards using solely City funding.

Memorandum

14. D.

CITY OF FLAGSTAFF

To:	The Honorable Mayor and Council
From:	McKenzie Jones, Sustainability Specialist
Date:	03/18/2013
Meeting Date:	04/02/2013

TITLE:

***Presentation on Observatory Mesa Growing Smarter Grant Application**

DESIRED OUTCOME:

This memorandum serves as an update on the Observatory Mesa acquisition process. In May, staff will return to Council seeking approval for the City's Arizona State Parks, Growing Smarter State Trust Land Acquisition Program Grant application to acquire Observatory Mesa.

INFORMATION:

On December 13, 2011 staff presented an update to Council on the status of the 2004 and 2010 bond projects. At that time staff discussed pursuing the Growing Smart Grant as a means to offset costs of the acquisition of Observatory Mesa. This is the last grant cycle for the Growing Smarter Grant program.

As critical wildlife habitat, a popular recreation corridor, and protection for dark skies, Observatory Mesa is a natural and cultural amenity for northern Arizona. Efforts to protect Observatory Mesa began decades ago and continue today. In 2004, City staff submitted an Arizona Preserve Initiative petition to reclassify 2,260 acres of State Trust land on Observatory Mesa for conservation purposes and voters approved a $5.5 million bond to acquire this land. At this time the bonded amount will not be sufficient to purchase the Observatory Mesa land outright, therefore reliance on grant funding is necessary.

The City has the opportunity to use Arizona State Parks Growing Smarter Grant funds in conjunction with the voter-approved bond to acquire conservation land on Observatory Mesa. In order to be considered for the grant funds, the City must successfully petition to have the lands reclassified by the State Land Commissioner as suitable for conservation purposes.

As a result, staff has moved forward with the existing Arizona Preserve Initiative Petition to reclassify all 2,260 acres (located within Sections 6, 8, 12, 18 and 19) with the intent to apply for a grant to fund up to 50% of the purchase price by June 28, 2013. The State Land Commissioner reclassified Observatory Mesa as suitable for conservation purposes on March 24, 2013. Arizona State Parks will announce the grant recipients in September 2013. If the City is awarded the grant, the land will be auctioned by the State Land Department by November 2013. If the City is the successful bidder, the City will hold title of the land upon purchase and Arizona State Parks will hold a conservation easement to protect Observatory Mesa in perpetuity.

Preserving these Trust Lands at the western edge of the city for conservation purposes and open space has many benefits, including ecological, economical, and recreational. Observatory Mesa is an elongated, flat topped, volcanic feature just west of Flagstaff and southwest of the San Francisco Peaks. The vegetation throughout is primarily Ponderosa Pine and Gambel Oak forest, with open sections atop the mesa supporting extensive grassland tracts and shrub steppe. Observatory Mesa is home to a variety of wildlife including seasonal grazing for elk, deer, mountain lion, and antelope. All the sections of

Trust Land on Observatory Mesa individually provide wildlife habitat, but together, with surrounding U.S. Forest Service lands, they would protect the ecological integrity of the area.

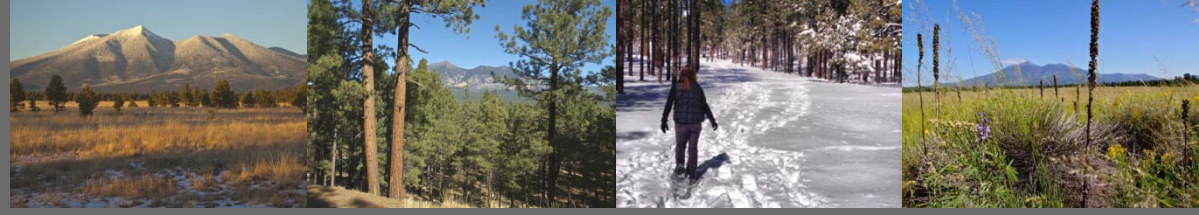
Protecting State Trust Land on Observatory Mesa positively impacts the observatories, provides protection from further light pollution, and strengthens the astrogeological sector of our economy. Additionally, ownership of the sections would give the City greater access and control in forest and watershed health initiatives, providing increased community protection.

After reviewing the developable qualities of the State Land sections on Observatory Mesa, staff have concluded the elevation and shallow soils on thick basalt bedrock would be costly to develop and to provide and maintain services if developed at high densities, thus this area is very suitable for conservation purposes.

