**FINAL AGENDA**

**REGULAR COUNCIL MEETING**
**TUESDAY**
**MAY 7, 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**: City Council Regular Meeting of April 16, 2013; City Council Combined Special Meeting/Budget Work Session of April 24-26, 2013; City Council Special Meeting (Executive Session) of April 30, 2013, and Combined Special Meeting/Work Session of April 30, 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).*

**A. Consideration of Appointments:** Disability Awareness Commission.

**RECOMMENDED ACTION:**

Make one appointment to a term expiring March 2014.
Make one appointment to a term expiring March 2016.

**B. Consideration of Appointments:** Sustainability Commission.

**RECOMMENDED ACTION:**

Make two appointments to terms expiring October 2014.

**C. Consideration of Appointments:** Open Space Commission.

**RECOMMENDED ACTION:**

Make one Real Estate appointment to a term expiring April 2016.
Make one Natural and Cultural Science appointment to a term expiring April 2015.
Make one At-Large appointment to a term expiring April 2016.

## 8. LIQUOR LICENSE PUBLIC HEARINGS

**A. Consideration and Action on Liquor License Application:** John Kennelly, Historic Brewing Company, 4366 E. Huntington Dr., Suite A, Series 03, New License.

**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.

**B.** **Consideration and Action on Liquor License Application:** Ray Morrissey, “Mr. Smokes", 2126 N. 4th St., Series 10 (beer and wine store), New License.

**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.

**C.** **Consideration and Action on Liquor License Application:** Michael Funk, “Firecreek", 22 E. Route 66, Series 07, Person 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.

**D.** **Consideration and Action on Liquor License Application:** Randy Nations, “San Felipe's", 103 N. Leroux, Series 06 (bar- all spirituous liquor), Person 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 Construction Manager at Risk Contract:** Street Maintenance Program 2013

**RECOMMENDED ACTION:**

1) Approve the Construction Manager at Risk Contract with C and E Paving and Grading, LLC in an amount not to exceed $943,788.00.
2) Authorize Change Order Authority in the amount of $200,000.00 to cover costs to re-surface seven Parks parking lots anticipated in FY 2014, or potential costs associated with unanticipated or additional items of work.
3) Authorize the City Manager to execute the necessary documents.

**B.** **Consideration and Approval of Construction Manager at Risk Design Phase Contract:** Westplex Taxi Lanes Reconstruction Project.

**RECOMMENDED ACTION:**

1) Award the Construction Manager at Risk Contract with Banicki Construction in an amount not to exceed $20,296.10, subject to approval by the Federal Aviation Administration (FAA) and ADOT Multi-Modal.
2) Authorize Change Order Authority of $1,014.81 (5%) to cover potential costs associated with unanticipated or additional items of work.
3) Authorize the City Manager to execute the necessary documents.

**C.** **Consideration and Approval of Service Agreement:** Supplemental Agreement No.2, Pulliam Airport Master Plan Improvements, Construction Services for the Westplex Taxilanes Reconstruction Project.

**RECOMMENDED ACTION:**

1) Approve Supplemental Agreement Number 2 with Kimley-Horn and Associates, Inc. in the amount of $421,369.00 subject to acceptance of a grant from the Federal Aviation Administration and the Arizona Department of Transportation, Multimodal Planning Division, Aeronautics.
2) Authorize the City Manager to execute the necessary documents.

**D.** **Consideration and Approval of Construction Contract:** Butler Avenue Median Improvements Project (Phase 3).

**RECOMMENDED ACTION:**

1) Approve the construction contract with RTR Paving and Resurfacing, LLC. in the amount of $373,896.50 including a $37,000 contract allowance and a contract time of 105 calendar days;
2) Approve Change Order Authority in the amount of $33,690.00 (10% of contract amount, less the allowance) for potential costs associated with unanticipated items of work; and
3) Authorize the City Manager to execute the necessary documents.

**E.** **Consideration and Approval of Amendment to Lease Agreement:** Amendment to the Lease Agreement with Boys and Girls Club for the Cogdill Recreation Center.

**RECOMMENDED ACTION:**

Adopt the amendments to the Cogdill recreation Center lease Agreement.

## 10. ROUTINE ITEMS

**A.** **Consideration and Approval of Street Closure(s):** NACo (WIR) Western Interstate Regional Conference and **Consideration of Alcohol Service on Heritage Square:** NACo (WIR) Western Interstate Regional Conference

**RECOMMENDED ACTION:**

1) Approve the street closure at Aspen Ave between San Francisco and Leroux on Wednesday, May 22, 2013, from 2:30pm-8pm.
2) Approve the serving of alcohol on Heritage Square: 5:30pm-8pm.

**B.** **Consideration and Approval of Intergovernmental Agreement:** Master Intergovernmental Agreement between the City of Flagstaff (City), Coconino County (County) , Northern Arizona University (NAU), and the Coconino County Community College District (CCC) for the support of the Northern Arizona Intergovernmental Public Transit Authority (NAIPTA).

**RECOMMENDED ACTION:**

Consider and approve the Amended and Restated Master Intergovernmental Agreement (IGA).

**C.** **Consideration and Adoption of Ordinance No. 2013-10:** An ordinance of the City Council of the City of Flagstaff approving the form and authorizing the execution and delivery of an Equipment Lease/Purchase Agreement for Renewable Energy Equipment; delegating authority to the Management Services Director of the City to determine certain matters and terms with respect to the foregoing; authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this ordinance; and authorizing clerical corrections.

**RECOMMENDED ACTION:**

1) Read Ordinance No. 2013-10 by title only for the first time on May 7, 2013.
2) City Clerk reads Ordinance No. 2013-10 by title only (if approved above)
3) Read Ordinance No. 2013 -10 by title only for the final time on May 7, 2013. (This requires a unanimous vote of the Council members present. City Charter, Article VII, Section 6)
4) City Clerk reads Ordinance No. 2013-10 by title only for the final time (if approved above)
5) City Council makes a finding that an emergency exists.
6) Adopt Ordinance No. 2013-10 on May 7, 2013 (Requires six affirmative votes because of the emergency clause)

**D.** **Consideration and Approval of Ordinance 2013-07 authorizing the trade of City-Owned Property:** If approved, Ordinance 2013-07 will authorize the trade of city-owned land. Parcel number 104-01-007, which is located at the Southwest corner of Elden Street and Butler Avenue, will be combined with the parcel to the South of it for development purposes. The City will receive an improved parcel for the community land trust program from the six unit subdivision created through the trade.

**RECOMMENDED ACTION:**

Should the Council wish to move forward with this exchange:
1) Read Ordinance No. 2013-07 by title only for the final time
2) City Clerk reads Ordinance No. 2013-07 by title only (if approved above)
3) Adopt Ordinance No. 2013-07

**E.** **Consideration and Adoption of Ordinance No. 2013-09:** An Ordinance adopting that Public Document entitled *2013 Addendum 5 of the Flagstaff Employee Handbook Regulations* by reference.

**RECOMMENDED ACTION:**

1) Read Ordinance No. 2013-09 by title only for the final time
2) City Clerk reads Ordinance No. 2013-09 (if approved above)
3) Adopt Ordinance No. 2013-09

**F.** **Consideration and Approval of Purchase Under National Intergovernmental Purchasing Alliance Contract:** Purchase one (1) Four Wheel Drive Backhoe Loader with Attachments.

**RECOMMENDED ACTION:**

Purchase (replace) one (1) four wheel drive backhoe loader with attachments - 420F Backhoe Loader from Empire Caterpillar Equipment of Flagstaff, Arizona in the amount of $103,037.00 plus tax and added fees for a replacement of the Water Distribution Section's 1991 John Deere 510D backhoe loader with attachments.

**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.** **Presentation**: *National Tourism Week*.

**B.** **Presentation**: *Vision Flagstaff*.

**C.** **Consideration of Proposals**: New Municipal Court Building.

**RECOMMENDED ACTION:**

Reject all proposals as submitted for Request for Proposals (RFP) 2012-14, property and design-build construction for a new municipal court building

**D.** **Consideration and Approval of Settlement and Release Agreement:** Canyon Del Rio.

**RECOMMENDED ACTION:**

Approve the Settlement and Release Agreement between the Canyon Del Rio Investors, LLC and the City of Flagstaff, AZ, authorize the City Manager to sign the Agreement and any other necessary and appropriate documents; and authorize staff to take other actions as needed to further the Council direction.

**E.** **City Comment on US Forest Service Proposed Action** - Flagstaff Watershed Protection Project.

**RECOMMENDED ACTION:**

Approve and submit an official public comment regarding the Proposed Action for the Flagstaff Watershed Protection Project.

## 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

**4. A.**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Elizabeth A. Burke, City Clerk |
| **Date:** | 05/02/2013 |
| **Meeting Date:** | 05/07/2013 |

### TITLE

**Consideration and approval of Minutes**: City Council Regular Meeting of April 16, 2013; City Council Combined Special Meeting/Budget Work Session of April 24-26, 2013; City Council Special Meeting (Executive Session) of April 30, 2013, and Combined Special Meeting/Work Session of April 30, 2013.

### RECOMMENDED ACTION:

Amend/Approve the minutes of the City Council Regular Meeting of April 16, 2013; City Council Combined Special Meeting/Budget Work Session of April 24-26, 2013; City Council Special Meeting (Executive Session) of April 30, 2013, and Combined Special Meeting/Work Session of April 30, 2013.

### INFORMATION

Attached are copies of the minutes from the City Council Regular Meeting of April 16, 2013; City Council Combined Special Meeting/Budget Work Session of April 24-26, 2013; City Council Special Meeting (Executive Session) of April 30, 2013, and Combined Special Meeting/Work Session of April 30, 2013, for amendment/approval.

**Attachments:** 04.16.2013.CCRM.Minutes
04.24.2013.CCBW.Minutes
04.30.2013.CCSM.Minutes
04.30.2013.CCWS.Minutes

# MINUTES

REGULAR COUNCIL MEETING
TUESDAY, APRIL 16, 2013
COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
4:00 P.M. AND 6:00 P.M.

1. **CALL TO ORDER**

Mayor Nabours called the meeting to order at 4:03 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).*

2. **ROLL CALL**

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

| Present: | Absent: |
|---|---|
| MAYOR NABOURS | VICE MAYOR EVANS |
| COUNCILMEMBER BAROTZ | |
| COUNCILMEMBER BREWSTER | |
| COUNCILMEMBER ORAVITS | |
| COUNCILMEMBER OVERTON | |
| COUNCILMEMBER WOODSON | |

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

3. **PLEDGE OF ALLEGIANCE AND MISSION STATEMENT**

The Council and audience recited the Pledge of Allegiance and then Mayor Nabours read the City of Flagstaff 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:** City Council Meeting of April 2, 2013; City Council Special Work Session of April 8, 2013; City Council Special Meeting

(Executive Session) of April 9, 2013; and City Council Work Session of April 9, 2013.

Staff was directed to amend Page 5 of the April 2, 2013, meeting (first paragraph) where it indicated that Councilmember Overton had made a statement in the first paragraph, but it was Councilmember Barotz.

**Councilmember Oravits moved to approve [the minutes of the City Council Meeting of April 2, 2013; City Council Special Work Session of April 8, 2013; City Council Special Meeting (Executive Session) of April 9, 2013; and City Council Work Session of April 9, 2013] 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.*

Mayor Nabours said that he recently attended the Robotics Competition in Chandler where the Coconino High School Coconuts were the star of the show. He had invited them to the meeting this evening to give a brief presentation.

Philly, Sarah and Kitty of the Coconuts gave a presentation on their group, showing the presentation that they had given to win an award, and also discussed the various other awards they had won.

Jaina Moan of the Museum of Northern Arizona discussed the upcoming Museum activities, including the Discovery Program taking place over the summer months.

## 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**

None

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.*

Items 9-A, D and E were removed from the Consent Agenda.

**Councilmember Brewster moved to approve Consent Items 9-B and 9-C; seconded; passed unanimously.**

A. **Consideration and Approval of Construction Contract:** Route 66 Culvert at Rio De Flag

**MOTION**:
1) Approve the construction contract (including Base Bid) with RTR Paving and Resurfacing in the amount of $296,047.00 which includes a $41,000.00 contract allowance and a 60 calendar day contract time;
2) Approve administrative change order authority in the amount of $13,000 (5% of the contract amount, less allowance) to cover potential costs associated with unanticipated items of work; and
3) Authorize the City Manager to execute the necessary documents.

Mayor Nabours noted that he had previously had some questions on this project and staff had provided a memo to address those questions. Mr. Alter reviewed the answers, stating that 16" pipe would not carry a significant amount of stormwater so as to change the downstream conditions so there would be not downstream impact.

Mr. Alter also reviewed the answer to the second question regarding the bottomless pit in the Country Club area. He said that the Army Corp of Engineers did rate that area hydraulically, and staff has looked at how long it would take to drain the lake if it was functioning at the level the Corp indicated, and it would take two or three days to drain. He said that they cannot depend on bottomless pits, but with the flow going into that area it would be insignificant.

B. **Consideration and Approval of Change Order No. 3:** Coconino/Elden/ Humphreys 2010 Bond Improvements.

**MOTION:** Approve Change Order No. 3 with Eagle Mountain Construction Co. in the amount of $303,511, ***to authorize the contractor to replace deteriorated**

**water and sewer mains in Cottage Avenue from Mike's Pike to Beaver Street**, and extend the contract by 35 calendar days.

C. **Consideration and Approval of Construction Contract:** Hillside Water and Sewer Replacement Project

**MOTION**:
1) Approve the construction contract with Capital Improvements, LLC in the amount of $322,542.10 which includes a $36,000 contract allowance and a 120 calendar day contract time;
2) Approve change order authority in the amount of $28,654 (10% of the contract amount , less allowance) to cover potential costs associated with unanticipated items of work; and
3) Authorize the City Manager to execute the necessary documents.

D. **Consideration and Approval of Construction Contract:** West Street and Arrowhead Avenue Project Phase II

**MOTION:**
1) **Award the Construction Contract to Capital Improvements, LLC in the amount** of $3,402,974.20 which includes a $210,000.00 contract allowance. The contract period is 200 calendar days; and
2) Authorize Change Order Authority to the City Manger in the amount of $319,297.00 (10% of contract amount excluding allowance) for unanticipated or additional items of work; and
3) Authorize the City Manager to execute the necessary documents.

Councilmember Oravits said that he did not have a question on this project, but asked that it be removed from the Consent Agenda because he would not be supporting it. He believed the price tag was high and that a roundabout was not practical for that area.

Mayor Nabours asked why this project was selected versus something else in town. Project Manager II Christine Cameron said that this was funded through the transportation tax bond. It has been on the drawing board since the inception of the bond. It is a major collector roadway, but does not have sidewalk, curb, gutter, or drainage. It was old asphalt and was a good candidate.

Councilmember Brewster noted that they had discussed what types of intersections were the safest, and the area residents decided on the small roundabout. She added that this was Phase II of a project that has already been started and appropriated.

E. ***Consideration and Approval of Amendment to Contract:** Design services and related construction costs for Picture Canyon-Rio de Flag Meander Restoration Project. (MOVED FROM 10-C)

**MOTION**:
1) Approve Contract Amendment with Natural Channel Design for the amount of $216,980.00

2) Authorize City Manager to execute the necessary documents.

Councilmember Oravits asked where the funding came from for this grant. Watershed Specialist David McKee said that it was through the Water Protection Fund, a state agency. Grants Manager Stacey Brechler-Knaggs said that the City had applied in 2005 for the original grant. At that time they had a lot of sources available. Recently they have been looking to sweep that fund and since this was an existing project that they liked, they offered additional funding.

She added that the Board approved only two projects in the entire state—Fossil Creek and the Picture Canyon Corridor, and the City was awarded both of them with increased funding amounts. Mr. McKee said that this would complete the Picture Canyon Corridor restoration project.

Councilmember Barotz asked if the funds would go back into the State General Fund if they had been swept. Ms. Brechler-Knaggs replied that she did not know for sure, she would be guessing that perhaps it would, but they were worried about the agency going away altogether.

**Mayor Nabours moved to approve Consent Items 9-A and 9-E; seconded; passed unanimously.**

**Councilmember Brewster moved to approved Consent Item 9-B; seconded; passed 5-1 with Councilmember Oravits casting the dissenting vote.**

10. **ROUTINE ITEMS**

A. **Consideration and Approval of Street Closure(s):** Ninth Annual Route 66 Days Charity Car Show.

Ms. Pavey reviewed the application, noting that notice of the item coming before Council at this meeting had been advertised in the March and April newsletters that are sent out electronically to the downtown property owners, and posted on the website under flagstaff.az.gov/downtown.

Discussion was held on what attempts needed to be made to notify property owners. It was suggested that perhaps additional efforts needed to be made; however, some Councilmembers noted that the applicant had done everything that was required of them in the Special Event Permit process and if members were not happy with that process, then it needed to be amended, not this specific application.

Staff was directed to resend the CCR that had been circulated about 1 ½ years ago regarding the Special Event Permit process.

**Councilmember Overton moved to approve [the street closure at Aspen and Birch avenues between Humphreys and San Francisco streets, on Saturday, September 7, 2013, from 6:00 a.m. - 6:00 p.m.]; seconded; passed unanimously.**

B. **Consideration and Approval of Construction Contract: Sitgreaves ADA Ramp Project**

City Engineer Rick Barrett stated that Trevor Henry was unable to be at the meeting, so Mo El-Ali would be addressing this project.

Mr. El-Ali reviewed the proposed project, stating that the lane will be reduced in width to provide for the ADA ramp. He added that it would have been very complicated to remove the steps on that side, so the ramp will be next to them, and he said that the roadway width was wide enough to allow for this reduction.

He said that it was a joint project with ADOT with ADOT paying 50% of the construction contract and the other 50% coming from the City's transportation tax. He said that the City would be coordinating traffic control with ADOT as well.

**Mayor Nabours moved to approve [award the construction contract to Eagle Mountain Construction of Flagstaff, Arizona in the amount of $158,475.00, which includes $16,000.00 in contract allowance. The contract period is 60 calendar days; and authorize Change Order Authority to the City Manager in the amount of $14,300.00 (10% of the bid contract amount, less contract allowance) for unanticipated additional costs; and authorize the City Manager to execute the necessary documents]; seconded; passed unanimously.**

C. ITEM MOVED TO CONSENT AGENDA 9-E.

D. **Consideration of Grant Agreements and Acceptance of Grant Funding** from the Arizona Department of Homeland Security 2010 grant program for Mobile Data Terminals and Enhancing Agent and Chemical Identification projects.

Mayor Nabours asked if these grants were all federal funds. Deputy Fire Chief Jerry Bills replied that they were all federal funds, administered through the State of Arizona. He said that this will complete a project that they partially funded in 2012.

Deputy Chief Bills reviewed the different equipment, noting that the MDT's would be placed in the wildland trucks and the chemical identification equipment would provide for additional equipment to allow crews to set up the perimeters of a spill, as an example, a chlorine leak.

**Councilmember Woodson moved to approve the grant agreements with the Arizona Department of Homeland Security and authorize the acceptance of grant funding in the amount of $19,800 for Mobile Date Terminals and $4,504 for Enhancing Agent and Chemical Identification; seconded; passed unanimously.**

E. **Consideration and Adoption of Resolution No. 2013-08 and Ordinance No. 2013-09:** 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.

Human Resources Director Shannon Anderson said that she had given a presentation during the previous week's Work Session that outlined some of the revisions seen in Addendum 5. One of the questions raised was how the City saves money on the personal day purchase program. She explained that the employee is paying for their day off, but it is paid over time and in turn the City does not pay the related taxes and retirement contribution.

**Mayor Nabours moved to read Resolution No. 2013-08; seconded; passed unanimously.**

*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"*

**Mayor Nabours moved to adopt Resolution No. 2013-08; seconded; passed unanimously.**

**Mayor Nabours moved to read Ordinance No. 2013-09 by title only for the first time; seconded; passed unanimously.**

*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*

## RECESS

The Flagstaff City Council Regular Meeting of April 16, 2013, recessed at 5:08 p.m.

## 6:00 P.M. MEETING

**RECONVENE**

Mayor Nabours reconvened the meeting of April 16, 2013, at 6:02 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).*

Mayor Nabours requested a Moment of Silence for those impacted by the recent Boston tragedy.

11. **ROLL CALL**

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

| Present: | Absent: |
|---|---|
| MAYOR NABOURS | VICE MAYOR EVANS |
| COUNCILMEMBER BAROTZ | |
| COUNCILMEMBER BREWSTER | |
| COUNCILMEMBER ORAVITS | |
| COUNCILMEMBER OVERTON | |
| COUNCILMEMBER WOODSON | |

Others present: City Manager Kevin Burke; 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 Adoption of Resolution No. 2013-07**: A resolution approving the City of Flagstaff 2013/2014 Annual Action Plan and authorizing its submission to the U.S. Department of Housing and Urban Development (HUD).

Councilmember Barotz asked if they wanted to move forward or wait until Vice Mayor Evans could be present as well.

Mayor Nabours voiced concern with accepting the grant funds and then the costs for the projects seem to be so much larger.

Councilmember Barotz asked that staff identify exactly how much of the funding was going to rehabilitation projects. Ms. Costa replied that with Option B it was the $140,000.

Mayor Nabours said that he had read in the Arizona Republic that one, if not more, member(s) of the Gilbert Town Council had voted against accepting the grant funds, and that raised the question to him of what would happen if the Council did not vote for the funds.

Councilmember Brewster said that if they had a problem with the process at the federal level, the City of Flagstaff not accepting the funds is not going to help that. If they do not take the funds, they will go to someone else and if the City wants to apply for them at a later time it will make it more difficult.

Councilmember Brewster asked what the solution would be to the need for the rehabilitation projects, or if they were suggesting to not do them at all. Councilmember Oravits said that they have sat there several times and said that this was not the purview of the City Council. Realistically, the City would probably not turn the funds down, but with regard to who would fix it, they could go back to the old way of doing things and let the private sector help.

Mayor Nabours said that in one of the options the City would have $19,000 in unallocated funds. He asked if they would risk losing that or if it could be carried over. Ms. Costa said that the City has to meet the 1.5X test every Spring, measured as on April 30. With that, they have to make sure they do not have in the bank 1.5 times their allocation. It depends on how quickly their sub-recipients get their projects done. They cannot carry too much forward. She said that right now they have approximately ten contracts open, guessing at around $350,000 waiting to be expended.

Discussion was held on the $70,000 identified for the thrift store. Mayor Nabours asked if it would jeopardize anything if they were to move that $70,000 to unallocated. Ms. Costa said that in her opinion it would be risky.

Housing Manager Sarah Darr explained that they were working with a lot of variables and it depends on how fast the other agencies spend their funds. If they were to add another $70,000 to the unallocated, they may then come in mid-year with an amendment to the Action Plan with another option for spending those funds.

Mayor Nabours asked if at midyear there would be an opportunity for additional applications. Ms. Darr said that traditionally, no, there would not be such an opportunity.

It was noted that there was no money included for support of the homeless. Staff noted that there was an application from Catholic Charities under the PATH program, which directly benefited the homeless. They added that they did not receive an application from Flagstaff Shelter Services.

Mr. Burke noted that his understanding with the segregation of funds was that the capacity was not on the Public Service side and that is where this would be impacted. Ms. Costa added that the Public Service category has a cap of 15% and under both of the options they have met that cap.

Some concern was voiced with use of funds for the startup of a business, such as the thrift store for BOTHHANDS. Devonna McLauglin, BOTHHANDS, said that one of the problems that the agencies run into is that HUD does not fund the grants until November and then they test for the 1.5X issue in April. As an agency, that leaves very little time from the time it is awarded to complete a project, and spending the money.

She also noted that the thrift store personnel would be hired through those living at the Sharon's Attic, so they would be serving homeless women.

Councilmember Oravits said that normally when a startup business is considered, a business plan is provided. Ms. McLaughlin said that they have done quite a bit of research through the Small Business Development Center, the Board, etc. She has a business plan proposal that was not part of the application process, but she would be happy to provide additional information.

Councilmember Oravits said that he also has concerns in that some of the other thrift stores that have started up in the City have gone out of business. McLaughlin said that they were not looking to provide credit. They spoke with quite a few of them, and also reached out to the Coconino Career Center about receiving training for those they will be employing.

She said that they do everything from HUD-approved housing counseling, foreclosure prevention counseling, sustainable housing for families, a construction company, rehab of homes, new construction of homes. They run the Sharon Manor, etc. She said that they have not always had experience with these types of businesses, but they have an engaged and dynamic Board of Directors. She said that they do have expertise to help in this area.

Mr. Burke noted that this was not the first time they would be funding a start up business. They funded Flagstaff Shelter Services when they were first starting up.

Councilmember Brewster said that they have an excellent reputation for completing projects and doing new things. Councilmember Barotz expressed her confidence in the Board of Directors of BOTHHANDS and if they have looked at this and feel it is a good idea, she has faith that the board members understand what they are undertaking.

**Mayor Nabours moved to move the $70,000 for BOTHHANDS to unallocated funds; seconded; motion failed 3-3 with Councilmembers Barotz, Brewster and Overton casting the dissenting votes.**

**Mayor Nabours moved to adopt Option B, except put the $70,000 from BOTHHANDS to infrastructure, and adding the $19,205 unallocated, with**

**both going toward the Arroyo Park Roadway; seconded; motion failed 3-3 with Councilmembers Barotz, Brewster and Overton casting the dissenting votes.**

After further discussion, **Councilmember Brewster moved to approve Option A; seconded; passed 5-1 with Councilmember Oravits casting the dissenting vote.**

Diana Watt, Northland Hospice, spoke in favor of the thrift store.

**Mayor Nabours moved to read 2013-07 by title only, as amended; seconded passed 4-1 with Councilmember Oravits casting the dissenting vote and Councilmember Barotz out of the room.**

| | |
|---|---|
| *Housing/Econ. Development Activities* | |
| *BOTHANDS, Inc. - Financial Assistance and Counseling Program* | *$122,000.00* |
| *BOTHANDS, Inc. – Job Creation* | *$62,000.00* |
| *Catholic Charities - Minor Rehabilitation of Housing* | *$43,000.00* |
| *City of Flagstaff - Owner Occupied Housing Rehabilitation* | *$100,000.00* |
| *Public Service Activities* | |
| *Northland Hospice – Hospice Operational Assistance* | *$20,000.00* |
| *Catholic Charities – PATH Operational Assistance* | *$30,000.00* |
| *DNA People's Legal Services – Housing Legal Assistance* | *$23,000.00* |
| *City of Flagstaff Infrastructure – Arroyo Roadway* | *$95,205.00* |

*A RESOLUTION APPROVING THE CITY OF FLAGSTAFF 2013/2014 ANNUAL ACTION PLAN AND AUTHORIZING ITS SUBMISSION TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT*

**Mayor Nabours moved to adopt Resolution No. 2013-07; seconded; passed 4-1 with Councilmember Oravits casting the dissenting vote and Councilmember Barotz out of the room.**

B. **Consideration and Adoption of Resolution No. 2013-09:** A resolution authorizing the City of Flagstaff to provide up to two-hundred forty-five thousand dollars ($245,000) to Mountainside Village/Flagstaff LP as Local Government Contribution for a Low Income Housing Tax Credit Acquisition/Rehabilitation Project under the Arizona Department of Housing ("ADOH") 2013 or 2014 Qualified Allocation Plan.

Housing Manager Sarah Darr reviewed this application, noting that the developer had brought forward a new fact that with the way the rent structure would be proposed to change, there would be an average savings per household of about $206 per month.