Attachments: Observatory Mesa PowerPoint

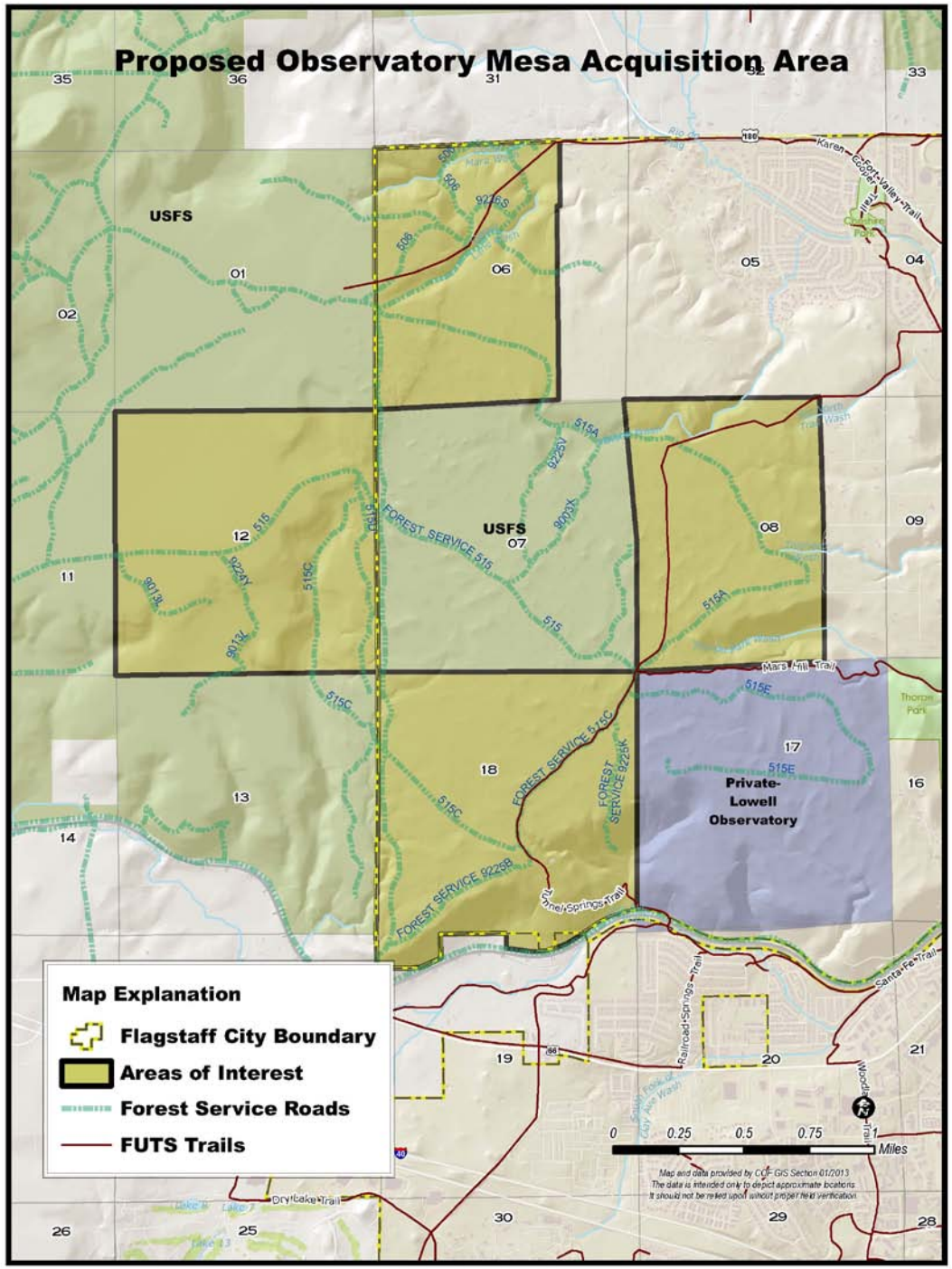
OBSERVATORY MESA GROWING SMARTER GRANT

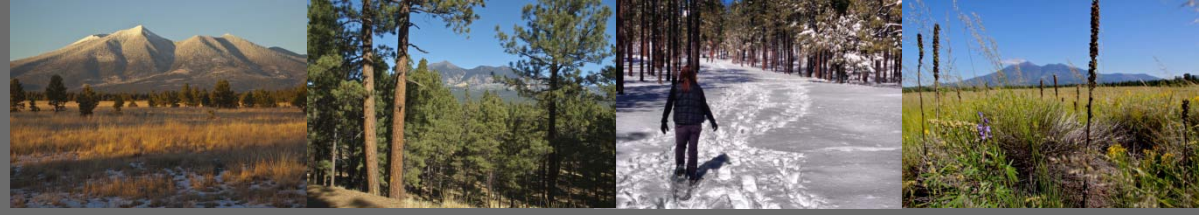
April 9, 2013



Background

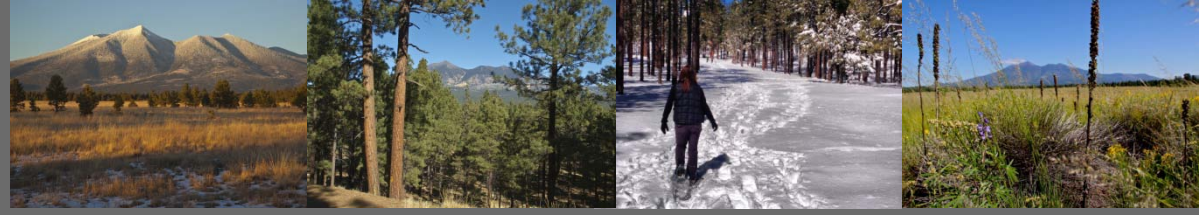
- Arizona Preserve Initiative (API) petition submitted in 2004 for 2,256 acres across State Land sections 6, 8, 12, 18, and 19
- $5.5 million bond passed in 2004 to acquire State Trust lands for open space conservation on Observatory Mesa


Proposed Observatory Mesa Acquisition Area
USFS
USFS
Private-
Lowell
Observatory
FOREST SERVICE 515
FOREST SERVICE 515C
FOREST SERVICE 9226R
FOREST SERVICE 9226K
Mars Hill Trail
Fort Valley Trail
Tunnel Springs Trail
Railroad Springs Trail
Santa Fe Trail
Dry Lake Trail
Map Explanation
Flagstaff City Boundary
Areas of Interest
Forest Service Roads
FUTS Trails
0 0.25 0.5 0.75 1 Miles
Map and data provided by COF GIS Section 01/2013
The data is intended only to depict approximate locations
It should not be relied upon without proper field verification



Opportunity

- Opportunity to apply for Growing Smarter Grant to purchase parts of Observatory Mesa through the API
- Growing Smarter Grant can provide up to 50% match



Next Steps

- Conduct State Land Appraisal
- Apply for Growing Smarter Grant
  - Due June 28, 2013
  - Recipients announced in September
  - Auction in October/November

Thank you