Ms. Darr reported that during the middle of last week the Arizona Department of Housing issued an interpretation that they are no longer accepting loans for these ten points. The developer has appealed that interpretation and continues to work on it.

Mayor Nabours asked how the process would take place, if it was through an escrow account. Ms. Darr said that it would all take place at the same time.

Councilmember Oravits asked for clarification of the interest only payments "when sufficient cash flow was available." Ms. Darr said that those are the terms of the current loan. When the loan was made in 1994, the project was not finished; it was not constructed until 1996 and there was no cash flow until the units were constructed and occupied. The interest is never forgiven; those payments were made current in Spring of 1997.

William Spreitzer, President of Wescap Investments, addressed the Council noting that he was also one of the current general partners of Mountainside Village. He clarified the process taking place through the escrow, stating that when they closed with the City there would be the recorded Deed of Trust that secures the City's current loan of $345,000 which would be released and a new loan would be recorded, assuring the City of its payments.

Mr. Spreitzer reviewed the different funding sources involved with the project, noting that if this was approved, the City would have $100,000 less in the project than it currently does.

Councilmember Oravits said that the Council was told that without this loan the deal would not happen. Mr. Spreitzer said that was correct. The $245,000 is an important key ingredient to the fund, and it is also important because it is a scoring category. He then reviewed all of the different rehab projects proposed to take place if everything moves forward.

Councilmember Oravits asked Mr. Spreitzer if he would be willing to change the wording in the agreement, to remove the "sufficient cash flow" term. Mr. Spreitzer said that some of the financial institutions would not accept that change and they would not have a feasible project.

Mr. Spreitzer then reviewed the audit process, noting that it is made by a third-party, independent auditor to determine whether there is "sufficient cash flow." The City would be informed of the audit, but all parties would have to live by it.

Mr. Spreitzer then reviewed some of the other projects they have going around the State. Councilmember Barotz asked what their vacancy rate was. Mr. Spreitzer said that it ran around 3%; from economic occupancy they were at 100%, but there is always some turnover. He added that they will make arrangements for the current residents for the project, as is required by HUD.

**Councilmember Woodson moved to read Resolution No. 2013-09 by title only; seconded; passed 5-1 with Councilmember Oravits casting the dissenting vote.**

*A RESOLUTION AUTHORIZING THE CITY OF FLAGSTAFF TO PROVIDE UP TO TWO HUNDRED FORTY-FIVE THOUSAND ($245,000.00) TO MOUNTAINSIDE VILLAGE/FLAGSTAFF LP AS LOCAL GOVERNMENT CONTRIBUTION FOR A LOW INCOME HOUSING TAX CREDIT PROJECT*

*UNDER THE ARIZONA DEPARTMENT OF HOUSING ("ADOH") 2013 QUALIFIED ALLOCATION PLAN*

**Councilmember Woodson moved to adopt Resolution No. 2013-09; seconded; passed 5-1 with Councilmember Oravits casting the dissenting vote.**

C. **Consideration and Approval of Ordinance 2013-07 authorizing the trade of City-Owned Property:** If approved, Ordinance 2013-07 will authorize the trade of city-owned land. Parcel number 104-01-007, which is located at the Southwest corner of Elden Street and Butler Avenue, will be combined with the parcel to the South of it for development purposes. The City will receive an improved parcel for the community land trust program from the six unit subdivision created through the trade.

Permanent Affordability Administrator David McIntire reviewed the project. Mayor Nabours noted that Items C and D were related. Mr. McIntire said that the property the City was trading was appraised, prior to the bus stop property being removed, at $29,000 because it is not easily usable. He explained that the City would exchange that parcel with the property owner of the other parcel, who would then combine the parcels and build six townhouses, one of which would be sold as affordable housing and the land on which it was located would be owned by the City through the Land Trust.

**Councilmember Woodson moved to read Ordinance No. 2013-07 by title only for the first time; seconded; passed unanimously.**

*AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AUTHORIZING CONVEYANCE OF CERTAIN REAL PROPERTY NEAR BUTLER AVENUE AND ELDEN STREET AS PART OF AN EXCHANGE AGREEMENT WITH SOUTHSIDE DEVELOPMENT, LLC; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT*

D. **Consideration and Approval of Preliminary Plat:** Southside Development, LLC. for Elden Townhomes subdivision, a six-lot, single-family, attached residential subdivision. The site is 11,342 square-feet (.26 acres) in size and is located at 307 South Elden Street (SW corner of Elden Street and Butler Avenue). The site is zoned both HR, High Density Residential and T4N1 Transect zones.

Planning Director Jim Cronk explained that the developer, David Carpenter, had been called away earlier in the day, but they did support both of these items.

Councilmember Woodson noted, for the sake of the public, that the Council has discussed this issue previously in Executive Session.

**Councilmember Woodson moved to approve [(as recommended by the Planning and Zoning Commission) the preliminary plat subject to the property owner executing an agreement stating that the transect zone T4N1 standards are applied to the property**, **and declare an effective date**

**concurrent with the effective date of Ordinance No. 2013-07**]; **seconded; passed unanimously.**

15. **DISCUSSION ITEMS**

*No staff input or public participation is allowed on these items until they are moved to a future regular agenda. No action can be taken on these items today other than a vote as to whether to place the issue on a future agenda.*

None

16. **PUBLIC PARTICIPATION**

None

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

Councilmember Woodson reported that the Arizona State Transportation Board meeting would be in Flagstaff on Friday, May 10, 2013, at 9:00 a.m. in the Council Chambers and they would be discussing their five-year plan. The evening before there is a dinner hosted by FMPO and Councilmembers were invited to attend.

Councilmember Brewster reported that she and the City Manager had attended a breakfast at NAU regarding energy innovation.

Councilmember Brewster also requested if it was possible to have the NAU students involved with the NAU Energy Initiative come before Council to make a presentation. Mayor Nabours suggested that they get on the agenda; Council agreed.

Mr. Burke reminded everyone that there was no Council meeting scheduled for next Tuesday (April 23); however, the Budget Retreat would be held Wednesday and Thursday, April 24-25, and possibly Friday, April 26, if needed. He added that the budget books would be made available tomorrow.

18. **ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held April 16, 2013, adjourned at 7:34 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 April 16, 2013. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 7th day of May, 2013.

_____
CITY CLERK

**MINUTES**

COMBINED SPECIAL MEETING/BUDGET WORK SESSION
THURSDAY-FRIDAY, APRIL 24-26, 2013
COUNCIL CONFERENCE ROOM
211 WEST ASPEN AVENUE
8:00 A.M.

***PLEASE NOTE***

***Agenda items may be addressed at any time over the multi-day retreat. The meeting will typically recess around 5:00 p.m. each day. Lunch breaks and regular breaks will be taken over the course of the days.***

# WEDNESDAY, APRIL 24, 2013

# SPECIAL MEETING

1. **Call to Order**

Mayor Nabours called the meeting to order at 8:02 a.m.

2. **Roll Call**

Present:

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

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; passed unanimously.**

4. **Executive Session**

A. 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. Nackard et al v. City of Flagstaff.

5. Adjournment

The Flagstaff City Council reconvened Open Session at 8:11 a.m. at which time the Special Meeting of April 24, 2013, was adjourned.

# BUDGET RETREAT

1. **Call to Order**

Mayor Nabours called the Budget Retreat to order at 8:19 a.m.

**2. City of Flagstaff 2014 Budget - Opening and Orientation**

Mr. Burke reviewed the mechanics side of the Budget process, reminding everyone that they were looking at a 10,000 foot level of the budget. He said that it took a lot of little movements and the back-up information was provided separately on the /S drive because of its size.

**3. FY2014 Budget Focus**

He then began the PowerPoint presentation which addressed:

- OVERVIEW AND ORIENTATION
- FY2014 BUDGET FOCUS
- EMPLOYEE COMPENSATION
- CRITICAL INFRASTRUCTURE
- DEVELOP A BUDGET BASED ON COUNCIL PRIORITIES
- EMPLOYEE INNOVATION COMMITTEE

Mr. Burke reviewed the recommendations of the Employee Innovation Committee. Councilmember Brewster said that if the City did start charging NAU for public safety call outs there could be major repercussions. She noted that they were the top employer in the City.

Brief discussion was held on the use of cinders on the roads rather than chemicals, to help prevent the trees from turning brown along the roadway. It was noted that the principle reason they started using the chemicals was for safety, and they have had less accidents. There are pros/cons of both ways and this is something they could look at further in the future.

**4. Fixed Costs and Expenditure Outlook**

- FIXED COSTS AND EXPENDITURE OUTLOOK
- PROPERTY AND CASUALTY INSURANCE
- ELECTRIC EXPENSE
- NATURAL GAS EXPENSE
- PENSION EXPENSE
- PENSION RATES
- HEALTH INSURANCE EXPENSE-CITY
- WORKER’S COMP EXPENSE

- FIXED COSTS AND EXPENDITURE OUTLOOK SUMMARY

A break was held between 9:54 a.m. and 10:10 a.m.

5. **Employee Advisory Committee and Compensation and Benefits**

Matt Faull and Noah Eisenman, Co-Chairmen of the Employee Advisory Committee (EAC), presented the following PowerPoint presentation:

- EAC – PURPOSE?
- EAC – VISION?
- EAC – WORK PROGRAM FY13
- EAC – MOVING FORWARD
- EAC – RECOMMENDATIONS
- TAKEAWAY

Discussion was held on the benefit package of the City and everyone agreed that it was a good package and the employees appreciated it. It was noted that the EAC wanted to first address the market, which has taken place, and then they would like to see merit increases reinstated. At the request of Council, staff then reviewed the survey results of why employees left the organization.

Human Resources Director Shannon Anderson then reviewed the PowerPoint presentation addressing the following:

- RECLASSIFICATION
- COMPENSATION AND BENEFITS
- CLASSIFICATION RESULTS

Discussion was held on the classification process and staff noted that if they went forward with the 3.2% increase, it would be on top of any increases recently received during the reclassification process. It was also noted that with such a large organization there is a legal component to ensuring that those doing the same type of work are classified consistently.

- COMPENSATION OUTLOOK
- FY2014 BUDGET RECOMMENDATIONS
- CITY BENEFITS
- BENEFIT EXPENSES
- RETIREMENT
- PERSONNEL CHANGES
- REORGANIZATION – COMMUNITY DEVELOPMENT
- REORGANIZATION – COURTS
- REORGANIZATION – LIBRARY
- REORGANIZATION – NET CHANGES

6. **Fund Presentations**

A. **General Fund Overview**

Mr. Burke began review of the General Fund, which addressed:

- GENERAL FUND - REVENUES
- GENERAL FUND – NEW REVENUES
- GENERAL FUND – REALLOCATIONS

GENERAL FUND – RECOMMENDED CUTS

- GENERAL FUND – 2.5% RECOMMENDED
- GENERAL FUND – EXPENDITURES/USES ONGOING

***WORKING LUNCH***

A lunch break was taken between 12:20 p.m. and 12:54 p.m.

B. **Recreation Fees**

- GENERAL FUND – RECREATION FEES
- RECREATION FEES – FEBRUARY RETREAT
- RECREATION FEES – SPECIAL EVENTS COST BREAKDOWN

Discussion was held on the Special Event fees and it was suggested that fees for commercial use should be more than nonprofit or individual uses, and also there may be some parks that the City reduces the fees on to encourage their use, in an attempt to eliminate certain activities. This item was placed on the ***Parking Lot*** for further discussion later.

- RECREATION FEES – USER FEES – PROPOSED CHANGES
- RECREATION FEES – PROGRAM FEES – PROPOSED CHANGES
- RECREATION FEES - AQUAPLEX

A break was taken between 2:24 p.m. and 2:41 p.m.

C. **New Revenue**

- NEW REVENUE – Sales Tax on Water

After some discussion, this item was moved to the ***Parking Lot*** for further discussion.

- NEW REVENUE – Real Estate Lease & Land Sale

After some discussion it was suggested that the words “City-owned property” be included in the title to clarify that this was being proposed only on City-owned properties. Council agreed to have staff review this concept further and bring something back for further consideration.

•NEW REVENUE – Special Event Liquor License
•NEW REVENUE – Liquor Licenses

Council agreed to look further into covering expenses of processing the Special Event liquor license if that was permitted by state law and also to move forward with recovering 100% of the expenses on processing of regular liquor licenses.

•NEW REVENUE - NAU Fire Calls

After brief discussion it was agreed that staff could have a discussion with NAU to see if they would like to participate, but it would not go farther than that.

•NEW REVENUE – Police & Fire

After discussion, there was no interest in moving forward with this revenue source.

•CEMETERY FEES

Discussion was held on Cemetery Fees and it was noted that the associated costs were not being recovered at this time. Staff was directed to continue moving forward with further study of breaking even and bring something back for consideration in the future.

•CELL TOWER LEASES

Ms. Trompeter explained that there are several slivers of property owned by the City around town that are of no real value for building, but she has been contacted by different companies interested in leasing the property for cell towers. After some discussion, staff was directed to move forward with considering this in the future.

A break was held between 3:58 p.m. and 4:10 p.m. and Vice Mayor Evans left the Retreat at this time.

D. ***Community Development - Major Projects Update**

•PLAN REVIEW

Community Development Director Mark Landsiedel said that past councils had allowed its department to raise building permit fees administratively 5%.

•ENGINEERING INSPECTION

He said that Community Development has seen a tremendous increase in activity since the beginning of the budget process this year. They have been working with the Budget Team to have some flexibility in using the budgeted associate planner (long range planning) in more of a swing position to address needs as they arise, which would add no cost other than they would not get the neighborhood plans done and those would need to be outsourced.

They are proposing to hire a part-time inspector for engineering. They added one FTE to the budget that is unfunded at this point. Through the recession they cut 35-50% of their staff. During the downturn they went to Mr. Burke at mid-cycle and said that at the end of the construction season they would cut positions so they would not be paying people over the winter. That worked out well for them, and now they are trying to work with the City Manager and Council to create a flexible approach as this continues to move upwards.

Mr. Landsiedel said that the first two years of the recession they did 38-39 single family dwellings; last year it was 140 and this year they may be pushing 200. That is just one piece of the equation to give them some idea.

•MAJOR DEVELOPMENTS

Planning Director Jim Cronk reviewed the various developments that the City will be dealing with over the next few years, noting that they could be looking at 7,000 dwelling units over the next 30-40 years or 27% of the City's current population.

With that workload that they are looking at over the next 18-24 months they believe they will be snowed under and will not be able to give the big clients the proper attention, as well as the regular things that come up. He said that they have been reviewing the schedule and debating between additional staffing and outsourcing.

Mr. Burke said that his recommendation in looking at this, and trying to be cautious with adding staff, is this was one where he thinks it makes a good case for hiring additional staff. He said that these types of activities do not lend themselves well to contracting out. He said that he was recommending that the associate planner position in the neighborhood plan spot become the swing planner and they were interested in adding an FTE for a current planner, paid for with the increase in plan review fees.

For increases in the engineering inspection fees, he would like to wait until FY2015.

Discussion was held on the fees overall and some concern was voiced with upfront costs dissuading businesses. Councilmember Brewster asked for a comparative on building permits and related fees around the state. It was noted that this had previously been provided to the Council and staff was asked to redistribute the information.

After lengthy discussion, consensus was to investigate funding a position through the increased fees.

The Budget Retreat recessed at 4:47 p.m. on April 24, 2013.

E. **BBB Funds Overview**

The Budget Retreat reconvened at 8:05 a.m. on Thursday, April 25, 2013, with all Councilmembers present.

Deputy City Manager Jerene Watson began with an overview of the BBB Funds.

- TOURISM FUND
- ECONOMIC DEVELOPMENT FUND
- WHEELER PARK

Discussion was held on the lighting of Wheeler Park and staff was directed to add it to the ***Parking Lot*** for further discussion.

Discussion was held on the proposed Rendezvous Project, a large bronze statue being proposed by the Beautification and Public Arts Commission, and the idea that Council may not be supportive of such a project, but by funding it in the budget it suggests that they are.

Councilmember Overton said that there is a political sensitivity within budgeting. This has been a rollover of funds for a number of years to be able to complete such a project. He said that the Beautification and Public Arts Commission should plan on coming forward in the future with a strong project, but he was willing to move forward with the budgeting aspect.

It was suggested that the wording be changed to Public Art Project. Mayor Nabours said that he wanted it clear that by moving forward with the appropriation he was not approving the specific project.

Discussion was held on the past practice of having the Board/Commission Chairmen present reports to the Council on their activities. Mr. Burke said that they had held off on doing that at this time because the Council had made a goal this year of reviewing all of the Boards/Commission and the first session of that discussion had been scheduled for in May.

Brief discussion was held on the use of the Consent Agenda if Council was going to review each project individually that comes before them that had previously been appropriated for within the budget. Mr. Burke said that there are some questions that come before Council that have a right answer, and in a lot of the Consent Agenda items they have set up the procurement process for how to purchase it. If they do not like a project overall, that becomes a policy discussion. Mr. Burke said that the overall process is a moving target.

- BEAUTIFICATION FUND
- PARKS & REC FUND

A break was held between 9:28 a.m. and 9:47 a.m.

7. **Public Comment**

*Anyone wishing to comment at the meeting regarding the FY2014 Budget is asked to fill out a speaker card and submit it to the recording clerk. When this item comes up on the agenda, your name will be called. Please limit your remarks to three minutes to allow everyone to have an opportunity to speak. Limits may be adjusted at the discretion of the Mayor.*

None

8. **Review and Requests for Additional Information**

9. **Reconvene - Opening and Overview**

10. **Fund Presentations (Continued)**

A. ***Library Fund Overview**

Management Services Director Barbara Goodrich reviewed the history of the Library Fund and the funding sources for the overall Library District. She explained that she serves on the Board as the City's representative Heidi Holland serves as the Library Director for the overall district and serves as the County's representative.

- LIBRARY FUND
- LIBRARY FUND – CUTS RECOMMENDED
- LIBRARY FUND – EXPENDITURES (Ongoing)
- LIBRARY FUND – RSL'S
- LIBRARY FUND – ONE-TIME/OPERATING
- LIBRARY FUND – SECONDARY PROPERTY TAX

After a lengthy discussion on the various proposals the consensus was to move forward with the recommendation of staff, and add funding to not have to reduce hours to the ***Parking Lot*** for further discussion.

B. ***Flagstaff Housing Authority Fund Overview**

- FLAGSTAFF HOUSING AUTHORITY FUND

FHA Finance Manager Deborah Beals reviewed the proposed budget. She said that they were cutting expenses on the administrative side and trying to find efficient, cost-effective ways to do things. She said that they are going to be looking at charging more of a market rate for maintenance services they provide to help offset some of their expenses.

B. ***Airport Fund Overview**

Deputy City Manager Jerene Watson reviewed the Airport Fund.

- AIRPORT FUND – SOURCES/REVENUES

- AIRPORT FUND – CUTS RECOMMENDED – 2.5%
- AIRPORT FUND – E XPENDITURES (ONGOING)
- AIRPORT FUND – REVISED SERVICE LEVELS
- AIRPORT FUND – ONGOING BALANCE – SUMMARY
- AIRPORT FUND – ONE-TIME SOURCES/USES
- AIRPORT FUND – SEQUESTRATION IMPACTS

D. ***Environmental Services and Sustainability and Environmental Management Funds Overview**

Ms. Watson then began reviewed the Solid Waste Fund and Pat Bourque continued with the PowerPoint presentation.

- SOLID WASTE FUND – SOURCES/REVENUES (ONGOING)
- SOLID WASTE FUND – CUTS RECOMMENDED – 2.5% (ONGOING)
- SOLID WASTE FUND - EXPENDITURES
- SOLID WASTE FUND – OPERATING CAPITAL

Ms. Watson then began review of the Sustainability and Environmental Management Fund, noting that this has now been separated from the Solid Waste Fund.

- SUSTAINABILITY AND ENVIRONMENTAL MANAGEMENT FUND

After some discussion, Mayor Nabours requested line-item detail on the Sustainability and Environmental Management Fund. Staff was directed to remove that portion of the backup materials and forward it to Council.

A lunch break was taken between 11:45 a.m. and 12:32 p.m.

E. ***Capital Improvement Program**

City Engineer Rick Barrett began review of the Capital Improvements Program.

- OVERVIEW OF CAPITAL IMPROVEMENTS PROGRAM
- CIP – PROCUREMENT DELIVERY METHODS
- PROFESSIONAL SERVICES (DESIGN PHASE)
- CONSTRUCTION SERVICES
- FACTORS TO BE CONSIDERED
- CIP – PROGRAM OVERVIEW
- COMPONENTS OF TOTAL PROJECT COSTS
- CIP – GENERAL GOVERNMENT

Mr. Barrett reviewed the Innovation Mesa project noting that the amount shown of $1,074,250 was not a total project estimate, but rather what they are able to spend in FY14, tied back to the design phase. After brief discussion, Grants Manager Stacey Brechler-Knaggs explained that it will include architectural and engineering fees, and there will also be some construction. It was noted that this project was contingent on a grant from the State and once that is received they will bring it before Council for its acceptance.

- OBSERVATORY MESA
- 2010 STREET/UTILITY
- FUTS/OPEN SPACE
- BROWNFIELDS ASSESSMENT
- PARKS & RECREATION - '96 BOND
- CIP – STREETS
- TRANSPORTATION
- BBB STREETSCAPE
- BBB FUTS
- WATER DISTRIBUTION
- WASTEWATER COLLECTION
- AIRPORT
- SOLID WASTE
- STORMWATER
- RESOURCES
- PROGRAM OVERVIEW – EXPENDITURES
- SECONDARY PROPERTY TAX
- OUTSTANDING G.O. AUTHORIZED BY NOT ISSUED

A break was taken between 2:19 p.m. and 2:35 p.m.

The following individuals then addressed the Council during Public Participation, to voice their support for finding additional funds to maintain the current library hours or even providing for additional hours.

- Ruth Ellen Elinski, CCCY
- Julianne Hartzell

F. **Utilities and Stormwater Funds Overview**

Utilities Director Brad Hill provided an overview of the Utilities and Stormwater Funds.

- WATER AND WASTEWATER FUND
- WATER AND WASTEWATER FUND - CUTS
- WATER AND WASTEWATER FUND – ONE-TIME SOURCES/USES
- WATER AND WASTEWATER FUND – OPERATING CAPITAL
- WATER AND WASTEWATER FUND – FLEET
- WATER AND WASTEWATER FUND – OPERATING CAPITAL WATER
- WATER AND WASTEWATER FUND – OPERATING CAPITAL WASTEWATER
- WATER AND WASTEWATER FUND – WILDCAT SOLUTIONS 2013
- WATER AND WASTEWATER FUND – WILDCAT SOLUTIONS 2014
- STORMWATER FUND
- STORMWATER FUND RATIO – PIE CHART

Deputy City Manager Josh Copley reviewed the issue with Council regarding the water account deposits and current procedures in place, and indicated that staff would like to consider increasing the deposit to help offset some of the write-offs of those that leave after living here for nine months.

After concerns were voiced with how it would impact others, consensus was to investigate increasing the deposit but allow for payment of it over a few months to make it easier.

G. **HURF and FMPO Funds Overview**

Public Works Director Erik Solberg began an overview of the HURF and FMPO Funds.

- HURF – SOURCES/REVENUES (ONGOING)
- HURF – CUTS RECOMMENDED – 2.5% (ONGOING)
- HURF – EXPENDITURES (ONGOING)
- HURF – ONGOING BALANCE – SUMMARY
- HURF – ONE-TIME SOURCES/USES
- HURF – OPERATING CAPITAL
- PAVEMENT PRESERVATION FUNDING HISTORY

FMPO Manager Dave Wessel then reviewed the FMPO Fund.

- FMPO – SEQUESTRATION IMPACTS
- FMPO – REVIEW OF IN-KIND TRANSFERS
- FMPO – OPPORTUNITIES TO OFFSET OTHER STREET MAINTENANCE NEEDS

Mr. Burke then reviewed the following:

- FUTURE TRANSPORTATION PLANNING
- UPDATED ONE-TIME FUNDING

Mr. Burke said that as they have gotten closer to the end of the fiscal year, they have identified an additional $400,000 in one-time funding available in the General, and staff was recommending that it be put toward the Courthouse Project.

Mr. Burke then returned to the ***Parking Lot*** items, to provide for further discussion and direction.

**<u>Recreation Fees and Special Events Fees</u>**

Mr. Grube presented new rates for Special Events, based on discussion held during the prior day's session.

After some discussion consensus was to increase commercial rates six times (6X), as presented, with some rates at 50%, and incentivize Bushmaster, Ponderosa, and Mobile Haven Parks.

**<u>Sales Tax on Water</u>**

Mr. Burke said that they need to go forward on these. He said that they could pay the $120,000 from Utilities to the General Fund and let the General Fund pay

them back with one-time dollars. The idea is that they are waiting to see what happens with the AARF employees relative to state pension, as that is a $100,000 ongoing budget item.

Discussion was held on whether the tax should come out of the utility or the General Fund. Some Councilmembers believed that if it was paid from the General Fund then all citizens are paying it, but if they added it to the utility bill, then just the user pays for it, and it needed to be collected in the utility.

**Library**

Mr. Burke said that staff was recommending that they redirect the funding for the Cardinals to fund the hours at the Library and take an additional $20,000 from the fund balance for marketing to address some of the summer users coming to Flagstaff. Council agreed.

Brief discussion was held on the possibility of using that additional funding to provide for hours at the Library on Sundays rather than returning to the current hours. It was agreed that they would have further discussion on that issue and encourage public input, including having the discussion with the Library Board.

**BBB – Economic Development**

Discussion was held on the SEDI funding. Eric Marcus, Director for SEDI, addressed the Council, stating that they had moved forward with next year's budget based on the decision made by Council in February to fund SEDI this next year in the amount of $20,000.

Discussion was held on the benefits of SEDI and other economic development groups. Final consensus of the Council was that based on the decisions made in February they would fund SEDI this next year with $10,000 ongoing and $10,000 one-time, with notice to SEDI that funding in future years was not guaranteed.

**Wheeler Park Lights**

After brief discussion, consensus was to put funding back in for the Wheeler Park Lights.

11. **Public Comment**

Councilmember Barotz said that earlier in the week they had the Flagstaff Watershed Protection Project signing and it was well attended. She said there were a lot of congratulatory remarks made, but she felt one person was left out, Kevin Burke, who deserve d a ton of credit.

Mayor Nabours reminded everyone of the funeral tomorrow for Valerie Hernandez of the Police Department and said Brenda Barton had sent a letter expressing her condolences as Valerie was a friend of her family.

The Retreat recessed at 5:11 p.m. on Thursday, April 25, 2013.

12. **Council Wrap Up / Adds and Deletes / Direction**

The Retreat reconvened on Friday, April 26, 2013, at 8:02 a.m.

Minesh Patel, representing the Flagstaff Area Lodging Association, addressed the Council stating that they greatly appreciated all of the hard efforts made by the Council with the additional $100,000, $20,000 for Phoenix market, and maintaining Christmas lights downtown. They wanted to be sure that none of the portions that had previously been discussed in February were being removed or shortened and was glad to hear that they were remaining as presented.

13. **Council Discussion re Procedure for Agenda Items**

Discussion was held on the procedure for getting items on a future agenda. Mayor Nabours and City Clerk Elizabeth Burke reviewed some of the history on how they got to where they were.

After lengthy discussion it was agreed to change the Rules of Procedure as follows:

If a Councilmember wanted to get an item on an agenda it would be placed under a new section entitled "Possible Future Agenda Items." Public participation to address those items could be made at the beginning (or end) of the meeting under Public Participation or a written card could be presented to the Clerk to be read by Mayor and Council during the meeting. Additionally, there would be an asterisk on this section of the agenda to indicate that any verbal public participation would need to be taken at the beginning.

It would then require three members of the Council to move an item to a future regular agenda at which time public comment would be received under that agenda item.

Brief discussion was held on the process of requesting information from staff. Mr. Burke said that currently he has agreed to allow staff to provide information if it would require eight hours of less of time. If more time was required, it would require another three members to direct that action.

**<u>Budget Discussions (continued)</u>**

**Snow Plowing** - Mr. Burke said that based on yesterday's discussions staff was recommending that they try a few pilot programs next year with regard to snow plowing. They would propose to take up to $100,000 in one-time monies and use dump trucks to go straight in and straight out, understanding that cul-de-sacs would not have a nice finish. They currently pay for it out of HURF; they are recommending reducing the $1.5 million to $1.4 million in one-time funds for this program. They may not use all of it. He said that they could also consider the timing factor and focus on certain times for addressing specific needs.

**Street Sweeping** - After further discussion it was agreed to utilize the recreational facility field fee revenue for street sweeping, and allow staff to focus on street sweeping during the spring, after the majority of storms have hit.

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

Vice Mayor Evans said that she had been contacted by residents in the Southside neighborhood regarding the 25 pairs of shoes in the tree located near the store on South San Francisco and Butler. Chief Treadway said that they have been working with Conoco to address that issue.

Vice Mayor Evans said that she has also received a request from residents near Fontaine and Franklin for a stop sign as they cannot get into traffic because it is coming to quickly. Mr. Burke said that he could not guarantee a stop sign, but they would study that area further.

Vice Mayor Evans asked for an update on Bushmaster Park. Mr. Burke said that he wanted to be respectful of the Parks and Recreation Commission and he would have them come and give an overview.

Councilmember Barotz complimented Lauren Hertz for her service with electronics recycling over the weekend during Earth Day activities.

Councilmembers thanked the Budget Team and all staff for the Retreat.

Mayor Nabours said that they will soon be reviewing the Regional Plan and he encouraged everyone to start digging into it. He asked that the Councilmembers consider review of these larger documents during a four-hour session during the day, rather than one hour every month or two so it is easier to follow up with the discussions. All agreed. It was also suggested that it would depend on what type of document they were reviewing. If it was something like the Procurement Manual staff could just bring the policy questions before the Council and then they would not need to go line by line through the entire document.

Mr. Burke thanked the Budget Team and all staff for their work on preparing the budget document. He said that it was a full organization effort. Additionally, he thanked the Council for their patience.

15. **Adjournment**

The Budget Retreat of April 24-26, 2013, adjourned at 9:37 a.m. on Friday, April 26, 2013.

_____
MAYOR

ATTEST:

_____
CITY CLERK

**MINUTES OF THE SPECIAL MEETING (EXECUTIVE SESSION) OF THE FLAGSTAFF CITY COUNCIL HELD ON TUESDAY, APRIL 30, 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 3:32 p.m.

2. Roll Call

| Present: | Absent: |
|---|---|
| MAYOR NABOURS | NONE |
| VICE MAYOR EVANS | |
| COUNCILMEMBER BAROTZ | |
| COUNCILMEMBER BREWSTER | |
| COUNCILMEMBER ORAVITS | |
| COUNCILMEMBER OVERTON | |
| COUNCILMEMBER WOODSON | |

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

3. Recess into Executive Session

**Councilmenber Overton moved to recess into Executive Session; seconded; passed unanimously.** The Flagstaff City Council recessed into Executive Session at 3:32 p.m.

4. **EXECUTIVE SESSION:**

A. 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 Section 38-431.03(A)(3) and (4), respectively.

1. Hopi v. City of Flagstaff

B. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer,

appointee or employee to determine whether the discussion or consideration should occur at a public meeting, pursuant to ARS Section 38-431.03(A)(1).

1. City Attorney Resume Review.

C. 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 Section 38-431.03(A)(3) and (7), respectively.

1. Encroachment Permits/Licenses for Outdoor Dining.

**5. ADJOURNMENT**

The Flagstaff City Council reconvened into Open Session at 5:55 p.m. at which time the Special Meeting of April 30, 2013, adjourned.

_____
MAYOR

ATTEST:

_____
CITY CLERK

COMBINED SPECIAL MEETING/
WORK SESSION
TUESDAY, APRIL 30, 2013
COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
6:00 P.M.

# SPECIAL MEETING

1. **Call to Order**

Mayor Nabours called the Special Meeting to order at 6:02 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.*

Present:

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

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

3. **Pledge of Allegiance**

The Flagstaff City Council and audience recited the Pledge of Allegiance.

4. **Consideration and Approval of Agreement:** Consent Order - Arizona Department of Environmental Quality in the Matter of Wildcat Hill Wastewater Treatment Plant and Rio de Flag Water Reclamation Facility; **and discussion of associated conservation efforts.***

Utilities Director Brad Hill addressed the Council and provided a brief PowerPoint presentation which addressed:

- ADEQ CONSENT ORDER
- CONSENT ORDER – WILDCAT HILL & RIO DE FLAG WASTEWATER

- INTRODUCTION
- WILDCAT HILL – WHY ARE WE HERE?
- CONSENT ORDER
- STATUS OVERVIEW
- QUESTIONS

Mr. Hill explained that there were two different ways to address such a violation—through the Consent Order or through a Compliance Order (which is a civil action).

Councilmember Woodson asked why they were not on top of this issue more and Mr. Hill explained that each plant had been doing their own reporting and the local ADEQ office was aware, but the violation was cited once the ADEQ Phoenix office became aware. He said that they have since made changes internally to the reporting process.

Councilmember Barotz asked that the Council receive periodic updates. Mr. Hill said that they have to provide updates to ADEQ monthly and could provide those to Council as well.

Moran Henn, representing Friends of Flagstaff's Future, said that she was there to address the issue of using potable water to supplement the lower levels of the reclaimed water, but providing it at the reduced rate. She urged the City to charge the potable water rate for the reclaimed water and not subsidize the price.

Mr. Hill then reviewed the second part of the issue on the agenda, which addressed the water conservation efforts being implemented this summer.

- 2013 REDUCED RECLAIM WATER DELIVERIES
- APRIL WATER COMMISSION - RECOMMENDATION
- CITY OF FLAGSTAFF CODE – 7-03-001-0014
- 2013 REDUCED RECLAIMED WATER DELIVERIES

Discussion was held on the fact that the Water Commission made the decision on this issue, rather than the Council. Mr. Hill explained that the City Code authorized the Utilities Director to notify the City Manager regarding this type of change, who then notifies the Council. Mr. Hill said that he felt it was appropriate to involve the Water Commission in the discussions and engage them along with the reclaimed water customers. Several members of the Council voiced concern with this process.

On question, Mr. Hill said that they estimated the use of potable water to provide 50% of the reduction, with the other 50% addressed through conservation, to cost the City around $37,000, not including the lost revenue on the water conservation.

Discussion was held on the legal obligation to supply the reclaimed water to the customers. Mr. Hill said that they have 72 customers for reclaimed water, a majority of which are provided through a Reclaimed Water Agreement. Under those agreements the City has the ability to turn them off if they do not comply and even on the other types they have that same ability.

Interim City Attorney D'Andrea said that the City Attorney's Office has reviewed the contracts and believe the City has the authority to make these changes; any other concerns would need to be discussed in Executive Session.

Brad Garner, Flagstaff and member of the Water Commission, said that his first thought when this came before the Commission was that it was above their "pay grade." He proposed a motion to bring this matter before Council with recommendations for: 1) 50/50; 2) 100/0; or 3) 0/100, with emergency rate changes, but the motion failed. He said that he questioned whether the issue of putting potable water into the reclaimed water system was operational or political.

Rudy Preston, Flagstaff, addressed the Council and said that he believed that Selinium in the water was still an issue, regardless of changing the testing procedures. He asked why it was not SCA's responsibility.

Katie Nelson, Flagstaff, said that she really did not want to see potable water being used in this way.

Mr. Hill reviewed the various options outlined in the Consent Order: 1) Class A+, 2) Blending; or 3) Repermit to Class A. He explained that if Wildcat is not working in 2014 they would propose blending; however, it will take some infrastructure, engineering and construction and they could not get that done within this irrigation season.

Discussion was then held on the possibility of going through the process to provide Class A rather than A+. It was noted that although the bond language when this came before the voters did not include the specific class of water, it was always identified to provide Class A+. In order to repermit for Class A water it requires a Nitrogen Management Plan and he does not recall the timeline for that because with the discussions that took place in February, they were moving forward to continue with Class A+. He said that if they did switch to permit for Class A it would be for all, and once the problem was addressed, they would repermit back to Class A+.

Various scenarios were discussed on ways to charge for the potable water used as reclaimed.

**Councilmember Woodson moved to approve and sign the Consent Order between the City of Flagstaff and the Arizona Department of Environmental Quality; seconded; passed unanimously.**

Staff was directed to bring information back to Council, next week if possible, on the timeline it would require to repermit to provide Class A water on a temporary basis, and any other ideas on how to address this issue without using potable water.

5. **Adjournment**

The Special Meeting of the Flagstaff City Council of April 30, 2013, adjourned at 7:15 p.m.

# WORK SESSION

1. **Call to Order**

Mayor Nabours called the Work Session to Order at 7:15 p.m.

2. **Public Participation**

*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.*

Nick Koressel and Avi Henn, representatives of the Green NAU – Energy Initiative, gave a brief PowerPoint presentation that addressed:

- GREEN NAU – ENERGY INTIATIVE
- ENERGY SAVINGS PERFORMANCE CONTRACTING HOW DOES IT WORK?
- ENERGY - WHAT WILL NAU SAVE?
- ENVIRONMENTAL BENEFITS
- BEHAVIOR CHANGE
- TWO AREAS OF FOCUS

Rudy Preston, Flagstaff, spoke about Selinium in the City's water and said he hoped they did not jump around with Class A water. Additionally, he saw the Council had held an Executive Session re the Hopi v. City of Flagstaff case and he hoped they would sit down and work things out and not give away all of the City's water.

6. **Arizona Department of Transportation Consultation with Rural Elected Officials.**

FMPO Manager David Wessel introduced Michael Kies with Arizona Department of Transportation (ADOT), who then gave a PowerPoint presentation on ADOT's Five-Year Plan. He said that the Plan was out for public comment right now and the State Transportation Board had asked them to take several scenarios to the public.

- FY2014-2013 TENTATIVE FIVE-YEAR TRANSPORTATION FACILITIES CONSTRUCTION PROGRAM
- BACKGROUND
- MAP-21
- ADOT'S LONG RANGE PLAN
- 2006-2012 ADOT HIGHWAY SPENDING
- ADJUSTING THE PROGRAM TO MATCH REVENUE FORECASTS
- REDUCED REVENUE
- $18.4 BILLION = VALUE OF STATE HIGHWAY SYSTEM INFRASTRUCTURE

- WE HAVE A CHOICE
- *SCENARIO A*: GA & STATEWIDE SUBPROGRAM SCENARIOS – SCENARIO A
- 81% on PRESERVATION
- *SCENARIO B* – FOCUS ON MAJOR PROJECTS
- 65% ON PRESERVATION
- *SCENARIO C*: PRESERVATION AND MAJOR PROJECTS (Staff recommended)
- FY 14 TO FY18 PROGRAM
- STATEWIDE PROGRAM
- SUMMARY OF THE PROGRAM FY14-FY18

Councilmember Oravits thanked Mr. Kies for his presentation and noted that the City of Flagstaff had recently been having similar discussions, on a smaller scale. He commented on a few areas getting bad, such as I-17 on the hill outside of Camp Verde, and he also mentioned the turn lane light at Fourth and East Route 66 Overpass was not visible.

Councilmember Brewster asked what ADOT was doing with bridges. Mr. Kies said that he knows that the federal government requires them to do so many inspections based on their formula, but he did not know what their schedule was as that was outside of his area of focus.

Councilmember Overton said that they could not say they have not seen this coming, but the communities have needs and it was disheartening to be going into preservation mode. He asked if there were contingency funds available for unforeseen incidents such as the road to Page. Julian Avila with ADOT said that an emergency was declared on that issue which will make it eligible for federal funs. Councilmember Overton said that the City was happy to lend any assistance in keeping that funding from coming from the statewide funds.

Mr. Burke asked if the reduction in funding shown on Slide 6 was at all impacted by the funds being moved from ADOT to DPS, or if it was just a shrinking of the pie. Mr. Kies said that what was shown was strictly the revenues from the gas tax, so it was just the shrinking of the pie.

Mr. Burke asked if there was a percentage decrease shown on the various funds. Mr. Kies replied that it was not a specific percentage, but rather based on a revenue formula referred to as the Casa Grande Accord.

In referring to the extra lane being installed on the mountain pass outside of Camp Verde, Mr. Burke asked if that was already completely funded, or if that was a project that would not be completed. Mr. Kies said that was a new truck lane, or passing lane, which is from a different pot of money since it is considered a safety project, and it is completely funded.

Mr. Burke said that in reviewing the different options, he believed that Option A best served the City of Flagstaff. Mr. Kies said that comments would be accepted through the ADOT website and could also be voiced at the State Transportation Board meeting being held in Flagstaff on May 10.

3. **Preliminary Review of Draft Agenda for the May 7, 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.*

Councilmember Overton asked to receive a construction site plan for Item 9-D on the May 7 Agenda. Councilmember Woodson noted that he would be declaring an emergency on that item.

Councilmember Oravits, in reference to Item 10-C which was calling for an emergency, said he would not be voting for the emergency as he did not support the project. Mr. Burke noted that the first and second read on the same evening would require a 7-0 vote; however, the emergency would only require 6, so it could be read for the second time on May 21, 2013, and then have an emergency declared, which would allow the City to still take advantage of the low interest rate.

Councilmember Barotz asked that an updated staff summary be supplied for the final agenda on Item 9-D, the Boys and Girls Club Agreement, as there were discrepancies between the summary and the agreement regarding insurance which she had already discussed with the Interim City Attorney.

A break was taken between 8:02 p.m. and 8:14 p.m.

4. **Discussion on community non-profit special event signs.**

Zoning Administrator Roger Eastman gave a PowerPoint presentation on non-profit special event signs, which addressed:

- COMMUNITY NONPROFIT SPECIAL EVENT SIGNS
- SUMMARIZING THE ISSUE
- SOME OPTIONS
- CITY OF SEATTLE'S KIOSKS
- SOME OPTIONS: IF NO
- ALTERNATIVE
- STAFF SEEKING DIRECTION

After some discussion, and input from Bob Kuhn of the Flagstaff Unified School District, Council directed staff to attempt to find a few visible locations in the City where they could have a pilot program to have these types of signs located there. Mr. Eastman said that staff would continue with status quo at this point and bring back some recommendations through the Zoning Code amendment process.

5. **Discussion on Use of Wireless Communication Devices While Driving or Bicycling Prohibited - Proposed Ordinance - 2013-11.**

Jeff Bauman, City Traffic Engineer and Staff Liaison to the Transportation Commission, presented a PowerPoint presentation which addressed:

- PROPOSED ORDINANCE – USE OF WIRELESS COMMUNICATION DEVICES
- BACKGROUND – COMMON TYPES OF DISTRACTION
- LEGISLATIVE HISTORY
- CELL PHONE WHILE DRIVING EXISTING LEGISLATION
- TEXTING WHILE DRIVING EXISTING LEGISLATION
- FEDERAL DISTRACTED DRIVING ISSUES
- DEFINITIONS
- TRAFFIC CODE – PROPOSED ORDINANCE
- ORDINANCE – VIOLATION
- PATH FORWARD

Mr. Kuhn and Bob Mullin, both members of the Transportation Commission, addressed the Council in support of the proposed ordinance.

The following comments were made in on the proposed ordinance:

- In Texas, there is no texting permitted in any school zone
- Enforcement would be a big issue
- There are other actions taken in cars that are distracting in addition to texting
- People know they should not drive and text at the same time
- One of the established goals of the Council was to protect the citizens of Flagstaff
- Just because it may be difficult to enforce does not mean they should not adopt an ordinance
- An education campaign should take place
- If they are going to adopt an ordinance, they should put all of their resources behind enforcing it

Police Chief Treadway said that he has spent most of his adult life and career investigating and enforcing traffic violations. As a representative of the Police Department they were very much in favor of doing whatever they can to make the community safer; however, there are enforcement challenges with ordinances of this nature. If they did move forward he would recommend that it be made a primary violation, not secondary. In speaking with a representative of Tucson, they indicated that since they instituted their ordinance they have only issued 26 citations.

Mr. Burke asked if there were any studies to indicate that once an ordinance of this type was adopted, there was a reduction in accidents, or a reduction in the behavior. Chief Treadway said that they do not have a clear answer to that, however, in traffic enforcement in general, he has read studies that indicate that for whatever violation a citation can have an impact on future driving behavior for the next three to five years.

Vice Mayor Evans said that while she strongly supports the Flagstaff Police Department, she was very concerned with abuse that could take place if an officer is able to pull someone over for texting, and then find other violations.

While there was not a consensus to move forward with an ordinance, everyone agreed that they would like to look at other ways to address the issue, particularly through an education campaign.

7. ~~**Presentation on Principles of Sound Water Management - Water Policies: Recharge & Recovery and Water Conservation**~~ **REMOVED FROM AGENDA.***

8. **Review of Draft Agenda Items for the May 7, 2013, City Council Meeting***

** Public comment on draft agenda items will be taken at this time, at the discretion of the Mayor.*

9. **Public Participation**

Mayor Nabours invited Joe Ferguson of the Arizona Daily Sun forward, and presented him with a proclamation and gift, and everyone thanked him for his service in reporting the news of the City, and wished him success in Tucson.

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

Councilmember Woodson reminded everyone of the Arizona State Transportation Board meeting scheduled for next Friday, May 10, and the dinner the evening before.

Councilmembers thanked staff for the Budget Retreat.

Vice Mayor Evans reported that Victor Travino with the Mexican Consulate was being relocated to a different post and on May 8 the Mayor of Phoenix is having a going-away party for him. She said that they will know his replacement around the first of June.

Vice Mayor Evans thanked members of the Flagstaff Leadership Program who had a group doing clean up at Bushmaster Park last weekend. She said that altogether, with various organizations, they had over 150 volunteers. She also said that they had a community picnic last weekend in the Sunnyside area.

Councilmember Overton reminded everyone of the Annual Literacy Spelling Bee later in the week, and he also thanked the Mayor and Kim Ott for the student tours that took place at City Hall.

Councilmember Brewster thanked the NAU students for their presentation earlier in the evening and she reminded everyone of the Bothhands Breakfast taking place later in the week.

Deputy City Manager Jerene Watson gave more information on the Flagstaff Leadership Program activities over the weekend, and thanked Mike O'Connor and Steve Zimmerman of the City, along with their crews, for getting things ready for them.

11. **Adjournment**

The Work Session of the Flagstaff City Council held April 30, 2013, adjourned at 9:42 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:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration of Appointments:** Disability Awareness Commission.

**RECOMMENDED ACTION:**

Make one appointment to a term expiring March 2014.
Make one appointment to a term expiring March 2016.

**Policy Decision or Reason for Action:**

By making appointments to the vacancies, the Disability Awareness Commission will be at full membership. There are three new applications on file and they are as follows:

Dazhoni James
James Martinez
Kaitlyn Verfuerth

**Financial Impact:**

These are voluntary positions and there is no budgetary impact to the City of Flagstaff.

**Connection to Council Goal:**

Effective governance.

**Has There Been Previous Council Decision on This:**

None.

**Options and Alternatives:**

1) Appoint two Commissioners: by appointing members at this time, the Disability Awareness Commission will be at full membership, allowing the group to continue meeting to provide recommendations to the City Council.

2) Table the action to allow for further discussion or expand the list of candidates.

**Background/History:**

The Disability Awareness Commission consists of nine citizens serving three year terms. There are currently two vacant seats available.

This commission's goals are to expand educational opportunities; improve access to housing, buildings, and transportation; have greater participation in recreational, social, and cultural activities; encourage greater opportunity for employment; and expand and strengthen rehabilitative programs and facilities.

**Key Considerations:**

It is important to fill the vacancies so as to allow the Commission to continue meeting on a regular basis.

**Expanded Financial Considerations:**

None.

**Community Benefits and Considerations:**

The City's boards, commissions, and committees were created to foster public participation and input and to encourage Flagstaff citizens to take an active role in city government.

**Community Involvement:**

INFORM: Board members and City staff have informed the community of these vacancies through word of mouth in addition to the posting on the City's website.

**Expanded Options and Alternatives:**

**COUNCIL INTERVIEW TEAM:** Councilmember Woodson and Councilmember Oravits.

---

**Attachments:** DAC Roster
DAC Authority
DAC Applicant Roster
DAC Applications

# City of Flagstaff, AZ

## DISABILITY AWARENESS COMMISSION MEMBERS

| NAME | APPOINTED | TERM EXPIRES | TRAINING COMPLETED |
|---|---|---|---|
| **Barrett, Kathryn S.** | **10/16/2012** | **03/15** | **03/15/2006** |
| Occupational Therapist/Flagstaff Medical Center<br>1926 Meadow Lark Drive<br>Flagstaff, AZ 86001<br>Cell Phone: 928-890-7665<br>Term: 4th (1st-2/05-3/06, 2nd 3/06-3/09; 3rd 3/09-3/12) | | | |
| **Chandler, Kathryn** | **03/14/2011** | **03/14** | **02/16/2012** |
| Paratransit Program Manager/NAIPTA<br>3924 E. Thrush Lane<br>Flagstaff, AZ 86004<br>Cell Phone: 928-607-9467<br>Term: (1st 3/11 - 3/14) | | | |
| **Gale, Debra** | **03/14/2011** | **03/14** | **03/12/2013** |
| Direct Service Provided/Habilation/ABRiO Family Services<br>1401 North 4th St. # 248<br>Flagstaff, AZ 86004<br>Cell Phone: 928-853-4730<br>Term: (1st 3/11 - 3/14) | | | |
| **McGinlay, Liz** | **12/18/2012** | **03/16** | **No** |
| VP Mission Advancement/Goodwill of Northern Arizona<br>5024 S. Topaz Rd<br>Flagstaff, AZ 86001<br>Cell Phone: 928-699-0340<br>Term: (1st 12/12-3/16) | | | |

| | | | |
|---|---|---|---|
| **Pfeil, Alida**<br>Residential Director/Quality Connections<br>2500 N. Center St. #2<br>Flagstaff, AZ 86004<br>Cell Phone: 928-607-1511<br>Term: (1st 12/12-3/16) | **12/18/2012** | **03/16** | **03/12/2013** |
| **Randall, Russell**<br>Transition Facilitator/Flagstaff Unified School District<br>1199 W. Coy Dr.<br>Flagstaff, AZ 86001<br>Cell Phone: 928-607-8410<br>Term: (1st 12/12 - 3/14) | **12/18/2012** | **03/14** | **03/12/2013** |
| **Tuck, Jim**<br>Retired<br>2829 N. Fremont Blvd.<br>Flagstaff, AZ 86001<br>Home Phone: 928-773-9194<br>Term: (1st 3/07-3/09; 2nd 3/09-3/12; 3rd 3/12 - 3/15) | **10/16/2012** | **03/15** | **10/20/2011** |
| **Z-VACANT,** | | **03/16** | **No** |
| **Z-VACANT,** | | **03/14** | **No** |

**Staff Representative: Josh Copley**

**As Of: April 09, 2013**

# CHAPTER 2-18
# COMMISSION ON DISABILITY AWARENESS

SECTIONS:

2-18-001-0001 COMMISSION ESTABLISHED, DUTIES
2-18-001-0002 MEMBERS AND TERMS:
2-18-001-0003 ORGANIZATION:

## SECTION 2-18-001-0001 COMMISSION ESTABLISHED, DUTIES

There is hereby established the Commission on Disability Awareness. It shall be the Commission's duty to advise the City Council on all issues affecting the City of Flagstaff in relation to individuals with disabilities and shall include, but not be limited to:

A. Review of City compliance with the Americans with Disabilities Acts and the Arizonans with Disabilities Acts.

B. Review of City programs, activities, services and procedures to ensure all citizens are afforded equitable access to same.

C. Develop and transmit recommendations to the City Council to assist the City Council in developing policies to respond to the concerns and needs of those with disabilities.

D. Provide a public forum for identifying and discussing issues of interest relating to individuals who are disabled, physically or mentally, and to act as an information and referral group to assist individuals, organizations, and employers in efforts to aid members of the community toward greater independence and community interactions.

E. Increase community awareness of the real contributions made by citizens of the community who are disabled and to provide recognition for employers, employees, students, teachers, parents, and professionals who further the goals of disability awareness and inclusion. (Ord. 1780, 11/17/92)

(Ord. No. 1780, Enacted, 11/17/92)

## SECTION 2-18-001-0002 MEMBERS AND TERMS:

The Commission shall consist of nine (9) members who shall be appointed by the City Council based upon the recommendations of the Committee/Commission. The Commission and the City Council will make every effort to recruit and appoint those individuals most directly involved and concerned with the obligations of the Americans with Disabilities Act. Commission members shall serve staggered, three-year terms.

A quorum shall consist of one more than half the membership of the commission.

In addition, the City Council may designate a Councilmember representative as a non-voting, ex-officio member of the Disability Awareness Commission who shall not count toward the quorum.

In the event a member's term expires, that member shall continue to serve until reappointed or replaced by the City Council. (Ord. 1833, 05/03/94)

(Ord. No. 1780, Enacted, 11/17/92; Ord. No. 1833, Amended, 05/03/94; Ord. No. 2007-31, Amended 07/23/2007)

SECTION 2-18-001-0003 ORGANIZATION:

A Chairperson and other Commission officers shall be selected by a majority vote of those members present at a meeting called for that purpose for a term of one (1) year. The Commission shall meet at such times, dates and locations as determined by the members except that the Chairperson may call a special meeting with not less than twenty-four (24) hours notice. All other rules of procedure shall be established by the members so long as said rules are consistent with State law, the City Charter, the Board and Commission Members' Handbook, and this Ordinance.

A Commission member who is absent from three consecutive regular meetings may have their remaining term terminated by a vote of the City Council upon recommendation of the Commission.

(Ord. 1780, 11/17/92); (Ord. No. 1780, Enacted, 11/17/92); (Ord. No. 2007-37, Amended 07/24/2007)

# City of Flagstaff, AZ

## DISABILITY AWARENESS COMMISSION APPLICANTS

| NAME | APPOINTED | TERM EXPIRES | TRAINING COMPLETED |
|---|---|---|---|
| **Dazhoni, James**<br>Employment Specialist/Goodwill Industries Norther Arizona<br>2110 N. East St. Apt. C<br>Flagstaff, AZ 86004<br>Cell Phone: 928-225-5697 | | | No |
| **Martinez, James**<br>Customer Service Rep/DES/DDD<br>4801 E. Snowshoe Way<br>Flagstaff, AZ 86004<br>Work Phone: 928-773-4957 | | | No |
| **Verfuerth, Kaitlyn**<br>Owner/BTO Yogurt<br>1145 N. Flowing Springs Trail<br>Flagstaff, AZ 86004<br>Cell Phone: 619-985-2793 | | | No |

**Staff Representative:** **Josh Copley**

**As Of:** **April 09, 2013**

**Stacy Saltzburg**

**From:** noreply@civicplus.com
**Sent:** Wednesday, January 30, 2013 12:59 PM
**To:** Elizabeth Burke; Stacy Saltzburg
**Subject:** Online Form Submittal: Board/Commission Application

RECEIVED
JAN 30 2013
BY:

If you are having problems viewing this HTML email, click to view a Text version.

## Board/Commission Application

Important Notice:
The City Council may consider appointments to boards and commissions in executive sessions which are closed to the public, and then make the appointments in a public meeting. You have the right, however, to have your application considered in a public meeting by providing a written request to the City Clerk.

**Application to Serve on a Board/Commission**

**Please note that this information is a public record.**

| | |
|---|---|
| Date:* | 1/30/2013 |
| Board/Commission you wish to serve on:* | Commission on Disability Awareness |
| If applicable, type of seat for which you are qualified: | |

**Your Information**

| | | | |
|---|---|---|---|
| Name:* | Dazhoni James | Home Phone:* | 9282255697 |
| Home Address:* | 2110 N. East St. Apt. C<br>Flagstaff, AZ | Zip:* | 86004 |
| Mailing Address (If different from above): | | | |
| Employer:* | Goodwill Industries Northern Arizona | Job Title:* | Employment Specialist |
| Business Phone: | 9285269188 | Cell: | 9282255697 |
| E-mail:* | dazhoni.james@goodwillna.org | | |
| Indicate preferred telephone:* | ( ) Home<br>( ) Work | (X) Cell | |

**Background Information**

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.
My experience and interest are applicable to this commission through the following: high knowledge of assisting individuals with disabilities to secure, enter and maintain employment, passion for promoting the lives of others, genuine desire to increase awareness and collaborate with others to actively fulfill the requirements of this board. I have worked passionately with Goodwill Industries of Northern Arizona as an employment specialist for 4.5 years. My role as an employment specialist requires a high level of expertise in strengthening and improving the lives of individuals with disabilities through expanding employment opportunities and addressing barriers in the workplace. Additionally, I work with employers to promote disability awareness in the workplace, discuss ADA (Americans with Disabilities) rights and work accommodations to ensure on the job success. Through my personal life experiences I have developed a lifelong passion for changing lives including individuals with disabilities. Being a member of the Navajo Nation and working through many barriers including alcoholism, domestic violence, high unemployment, poverty and minimal access to services for individuals with disabilities has sparked a lifelong passion to possess a solution focused attitude to changing lives through knowledge, awareness and advocacy. As a member of this commission I will collaborate with others, focus on creating more opportunities in employment and provide ongoing feedback and solutions to barriers that individuals with disabilities face including employment, access to programs, housing and other important initiatives.
Why do you want to serve on the board or commission you listed?
I desire to serve on this commission so I may collaborate with others from the Flagstaff community to creatively and innovatively increase the knowledge of individuals with disabilities, expand educational opportunities, participate in expanding employment; and strengthen rehabilitation programs. While serving on the board, I will bind my professional and personal experience to change lives through my service and creating awareness. I have seen this commission impact the Flagstaff community and want to be a part of the 'movement'. It has become my goal to help

others overcome barriers by identifying proactive solutions, establishing goals and an active plan to address each situation. Again, I wish to serve on this board to continue to strengthen the goals of the commission, to offer feedback and solutions to barriers, and to be an advocate for those in the Flagstaff community and beyond.

By submitting this electronic form, I acknowledge that any information provided above is a public record, and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

* indicates required fields.

The following form was submitted via your website: Board/Commission Application

Date:: 1/30/2013

Board/Commission you wish to serve on:: Commission on Disability Awareness

If applicable, type of seat for which you are qualified::

Name:: Dazhoni James

Home Phone:: 9282255697

Home Address:: 2110 N. East St. Apt. C Flagstaff, AZ

Zip:: 86004

Mailing Address (If different from above)::

Employer:: Goodwill Industries Northern Arizona

Job Title:: Employment Specialist

Business Phone:: 9285269188

Cell:: 9282255697

E-mail:: dazhoni.james@goodwillna.org

Indicate preferred telephone:: Cell

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: My experience and interest are applicable to this commission through the following: high knowledge of assisting individuals with disabilities to secure, enter and maintain employment, passion for promoting the lives of others, genuine desire to increase awareness and collaborate with others to actively fulfill the requirements of this board.

I have worked passionately with Goodwill Industries of Northern Arizona as an employment specialist for 4.5 years. My role as an employment specialist requires a high level of expertise in strengthening and improving the lives of individuals with disabilities through expanding employment opportunities and addressing barriers in the workplace. Additionally, I work with employers to promote disability awareness in the workplace, discuss ADA (Americans with Disabilities) rights and work accommodations to ensure on the job success.

Through my personal life experiences I have developed a lifelong passion for changing lives including individuals with disabilities. Being a member of the Navajo Nation and working through many barriers including alcoholism, domestic violence, high unemployment, poverty and minimal access to services for individuals with disabilities has sparked a lifelong passion to possess a solution focused attitude to changing lives through knowledge, awareness and advocacy.

As a member of this commission I will collaborate with others, focus on creating more opportunities in employment and provide ongoing feedback and solutions to barriers that individuals with disabilities face including employment, access to programs, housing and other important initiatives.

Why do you want to serve on the board or commission you listed?: I desire to serve on this commission so I may collaborate with others from the Flagstaff community to creatively and innovatively increase the knowledge of individuals with disabilities, expand educational opportunities, participate in expanding employment; and strengthen rehabilitation programs.

While serving on the board, I will bind my professional and personal experience to change lives through my service and creating awareness. I have seen this commission impact the Flagstaff community and want to be a part of the 'movement'. It has become my goal to help others overcome barriers by identifying proactive solutions, establishing goals and an active plan to address each situation.

Again, I wish to serve on this board to continue to strengthen the goals of the commission, to offer feedback and solutions to barriers, and to be an advocate for those in the Flagstaff community and beyond.

Additional Information:
Form submitted on: 1/30/2013 12:59:10 PM
Submitted from IP Address: 206.80.216.98
Referrer Page: http://www.flagstaff.az.gov/index.aspx?NID=1883
Form Address: http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166

**Stacy Saltzburg**

**From:** noreply@civicplus.com
**Sent:** Wednesday, March 20, 2013 4:56 PM
**To:** Elizabeth Burke; Stacy Saltzburg
**Subject:** Online Form Submittal: Board/Commission Application

If you are having problems viewing this HTML email, click to view a Text version.

## Board/Commission Application

Important Notice:
The City Council may consider appointments to boards and commissions in executive sessions which are closed to the public, and then make the appointments in a public meeting. You have the right, however, to have your application considered in a public meeting by providing a written request to the City Clerk.

**Application to Serve on a Board/Commission**

**Please note that this information is a public record.**

| | |
|---|---|
| Date:* | 03/20/2013 |
| Board/Commission you wish to serve on:* | Disability Awareness |
| If applicable, type of seat for which you are qualified: | Board Member |

**Your Information**

| | | | |
|---|---|---|---|
| Name:* | James D Martinez | Home Phone:* | (928) 526-8885 |
| Home Address:* | 4801 E Snowshoe Way | Zip:* | 86004 |
| Mailing Address (If different from above): | 4801 E Snowshoe Way | | |
| Employer:* | DES/DDD | Job Title:* | Customer Service Rep |
| Business Phone: | (928) 773-4957 | Cell: | (928) 699-0532 |
| E-mail:* | jdmartinez@azdes.gov | | |
| Indicate preferred telephone:* | ( ) Home<br>(X) Work | ( ) Cell | |

**Background Information**

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.
I am a Flagstaff native and I have devoted my life and career to helping people with disabilities have productive lives. In addition, I am a man with Cerebral Palsy who believes in serving as a strong advocate for people with disabilities who may not otherwise have a voice. I work for the Division of Developmental Disabilities full time and serve in several leadership roles in the community. Most notably, I am the Executive Director of Flagstaff Community Partnership and President of the Committee on Accessible Transportation with NAIPTA.
Why do you want to serve on the board or commission you listed?
I served with the Disability Awareness Commission beforehand and feel like I made a lasting positive difference in the community. My knowledge of disability laws and regulations has received recognition from community, state and national leaders.

By submitting this electronic form, I acknowledge that any information provided above is a public record, and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

* indicates required fields.

The following form was submitted via your website: Board/Commission Application

Date:: 03/20/2013

Board/Commission you wish to serve on:: Disability Awareness

If applicable, type of seat for which you are qualified:: Board Member

Name:: James D Martinez

Home Phone:: (928) 526-8885

Home Address:: 4801 E Snowshoe Way

Zip:: 86004

Mailing Address (If different from above):: 4801 E Snowshoe Way

Employer:: DES/DDD

Job Title:: Customer Service Rep

Business Phone:: (928) 773-4957

Cell:: (928) 699-0532

E-mail:: jdmartinez@azdes.gov

Indicate preferred telephone:: Work

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: I am a Flagstaff native and I have devoted my life and career to helping people with disabilities have productive lives. In addition, I am a man with Cerebral Palsy who believes in serving as a strong advocate for people with disabilities who may not otherwise have a voice. I work for the Division of Developmental Disabilities full time and serve in several leadership roles in the community. Most notably, I am the Executive Director of Flagstaff Community Partnership and President of the Committee on Accessible Transportation with NAIPTA.

Why do you want to serve on the board or commission you listed?: I served with the Disability Awareness Commission beforehand and feel like I made a lasting positive difference in the community. My knowledge of disability laws and regulations has received recognition from community, state and national leaders.

Additional Information:
Form submitted on: 3/20/2013 4:56:20 PM
Submitted from IP Address: 207.108.136.244
Referrer Page: No Referrer - Direct Link
Form Address: http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166

**Stacy Saltzburg**

**From:** noreply@civicplus.com
**Sent:** Monday, February 11, 2013 2:38 PM
**To:** Elizabeth Burke; Stacy Saltzburg
**Subject:** Online Form Submittal: Board/Commission Application

RECEIVED
FEB 11 2013
BY:

If you are having problems viewing this HTML email, click to view a Text version.

## Board/Commission Application

Important Notice:
The City Council may consider appointments to boards and commissions in executive sessions which are closed to the public, and then make the appointments in a public meeting. You have the right, however, to have your application considered in a public meeting by providing a written request to the City Clerk.

**Application to Serve on a Board/Commission**

**Please note that this information is a public record.**

| | |
|---|---|
| Date:* | 2/11/2013 |
| Board/Commission you wish to serve on:* | Disability Awareness Commission |
| If applicable, type of seat for which you are qualified: | |

**Your Information**

| | | | |
|---|---|---|---|
| Name:* | Kaitlyn Verfuerth | Home Phone:* | 619-985-2793 |
| Home Address:* | 1145 N. Flowing Springs Trail | Zip:* | 86004 |
| Mailing Address (If different from above): | | | |
| Employer:* | BTO Yogurt | Job Title:* | Owner |
| Business Phone: | 928-266-0416 | Cell: | 619-985-2793 |
| E-mail:* | kaitlyn@btoyogurt.com | | |
| Indicate preferred telephone:* | ( ) Home<br>( ) Work | (X) Cell | |

**Background Information**

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.
I am a Paraplegic due to a car accident when I was 7 years of age. I have spent most of my life in a wheelchair. Never being one to give up, I made the most of my situation. I have been playing Tennis and Basketball ever since the accident. I have had the honor to represent our country in 2 Paralympic games playing Tennis. I am ranked #1 in the US and top 20 in the world. In 2012 my Basketball team won the national championship. I currently serve on the USTA SAZ board. Our mission is to help the wheelchair tennis game grow throughout not only Sourthern Arizona. I would love to start such a board for Northern Arizona. Last November I went to the island of St. Maarten for Disability Awareness week. Myself, along with several other top wheelchair tennis pros, taught tennis, spoke in schools, visited rehabs and hospitals, spreading Disability Awareness. Despite my disability, I try to focus on my abilities. My husband and I moved to Flagstaff from Tucson in May 2012 buying a home and opening a business. Since moving here, we have become involved in various recreational activities, as well as fundraisers with our business. BTO yogurt has helped many NAU clubs/organizations, Flagstaff Unified School District, local families, Northern Arizona Food Drive, etc.. raise money. I would like to get involved with disability awareness in Flagstaff. I would love to start a rec. program for people with disabilities. Most recent I am the new girls varsity tennis coach for Flagstaff High School.
Why do you want to serve on the board or commission you listed?
I want to serve on the Disability Awareness Commission because I want to help spread disability awareness throughout the region. It would be an honor to help serve this board, being that every day I spread awareness. I have the experience and the desire to help.

By submitting this electronic form, I acknowledge that any information provided above is a public record, and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

* indicates required fields.

The following form was submitted via your website: Board/Commission Application

Date:: 2/11/2013

Board/Commission you wish to serve on:: Disability Awareness Commission

If applicable, type of seat for which you are qualified::

Name:: Kaitlyn Verfuerth

Home Phone:: 619-985-2793

Home Address:: 1145 N. Flowing Springs Trail

Zip:: 86004

Mailing Address (If different from above)::

Employer:: BTO Yogurt

Job Title:: Owner

Business Phone:: 928-266-0416

Cell:: 619-985-2793

E-mail:: kaitlyn@btoyogurt.com

Indicate preferred telephone:: Cell

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: I am a Paraplegic due to a car accident when I was 7 years of age. I have spent most of my life in a wheelchair. Never being one to give up, I made the most of my situation. I have been playing Tennis and Basketball ever since the accident. I have had the honor to represent our country in 2 Paralympic games playing Tennis. I am ranked #1 in the US and top 20 in the world. In 2012 my Basketball team won the national championship.

I currently serve on the USTA SAZ board. Our mission is to help the wheelchair tennis game grow throughout not only Sourthern Arizona. I would love to start such a board for Northern Arizona. Last November I went to the island of St. Maarten for Disability Awareness week. Myself, along with several other top wheelchair tennis pros, taught tennis, spoke in schools, visited rehabs and hospitals, spreading Disability Awareness.

Despite my disability, I try to focus on my abilities. My husband and I moved to Flagstaff from Tucson in May 2012 buying a home and opening a business. Since moving here, we have become involved in various recreational activities, as well as fundraisers with our business. BTO yogurt has helped many NAU clubs/organizations, Flagstaff Unified School District, local families, Northern Arizona Food Drive, etc.. raise money.

I would like to get involved with disability awareness in Flagstaff. I would love to start a rec. program for people with disabilities. Most recent I am the new girls varsity tennis coach for Flagstaff High School.

Why do you want to serve on the board or commission you listed?: I want to serve on the Disability Awareness Commission because I want to help spread disability awareness throughout the region. It would be an honor to help serve this board, being that every day I spread awareness. I have the experience and the desire to help.

Additional Information:
Form submitted on: 2/11/2013 2:37:33 PM
Submitted from IP Address: 24.121.54.51
Referrer Page: No Referrer - Direct Link
Form Address: http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Saltzburg, Deputy City Clerk |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration of Appointments:** Sustainability Commission.

**RECOMMENDED ACTION:**

Make two appointments to terms expiring October 2014.

**Policy Decision or Reason for Action:**

By making the above appointments, the Sustainability Commission will be at full membership and will be able to continue meeting on a regular basis. There are five new applications on file, they are as follows:

Dominique Bain (new applicant)
Molly Groyer (new applicant)
Branden Jordan (new applicant)
Jodi Norris (new applicant)
Jamie Semana (new applicant)

**Financial Impact:**

These are voluntary positions and there is no budgetary impact to the City of Flagstaff.

**Connection to Council Goal:**

Effective governance.

**Has There Been Previous Council Decision on This:**

None.

**Options and Alternatives:**

1) Appoint two Commissioners: By appointing members at this time, the Sustainability Commission will be at full membership, allowing the group to meet and provide recommendations to the City Council.

2) Table the action to allow for further discussion or expand the list of candidates.

**Background/History:**

The Sustainability Commission consists of seven citizens serving three-year terms. There are currently two seats available; please note that Commissioner Carlton Johnson is resigning from the commission the middle of May thus creating the second vacancy.

The commission is responsible for recommending and coordinating activities in concert with the Flagstaff sustainability program, the U.S. Mayors' Climate Protection Agreement, and other sustainability initiatives. To accomplish these objectives, the commission will address issues including, but not limited to: climate and air quality; transportation; energy; solid waste and toxic substances; water, wastewater, and stormwater; sustainable building and purchasing practices; and sustainable economic development. Among the commission's directives are promotion of sustainable practices in all spheres of life and educating the public.

**Key Considerations:**

It is important to fill the vacancies so as to allow the Commission to continue meeting on a regular basis.

**Expanded Financial Considerations:**

None.

**Community Benefits and Considerations:**

The City's boards, commissions, and committees were created to foster public participation and input and to encourage Flagstaff citizens to take an active role in city government.

**Community Involvement:**

INFORM: The vacancies are posted on the City's website and individual recruitment and mention of the openings by Board members and City staff has occurred, informing others of these vacancies through word of mouth.

**Expanded Options and Alternatives:**

**COUNCIL INTERVIEW TEAM:** Councilmember Barotz and Councilmember Woodson.

---

**Attachments:** Sustainability Roster
Sustainability Authority
Sustainability Applicant Roster
Sustainability Applications

# City of Flagstaff, AZ

## SUSTAINABILITY COMMISSION MEMBERS

| NAME | APPOINTED | TERM EXPIRES | TRAINING COMPLETED |
|---|---|---|---|
| **Dorfsmith, Elisha** | **01/15/2013** | **10/15** | **03/12/2013** |
| Owner of dorfsmith.com/Self Employed<br>4858 E. Merriam Dr.<br>Flagstaff, AZ 86004<br>Cell Phone: 928-864-6310<br>Term: (1st 1/13-10/15) | | | |
| **Farretta, Kathy** | **11/01/2011** | **10/14** | **02/16/2012** |
| Education Program Manager/Museum of No. Arizona<br>4045 Lake Mary Road #32<br>Flagstaff, AZ 86001<br>Cell Phone: 380-1308<br>Term: (1st 9/10 - 10/11; 2nd 10/11-10/14) | | | |
| **Johnson, Carlton** | **11/01/2011** | **10/14** | **02/16/2012** |
| Civil Engineer/Shephard Wesnitzer, Inc.<br>21 W. Elm Ave<br>Flagstaff, AZ 86001<br>Term: (1st 11/11 - 10/14) | | | |
| **Lucy, Kimberly** | **02/15/2011** | **10/13** | **02/16/2012** |
| Grand Canyon Program Coordinator/Arizona Raft Adventures<br>6235 N Dodge Ave<br>Flagstaff, AZ 86004<br>Cell Phone: 928-221-1994<br>Term: (1st 2/11-10/13) | | | |

| | | | |
|---|---|---|---|
| **Tecle, Aregai** | **03/06/2012** | **10/13** | **No** |
| Professor/Northern Arizona University - School of Forestry<br>3222 S. Mehrhoff Place<br>Flagstaff, AZ 86001<br>Home Phone: 928-214-9720<br>Term: (1st 3/12-10/13) | | | |
| **Welch, Jack** | **12/18/2012** | **10/15** | **04/24/2008** |
| Retired<br>2600 East 7th #18<br>Flagstaff, AZ 86004<br>Home Phone: (928) 714-0504<br>Term: (1st 4/09-10/09; 2nd 10/09-10/12; 3rd 10/12-10/15) | | | |
| **Z-VACANT,** | | **10/14** | **No** |

**Staff Representative:** **Nicole Woodman**

**As Of:** **April 09, 2013**

# CHAPTER 2-17
# SUSTAINABILITY COMMISSION

SECTIONS

2-17-001-0001 COMMISSION ESTABLISHED; ORGANIZATIONAL STRUCTURE
2-17-001-0002 PURPOSE; POWERS AND DUTIES

## SECTION 2-17-001-0001 COMMISSION ESTABLISHED; ORGANIZATIONAL STRUCTURE

A. ESTABLISHMENT OF THE COMMISSION.

1. There is hereby created the Sustainability Commission (the "Commission"), which shall replace the Clean and Green Committee;

2. The membership of the Commission shall consist of seven (7) members. Members of the Commission shall be appointed by the City Council and shall represent the diverse interests and views of the community. The Commission shall be a working Commission, in which each member takes an active role in accomplishing the goals and objectives of the Commission. Members shall serve a term of three (3) years with no member appointed for more than two (2) full consecutive terms.

3. The Commission shall be responsible for electing a Chair and a Vice-Chair. The Chair shall act as public spokesperson for the Commission at public functions, shall serve as an ex-officio member of all standing committees, shall appoint the chair of all standing committees upon the advice and consent of the Commission, and shall perform other duties as required. The Vice-Chair shall act in the absence of the Chair.

4. The City Council may appoint a non-voting Councilmember Liaison who shall not count toward a quorum.

## SECTION 2-17-001-0002 PURPOSE; POWERS AND DUTIES

The purpose of this Commission shall be to continue the work initiated by the Clean and Green Committee and to further work with the City Council and the City Staff by recommending and coordinating activities as part of the Flagstaff Sustainability Program, the U.S. Mayors Climate Protection Agreement, and any future sustainability initiatives pursued by the City.

Subject to state law and the procedures prescribed herein, the Sustainability Commission shall have and may exercise the following powers, duties, and responsibilities:

A. The Commission shall work with City staff toward the development and implementation of the Flagstaff Sustainability Program. The issues addressed by this program may include, but not be limited to, the following:

1. Climate and air quality
2. Transportation
3. Energy
4. Solid waste and toxic substances
5. Water, wastewater, and stormwater
6. Sustainable building and purchasing practices
7. Sustainable economic development

B. The Commission shall work with the City staff toward the development and implementation of the U.S. Mayors Climate Protection Agreement and any future sustainability initiatives passed by the City Council.

C. The Commission shall work with the City Council in the development of initiatives linking the concepts of sustainability with economic development and affordability for the benefit of all community members.

D. The Commission shall promote the benefits of sustainable practices in all spheres of life and shall educate the public concerning such practices.

E. The Commission shall promote compliance with City ordinances concerning sustainability and environmental management.

F. The Commission shall encourage sustainable practices by individuals, groups, organizations, industrial and commercial enterprises, educational institutions, and government agencies.

(Ord. 2007-27, Amended 04/17/2007)

# City of Flagstaff, AZ

## SUSTAINABILITY COMMISSION APPLICANTS

| NAME | APPOINTED | TERM EXPIRES | TRAINING COMPLETED |
|---|---|---|---|
| **Bain, Dominique**<br>GK-12 Fellow/National Science Foundation<br>2627 N. Rose #3<br>Flagstaff, AZ 86004 | | | No |
| **Groyer, Molly**<br>Student Worker Supervisor/NAU Financial Aid<br>813 W. University Ave. #613<br>Flagstaff, AZ 86001<br>Cell Phone: 602-373-4255 | | | No |
| **Jordan, Brandon**<br>Fire Science Student/Arizona Snowbowl/Student<br>PO Box 544<br>Flagstaff, AZ 86001<br>Home Phone: 928-237-3757 | | | No |
| **Norris, Jodi**<br>Quantitative Ecologist/National Park Service<br>1916 N. Marion<br>Flagstaff, AZ 86001<br>Cell Phone: 928-310-6495 | | | No |
| **Samana, Jamie**<br>NAU - Geography Instructor/Northern Arizona University/Touch the SW Tours<br>4610 Lake Mary Rd.<br>Flagstaff, AZ 86001<br>Home Phone: 928-266-0579 | | | No |

**Staff Representative:** **Nicole Woodman**

**As Of:** **April 29, 2013**

**Stacy Saltzburg**

**From:** noreply@civicplus.com
**Sent:** Thursday, March 28, 2013 2:42 PM
**To:** Elizabeth Burke; Stacy Saltzburg
**Subject:** Online Form Submittal: Board/Commission Application

If you are having problems viewing this HTML email, click to view a Text version.

## Board/Commission Application

Important Notice:
The City Council may consider appointments to boards and commissions in executive sessions which are closed to the public, and then make the appointments in a public meeting. You have the right, however, to have your application considered in a public meeting by providing a written request to the City Clerk.

**Application to Serve on a Board/Commission**

**Please note that this information is a public record.**

| | | | |
|---|---|---|---|
| Date:* | 03/28/2013 | | |
| Board/Commission you wish to serve on:* | Sustainability | | |
| If applicable, type of seat for which you are qualified: | | | |

**Your Information**

| | | | |
|---|---|---|---|
| Name:* | Dominique Bain | Home Phone:* | 314-910-7526 |
| Home Address:* | 2627 N. Rose #3 | Zip:* | 86004 |
| Mailing Address (If different from above): | | | |
| Employer:* | National Science Foundation | Job Title:* | GK-12 Fellow |
| Business Phone: | | Cell: | |
| E-mail:* | dmg269@nau.edu | | |
| Indicate preferred telephone:* | (X) Home<br>( ) Work | ( ) Cell | |

**Background Information**

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.
I am finishing my Master's degree at Northern Arizona University (NAU) in Environmental Sciences and Policy. During my time at NAU, I have worked to learn about and promote clean energy and environmental sustainability. I have focused my classes on those topics. I am a part of the Energy Mentors at NAU - promoting energy efficiency. As a GK-12 fellow, I work with local students on a regular basis and we often structure our lessons around clean energy and sustainability.
Why do you want to serve on the board or commission you listed?
I want to become more involved in Flagstaff. My husband and I have lived here for about a year and a half and we love the city and surrounding areas. Cultivating sustainable practices around energy use and climate change are imperative to a community's ability to thrive by helping to maximum the efficiency of community resources and enabling the community to adapt to a changing world. I want to be a part of creating those sustainable practices in Flagstaff. The community here is vibrant, intellectual, and connected. While I have seen these in many ways in Flagstaff, one of the best examples was the crowd at William deBuys's lecture at the Orpheum this fall. The theater was packed. Clearly, the community of Flagstaff is concerned about climate change and its potential impacts. When deBuys discussed the unique opportunity Flagstaff has to be a leader because of its location and the risk of drought here, the crowd cheered. They know Flagstaff is a special place and they want the community here to continue to thrive, but they also understand there will be challenges in the future.

By submitting this electronic form, I acknowledge that any information provided above is a public record, and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

* indicates required fields.

The following form was submitted via your website: Board/Commission Application

Date:: 03/28/2013

Board/Commission you wish to serve on:: Sustainability

If applicable, type of seat for which you are qualified::

Name:: Dominique Bain

Home Phone:: 314-910-7526

Home Address:: 2627 N. Rose #3

Zip:: 86004

Mailing Address (If different from above)::

Employer:: National Science Foundation

Job Title:: GK-12 Fellow

Business Phone::

Cell::

E-mail:: dmg269@nau.edu

Indicate preferred telephone:: Home

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: I am finishing my Master's degree at Northern Arizona University (NAU) in Environmental Sciences and Policy. During my time at NAU, I have worked to learn about and promote clean energy and environmental sustainability. I have focused my classes on those topics. I am a part of the Energy Mentors at NAU - promoting energy efficiency. As a GK-12 fellow, I work with local students on a regular basis and we often structure our lessons around clean energy and sustainability.

Why do you want to serve on the board or commission you listed?: I want to become more involved in Flagstaff. My husband and I have lived here for about a year and a half and we love the city and surrounding areas. Cultivating sustainable practices around energy use and climate change are imperative to a community's ability to thrive by helping to maximum the efficiency of community resources and enabling the community to adapt to a changing world. I want to be a part of creating those sustainable practices in Flagstaff. The community here is vibrant, intellectual, and connected. While I have seen these in many ways in Flagstaff, one of the best examples was the crowd at William deBuys's lecture at the Orpheum this fall. The theater was packed. Clearly, the community of Flagstaff is concerned about climate change and its potential impacts. When deBuys discussed the unique opportunity Flagstaff has to be a leader because of its location and the risk of drought here, the crowd cheered. They know Flagstaff is a special place and they want the community here to continue to thrive, but they also understand there will be challenges in the future.

Additional Information:
Form submitted on: 3/28/2013 2:42:18 PM
Submitted from IP Address: 24.121.32.183
Referrer Page: No Referrer - Direct Link
Form Address: http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166

**Stacy Saltzburg**

**From:** noreply@civicplus.com
**Sent:** Thursday, March 28, 2013 2:01 PM
**To:** Elizabeth Burke; Stacy Saltzburg
**Subject:** Online Form Submittal: Board/Commission Application

If you are having problems viewing this HTML email, click to view a Text version.

## Board/Commission Application

Important Notice:
The City Council may consider appointments to boards and commissions in executive sessions which are closed to the public, and then make the appointments in a public meeting. You have the right, however, to have your application considered in a public meeting by providing a written request to the City Clerk.

**Application to Serve on a Board/Commission**

**Please note that this information is a public record.**

| | | | |
|---|---|---|---|
| Date:* | 03/28/2013 | | |
| Board/Commission you wish to serve on:* | Sustainability Commission | | |
| If applicable, type of seat for which you are qualified: | | | |

**Your Information**

| | | | |
|---|---|---|---|
| Name:* | Molly Groyer | Home Phone:* | 602-373-4255 |
| Home Address:* | 813 W. University Ave., Apt 612 | Zip:* | 86001 |
| Mailing Address (If different from above): | | | |
| Employer:* | NAU Financial Aid | Job Title:* | Student Worker Supervisor |
| Business Phone: | | Cell: | 602-373-4255 |
| E-mail:* | mg464@nau.edu | | |
| Indicate preferred telephone:* | ( ) Home<br>( ) Work | (X) Cell | |

**Background Information**

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.
Currently, I am a senior in the Environmental Science-Policy and Administration major at NAU. I believe that in order to protect the environment, all citizens must work together to change their consumption behaviors. I was an intern for the Coconino County Sustainable Building Program. I performed a project assessment on past buildings certified through the program by conducting face-to-face interviews with homeowners, as well as analyzing and evaluating data and comparing the data to AZ and U.S. averages. The goal of the assessment was to determine energy and water savings, in addition to providing the community with an idea of what types of systems and actions are the most efficient. Therefore, I believe I have the educational, as well as real-world experience to be part of the Sustainability Commission.
Why do you want to serve on the board or commission you listed?
I want to serve on the board to both expand my knowledge and experience with implementing real-world sustainability practices, in addition to providing the community with the knowledge that I have gained from my experiences in the class room and my internship.

By submitting this electronic form, I acknowledge that any information provided above is a public record, and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

* indicates required fields.

The following form was submitted via your website: Board/Commission Application

Date:: 03/28/2013

Board/Commission you wish to serve on:: Sustainability Commission

If applicable, type of seat for which you are qualified::

Name:: Molly Groyer

Home Phone:: 602-373-4255

Home Address:: 813 W. University Ave., Apt 612

Zip:: 86001

Mailing Address (If different from above)::

Employer:: NAU Financial Aid

Job Title:: Student Worker Supervisor

Business Phone::

Cell:: 602-373-4255

E-mail:: mg464@nau.edu

Indicate preferred telephone:: Cell

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: Currently, I am a senior in the Environmental Science-Policy and Administration major at NAU. I believe that in order to protect the environment, all citizens must work together to change their consumption behaviors. I was an intern for the Coconino County Sustainable Building Program. I performed a project assessment on past buildings certified through the program by conducting face-to-face interviews with homeowners, as well as analyzing and evaluating data and comparing the data to AZ and U.S. averages. The goal of the assessment was to determine energy and water savings, in addition to providing the community with an idea of what types of systems and actions are the most efficient. Therefore, I believe I have the educational, as well as real-world experience to be part of the Sustainability Commission.

Why do you want to serve on the board or commission you listed?: I want to serve on the board to both expand my knowledge and experience with implementing real-world sustainability practices, in addition to providing the community with the knowledge that I have gained from my experiences in the class room and my internship.

Additional Information:
Form submitted on: 3/28/2013 2:00:57 PM
Submitted from IP Address: 12.161.57.66

Referrer Page: No Referrer - Direct Link
Form Address: http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166

**Stacy Saltzburg**

**From:** noreply@civicplus.com
**Sent:** Sunday, April 28, 2013 9:29 PM
**To:** Elizabeth Burke; Stacy Saltzburg
**Subject:** Online Form Submittal: Board/Commission Application

If you are having problems viewing this HTML email, click to view a Text version.

## Board/Commission Application

Important Notice:
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**Application to Serve on a Board/Commission**

**Please note that this information is a public record.**

| | |
|---|---|
| Date:* | 04/28/2013 |
| Board/Commission you wish to serve on:* | Flagstaff Sustainability Program |
| If applicable, type of seat for which you are qualified: | |

**Your Information**

| | | | |
|---|---|---|---|
| Name:* | Branden Jordan | Home Phone:* | 9282373757 |
| Home Address:* | 514 W Dale Ave #B | Zip:* | 86001 |
| Mailing Address (If different from above): | PO Box 544 | | |
| Employer:* | Arizona Snowbowl / Student | Job Title:* | Fire Science Student |
| Business Phone: | | Cell: | |
| E-mail:* | boilermaker4@yahoo.com | | |
| Indicate preferred telephone:* | (X) Home<br>( ) Work | ( ) Cell | |

**Background Information**

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.
I am an active member of the Greater Flagstaff Forest Partnership and am always looking for opportunities to help with the environment and community. I am rather new to the Flagstaff area and eager to get involved.
Why do you want to serve on the board or commission you listed?
I am very concerned about sustainability and conservation efforts and want to help in any way I can. I have a degree in Animal Science and Agribusiness MGMT from Purdue University which focused a lot on agricultural sustainability.

By submitting this electronic form, I acknowledge that any information provided above is a public record, and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

* indicates required fields.

The following form was submitted via your website: Board/Commission Application

Date:: 04/28/2013

Board/Commission you wish to serve on:: Flagstaff Sustainability Program

If applicable, type of seat for which you are qualified::

Name:: Branden Jordan

Home Phone:: 9282373757

Home Address:: 514 W Dale Ave #B

Zip:: 86001

Mailing Address (If different from above):: PO Box 544

Employer:: Arizona Snowbowl / Student

Job Title:: Fire Science Student

Business Phone::

Cell::

E-mail:: boilermaker4@yahoo.com

Indicate preferred telephone:: Home

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: I am an active member of the Greater Flagstaff Forest Partnership and am always looking for opportunities to help with the environment and community. I am rather new to the Flagstaff area and eager to get involved.

Why do you want to serve on the board or commission you listed?: I am very concerned about sustainability and conservation efforts and want to help in any way I can. I have a degree in Animal Science and Agribusiness MGMT from Purdue University which focused a lot on agricultural sustainability.

Additional Information:
Form submitted on: 4/28/2013 9:28:30 PM
Submitted from IP Address: 184.98.196.90
Referrer Page: https://www.facebook.com/
Form Address: http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166

Rec'd 1/11/13 at 11:38a.m. S.A

*IMPORTANT NOTICE: The City Council may consider appointments to boards and commissions in executive sessions which are closed to the public, and then make the appointments in a public meeting. You have the right, however, to have your application considered in a public meeting by providing a written request to the City Clerk.*

# CITY OF FLAGSTAFF
## APPLICATION TO SERVE ON A BOARD/COMMISSION

**RETURN TO: CITY CLERK'S OFFICE, 211 WEST ASPEN AVENUE, FLAGSTAFF, AZ 86001**

**PLEASE NOTE THAT THIS INFORMATION IS A PUBLIC RECORD.**
**APPLICATIONS WILL BE KEPT ON FILE FOR ONE YEAR!**

**DATE:** 1-10-2013

**BOARD/COMMISSION YOU WISH TO SERVE ON:** Sustainability

**IF APPLICABLE, TYPE OF SEAT FOR WHICH YOU ARE QUALIFIED:**

**YOUR NAME:** Jodi Norris **HOME PHONE:** 928-310-6495

**HOME ADDRESS:** 1916 N Marion **ZIP:** 86001

**MAILING ADDRESS (If Different from Above):**

**EMPLOYER:** National Park Service **JOB TITLE:** Quantitative Ecologist

**BUS. PHONE:** 928-523-1942 **CELL:** 928-310-6495 **E-MAIL** jm38@nau.edu

**PLEASE INDICATE PREFERRED TELEPHONE:** **HOME** **WORK** X **CELL**

**BACKGROUND INFORMATION: Please explain how your community activities and other relevant experience/ interests are applicable to this board or commission.**

I have served on the City of Flagstaff Bicycle Advisory Committee since 2007.
My education and job experience is with science, in particular geology (Bachelors and Master of Science), botany (PhD studying regional ponderosa response to climate over the last 5,000 years), water (10 years working part time for the U.S. Geological Survey Water Resources Division) and most recently the statistical analysis of ecosystems for the National Park Service. All of these have given me a strong appreciation for western landscapes, the importance of water resources, and the ability of ecosystems and populations to function within limits.

**Why do you want to serve on the board or commission you listed? (Attach additional page if needed.)**

There are many positive things that this city already has accomplished and is capable of accomplishing to better the quality of life for those who live here and visit here. Many of these have come about through cooperation between interested citizens and city staffers and officials, and I would like to be a part of that process. I believe we can make great improvements as a team, and I think the city's sustainability and water commissions offer the best opportunities within the city to plan for the future.

I understand that any information provided above is a public record and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

**Applicant Signature**

**The City of Flagstaff is an Equal Opportunity/Affirmative Action Employer.**

*IMPORTANT NOTICE: The City Council may consider appointments to boards and commissions in executive sessions which are closed to the public, and then make the appointments in a public meeting. You have the right, however, to have your application considered in a public meeting by providing a written request to the City Clerk.*

# CITY OF FLAGSTAFF
## APPLICATION TO SERVE ON A BOARD/COMMISSION

**RETURN TO: CITY CLERK'S OFFICE, 211 WEST ASPEN AVENUE, FLAGSTAFF, AZ 86001**

**PLEASE NOTE THAT THIS INFORMATION IS A PUBLIC RECORD.**
APPLICATIONS WILL BE KEPT ON FILE FOR ONE YEAR!

**DATE:** 04/06/13

**BOARD/COMMISSION YOU WISH TO SERVE ON:** Sustainability and/or Open Space

**IF APPLICABLE, TYPE OF SEAT FOR WHICH YOU ARE QUALIFIED:** Open/at large, Nat. Science

**YOUR NAME:** Jamie Samana **HOME PHONE:** 928-266-0579

**HOME ADDRESS:** 4610 Lake Mary Rd. **ZIP:** 86001

**MAILING ADDRESS (If Different from Above):**

**EMPLOYER:** Northern Arizona University, Touch the Southwest Tours **JOB TITLE:** NAU - Geography Instructor

**BUS. PHONE:** 928-523-5853 **CELL:** 928-864-7606 **E-MAIL** jamieinjoy@gmail.com

**PLEASE INDICATE PREFERRED TELEPHONE:** X **HOME** **WORK** **CELL**

**BACKGROUND INFORMATION: Please explain how your community activities and other relevant experience/ interests are applicable to this board or commission.**

I have been actively involved in my local community for over 25 years. With a Master's degree in geography/land use I worked as a city planner and then as a consultant for 12 years (1982-1993 in Prescott). For the next 20 years, I taught college geography at Yavapai College (including land use, cultural, lab science, environmental courses), while serving in many local organizations. From 2008-2010, I lived in Oregon and California, teaching geography, travelling and also serving on a planning and zoning commission. I returned to Arizona in late 2010 to teach, guide tours, get married and live in Flagstaff - a place I've always loved, and where I hope to contribute my time, energy and passion.

**Why do you want to serve on the board or commission you listed? (Attach additional page if needed.)**

I believe that the way to maintain a beautiful, viable and vibrant community is to become involved in a meaningful way. My experience in designing open space/regional plans, public lands acquisition, authoring environmental plans and impact reports, as well as working with governments at all levels, have given me a unique set of experience and education that can make a meaningful contribution. A more flexible professional schedule now allows me to serve on a commission and commit myself to it. As an educator, active environmentalist, tour guide, and lover of Flagstaff, I hope to be part of a working commission and make a difference. My outer life reflects my inner values and principles - being an authentic and active steward of the environment (physically and culturally) and community are integral to who I am. Thank you!

I understand that any information provided above is a public record and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

Jamie Samana

**Applicant Signature**

**The City of Flagstaff is an Equal Opportunity/Affirmative Action Employer.**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Saltzburg, Deputy City Clerk |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration of Appointments:** Open Space Commission.

**RECOMMENDED ACTION:**

Make one Real Estate appointment to a term expiring April 2016.
Make one Natural and Cultural Science appointment to a term expiring April 2015.
Make one At-Large appointment to a term expiring April 2016.

**Policy Decision or Reason for Action:**

By making the above appointments, the Open Space Commission will be at full membership.

There is one application on file for the Real Estate appointment:
Bryan Burton (current commissioner)

There are three applications on file for the Natural and Cultural Science appointment:
Bruce Fox (current commissioner)
Christopher Ives (new applicant)
Jamie Samana (new applicant)

All of the applicants are eligible for the At-Large appointment.

**Financial Impact:**

These are voluntary positions and there is no budgetary impact to the City of Flagstaff.

**Connection to Council Goal:**

Effective governance.

**Has There Been Previous Council Decision on This:**

None.

**Options and Alternatives:**

1) Appoint one Real Estate Commissioner, one Natural and Cultural Science Commissioner, and one At-Large Commissioner: By appointing members at this time, the commission will be better able to meet and provide recommendations to the City Council.

2) Table the action to allow for further discussion or expand the list of candidates.

**Background/History:**

The Open Spaces Commission consists of nine voting members including seven Council-appointed members and one representative each from the Planning & Zoning Commission and Parks & Recreation Commission. One position represents the real estate industry, four positions represent cultural and natural sciences, and two positions are at-large seats. There is currently one real estate seat, one natural and cultural sciences, and one at-large seat available.

The Commission serves as an advisory body on the acquisition, management, use, restoration, enhancement, protection, and conservation of open space land.

**Key Considerations:**

It is important to fill the vacancies so as to allow the Commission to continue meeting on a regular basis.

**Expanded Financial Considerations:**

None.

**Community Benefits and Considerations:**

The City's boards, commissions, and committees were created to foster public participation and input and to encourage Flagstaff citizens to take an active role in city government.

**Community Involvement:**

INFORM: The vacancies are posted on the City's website and individual recruitment and mention of the openings by Board members and City staff has occurred, informing others of these vacancies through word of mouth.

**Expanded Options and Alternatives:**

**COUNCIL INTERVIEW TEAM:** Councilmember Brewster and Councilmember Barotz.

---

**Attachments:** Open Space Roster
Open Space Authority
Open Space Applicant Roster
Open Space Applications

# City of Flagstaff, AZ

## OPEN SPACES COMMISSION MEMBERS

| NAME | APPOINTED | TERM EXPIRES | TRAINING COMPLETED |
|---|---|---|---|
| **Burton, Bryan** | **12/18/2012** | **04/13** | **No** |
| REAL ESTATE MEMBER<br>Realtor/United Country Northern Arizona Realty<br>686 W. Old Territory Trail<br>Flagstaff, AZ 86001<br>Cell Phone: 928-556-0556<br>Term: (1st 12/12-04/13) | | | |
| **Eberly, Carrie** | **06/07/2011** | **04/14** | **02/16/2012** |
| AT LARGE<br>Program Manager/Diablo Trust<br>1715 N.Beaver<br>Flagstaff, AZ 86001<br>Home Phone: 208-691-8043<br>Term: (1st 6/11-4/14) | | | |
| **Fall, John** | | **Indefinite** | **10/20/2011** |
| PARKS & REC REPRESENTATIVE<br>Retired<br>2301 W. Constitution Blvd.<br>Flagstaff, AZ 86001 | | | |
| **Fox, Bruce E.** | **06/01/2010** | **04/13** | **02/16/2012** |
| AT-LARGE<br>Professor/Northern Arizona University<br>2180 E. Skyline Dr.<br>Flagstaff, AZ 86004<br>Work Phone: 523-6636<br>Term: (1st 6/10-4/13) | | | |

| | | | |
|---|---|---|---|
| **Gist, Jessica**<br>NATURAL & CULTURAL SCIENCES<br>Habitat/Research Technician/Arizona Game & Fish Department<br>25 E. Ridgecrest Dr.<br>Flagstaff, AZ 86001<br>Cell Phone: 831-521-7916<br>Term: (1st 6/11-4/14) | **06/07/2011** | **04/14** | **02/16/2012** |
| **Hirst, Stephen**<br>NATURAL & CULTURAL SCIENCES<br>Retired<br>1035 East Apple Way<br>Flagstaff, AZ 86001<br>Cell Phone: 380-3273<br>Term: (1st 12/08-4/09; 2nd 4/09-4/12; 3rd 4/12-4/15) | **06/05/2010** | **04/15** | **03/18/2010** |
| **Miller, Richard**<br>NATURAL & CULTURAL SCIENCES<br>Retired<br>1200 W. Shullenbarger Dr.<br>Flagstaff, AZ 86001<br>Home Phone: 928-853-6120<br>Term: (1st 6/12 - 4/15) | **06/05/2012** | **04/15** | **03/12/2013** |
| **Moore, Paul**<br>PLANNING AND ZONING REPRESENTATIVE<br>Owner/Paul Wm. Moore, Architect<br>1665 No. Turquoise Dr.<br>Flagstaff, AZ 86001<br>Home Phone: 773-1624 | | **Indefinite** | **08/24/2008** |
| **Z-VACANT,**<br>NATURAL & CULTURAL SCIENCES | | **04/15** | **No** |

**Staff Representative: McKenzie Jones**

**As Of: April 09, 2013**

# CHAPTER 2-20
# OPEN SPACES COMMISSION

SECTIONS:


2-20-001-0001 COMMISSION ESTABLISHED; ORGANIZATION:
2-20-001-0002 TERMS OF OFFICE:
2-20-001-0003 DUTIES:
2-20-001-0004 OPEN SPACES LONG RANGE MANAGEMENT PLAN COMPONENTS:
2-20-001-0005 MEETINGS; ATTENDANCE:


## SECTION 2-20-001-0001 CREATION OF COMMISSION:

There is hereby created an advisory body to be called the "Open Spaces Commission" ("Commission") consisting of the following nine regular members all of whom shall be appointed by the City Council, except for designees from the Planning and Zoning Commission and the Parks and Recreation Commission: four members from the natural and cultural sciences; one member from the Planning and Zoning Commission; one member from the Parks and Recreation Commission; one member who markets real estate or is a representative from real estate development; and two public at-large members. All Commission members shall be voting members. In addition, the City Council may designate a Councilmember representative as a non-voting, ex-officio member of the Commission. A chairperson shall be selected by a majority vote of those members at a meeting called for that purpose.

(Ord. No. 2007-08, Amended 02/06/2007)

## SECTION 2-20-001-0002 TERMS OF OFFICE:

Appointments from the Planning and Zoning Commission and the Parks and Recreation Commission to the Open Spaces Commission shall be for no longer than the remaining term of the appointing Commission's designee. Terms of all other appointees shall be for three years except for the first appointments creating staggered terms as follows: The City Council shall appoint two members for three year (3) terms, two members for two (2) year terms, and two members for one (1) year terms. After the initial appointment all terms thereafter will be three (3) year terms.

## SECTION 2-20-001-0003 DUTIES:

A. It shall be the Commission's duty to advise the City Council on acquisition, preservation, and alternatives for open space land management.

B. The duties of the Commission shall also include, but not be limited to: Reviewing and advising the City Council on the development of an Open Spaces Long Range Management Plan and policies to provide broad,

long-term direction for planning and decision making for the lands designated as Urban Open Space Management Area in the Urban Open Spaces Plan of the Flagstaff Area Regional Land Use and Transportation Plan.

C. Advising and assisting the Mayor and City Council on ways to educate and involve the community on the value, protection, and stewardship of open space lands.

D. Advising and assisting the Mayor and City Council on ways to work collaboratively with other governmental entities, organizations, and departments to advance and ensure the implementation of the Open Spaces Long Range Management Plan and the Flagstaff Area Regional Land Use and Transportation Plan.

E. Advising and assisting the Mayor and City Council regarding regional open space issues as well as to any regional open spaces coalition that may be formed in the future relative to lands designated as open space in the Greater Flagstaff Area Open Spaces and Greenways Plan.

F. Obtaining public input and participation in various programs such as environmental education and interpretation on the use, operation, and management of open space and providing information concerning the goals, projects, and operations of the open space program.

SECTION 2-20-001-0004 OPEN SPACES LONG RANGE MANAGEMENT PLAN COMPONENTS:

A. The components of the Open Spaces Long Range Management Plan shall include, but not be limited to:

1. Program goals, management decision-making processes, and implementation techniques for resource preservation.

2. Policies to provide the framework for more issue- or site-specific planning and implementation.

3. Criteria for the acquisition of lands that are consistent with open space goals and policies set forth in the Open Spaces Long Range Management Plan.

4. Plans for the management of the open spaces to achieve the goals of the Open Spaces Long Range Management Plan using such studies and data as property inventories, the nature and significance of the natural and cultural resources, plant and animal species ecosystems, existing uses and conditions, and interactions and connections between natural areas and between developed and undeveloped areas.

5. Developing, identifying, and recommending the use of various methods, such as intergovernmental agreements, rights-of-way for access, and grants, to assure protection of critical open space lands.

6. Policies to monitor, maintain, enhance, and restore, where necessary, natural and cultural resources, uses, accesses, trails, and facilities.

7. Public participation, education, and interpretive programs.

SECTION 2-20-001-0005 MEETINGS; ATTENDANCE:

The Commission shall meet on a quarterly basis, at a minimum, at such times, dates and locations as determined by the members, except that the chairperson may call a special meeting with not less than 24 hours notice. All other rules or procedures shall be established by the members so long as the rules are consistent with state law, including the Open Meetings Law, the City charter and this ordinance.

A quorum shall be one more than half of the voting membership of the Commission.

A regular Commission member who is absent for three consecutive regular meetings may be removed from the Commission by a vote of the City Council.

(Ord. 2003-03, Enacted, 02/04/03; Ord. No. 2007-08, Amended 02/06/2007)

# City of Flagstaff, AZ

## OPEN SPACES COMMISSION APPLICANTS

| NAME | APPOINTED | TERM EXPIRES | TRAINING COMPLETED |
|---|---|---|---|
| **Burton, Bryan** | 12/18/2012 | 04/13 | No |
| REAL ESTATE MEMBER<br>Realtor/United Country Northern Arizona Realty<br>686 W. Old Territory Trail<br>Flagstaff, AZ 86001<br>Cell Phone: 928-556-0556<br>Term: (1st 12/12-04/13) | | | |
| **Fox, Bruce** | | | No |
| NATURAL & CULTURAL SCIENCES<br>Professor of Forest Management/Northern Arizona University<br>2180 E. Skyline Dr.<br>Flagstaff, AZ 86001<br>Work Phone: 928-523-6636<br>Term: (1st 6/10-4/13) | | | |
| **Ives, Christopher** | | | No |
| NATURAL & CULTURAL SCIENCES<br>Forestry Technician/US Forest Service, Coconino National Forest<br>581 E. Cherry Ave<br>Flagstaff, AZ 86001<br>Cell Phone: 908-334-0415 | | | |
| **Samana, Jamie** | | | No |
| NATURAL & CULTURAL SCIENCES<br>NAU - Geography Instructor/Northern Arizona University/Touch the SW Tours<br>4610 Lake Mary Rd.<br>Flagstaff, AZ 86001<br>Home Phone: 928-266-0579 | | | |

**Staff Representative:** **McKenzie Jones**

**As Of:** **April 09, 2013**

*IMPORTANT NOTICE: The City Council may consider appointments to boards and commissions in executive sessions which are closed to the public, and then make the appointments in a public meeting. You have the right, however, to have your application considered in a public meeting by providing a written request to the City Clerk.*

# CITY OF FLAGSTAFF
## APPLICATION TO SERVE ON A BOARD/COMMISSION

RETURN TO: CITY CLERK'S OFFICE, 211 WEST ASPEN AVENUE, FLAGSTAFF, AZ 86001

**PLEASE NOTE THAT THIS INFORMATION IS A PUBLIC RECORD.**
APPLICATIONS WILL BE KEPT ON FILE FOR ONE YEAR!

DATE: ~~May 23, 2012~~ 3/28/2013

BOARD/COMMISSION YOU WISH TO SERVE ON: Open Spaces Commission

IF APPLICABLE, TYPE OF SEAT FOR WHICH YOU ARE QUALIFIED: Real Estate

YOUR NAME: Bryan Burton HOME PHONE: 928-556-0556

HOME ADDRESS: 686 W. Old Territory Trail ZIP: 86001

MAILING ADDRESS (If Different from Above):

EMPLOYER: United Country Northern Arizona Realty JOB TITLE: Realtor

BUS. PHONE: 928+225-2289 CELL: 928-556-0556 E-MAIL bryanb@flagstaffaz-realestate.com

PLEASE INDICATE PREFERRED TELEPHONE: HOME WORK X CELL

**BACKGROUND INFORMATION: Please explain how your community activities and other relevant experience/ interests are applicable to this board or commission.**

As a realtor keeping Flagstaff an area where our residents want to live and work is a priority. Common open area for the residents of Flagstaff is very important and large part of what makes this city. As a Community Association Manager I see the advantage and the cost for maintenance of these areas which has to be in balance with their benefits and city budgets. The city needs to attract business and they look for what attracts their employees, as a commission for the open space I believe we have an obligation to balance nature with people and business.

**Why do you want to serve on the board or commission you listed? (Attach additional page if needed.)**

I've lived here from 2003 without giving back to the city until now in this form. My work and elderly family members kept me occupied but now I'm working as a realtor and community association manager and have the time and desire to help. Many of my clients and friends work with the different agencies here now it is my time. I think this will be a good place to put my background to work for Flagstaff.

I understand that any information provided above is a public record and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

Bryan Burton

**Applicant Signature**

**The City of Flagstaff is an Equal Opportunity/Affirmative Action Employer.**

**Stacy Saltzburg**

**From:** noreply@civicplus.com
**Sent:** Friday, March 29, 2013 4:29 PM
**To:** Elizabeth Burke; Stacy Saltzburg
**Subject:** Online Form Submittal: Board/Commission Application

If you are having problems viewing this HTML email, click to view a Text version.

## Board/Commission Application

Important Notice:
The City Council may consider appointments to boards and commissions in executive sessions which are closed to the public, and then make the appointments in a public meeting. You have the right, however, to have your application considered in a public meeting by providing a written request to the City Clerk.

**Application to Serve on a Board/Commission**

**Please note that this information is a public record.**

| | |
|---|---|
| Date:* | 03/29/2013 |
| Board/Commission you wish to serve on:* | Open Spaces |
| If applicable, type of seat for which you are qualified: | Natural and Cultural Sciences |

**Your Information**

| | | | |
|---|---|---|---|
| Name:* | Bruce Fox | Home Phone:* | 928.526.0148 |
| Home Address:* | 2180 E. Skyline Drive | Zip:* | 86004-6822 |
| Mailing Address (If different from above): | | | |
| Employer:* | Northern Arizona University | Job Title:* | Professor of Forest Management |
| Business Phone: | 928.523.6636 | Cell: | 928.814.5946 |
| E-mail:* | Bruce.Fox@nau.edu | | |
| Indicate preferred telephone:* | ( ) Home<br>(X) Work | ( ) Cell | |

**Background Information**

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.
My most applicable experience for serving on the commission is that I have spent the past three years on the commission--and enjoyed it thoroughly. In addition to serving on this commission, I was a two-term member of the Board of Directors for the Flagstaff Leadership Program, was the Northern Arizona University representative to the 2001/2002 regional plan Steering Committee, and am a long term resident of Flagstaff (over 25 years). Also, my education and experience as a forester provides me with a sound scientific background to help me effectively serve on this commission.
Why do you want to serve on the board or commission you listed?
I would like to continue my membership on this commission for three reasons: 1. Open space is a very important part of the culturee and value of Flagstaff, and I want to have some part in helping to preseve and protect open spaces; 2. My overall education and experience allows me to positively contribute to the functioning of the Commission as it caries out its chage; and 3. Quite selfishly, it is a fun and rewarding experience that helps me learn more about the city in which I live.

By submitting this electronic form, I acknowledge that any information provided above is a public record, and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

* indicates required fields.

The following form was submitted via your website: Board/Commission Application

Date:: 03/29/2013

Board/Commission you wish to serve on:: Open Spaces

If applicable, type of seat for which you are qualified:: Natural and Cultural Sciences

Name:: Bruce Fox

Home Phone:: 928.526.0148

Home Address:: 2180 E. Skyline Drive

Zip:: 86004-6822

Mailing Address (If different from above)::

Employer:: Northern Arizona University

Job Title:: Professor of Forest Management

Business Phone:: 928.523.6636

Cell:: 928.814.5946

E-mail:: Bruce.Fox@nau.edu

Indicate preferred telephone:: Work

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: My most applicable experience for serving on the commission is that I have spent the past three years on the commission--and enjoyed it thoroughly.

In addition to serving on this commission, I was a two-term member of the Board of Directors for the Flagstaff Leadership Program, was the Northern Arizona University representative to the 2001/2002 regional plan Steering Committee, and am a long term resident of Flagstaff (over 25 years).

Also, my education and experience as a forester provides me with a sound scientific background to help me effectively serve on this commission.

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1. Open space is a very important part of the culturee and value of Flagstaff, and I want to have some part in helping to preseve and protect open spaces;
2. My overall education and experience allows me to positively contribute to the functioning of the Commission as it caries out its chage; and
3. Quite selfishly, it is a fun and rewarding experience that helps me learn more about the city in which I live.

Additional Information:
Form submitted on: 3/29/2013 4:29:23 PM
Submitted from IP Address: 134.114.212.115
Referrer Page: No Referrer - Direct Link
Form Address: http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166

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RECEIVED
DEC 31 2012
BY:

# CITY OF FLAGSTAFF
## APPLICATION TO SERVE ON A BOARD/COMMISSION

**RETURN TO: CITY CLERK'S OFFICE, 211 WEST ASPEN AVENUE, FLAGSTAFF, AZ 86001**

**PLEASE NOTE THAT THIS INFORMATION IS A PUBLIC RECORD.**
**APPLICATIONS WILL BE KEPT ON FILE FOR ONE YEAR!**

**DATE:** 12/30/12

**BOARD/COMMISSION YOU WISH TO SERVE ON:** Open Spaces Commission

**IF APPLICABLE, TYPE OF SEAT FOR WHICH YOU ARE QUALIFIED:** Natural Sciences

**YOUR NAME:** Christopher M. Ives **HOME PHONE:** (908) 334-0415

**HOME ADDRESS:** 581 E Cherry Ave., Flagstaff, AZ **ZIP:** 86001

**MAILING ADDRESS (If Different from Above):**

**EMPLOYER:** US Forest Service, Coconino National Forest **JOB TITLE:** Forestry Technician

**BUS. PHONE:** **CELL:** (908)334-0415 **E-MAIL** cives@kings.edu

**PLEASE INDICATE PREFERRED TELEPHONE:** **HOME** **WORK** ✓ **CELL**

**BACKGROUND INFORMATION: Please explain how your community activities and other relevant experience/ interests are applicable to this board or commission.**

See Attached

**Why do you want to serve on the board or commission you listed? (Attach additional page if needed.)**

See Attached

I understand that any information provided above is a public record and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

**Applicant Signature**

**The City of Flagstaff is an Equal Opportunity/Affirmative Action Employer.**

## BACKGROUND INFORMATION

*Please explain how your community activities and other experience/interests are applicable to this board or commission?*

Since receiving my undergraduate degree in 2005 I have spent the last eight summers living and working in the ecosystems of the southwest. As a Program Coordinator with the Coconino Rural Environment Corps and a Wildland Firefighter on the Coconino National Forest I have a strong understanding of the unique land use challenges we face living in Northern Arizona. My experience also extends to working with small-scale forestry companies, private landowners, and non-profits in diverse communities throughout the country. As a result of this experience, I have been exposed to a wide variety of approaches to land management. I understand the necessity of taking into account the recreational, economic, and ecological needs of the specific community you are working with.

During my time as a conservation practitioner, I have also experienced frustrations as a result of the disconnect that exists between government, scientific researchers, and on the ground implementation of management techniques. This experience has served as a catalyst for me to become involved with research and policy. This spring I will begin classes at the Northern Arizona University School of Forestry with the intent of earning a Master of Science degree in Forestry. I would like my focus to be Fire Ecology and the effectiveness of management techniques in southwestern forest ecosystems. I have also applied for a research and writing internship with the Regional Land Use Action Team, which is part of the organization: Friends of Flagstaff's Future. Working with Friends of Flagstaff's Future will allow me to further develop my understanding of local land management issues and the public process associated with it.

In addition to my knowledge of local ecosystem management, I also have spent a large portion of my life working in team environments with diverse personalities who often hold very different viewpoints than I. Working constructively and maintaining compassion towards others in these situations are a set of skills that I have worked hard to develop. I feel my ability to function effectively in this type of environment is valuable in making a positive contribution to the commission.

*Why do you want to serve on the board or commission you listed?*

My motivations for serving on the Open Spaces Commission are a result of my investment in this community. Through my work I have developed a great love and high level of respect for Flagstaff and its surrounding environment. I feel that I could offer a unique and valuable perspective as a result of my experiences. I could think of no greater way to give back to this community than to play an active part in securing its future. Having spent the early years of my life in the suburban neighborhoods of New Jersey, I understand all too well how a lack of urban planning and preservation of open spaces can affect all aspects of community sustainability. Developing a stronger local forest economy, maintaining ecosystem function, and maximizing opportunities for recreational enjoyment are all very real goals for Flagstaff's future. These are opportunities that the town I grew up in does not have. As a result, I do not take this opportunity for granted.

In addition to my dedication to Flagstaff's natural environment, I also feel deeply connected to the people that are apart of making our city what it is. Through my past leadership experiences, I understand how important it is to be aware of the needs and characteristics of the people you serve. As a member of the Open Spaces Commission, I believe it will be important to make decisions based on feedback from community members and the value they see in different management options. Additionally, I have a lot to learn from other members of the committee and our local government. I am constantly reevaluating my beliefs and striving to remain open to new ideas and ways of looking at things.

781 E Cherry Ave.
Flagstaff, AZ 86001

# Christopher Ives

(908) 334-0415
cives@kings.edu

## EDUCATION

**Bachelor of Arts Degree: History with Secondary Education Certification**
King's College, Wilkes-Barre, PA — Webster University, Vienna, Austria
Graduation Date: May 2005 — Study abroad program, May- August 2004

## EXPERIENCE

May-Oct. 2012 — **Saw Boss** Crew 4 Fuels, Coconino NF, Flagstaff RD, Flagstaff, AZ
Supervised a ten person wildland fire crew while on fuels reduction and restoration projects in the vicinity of Flagstaff, AZ. Additional responsibilities included the design and implementation of a chainsaw training curriculum, fire effects monitoring, prescribed fire prep/implementation, and acting as primary sawyer while on fire suppression assignments.

Feb.-April 2012 — **Crew Leader** Dolores River Restoration Crew, Southwest Conservation Corps, Durango, CO
Supervised a residential crew of six 21-25 year old corpsmembers in Tamarisk removal from the Dolores River watershed. Position responsibilities also included chainsaw training, herbicide application, and a the implementation of a natural resource centered educational curriculum

Apr.-Oct. 2011 — **Crew First Responder** Black Mesa Hotshots, Apache Sitgreaves NF, Black Mesa RD, Overgaard, AZ
Participated in all aspects of fire suppression, including hand line construction, ignitions, and pump/hose operation. Also managed emergency medical support for the crew. Experienced an 1140 overtime hour season, operated in all southwestern fuel types, and was given out of region assignments to Montana and Minnesota

May 2009-Apr. 2011 — **Program Coordinator/ Woodsboss** Coconino Rural Environment Corps, Flagstaff, AZ
Coordinated the operations of five youth or adult crews at a time in the completion of trail, hazard fuels reducation, and other conservation related projects. Position also required the planning/implementation of staff and skills trainings, interviewing and selecting crew supervisors, project planning, and agency partnership relations

Feb.-April 2009 — **Crew Leader** Crew Leader Development Crew, Southwest Conservation Corps, Durango, CO
Supervised a residential crew of six 21-25 year olds in the completion of trail and chainsaw projects in addition to the implementation of a leadership development curriculum with the goal of preparing these corpsmembers for service as crew leaders

Jan-Feb. 2009 — **Apprentice** Windhorse Farm, New Germany, NS, Canada
Participated in ecologically based thinning work in Acadia forest type. Learned small-scale forest planning and lumber production practices for use in flooring, music wood, and specialty furniture

Mar.-May, Sept.-Oct. 2008 — **Crew Leader** Northwest Youth Corps, Eugene, OR
Supervised a residential crew of eleven young adults ages 16-20 in the completion of diverse conservation related projects throughout Oregon and Washington. Projects were often in remote areas and required coordination with agency contacts

May-Aug.2005-08 — **Environmental Educator Coordinator**- Philmont Conservation Department, Cimarron, NM
Trained and supervised the operations of an eleven person staff and several field crews in the delivering of a conservation and environmental education program to youth. Program elements included exposure to local land management issues, hand on restoration projects, and interface with local natural resource professionals

Jan-Mar. 2008 — **Apprentice** Farmer Brown's Logging with Horses, Hunt, NY
Learned use of Belgian draft horses, chainsaw, and other logging tools for low impact forest thinning in eastern hardwood forests. Learned basic Game of Logging cutting methods

Sept.-Oct. 2007 — **Apprentice** Cedar Grove Farm, Port Orford, OR
Learned small-scale organic farming and homesteading skills as well as the operation of a chainsaw, log arch, hand tools, and come along for use in low impact forest management. Also assisted with Port Orford Cedar regeneration project

## ACHIEVEMENTS/ACTIVITIES

*Phi Alpha Theta, History Honor Society- President
*King's College Men's Lacrosse- Team Captain
*Middle Atlantic Conference All Academic Team
*Eagle Scout/ Venturing Silver Award/ Vigil Honor
*Volunteer- Washington Department of Natural Resources
*Volunteer- Mountain Bounty Farm, Nevada City, CA
*Student Athletic Leadership Committee
*Dean's List, King's College
*King's College Environmental Club- Vice President
*Monarch Ambassador (College Tour Guide)
*Volunteer- Elk River Land Trust
*Volunteer- Northern Arizona University, School of Forestry

**REFERENCES**

Tom Helmer
Program Director
Northwest Youth Corps
(541) 349-5055 Tomh@nwyouthcorps.org
2621 Augusta Street
Eugene, OR 97403

Mike Sudmeier
(Former Associate Director of Conservation
Philmont Conservation Department)
(563) 581-1238 Michael.sudmeier@gmail.com
PO Box 2523
Jackson, WY 83001

Aaron Graeser
Crew Captain
Crew 4 Fuels, United States Forest Service
(928) 527-8221 agraeser@fs.fed.us
5075 N. Highway 89
Flagstaff, AZ 86004
(928) 527-8221

Allison Laramee
Senior Field Operations Coordinator
Coconino Rural Environment Corps
(928)679-8163 Alaramee@coconino.az.gov
5410 E. Commerce Ave.
Flagstaff, AZ 86004

Kevin Heiner
Program Director
Southwest Conservation Corps (Four Corners)
(970) 259-8607 kevin@sccorps.org
701 Camino del Rio Suite 101
Durango, CO 81301

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# CITY OF FLAGSTAFF
## APPLICATION TO SERVE ON A BOARD/COMMISSION

**RETURN TO: CITY CLERK'S OFFICE, 211 WEST ASPEN AVENUE, FLAGSTAFF, AZ 86001**

**PLEASE NOTE THAT THIS INFORMATION IS A PUBLIC RECORD.**
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**DATE:** 04/06/13

**BOARD/COMMISSION YOU WISH TO SERVE ON:** Sustainability and/or Open Space

**IF APPLICABLE, TYPE OF SEAT FOR WHICH YOU ARE QUALIFIED:** Open/at large, Nat. Science

**YOUR NAME:** Jamie Samana **HOME PHONE:** 928-266-0579

**HOME ADDRESS:** 4610 Lake Mary Rd. **ZIP:** 86001

**MAILING ADDRESS (If Different from Above):**

**EMPLOYER:** Northern Arizona University, Touch the Southwest Tours **JOB TITLE:** NAU - Geography Instructor

**BUS. PHONE:** 928-523-5853 **CELL:** 928-864-7606 **E-MAIL** jamieinjoy@gmail.com

**PLEASE INDICATE PREFERRED TELEPHONE:** X **HOME** **WORK** **CELL**

**BACKGROUND INFORMATION: Please explain how your community activities and other relevant experience/ interests are applicable to this board or commission.**

I have been actively involved in my local community for over 25 years. With a Master's degree in geography/land use I worked as a city planner and then as a consultant for 12 years (1982-1993 in Prescott). For the next 20 years, I taught college geography at Yavapai College (including land use, cultural, lab science, environmental courses), while serving in many local organizations. From 2008-2010, I lived in Oregon and California, teaching geography, travelling and also serving on a planning and zoning commission. I returned to Arizona in late 2010 to teach, guide tours, get married and live in Flagstaff - a place I've always loved, and where I hope to contribute my time, energy and passion.

**Why do you want to serve on the board or commission you listed? (Attach additional page if needed.)**

I believe that the way to maintain a beautiful, viable and vibrant community is to become involved in a meaningful way. My experience in designing open space/regional plans, public lands acquisition, authoring environmental plans and impact reports, as well as working with governments at all levels, have given me a unique set of experience and education that can make a meaningful contribution. A more flexible professional schedule now allows me to serve on a commission and commit myself to it. As an educator, active environmentalist, tour guide, and lover of Flagstaff, I hope to be part of a working commission and make a difference. My outer life reflects my inner values and principles - being an authentic and active steward of the environment (physically and culturally) and community are integral to who I am. Thank you!

I understand that any information provided above is a public record and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

Jamie Samana

**Applicant Signature**

**The City of Flagstaff is an Equal Opportunity/Affirmative Action Employer.**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Saltzburg, Deputy City Clerk |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Action on Liquor License Application:** John Kennelly, Historic Brewing Company, 4366 E. Huntington Dr., Suite A, Series 03, New License.

**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:**

John Kennelly is opening Historic Brewing Company which requires a new Series 03 (microbrewery) license.

**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 new Series 03 liquor license was received from John Kennelly on behalf of Historic Brewing Company, 4366 E. Huntington Dr., Suite A.

A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.

A background investigation performed by Gregory Brooks, Code Compliance Officer II, 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:**

Because the application is for a new license, consideration may be given to both the location and the applicant's personal qualifications.

A Series 03 is a non-transferable liquor license which allow for on- and off-sale retail privilege for a licensed microbrewery which manufactures or produces at least 5,000 gallons, but less than 310,000 gallons of beer annually.

The deadline for issuing a recommendation on this application is May 24, 2013.

For a Series 03 (microbrewery) license, the applicant is required to provide the distance between the applicant’s business and the nearest church or school; the State no longer requires a geological map or list of licenses in the vicinity for any license series.

**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 was properly posted on April 15, 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:**

Historic - Letter to Applicant
Hearing Procedures
Series 03 Description
Historic - Section 13
Historic - PD Memo
Historic - Code Memo
Historic - Tax Memo

**OFFICE OF THE CITY CLERK**

April 23, 2013

Historic Brewing Company
Attn: John Kennelly
4366 E. Huntington Dr., Ste. A
Flagstaff, AZ 86046

Dear Mr. Kennelly:

Your application for a new Series 03 liquor license for Historic Brewing Co. at 4366 E. Huntington Dr., Suite A was posted on April 15, 2013. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, May 7, 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 May 6, 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.

Department of Liquor Licenses and Control

# Domestic Microbrewery Application Kit (Series 03)

Application

Application Requirements

Questionnaire

Alien Status Form

Each application for a new liquor license includes The Arizona Statement of Citizenship and Alien Status For State Public Benefits Form (AKA Aliens Status Form). Beginning April 1, 2009, this Federal- and State-required form must be completed by;

1. statutory agents;
2. individual owners including Joint Tenants With Right of Survivorship (JTWROS); and
3. each partner (who is a person) in a partnership including general and limited partners. This does not include corporations which are partners.

To help you complete the form are Attachments A & B and frequently asked questions (Alien Status Form FAQs) below.

Alien Status Form Attachments A & B

Alien Status Form FAQ

Fingerprint Card

This non-transferable liquor license allows for on & off-sale retail privileges for a licensed microbrewery which manufactures or produces at least five thousand (5,000) gallons, but less than three hundred ten thousand (310,000) gallons of beer annually. With this license, the Microbrewery may sell beer produced or manufactured on the premises for consumption on or off the premises, may make sales and deliveries of beer to persons licensed to sell beer, may serve beer produced or manufactured on the premises for the purpose of sampling.

ADDITIONAL RIGHTS AND RESPONSIBILITIES: Must report annually at the end of each fiscal year the amount of beer manufactured. If the total amount of beer manufactured exceeds the amount permitted by a Series 03 license, the licensee shall apply for and receive a Series 01 license (In-state Producer). A microbrewery may sell other spirituous liquors if the microbrewery is properly licensed to deal in such products. A person who holds a domestic microbrewery license that meets the requirements of this Section, and who is not otherwise engaged in the business of a distiller, vintner, brewer, rectifier, blender or other producer of spirituous, in any jurisdiction, may hold

6

other on-sale retail licenses. The purchase of spirituous liquor for sale at the other on-sale retail premises shall be from wholesalers who are licensed in this state. Applicants, licensees, and managers must take a Title 4 training course (liquor handling, laws and regulations) prior to approval. 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. An Employee Log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

ARIZONA STATUTES AND REGULATIONS: A.R.S. §4-119, 4-201, 4-202, 4-203, 4-205.04, 4-209 (B)(3), 4-209(D)(3), 4-243, 4-261;Rule R19-1-227; R19-1-235.

| **Application Fees:** | |
|---|---|
| Average Approval Time: | Sixty-five (65) to one-hundred five (105) days. |
| Period of Issuance: | One (1) year with option to renew. |
| Non-refundable application fee: | $100.00 |
| Fingerprint fee per card: | Finger Print Services |
| Interim Permit fee: | $100.00 |
| **Fees Due Upon Approval:** | |
| Final fees (full year): | $600.00 |
| Final fees (half year): | $450.00 |
| Annual renewal fee (includes surcharge): | $370.00 |

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## 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 _____ Address _____
2. New Business: (Physical Street Location) Name _____ Address _____
3. License Type: _____ License Number: _____
4. If more than one license to be transferred: License Type: _____ License Number: _____
5. What date do you plan to move? _____ What date do you plan to open? _____

## 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))

1. Distance to nearest school: 4752 ft. Name of school Pinecone Elementry
   Address 3700 N. Faming Dr, Flagstaff, AZ 86004 (City, State, Zip)
2. Distance to nearest church: 4752 ft. Name of church Hope Community Church
   Address 3700 N. Faming Dr., 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 Dick Henderson
   Address 4651 N. Inland Shores Dr., Flagstaff, AZ 86004 (City, State, Zip)

4a. Monthly rental/lease rate $ 2000.00 What is the remaining length of the lease 1 yrs. ____ mos.

4b. What is the penalty if the lease is not fulfilled? $ 500 if late or other _____ (give details - attach additional sheet if necessary)

5. What is the total **business** indebtedness for this license/location excluding the lease? $ Ø
   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)? Brewing and distribution of products

## 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 # 01033001 (exactly as it appears on license) Name ~~Mogollon Brewing Company~~ Dara Scott Kanzler

## 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 No Patio
   ☐ 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? July 1 / 2013
   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.

**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.**

JK
applicants initials

**MEMORANDUM**

**Memo #13-048-01**

**TO:** **Chief Kevin Treadway**

**FROM:** **Sgt. Matt Wright**

**DATE:** **April 19, 2013**

**RE:** **Liquor application for Historic Brewing Company –series 3 license micro brewery license-**

---

On April 19, 2013, I initiated an investigation into an application for a new license regarding a series 3 (domestic microbrewery license). The application filed by John Kennelly (controlling person/agent) and Sherrill Kennelly is also listed as a controlling person. John will be responsible for the day to day operations. The microbrewery is located at 4366 E. Huntington Suite A, on the East side of Flagstaff. The license number being applied for is 03033009.

I conducted a query through our local systems and public access on John and Sherrill Kennelly. No derogatory records were found on Sherrill. John was charged and plead guilty in 2004 for Selling Liquor to a Minor in the area of Sedona. John and Sherrill currently own and operate several other liquor licenses in Williams, Arizona. I could not locate any liquor law violations at any of these businesses. I spoke with Sherrill who stated they plan to operate the micro brewery in order to sell their beer from the can and kegs to local businesses. Sherrill said they currently do not have any plans to operate a tap room. Sherrill said all of their licenses are in good standing with AZDLLC.

Both Sherrill and John have stated they have completed the Arizona Department of Liquor Law Training course as required.

Based on this investigation I can find no reason to oppose this application.

# Planning and Development Services Memorandum

**April 18, 2013**

**TO:** Susan Alden, City Records Technician

**THROUGH:** Roger Eastman, AICP, Zoning Code Administrator

**FROM:** Gregory Brooks, Code Compliance Officer II

**RE:** Application for Liquor License #03033009
4366 E. Huntington Dr., Flagstaff, Arizona 86004
Assessor's Parcel Number 113-26003W
John Kennelly on behalf of Historic Brewing Company

---

This application is a request for a Series 03 (Domestic Microbrewery) new liquor license from John Kennelly on behalf of Historic Brewing Company, located in the Light Industrial (LI) Zone. This district allows for domestic microbreweries.

There are no active zoning code violations associated with John Kennelly or Historic Brewing Company 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: April 23, 2013

Re: Series 3 Liquor License – New License – Historic Brewing Co

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Historic Brewing Company LLC with John F Kennelly as its Managing Member is licensed with the City of Flagstaff for the Sales Tax purposes and has not been in business long enough to file their first tax return. I anticipate their full compliance in filing tax returns when they become due. They are currently in good standing with the Sales Tax Section.

/liquor licenses/Historic Brewing.doc

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Saltzburg, Deputy City Clerk |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Action on Liquor License Application:** Ray Morrissey, “Mr. Smokes", 2126 N. 4th St., Series 10 (beer and wine store), New License.

**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:**

Ray Morrissey with Mr. Smokes has submitted a liquor license application for an exisiting business that requires a Series 10 (beer and wine store) license.

**Financial Impact:**

There is no budgetary impact to the City of Flagstaff as this is a recommendation to the State.

**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 new Series 10 (beer and wine store) liquor license was received from Ray Morrissey for Mr. Smokes, 2126 N. 4th St. This is an existing business that wants to sell beer and wine.

A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.

A background investigation performed by Gregory Brooks, Code Compliance Officer II, 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 compliance with the tax and licensing requirements of the City.

**Key Considerations:**

Because the application is for a new license, consideration may be given to both the applicant's personal qualifications and the location.

A Series 10 (beer and wine store) license allows a retail store to sell beer and wine (no other 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 May 15, 2013.

For a Series 10 (beer and wine store) license, the applicant is required to provide the distance between the applicant’s business and the nearest church or school for government; the State does not require a geological map or list of licenses in the vicinity for any license series.

**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 was properly posted on April 10, 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:** Mr. Smokes Letter to Applicant
Hearing Procedures
Series 10 Description
Mr. Smokes Section 13
Mr. Smokes - PD Memo

Mr. Smokes - Code Memo
Mr. Smokes - Tax Memo

**OFFICE OF THE CITY CLERK**

April 23, 2013

Mr. Smokes
Attn: Ray Morrissey
2126 N. 4th St.
Flagstaff, AZ 86004

Dear Mr. Morrissey:

Your application for a new Series 10 liquor license for Mr. Smokes at 2126 N. 4th Street was posted on April 10, 2013. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, May 7, 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 April 30, 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 10 Beer and Wine Store License (Beer and wine only)

Non-transferable
Off-sale retail privileges
Note: Terms in **BOLD CAPITALS** are defined in the glossary.

PURPOSE:
Allows a retail store to sell beer and wine (no other 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 _____ Address _____
2. New Business: (Physical Street Location) Name _____ Address _____
3. License Type: _____ License Number: _____
4. If more than one license to be transferred: License Type: _____ License Number: _____
5. What date do you plan to move? _____ What date do you plan to open? _____

## 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))

1. Distance to nearest school: 1 MILE ft. Name of school WF Killip School
   Address 2300 E Sixth St Flagstaff, AZ 86004
   City, State, Zip
2. Distance to nearest church: 3/4 MILE ft. Name of church Canyon Chapel
   Address 1919 N. 4th St. 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 Greenlaw Village Shopping Center - Anthony Choi
   Address 2160 N 4th St. Suite 105 Flagstaff, AZ 86004
   City, State, Zip

4a. Monthly rental/lease rate $ 610.33 What is the remaining length of the lease 1 yrs. ____mos.

4b. What is the penalty if the lease is not fulfilled? $_____ or other _____
(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 |
|---|---|---|---|---|---|---|
| None | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Smoke Shop/Beer + Wine Store

13 JAN 29 AM 10:52

## 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.

**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

**MEMORANDUM**

**Memo # 13-047-01**

**TO** **Chief Treadway**

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

**DATE** **April 12, 2013**

**REF** **LIQUOR LICENSE APPLICATION – SERIES 10- FOR "Mr. Smokes"**

---

On March 14, 2013, I initiated an investigation into an application for a series 10 liquor license filed by Ray Morrissey and Michelle Beckham the listed controlling persons for Mr. Smokes. Lawrence Morrissey is also listed on the application as a manager of the business. Mr. Smokes is located at 2126 N. 4th Street in Flagstaff. Ray and Michelle are the owners of the business. The liquor license application number is 10033183.

I conducted a local records and a public access check on Ray Morrissey, Michelle Beckham and Lawrence Morrissey. The check found no criminal records for Michelle and Ray. The same check was done for Lawrence which revealed a questionable arrest history. Ray and Michelle have never owned a liquor license and have no pending liquor law violations. Ray and Michelle's business is located more that 300 feet away from the nearest school or church.

On March 26, 2013, I spoke with Ray and Michelle about the listed manager and his history. It was at this time they decided to pull the application from the agenda so they could remove Lawrence from the state liquor license application. I received confirmation from the State Liquor License and Control that the new listed manager would be Michelle Beckham. I spoke with Ray and Michelle who stated they have completed the mandatory liquor law training courses.

In speaking with Ray he stated he currently does not have a liquor license and has not been associated with any previous liquor licenses. Ray said he plans to sell mid-range wine and craft beers along with his current smoke shop sales.

As a result of this investigation, I do 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 #10033183
2126 N Fourth St., Flagstaff, Arizona 86004
Assessor's Parcel Number 107-14-009A
Ray Morrissey on behalf of Mr. Smokes

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This application is a request for a Series 09 (Liquor Store) new liquor license from Ray Morrissey on behalf of Mr. Smokes, located in the Community Commercial (CC) Zone. This district allows for liquor sales.

There are no active Zoning Code violations associated with Ray Morrissey or Mr. Smokes 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 10 Liquor License – New License – Mr. Smokes

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Mr. Smokes LLC is licensed with the City of Flagstaff for the Sales Tax purposes and current on its tax return filing. Currently they are in good standing with the Sales Tax Section.

/liquor licenses/Mr. Smokes.doc

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Saltzburg, Deputy City Clerk |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Action on Liquor License Application:** Michael Funk, “Firecreek", 22 E. Route 66, Series 07, Person 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 07 licenses must be obtained through the person transfer of an existing license from another business. Michael Funk has started a new business which requires a Series 07 (Beer and Wine Bar) license. The person transfer is from Alexis Holle as an individual to Michael Funk.

**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 person transfer Series 07 liquor license was received from Michael Funk for Firecreek, 22 E. Route 66. The person transfer is from Alexis Holle as an individual to Michael Funk.

A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.

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

Sales tax and licensing information was reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, resulting in a recommendation for approval.

**Key Considerations:**

Because the application is for a person transfer, consideration may only be given to the applicant's personal qualifications.

A Series 07 beer and wine bar license allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

The deadline for issuing a recommendation on this application is May 15, 2013.

For a Series 07 beer and wine bar license, the applicant is required to provide the distance between the applicant’s business and the nearest church or school; the State does not require a geological map or list of licenses in the vicinity for any license series.

**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 was properly posted on April 9, 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.

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**Attachments:**

- Firecreek - Letter to Applicant
- Hearing Procedures
- Series 07 Description
- Firecreek - Section 13
- Firecreek - PD Memo
- Firecreek - Code Memo
- Firecreek - Tax Memo

**OFFICE OF THE CITY CLERK**

April 23, 2013

Firecreek
Attn: Michael Funk
22 E. Route 66
Flagstaff, AZ 86001

Dear Mr. Funk:

Your application for a Series 07 person transfer liquor license for Firecreek at 22 E. Route 66 was posted on April 9, 2013. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, May 7, 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 April 29, 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 07 Beer and Wine Bar License

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

PURPOSE:
Allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or 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.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Off-sale ("To Go") package sales can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the one provided for the bar.

Bar, beer and wine bar and restaurant licensees must pay an annual surcharge of $20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

## 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 ~~'13 MAR 8 Liq. Lic. PM 2:57~~
   Address _____

2. New Business: (Physical Street Location) Name _____
   Address _____

3. License Type: _____ License Number: _____

4. If more than one license to be transferred: License Type: _____ License Number: _____

5. What date do you plan to move? _____ What date do you plan to open? _____

## 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))

1. Distance to nearest school: 1400 ft. Name of school San Francisco de Asis Catholic School
   Address 210 N. Humphreys St. FLAGSTAFF, AZ 86001
   City, State, Zip

2. Distance to nearest church: 1200 ft. Name of church NATIVITY OF BLESSED VIRGIN
   Address 16 W. CHERRY AVE, FLAGSTAFF, AZ 86001
   City, State, Zip

3. I am the: ☒ Lessee ☐ Sublessee ☐ Owner ☐ Purchaser (of premises)

4. If the premises is leased give lessors: Name Stephen Beiser
   Address 3910 Hidden Hollow Rd, FLAGSTAFF, AZ 86001
   City, State, Zip

4a. Monthly rental/lease rate $ 2200.00 What is the remaining length of the lease 3 yrs. 0 mos.

4b. What is the penalty if the lease is not fulfilled? $ 25.00 or other per day late fee.
(give details - attach additional sheet if necessary)

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

| Last | First | Middle | Amount Owed | Mailing Address | City State | Zip |
|---|---|---|---|---|---|---|
| | | | | | | |
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| | | | | | | |

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Beer Wine Bar

## 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.

'13 MAR 8 Liq. Lic. PM 2:57

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 # 07033001 (exactly as it appears on license) Name ALEXIS ELIZABETH HOLLE Sundance LLC

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## 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 you inspection 90 days after filing your application, please request an extension in writing, specify why the extension is necessar 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

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## 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.

**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

**MEMORANDUM**

**Memo # 13-045-01**

**TO:** **Chief Kevin Treadway**

**FROM:** **Sgt. M. Wright**

**DATE:** **April 12, 2013**

**RE:** **Series 7 Liquor License –Person Transfer-Application for Firecreek**

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On April 12, 2013, I initiated an investigation into a series 7 (beer and wine) liquor license person transfer application filed by Michael Funk (Controlling Person), Diana Lynn Hughmanick (Controlling Person), John Hughmanick (Controlling Person), and Matthew Bingham (Manager). The listed people currently own the business once known as Sundara located at 22 E. Route 66 and the new business will be called Firecreek. They purchased the business and the series 7 license 07033001. This is an application to change the name of the company and the people who own and operate the business as listed above.

I spoke with Matthew Bingham who stated the liquor license was purchased so they can serve beer and wine in the evening hours as they are primarily a coffee shop. Firecreek is located more than 300 feet from the nearest school or church.

I conducted a local records query and public access check on Michael Funk, Diana Lynn Hughmanick, John Hughmanick, and Matthew Bingham. No derogatory records were found. Matthew advised he had completed the liquor class provided by the Department of Liquor Licenses and Control and provided proof. Matthew said he has managed other liquor licenses. Matthew confirmed he has never had or been involved with any liquor law violations.

At this time the Flagstaff Police Department makes a recommendation for approval.

# Planning and Development Services Memorandum

**April 18, 2013**

**TO:** Susan Alden, City Records Technician

**THROUGH:** Roger Eastman, AICP, Zoning Code Administrator

**FROM:** Gregory Brooks, Code Compliance Officer II

**RE:** Application for Liquor License #07033001
22 E. Rt. 66, Flagstaff, Arizona 86001
Assessor's Parcel Number 100-20-002
Michael Funk on behalf of Firecreek

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This application is a request for a Series 07 (Beer and Wine Bar) person transfer liquor license from Michael Funk on behalf of Firecreek, located in the Central Business (CB) Zone. This district allows for beer and wine bars.

There are no active zoning code violations associated with Michael Funk or Firecreek 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: April 17, 2013

Re: Series 7 Liquor License – Person Transfer - Firecreek

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Firecreek Flagstaff LLC is licensed with the City of Flagstaff for the Sales Tax purposes and has not been in business long enough to file their first tax return. I anticipate their full compliance in filing tax returns when they become due. They are currently in good standing with the Sales Tax Section.

/liquor licenses/Firecreek.doc

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Stacy Saltzburg, Deputy City Clerk |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Action on Liquor License Application:** Randy Nations, “San Felipe's", 103 N. Leroux, Series 06 (bar- all spirituous liquor), Person 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 06 (bar- all spirituous liquor) licenses are obtained through the person transfer of an existing license from another business. The person transfer is from Christopher Keller for San Felipe's Costal Cantina located at 103 N. Leroux Flagstaff, Arizona to Randy Nations.

**Financial Impact:**

There is no budgetary impact to the City of Flagstaff as this is a recommendation to the State.

**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 person transfer Series 06 liquor license was received from Randy Nations for San Felipe's Cantina at 103 N. Leroux St. The person transfer is from Christopher Keller for San Felipe's Cantina located at 103 N. Leroux, Flagstaff, Arizona to Randy Nations.

A background investigation performed by Sgt. Matt Wright of the Flagstaff Police Department resulted in a recommendation for approval.

A background investigation performed by Gregory Brooks, Code Compliance Officer II, 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 compliance with the tax and licensing requirements of the City.

**Key Considerations:**

Because the application is for a person transfer, consideration may only be given to the applicant's personal qualifications.

A Series 06 (bar - all spirituous liquor) allows a bar retailer to sell and serve spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

The deadline for issuing a recommendation on this application is May 4, 2013.

For a Series 06 liquor license, the applicant is required to provide the distance between the applicant's business and the nearest church or school; the State does not require a geological map or list of licenses in the vicinity for any license series.

**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 was properly posted on March 28, 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.

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**Attachments:**

San Felipes - Letter to Applicant
Hearing Procedures
Series 06 Description
San Felipes - Section 13
San Felipes - PD Memo
San Felipes - Code Memo

San Felipes - Tax Memo

**OFFICE OF THE CITY CLERK**

April 23, 2013

Flagstaff San Felipe's LLC
Attn: Randy Nations
PO Box 2502
Chandler, AZ 85244

Dear Mr. Nations:

Your application for a Series 06 person transfer liquor license for San Felipe's Cantina at 103 N. Leroux St. was posted on March 28, 2013. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, May 7, 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 expired on April 17, 2013 and the application may be removed from the premises at this 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 06 Bar (all spirituous liquor)

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

PURPOSE:
Allows a bar retailer to sell and serve spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or 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.

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Off-sale ("To Go") package sales of spirituous liquor can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the ones provided for the bar.

A hotel or motel with a Series 06 license may sell spirituous liquor in sealed containers in individual portions to its registered guests at any time by means of a minibar located in the guest rooms of registered guests. The registered guest must be at least twenty-one (21) years of age. Access to the minibar is by a key or magnetic card device and not furnished to a guest between the hours of 2:00 a.m. and 6:00 a.m. Monday through Saturday and 2:00 a.m. and 10:00 a.m. on Sundays.

Bar, beer and wine bar, and restaurant licensees must pay an annual **SURCHARGE** of $20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

## 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 _____
   Address _____
2. New Business: (Physical Street Location) Name _____
   Address _____
3. License Type: _____ License Number: _____
4. If more than one license to be transferred: License Type: _____ License Number: _____
5. What date do you plan to move? _____ What date do you plan to open? _____

## 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))

1. Distance to nearest school: 0.2 Mi ft. Name of school San Francisco de Asis Catholic School
   Address 320 N Humphrey St Flagstaff AZ 86001
   City, State, Zip
2. Distance to nearest church: 0.1 Mi ft. Name of church Nativity of the Blessed Virgin Mary Chapel
   Address 16 W Cheryl Ave Flagstaff AZ 86001
   City, State, Zip
3. I am the: ☒ Lessee ☐ Sublessee ☐ Owner ☐ Purchaser (of premises)
4. If the premises is leased give lessors: Name Barry and Arlette Levitan
   Address 19 S San Francisco St Flagstaff AZ 86001
   City, State, Zip

4a. Monthly rental/lease rate $ 5,055.24 What is the remaining length of the lease 5 yrs. ____ mos.

4b. What is the penalty if the lease is not fulfilled? $_____ or other still owe term
(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)? bar

## 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 # 06030008 (exactly as it appears on license) Name Randy D. Nations

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## 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

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## 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.

   **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.**

   RDN
   applicants initials

**MEMORANDUM**

**Memo # 13-046-01**

**TO:** **Chief Kevin Treadway**

**FROM:** **Sgt. Matt Wright**

**DATE:** **April 12, 2013**

**REF** **Series 6 Liquor License Person Transfer at San Felipe's Cantina**

---

On April 13, 2013, I initiated an investigation into an application for a series 06 (bar) liquor license person to person transfer. The liquor license application has been filed by Randy Nations owner of Arizona Liquor Industry Consultants, on behalf of John Hindman new owner of San Felipe's Cantina. San Felipe's is located at 103 North Leroux St., in downtown Flagstaff. The license number being applied for is 06030008 a full bar license.

I conducted a query through local systems and public access on John Hindman (Controlling person) and no derogatory records were found. No liquor law violations were located. John is the current owner of Sportsman's in Flagstaff.

In speaking with a representative from Randy Nations office they explained John had just purchased San Felipe's from Christopher Keller. I spoke with John who stated his son Kirk Hindman would manager and run the day to day operations of San Felipe's. I later confirmed Kirk had attended a liquor law training course and will provide proof.

I conducted a query on Kirk Hindman. I found Kirk with in the last ten years, had been charged with assault, but the case was dismissed in Flagstaff City Court in 2011.

As a result of the investigation, I can find no reason to oppose the series 06 application for person transfer. Recommendation to council would be for approval.

# Planning and Development Services Memorandum

**April 18, 2013**

**TO:** Susan Alden, City Records Technician

**THROUGH:** Roger Eastman, AICP, Zoning Code Administrator

**FROM:** Gregory Brooks, Code Compliance Officer II

**RE:** Application for Liquor License #06030008
103 N Leroux St., Flagstaff, Arizona 86001
Assessor's Parcel Number 100-19-001A
Randy Nations on behalf of San Felipe's Cantina

---

This application is a request for a Series 06 (Bar) person transfer liquor license from Randy Nations on behalf of San Felipe's Cantina, located in the Central Business (CB) Zone. This district allows for bars.

There are no active zoning code violations associated with Randy Nations or San Felipe's Cantina 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: April 17, 2013

Re: Liquor License – Flagstaff San Felipe's LLC

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Flagstaff San Felipe's LLC is licensed with the City of Flagstaff for the Sales Tax purposes and have not been in business long enough to file their first tax return. I anticipate their full compliance in filing tax returns when they become due. They are currently in good standing with the Sales Tax Section.

/liquor licenses/San Felipe.doc

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Dan Holmes, PW Project Manager |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Approval of Construction Manager at Risk Contract:** Street Maintenance Program 2013

**RECOMMENDED ACTION:**

1) Approve the Construction Manager at Risk Contract with C and E Paving and Grading, LLC in an amount not to exceed $943,788.00.
2) Authorize Change Order Authority in the amount of $200,000.00 to cover costs to re-surface seven Parks parking lots anticipated in FY 2014, or potential costs associated with unanticipated or additional items of work.
3) Authorize the City Manager to execute the necessary documents.

**Policy Decision or Reason for Action:**

Provide for annual maintenance of City streets.

**Financial Impact:**

The Street Maintenance Program is funded in account 040-3332-600 in FY 2012/2013 in the amount of $1,154,879.

**Connection to Council Goal:**

Repair, Replace, maintain infrastructure (streets & utilities)

**Has There Been Previous Council Decision on This:**

Yes. Council previously approved the design phase services contract on April 3, 2012

**Options and Alternatives:**

1.) Approve the Construction Manager at Risk Construction Phase Services Agreement as presented.
2.) Reject the Agreement and direct staff to pursue traditional design-bid-build project delivery. This would negatively delay progress on the project by two months.

**Background/History:**

The City has established an annual program to maintain existing street pavements. This year, the program provides two major services: a non-structural upgrades by overlay and ADA compliance.

The overlay streets are selected after evaluation of the street condition using pavement management software owned by the City. One half of the City street pavements are evaluated and ranked each year. Each street pavement is assigned an overall condition index (OCI) based on the type and severity of the distress observed. A pavement that has no distress is given an OCI of 100. Each pavement distress such as cracking or roughness reduces the street's OCI. The street pavements are ranked by OCI and the pavements exhibiting the most severe distress are programmed for resurfacing with asphaltic concrete overlays as budget allows.

In recent years, the Arizona State Legislature has authorized the use of Alternative Project Delivery Methods (APDM) in lieu of the traditional Design-Bid-Build method of project delivery. These alternative methods allow a contracting agency the opportunity to select a construction team utilizing a Qualifications Based Selection process to procure construction services from a firm deemed most qualified to perform the work. The enabling legislation also allows for provision of multiple Guaranteed Maximum Prices under a single procurement.

On February 1, 2012, a Request for Statements of Qualifications for Construction Manager at Risk services was published in the Arizona Daily Sun and posted on the City's Purchasing web site. On February 15, 2012, the City of Flagstaff received seven Statements of Qualifications from firms wishing to provide CM at Risk services for the project. A selection committee of five members independently reviewed and evaluated those statements in accordance with guidelines established by the enabling legislation. Based on numerical evaluation of the statements received, the firm of C and E Paving and Grading, LLC received the highest ranking and was deemed the most qualified among those submitting proposals to provide the desired design phase services.

On April 3, 2012, Council approved award of the Design Phase Services Contract for the 2012, 2013 and 2014 programs to C and E Paving and Grading, LLC. in the amount of $ 76,921.00. Design phase services including program and budget evaluation, project scheduling, design document reviews, constructability reviews, detailed cost estimating, and preparation of final construction documents have now been completed. Based upon the Design Phase Services, C and E Paving and Grading, LLC has provided a Guaranteed Maximum Price (GMP) to complete construction of the annual improvement project. The GMP will include costs for construction, a CM @ Risk contingency, construction fee, costs for General Conditions including bonds and insurance, and sales taxes.

**Key Considerations:**

The goal of the Street Maintenance Program is to use the available funds in the most efficient manner to lengthen the service life of the City street pavements and avoid costly pavement reconstruction. The ADA improvements provide improved access for disabled citizens and visitors along existing streets and provide compliance with Federal requirements.

**Expanded Financial Considerations:**

The Street Maintenance Program is to be funded by the Street Improvement Program budget in FY 2012/2013. The contract includes an owner's contingency of $25,000.00 to cover the potential cost of unanticipated or additional work which may be required during construction. All work for the Street Maintenance Program is anticipated to be complete in FY 2012/2013. The Parks Section has requested resurfacing work including chip seal and overlays in seven parking lots to be completed in FY 2013/2014 under this contract. It is anticipated that this work will be completed after July 1, 2013 under the Change Order Authority if the Parks budget for this work is approved by Council. An account summary for the work is shown below:

**FLAGSTAFF STREET MAINTENANCE PROGRAM 2013 FUNDING SUMMARY**

| ACCOUNT NUMBER | DESCRIPTION | BUDGET |
|---|---|---|
| 040-3332-600 | Annual Street Improvements | $ 1,154,879 |
| 001-2602-520 | Parks Grounds Maintenance | $ 89,900 * |
| 001-2609-520 | BBB Recreation Fields | $ 93,500 * |

* Proposed FY 13/14 Parks Budget

**Community Benefits and Considerations:**

The Street Maintenance Program provides surface treatments as required to preserve and maintain pavement condition on the 634 lane miles of asphalt City streets. The ADA improvements provide improved access for disabled citizens and visitors along existing streets and provide compliance with Federal requirements.

Use of the Construction Manager at Risk method of project delivery will eliminate the need for an advertisement/bid/award process and will cut approximately two months off the project development schedule. In addition, value engineering, constructability reviews and design input conducted as part of this service agreement have the potential to realize significant construction cost savings over the traditional design-bid-build delivery method.

**Community Involvement:**

Inform - The Public Works Division will prepare weekly news releases that are distributed to the local media outlets describing the location of the street construction and any traffic restrictions planned for the week. The contractor distributes written notices to all the adjacent businesses and residents in advance of the construction.

**Expanded Options and Alternatives:**

Options available to the Council include:

1. Approve the CM @ Risk Construction Phase Services Agreement as presented.

2. Reject approval of the Agreement and direct staff to pursue traditional design-bid-build project delivery. This would effectively delay progress on the project by two months.

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**Attachments:** List of Overlay Streets
List of Proposed Parking Lot Improvements
CMAR Constrction Contract
Map

**CITY OF FLAGSTAFF**

**FLAGSTAFF STREET MAINTENANCE PROGRAM 2013**

**C.O.F. FILE NO. 01-13001 (333200)**

# LIST OF OVERLAY STREETS

## ANNUAL MAINTENANCE PROGRAM

| MAP ID | Street Name | Start | End |
|---|---|---|---|
| 1 | Sheila Dr. | Brenda Loop | Fremont Blvd. |
| 2 | Eddy Dr. | Wilson Dr. | West End |
| 3 | University Heights Dr. | Lindsey Loop | Cheryl Dr. |
| 4 | Havasupai Rd. | Navajo Rd. | Fort Valley Rd. |

**CITY OF FLAGSTAFF**

**FLAGSTAFF STREET MAINTENANCE PROGRAM 2013**

**C.O.F. FILE NO. 01-13001 (333200)**

# LIST OF PARKING LOT IMPROVEMENTS

(Subject to Approval of FY 13/14 Parks Budget)

| Park | Improvement Type | Funding Source |
|---|---|---|
| Ponderosa Park | Overlay | Parks Grounds |
| Thorpe Multi-Purpose | Chip Seal | Parks Grounds |
| Thorpe Basketball Ct. | Overlay | Parks Grounds |
| Thorpe Tennis Ct. | Overlay | Parks Grounds |
| Cheshire Park | Chip Seal | Parks Grounds |
| Continental Complex | Chip Seal | BBB |
| Foxglenn Park | Chip Seal | BBB |

# City of Flagstaff, Arizona

# STREET MAINTENANCE PROGRAM 2013

# CONSTRUCTION MANAGER AT RISK

# CONSTRUCTION SERVICES

**PROJECT NO. 01-13001**

**Agreement No. 2012-28**

**GMP Agreement Number: Three**

***MAYOR***
***GERALD W. NABORS***

***CITY COUNCIL***

***KARLABREWSTER***
***SCOTT OVERTON***
***CORAL EVANS***
***CELIA BAROTZ***
***JEFF ORAVITZ***
***MARK WOODSON***

***CITY MANAGEMENT***

***City Manager***
***Kevin Burke***

***Utilities Director***
***Brad Hill***

***Community Development Director***
***Mark G. Landsiedel***

***Public Works Director***
***Erik Solberg***

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# CITY OF FLAGSTAFF, ARIZONA

## STREET MAINTENANCE PROGRAM 2013
## CONSTRUCTION MANAGER AT RISK
## CONSTRUCTION SERVICES AGREEMENT

**PROJECT No. 01-13001; GMP Agreement No. Three ; Agreement No. 2012-28**

This Construction Services Agreement ("Agreement"), is made and entered into by and between the City of Flagstaff, an Arizona municipal corporation ("City"), and C and E Paving & Grading, LLC ("Construction Manager at Risk" or CM@Risk") on this ___ day of _____, 2013.

## RECITALS

**A.** The City is authorized and empowered by provisions of the City Charter to execute agreements for construction services.

**B.** The City intends to construct the Street Maintenance Program 2013 as more fully described in Exhibit "A" attached ("Project").

**C.** To undertake the construction administration of the Project the City has entered into a separate agreement with Plateau Engineering, Inc. ("Design Professional.")

**D.** CM@Risk has represented to the City that it has the ability to provide construction services for the Project, and based on this representation, the City hereby engages CM@Risk to provide these services and construct the Project.

**E.** Agreement # 2012-28 has been executed previously between the City and CM@Risk to perform design phase services for the Project. Those services may continue during the duration of this Agreement.

***NOW THEREFORE,*** for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and CM@Risk as follows:

## Article 1 - Definitions

"Agreement" - This written document signed by the City and CM@Risk covering the construction phase of the Project, and including other documents itemized and referenced in, or attached to, and made part of this Agreement.

"Change Directive" - A written order prepared and signed by the City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

"Change Order" - A type of Contract amendment issued after execution of the Contract Documents or future GMP Amendments signed by the City and CM@Risk, agreeing to changes to a GMP, for substantial unanticipated alterations in the character of Work. The Change Order shall state the following: the addition, deletion or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Agreement terms.

"The City ("Owner" or "OWNER") - The City of Flagstaff, a municipal corporation, with whom CM@Risk has entered into this Agreement and for whom the services are to be provided pursuant to said Contact. Regulatory activities handled by the City of Flagstaff Community Development, Fire and Planning Departments or any other City Department are not subject to the responsibilities of the City under this Agreement.

"City's Representative" - The person designated in Subsection 8.3.1.2.

"City's Senior Representative" - The person designated in Subsection 8.3.1.1.

"CM@Risk" - The firm selected by the City to provide construction services as detailed in this Agreement.

"CM@Risk's Contingency" - A fund to cover cost growth during the Project used at the discretion of CM@Risk usually for costs that result from project circumstances. The amount of CM@Risk's Contingency shall be negotiated as a separate line item in each GMP package. Use and management of CM@Risk's Contingency is described in Subsection 5.3.1.

"CM@Risk's Representative" - The person designated in Subsection 8.3.2.2.

"CM@Risk's Senior Representative" - The person designated in Subsection 8.3.2.1.

"Construction Documents" - Certain plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements or dated plans and specifications specifically identified as the "Construction Documents" herein or in an Exhibit or Addendum which is attached hereto.

"Construction Fee" - CM@Risk's administrative costs, home office overhead, and profit as applicable to this Project whether at CM@Risk's principal or branch offices.

"Contract Documents" - The following items and documents in descending order of precedence executed by the City and CM@Risk: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

"Contract Price" - The amount or amounts set forth in Article 5.

"Contract Time" - The days, as set forth in Article 4, the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

"Cost of the Work" - The direct costs necessarily incurred by CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include CM@Risk's Construction Fee, General Conditions Costs, and taxes.

"Critical Path Method" - A scheduling technique used to predict project duration by analyzing which sequence of activities has the least amount of scheduling flexibility thus identifying the path (sequence) of activities which represent the longest total time required to complete the Project. Delay in completion of the identified activities shall cause a delay in achieving Substantial Completion.

"Day(s)" - Calendar days unless otherwise specifically noted in the Contract Documents.

"Design Phase Contract" - The agreement between the City and CM@Risk for Services provided by CM@Risk during the design phase which may include the following: design recommendations, Project scheduling, constructability reviews, alternate systems evaluation, cost estimate, Minority Business Enterprise/Woman's Business Enterprise/Small Business Enterprise **("MBE/WBE/SBE")** utilization, subcontractor bid phase services, GMP preparation and other services set forth in this Agreement or reasonably inferable therefrom.

"Design Professional" - A qualified, licensed design professional who furnishes, design, construction documents, and/or construction administration services required for the Project.

"Differing Site Conditions" - Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Completion" - 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner's Project specifications and Owner training/start up activities.

"Float" - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"General Conditions Costs" - Includes, but is not limited to the following types of costs for CM@Risk during the construction phase: (i) payroll costs for Project manager or CM@Risk for work conducted at the Site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the Site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities setup solely for this Project including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the Site, (vii) costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of CM@Risk or Subcontractors.

"Guaranteed Maximum Price" or "GMP" - The sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CM@Risk's Contingency.

"GMP Plans and Specifications" - The plans and specifications upon which the Guaranteed Maximum Price proposal is based.

"Legal Requirements" - All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Notice to Proceed" or "NTP" - The directive issued by the City, authorizing CM@Risk to start Work.

"Owner's Contingency" - A fund to cover cost growth during the project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen Site conditions. The amount of the Owner's contingency shall be set solely by the Owner and shall be in addition to the Project costs included in CM@Risk's GMP packages. Use and management of the Owner's contingency is described in Section 5.3.2.

"Performance Period" - The period of time allotted in the Contract Documents to complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Master Schedule.

"Payment Request" - The City form used by CM@Risk to request progress payments for Work in accordance with Article 7.

"Product Data" - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CM@Risk to illustrate materials or equipment for some portion of the Work.

"Project" - The work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in Exhibit "A" attached.

"Project Record Documents" - The documents created pursuant to Section 2.10.

"Samples" - Physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work shall be evaluated.

"Schedule of Values" - A statement furnished by CM@Risk to the City's Representative for approval, reflecting the portions of the GMP allotted for the various parts of the work and used as the basis for evaluating CM@Risk's applications for progress payments.

"Shop Drawings" - Drawings, diagrams, schedules and other data specially prepared for the Work by CM@Risk or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Site" - Land or premises on which the Project is located.

"Specifications" - The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

"Subcontractor" - An individual or firm having a direct Agreement with CM@Risk or any other individual or firm having an Agreement with the aforesaid Contractors at any tier, who undertakes to perform a part of the construction phase Work for which CM@Risk is responsible.

"Submittals" - Documents and/or things that may be produced or presented by one party for consideration review or such other actions as may be required by this Agreement by another party, entity or person. Examples of Submittals include, but are not limited to, preliminary or evolving drafts, product data samples, etc.

"Substantial Completion" - The established date when the Work or designated portion thereof is sufficiently complete, in accordance with the Contract Documents so that the Owner may occupy the Work, or designated portion thereof, for the use for which it is intended. This may include, but is not limited to: (i) Approval by the City or State Fire Marshall and/or other state or local authorities having jurisdiction over the Work or a portion thereof (Certificate of Occupancy); (ii) all systems in place, functional, and displayed to, and accepted by, the City or it's representative; (iii) City operation and maintenance training complete; (iv) HVAC test and balance completed with reports provided to the Design Professional for review; (v) Operational and Maintenance manuals and final Project Record Documents delivered to the City or Design Professional for review.

"Supplier" - A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct agreement with CM@Risk or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

"Work" - The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

## Article 2 - CM@Risk's Services and Responsibilities

**2.0** CM@Risk shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the City. All Work shall be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@Risk in Flagstaff, Arizona. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Project's Contract Documents. It is not required that the services be performed in the sequence in which they are described.

**2.1 General Services**

**2.1.1.** CM@Risk's Representative shall be reasonably available to the City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk's Representative shall communicate regularly with the City but not less than once a week and shall be vested with the authority to act on behalf of CM@Risk. CM@Risk's Representative may be replaced only with the written consent of the City.

**2.2 Government Approvals and Permits**

**2.2.1** Unless otherwise provided, CM@Risk shall obtain all applicable and/or necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. CM@Risk is specifically reminded of the need to obtain the applicable and/or necessary environmental permits or file the applicable and/or necessary environmental notices.

**2.2.2** Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

**2.2.3** City shall be responsible for City of Flagstaff review and permit(s) fees for building and demolition permits. City shall also pay review fees for grading and drainage, water, sewer, and landscaping. City shall also pay for utility design fees for permanent services.

**2.2.4** CM@Risk shall be responsible for all other permits and review fees not specifically listed in Subsection 2.3.3 above.

**2.2.5** CM@Risk is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are CM@Risk's responsibility.

**2.3 Pre-construction Conference**

**2.3.1** Prior to the commencement of any Work, the City's Representative or designee shall schedule and conduct a Pre-construction conference.

**2.3.2** The purpose of this conference is to establish a working relationship between CM@Risk, utility firms, and various City agencies. The agenda shall include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and emergency telephone numbers for all representatives involved in the course of construction.

**2.3.3** The Notice to Proceed date shall be concurred with by the parties or set by the City at the Preconstruction Conference. After the meeting and upon receipt of a signed Agreement and delivery of the required bonds and insurance in a City approved format, a Notice to Proceed letter shall be issued confirming the construction start date, Performance Period and if applicable, the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion shall be listed and/or as set forth in Article 1 herein. Failure by CM@Risk to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it shall not alter the proposed Substantial Completion date nor be a basis for any time extension request or other claims.

**2.3.4** CM@Risk shall provide a Schedule of Values based on the categories used in the buy out of the Work but not greater than the approved GMP and identifying CM@Risk's Contingency. The Schedule of Values shall subdivide the Work into all items comprising the Work. The Schedule of Values shall contain sufficient detail to identify each individual element of the Work and shall relate to the approved GMP Schedule. The Schedule of Values shall be subject to approval by the City's representative.

**2.3.5** Minimum attendance by CM@Risk shall be CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and CM@Risk's safety officer.

**2.4 Control of the Work**

**2.4.1** Unless otherwise provided in the Contract Documents to be the responsibility of the City or a separate Contractor, CM@Risk shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CM@Risk to complete the Work consistent with the Contract Documents.

**2.4.2** CM@Risk shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.4.3** CM@Risk's Representative or CM@Risk's Superintendent shall be present at the Site at all times that construction activities are taking place.

**2.4.3.1** All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.

**2.4.3.2** In the event of noncompliance with this Section, the City may require CM@Risk to stop or suspend the Work in whole or in part.

**2.4.4** Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is CM@Risk's responsibility to ensure the Subcontractor employed for such work, is approved by the manufacturer.

**2.4.5** Before ordering materials or doing work, CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements.

No extra charge or compensation shall be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, shall be submitted to the City for resolution before proceeding with the work.

**2.4.6** CM@Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City at once.

**2.4.7** CM@Risk shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a civil engineer or surveyor licensed as such in the State of Arizona.

**2.4.8** Any person employed by CM@Risk or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM@Risk or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. CM@Risk or Subcontractor shall keep the City harmless from damages or claims, which may occur in the enforcement of this Section.

**2.4.9** CM@Risk 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.

**2.4.10** CM@Risk shall coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, CM@Risk agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.5 Control of the Work Site**

**2.5.1** Throughout all phases of construction, including suspension of Work, CM@Risk shall keep the Site reasonably free from debris, trash and construction wastes to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM@Risk shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit the City to occupy the Project or a portion of the Project for its intended use.

**2.5.2** CM@Risk shall take whatever steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the Arizona Department of Environmental Quality rules and regulations.

**2.5.3** CM@Risk shall maintain ADA, ADAAG and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA, ADAAG and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

**2.5.4** Only materials and equipment, which are to be used directly in the Work, shall be brought to

and stored on the Site by CM@Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of CM@Risk.

**2.6 Shop Drawings, Product Data and Samples**

**2.6.1** Shop Drawings, Product Data, Samples and similar Submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which Submittals are required, the way CM@Risk proposes to conform to the information given and the design concept expressed in the Contract Documents.

**2.6.2** CM@Risk shall review, approve, verify, and submit to the City five copies of each Shop Drawing, Product Data, Sample, and similar Submittals required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit "B" as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by CM@Risk, which are not required by the Contract Documents, may be returned without action.

**2.6.3** CM@Risk shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar Submittals until the respective submittal has been approved by the City or City's designee. Such Work shall be in accordance with approved Submittals.

**2.6.4** By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar Submittals, CM@Risk represents that CM@Risk has determined and verified materials, field measurements and field construction criteria related thereto, or shall do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

**2.6.5** CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City 's approval of Shop Drawings, Product Data, Samples or similar Submittals unless CM@Risk has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation. CM@Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar Submittals by the City's approval thereof.

**2.6.6** CM@Risk shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar Submittals, to revisions other than those requested by the City on previous Submittals.

**2.6.7** Informational Submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.

**2.6.8** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

**2.7 Quality Control, Testing and Inspection**

**2.7.1** All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

**2.7.2** All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.

**2.7.3** The procedures and methods used to sample and test material shall be determined by the City. Unless otherwise specified, samples and tests shall be made in accordance with the most recently adopted edition of the City of Flagstaff Engineering Division Design and Construction Standards and Specifications.

**2.7.4** The City shall select a City or Independent Testing Laboratory and shall pay for initial City Acceptance Testing.

**2.7.4.1** When the first and/or subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and the cost of all tests, except the first test, shall be paid for by CM@Risk. CM@Risk's Contingency cannot be utilized for the cost of re-testing.

**2.7.4.2** When the first and/or subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

**2.7.5** CM@Risk shall cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.

**2.7.6** At the option of the City, materials may be approved at the source of supply before delivery is started.

**2.7.7** Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by CM@Risk, unless otherwise provided in the Contract Documents.

**2.7.8** CM@Risk's convenience and quality control testing and inspections shall be the sole responsibility of CM@Risk and paid by CM@Risk.

**2.8 Trade Names and Substitutions**

**2.8.1** Unless indicated that no substitutions are permitted, CM@Risk may request a substitution or alternative to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, subject to the following:

**2.8.2** The substitution shall be submitted by CM@Risk in writing to the City.

**2.8.3** CM@Risk shall certify that the substitution shall perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

**2.8.4** The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.

**2.8.5** The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.

**2.8.6** CM@Risk if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

**2.8.7** The City shall make the final decision and shall notify CM@Risk in writing as to whether the substitution has been accepted or rejected.

**2.8.8** If the City does not respond in a timely manner, CM@Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution shall be considered rejected.

**2.9 Project Record Documents**

**2.9.1** During the construction period, CM@Risk shall maintain at the Site a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes.

**2.9.1.1** CM@Risk shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. CM@Risk shall give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on Drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order, Change Order Directive, Field Order, Record of Field Change, ASI's and RFI's.
- Addenda and other details not on original Agreement Drawings.

**2.9.1.2** CM@Risk shall mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.

**2.9.1.3** CM@Risk shall mark Project Record Drawings sets with red erasable colored pencil.

**2.9.1.4** CM@Risk shall note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.

**2.9.1.5** CM@Risk shall, as a condition of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the City or its representative for review and comment.

**2.10.2** Upon receipt of the reviewed Project Record Drawings from the City, CM@Risk shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:

**2.10.2.1** CM@Risk shall provide a complete set of electronic Project Record Drawings prepared in AutoCAD format compatible with City of Flagstaff CADD technology. The Design Professional shall provide files of the original Construction Documents to CM@Risk for the use of preparing these final Project Record Drawings or CM@Risk may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

**2.10.2.2** CM@Risk shall provide a complete set of reproducible mylars from the final AutoCAD drawings.

**2.10.2.3** CM@Risk shall provide the original copy of the Project Record Drawings (redline mark-ups).

**2.10 Project Safety**

**2.11.1** CM@Risk recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

**2.11.2** CM@Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

**2.11.3** CM@Risk shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

**2.11.4** The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors and others as applicable.

**2.11.5** CM@Risk and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.

**2.11.6** CM@Risk shall immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.11.7** CM@Risk's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

**2.11 Warranty**

**2.12.1** CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

**2.12.2** CM@Risk's warranty obligation shall be for one (1) year, except for such greater period as may be required by the technical specifications.

**2.12.3** Nothing in this warranty is intended to limit any manufacturer's warranty which provides The City with greater warranty rights than set forth in this Section or the Contract Documents. CM@Risk shall provide City with all manufacturers' warranties upon Substantial Completion.

**2.12.4** Nothing in this warranty is intended to limit any other remedy at law that may be available to the City.

**2.13 Correction of Defective Work**

**2.13.1** CM@Risk agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents, or as may be available to the City by law. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

**2.13.2** During the performance of the Work, CM@Risk shall take meaningful steps to commence correction of such nonconforming Work as notified by the City or as discovered by CM@Risk. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps during the performance of the Work, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk with written notice that City shall commence correction of such nonconforming Work with its own forces.

**2.13.3** CM@Risk shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.12 and/or Section 2.13.1 above, within seven (7) days of receipt of written notice from City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps within such seven-day period, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk with written notice that City shall commence correction of such nonconforming Work with its own forces.

**2.13.4** If City does perform such corrective Work, CM@Risk shall be responsible for all reasonable costs incurred by City in performing such correction.

**2.13.5** For nonconforming Work that creates an emergency requiring an immediate response, CM@Risk shall respond and initiate corrections within twenty-four hours.

**2.13.6** The one year period referenced in Subsection 2.13.1 above applies only to CM@Risk's obligation to correct nonconforming Work relative to the warranty set forth in that section and is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding CM@Risk's other obligations under the Contract Documents or as may be allowed by law.

## Article 3 - The City's Services and Responsibilities

**3.1 Duty to Cooperate.**

**3.1.1** City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations and services in a timely manner to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.

**3.1.2** City shall furnish at CM@Risk's request, at no cost to CM@Risk, a CADD file of the Construction Documents in AutoCAD format compatible with The City of Flagstaff CADD technology.

**3.2 The City's Representative**

**3.2.1** City's Representative shall be responsible for providing City (as defined in Article I) supplied information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents.

**3.2.2** City's Representative shall also provide CM@Risk with prompt notice if it observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.

**3.2.3** The City may utilize field inspectors to assist the City's Representative during construction in observing performance of CM@Risk. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an inspector from a City laboratory pursuant to Section 2.8.4.

**3.2.3.1** The field inspector shall be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.

**3.2.3.2** The field inspector shall not be authorized to issue instructions contrary to the Construction Documents or to act as foreman for CM@Risk.

**3.2.3.3** The field inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.

**3.2.3.4** The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for CM@Risk's failure to perform the work in accordance with Contract Documents.

**3.3 Design Professional Services**

**3.3.1** The City may contract separately with one or more Design Professionals to provide construction administration of the Project. The Design Professional's Agreement as well as other firms hired by the City shall be available for review by CM@Risk. CM@Risk shall not have any right however, to limit or restrict any contract provisions and/or modifications that are mutually acceptable to the City and Design Professional.

**3.3.2** The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work.

**3.3.2.1** Provide oversight of the Work. The City and CM@Risk shall endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.

**3.3.2.2** Conduct Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional shall keep the City informed of progress of the Work and any noted defects and deficiencies of the Work, and shall endeavor to guard the City against defects and deficiencies in the Work. The Design Professional may have authority to reject construction, which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Section 2.8.

**3.3.2.3** Review and recommend approval of Payment Requests.

**3.3.2.4** Review and approve or take other appropriate action upon CM@Risk's Submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.7.

**3.3.2.5** Interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM@Risk. The Design Professional's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

**3.3.2.6** Prepare Change Orders, and may authorize minor changes in the Work as provided in Section 6.6.1.

**3.3.2.7** Conduct inspections to determine Substantial Completion and Final Acceptance.

**3.3.2.8** Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by CM@Risk.

**3.4** **City's Separate Contractors**. City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with CM@Risk in order to enable CM@Risk to timely complete the Work consistent with the Contract Documents.

**3.5** **Permit Review and Inspections**

**3.5.1** If requested by CM@Risk, the City's Representative shall provide assistance and guidance in obtaining necessary reviews, permits and inspections, however, the responsibility for obtaining the necessary reviews, permits and inspections remains with CM@Risk.

**3.5.2** Regulating agencies of the City, such as Community Development, Fire, Planning, Building Inspection, Environmental Services, and Engineering Departments, enforce Legal Requirements. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

## Article 4 - Contract Time

**4.0** **Contract Time.**

**4.0.1** Contract Time shall start with the Notice to Proceed ("NTP") with construction services and shall end with Substantial Completion.

**4.0.2** Where there is more than one GMP, each GMP shall establish a separate NTP date and a Performance Period. The Performance Periods for individual GMPs may be sequential or concurrent as established in the individual Notices to Proceed. The Performance Period for the GMP under this Agreement shall be 120 days starting with the NTP.

**4.0.3** CM@Risk agrees that it shall commence timely performance of the Work and shall achieve substantial completion within the Performance Periods and Contract Time.

**4.0.4** All of the times set forth in this Article 4 shall be subject to adjustment in accordance with Article 6.

**4.0.5** Time is of the essence, for times and time matters set forth in Article 4 and the rest of this Agreement.

**4.1 Substantial Completion**

**4.1.1** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter or as may be mutually agreed by the parties in writing. Substantial Completion shall be in accordance with its definition in Article 1 and with the criteria set forth in the Notice to Proceed.

**4.1.2** Prior to notifying the City in accordance to Section 4.1.3 below, CM@Risk shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. CM@Risk shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of CM@Risk to complete all Work in accordance with the Contract Documents.

**4.1.3** CM@Risk shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.

**4.1.4** Within five (5) days of City's receipt of CM@Risk's notice, the City and CM@Risk shall jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.

**4.1.5** If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that shall set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CM@Risk's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**4.1.6** City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 4.1.5 above, (ii) CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CM@Risk agree that City's use or occupancy shall not interfere with CM@Risk's completion of the remaining Work.

**4.2** **Final Completion**. Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and CM@Risk shall jointly inspect to verify that the remaining items of Work have been completed as set forth in Section 4.1.5. The City shall issue a Final Completion Letter and payment pursuant to Section 7.5.

**4.3 Liquidated Damages**

**4.3.1** CM@Risk understands that if Substantial Completion is not attained within the Contract Time as adjusted, the City shall suffer damages, which are difficult to determine and accurately specify. CM@Risk agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CM@Risk shall pay the City $ 1,070.00 per day as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

**4.3.2** CM@Risk understands that if Final Completion is not attained within the Contract Time as adjusted, the City shall suffer damages, which are difficult to determine and accurately specify. CM@Risk agrees that if Final Completion is not attained within the Contract Time as adjusted, CM@Risk shall pay the City $ 1,070.00 per day as liquidated damages for each Day that Final

Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

**4.4 Project Master Schedule**

**4.4.1** The Project Master Schedule approved as part of a GMP shall be updated and maintained throughout the Work by CM@Risk.

**4.4.2** The Project Master Schedule shall be revised by CM@Risk as required by conditions and progress of the Work, but such revisions shall not relieve CM@Risk of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

**4.4.3** Updated Project Master Schedules shall be submitted monthly by CM@Risk to the City as part of the Payment Request.

**4.4.3.1** CM@Risk shall provide City with a monthly status report with each Project Master Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP and within the Contract Time.

**4.4.3.2** With each schedule submittal CM@Risk shall include a transmittal letter including the following:

- Description of problem tasks (referenced to field instructions, requests for information (RFI's), as appropriate.
- Current and anticipated delays including:
  - Cause of the delay
  - Corrective action and schedule adjustments to correct the delay
  - Known or potential impact of the delay on other activities, milestones, and/or the date of Substantial Completion.
- Changes in construction sequence
- Pending items and status thereof including but not limited to:
  - Time Extension requests
  - Other items
- Substantial Completion date status:
  - If ahead of schedule, the number of calendar days ahead.
  - If behind schedule, the number of calendar days behind.
- Other project or scheduling concerns

**4.4.4** City's review of and response to the Project Master Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving CM@Risk of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**4.4.5** The Project Master Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.

**4.4.5.1** The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities.

The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

**4.4.5.2** The CPM diagram schedule shall indicate all relationships between activities.

**4.4.5.3** The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

**4.4.5.4** The CPM diagram schedule shall be based upon activities, which would coincide with the Schedule of Values.

**4.4.5.5** The CPM diagram schedule shall show all Submittals associated with each work activity and the review time for each submittal.

**4.4.5.6** The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with CM@Risk activities.

**4.4.5.7** The schedule shall include a critical path activity that reflects anticipated weather delay during the performance of the Agreement. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on the information set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.

**4.4.6** The Project Master Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.

**4.4.7** Float time shall be as prescribed below:

**4.4.7.1** The total Float within the overall schedule, is not for the exclusive use of either the City or CM@Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Agreement milestones and the Project completion date.

**4.4.7.2** CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions shall be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date and then only if any such extensions or damages are shown to be justified under the Contract Documents.

**4.4.7.3** Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path Submittals returned in less time than allowed by the Agreement, approval of substitution requests and credit changes which result in savings of time to CM@Risk, etc.). In such an event, CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

## Article 5- Contract Price

**5.0** CM@Risk agrees at his own cost and expense, to completely construct and install all Work and materials as called for by this Agreement, free and clear of all claims, liens and charges

whatsoever, in the manner and under the conditions specified in the Contract Documents, within the time or times stated in the approved Guaranteed Maximum Price (GMP).

**5.1 Contract Price**

**5.1.1** The Contract Price shall be as approved in the Guaranteed Maximum Price Proposal # Three attached as Exhibit "B" and an amount of $ 923,788.00 with an additional $ 20,000.00allowed for Owner's Contingency.

**5.1.2** The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.

**5.1.3** The General Conditions Costs and the Construction Fee are firm fixed lump sums delineated in the GMP.

**5.1.4** Taxes are deemed to include all sales, use consumer and other taxes, which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective, or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

**5.2 Guaranteed Maximum Price**

**5.2.1** The Guaranteed Maximum Price is composed of the maximum Cost of the Work; the Construction Fee; General Conditions Costs; taxes; and, CM@Risk's contingency all of which are not-to-exceed cost reimbursable or lump sum amounts defined in Articles 5.1 and 5.3. CM@Risk is at risk to cover any additional Project costs. If the Cost of Work amount, set forth in the GMP, is in excess of the actual Cost of Work and/or CM@Risk's Contingency, said amount by which the Cost of Work set forth in the GMP is in excess of the actual Cost of Work and/or CM@Risk's Contingency, shall revert to the City.

**5.2.2** The GMP is subject to adjustments made in accordance with Article 6 and by GMP amendments to this Agreement.

**5.2.3** GMP amendments are cumulative except for CM@Risk's Contingency. The amount of CM@Risk's Contingency for each GMP shall be negotiated separately.

**5.2.4** If the GMP requires an adjustment due to changes in the scope of the Work the cost of such changes is determined subject to Article 6. The markups that may be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

**5.3 Contingencies**

**5.3.1** CM@Risk's Contingency is an amount CM@Risk may use at its sole discretion for, an increase in the Cost of Work , and may use for increases in General Conditions Costs with written approval of the City. CM@Risk's Contingency is assumed to be a direct Project cost and all applicable markups shall be applied at the time of GMP submission.

**5.3.1.1** When CM@Risk utilizes CM@Risk's Contingency funds, CM@Risk shall make the appropriate changes to the Schedule of Values with the next regular progress payment request. CM@Risk shall deduct the amount of CM@Risk's Contingency funds used from CM@Risk's Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. If CM@Risk's contingency funds are used for a new line item that was not given with the original Schedule of Values, these shall be so indicated.

**5.3.2** Owner's Contingency are funds to be used at the sole discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen Site conditions. Owner's Contingency shall be added to the GMP amount provided by CM@Risk, the sum of which shall be the full Contract Price for construction. At the time that Owner's Contingency is used the appropriate markups shall be applied.

**5.4** **Open Book.** CM@Risk shall submit to the City upon request all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant progress payment checks. The requirements of this Section shall be included in all Agreements between CM@Risk and its Subcontractors and Consultants. The City may exercise its rights under this Section as often as reasonably necessary in the City's sole judgment to assure the City has a complete and accurate understanding of all Project costs.

## Article 6 - Changes to the Contract Price and Time

**6.0** **Delays to the Work**

**6.0.1** If CM@Risk is delayed in the performance of the Work that shall cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own, or, those for whom CM@Risk is responsible, the Contract Times for performance shall be reasonably extended by Change Order.

**6.0.2** CM@Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work within three (3) days of the occurrence of the delay. In the case of a continuing delay only one request is necessary.

**6.0.3** By way of example, events that shall entitle CM@Risk to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate Contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

**6.0.4** If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled Substantial Completion. All terms, conditions and definitions necessary for the application of this paragraph shall be as set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto.

**6.0.5** It is understood, however, that permitting CM@Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.

**6.0.6** In addition to CM@Risk's right to a time extension for those events set forth in this Section, CM@Risk shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CM@Risk and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God and shall not be adjusted absent a showing of actual damage.

**6.1 Differing Site Conditions**

**6.1.1** If CM@Risk encounters a Differing Site Condition, CM@Risk shall be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM@Risk's cost and/or time of performance are actually adversely impacted by the Differing Site Condition.

**6.1.2** Upon encountering a Differing Site Condition, CM@Risk shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CM@Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

**6.2 Errors, Discrepancies and Omissions**

**6.2.1** If CM@Risk observes errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the Design Professional and request clarification.

**6.2.2** If CM@Risk proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, CM@Risk does so at its own risk. Adjustments involving such circumstances made by CM@Risk prior to clarification by the Design Professional shall be at CM@Risk's risk.

**6.3 The City Requested Change in Work**

**6.3.1** The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.

**6.3.2** Such alterations and changes shall not invalidate this Agreement nor release the surety and CM@Risk agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.

**6.3.3** The City shall request a proposal for a change in Work from CM@Risk, and an adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreed upon cost and time.

**6.4** **Legal Requirements**. The Contract Price and/or Contract Times shall be adjusted to compensate CM@Risk for the effects of any changes in the Legal Requirements enacted after the date of their Agreement or the date of the GMP, affecting the performance of the Work

**6.5 Change Directives and Change Orders**

**6.5.1** City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive if any adjustments are appropriate. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

**6.5.2** All changes in Work authorized by Change Directives and/or Change Orders shall be performed under the conditions of the Contract Documents.

**6.6 Minor Changes in the Work**

**6.6.1** The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM@Risk. CM@Risk shall carry out such written orders promptly.

**6.6.2** CM@Risk may make minor changes in Work, provided, however that CM@Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@Risk.

**6.6.3** Minor changes in Work shall not involve an adjustment in the Contract Price and/or Contract Times.

**6.7 Contract Price Adjustments**

**6.7.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

**6.7.1.1** Unit prices set forth in this Agreement or as subsequently agreed to between the parties;

**6.7.1.2** A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; and

**6.7.1.3** Costs, fees and any other markups.

**6.7.2** The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP as shown on Exhibit "B".

**6.7.3** If an increase or decrease cannot be agreed to as set forth in Sections 6.7.1.1 through 6.7.1.3 above and City issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in their Agreement. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

**6.7.4** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices shall cause substantial inequity to City or CM@Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**6.7.5** If City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to Article 8 hereof.

**6.7.5.1** As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.

**6.7.5.2** If the parties are unable to agree and City expects CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk (i) directing CM@Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed.

**6.7.6** **Emergencies**. In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Section shall be determined as provided in this Article.

## Article 7- Procedure for Payment

**7.0** For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to the City's satisfaction, the City agrees to pay CM@Risk the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes and CM@Risk's Construction Fee, but no more than the GMP as adjusted by any change orders. Payment for the specific work under this Agreement shall be made in accordance with payment provisions detailed below.

**7.1 GMP Payment Request**

**7.1.1** At the pre-construction conference prescribed in Section 2.4, CM@Risk shall submit for City's review and approval a Schedule of Values. The Schedule of Values shall serve as the basis for monthly progress payments made to CM@Risk throughout the Work.

**7.1.2** At least five (5) working days prior to the date established for a Payment Request, CM@Risk shall submit an updated Project Master Schedule and meet with the City's Representative to review the progress of the Work as it shall be reflected on the Payment Request.

**7.1.3** The Payment Request shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that title to all Work shall pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

**7.1.4** The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved schedule.

**7.1.4.1** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.

**7.1.4.2** For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within Coconino County or other Sites as may be approved and be accessible for City's inspection. CM@Risk must establish City title to such materials and equipment or otherwise protect the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.

**7.1.4.3** All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.

**7.1.5** CM@Risk shall submit to City on a monthly basis either on the first of the month for payment on the 15th or on the 19th of the month for payment on the 30th or 31st. If the payment date is on a Saturday, payment shall be on Friday. If the payment date is on a Sunday, payment shall be on Monday.

**7.2 Payment of GMP**

**7.2.1** City shall make payment in accordance with A.R.S. §34-607. Payment shall be made no later than fourteen (14) days after the Payment Request is certified and approved, but in each case less the total of payments previously made, and less amounts properly retained under Section 7.3 below.

**7.2.2** City shall pay CM@Risk all amounts properly due. If City determines that CM@Risk is not entitled to all or part of a Payment Request, it shall notify CM@Risk in writing within (7) days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@Risk shall take to rectify City's concerns. CM@Risk and City shall attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

**7.3 Retention on GMP**

**7.3.1** City shall retain ten percent (10%) of each Payment Request amount provided. When fifty percent (50%) of the Work has been completed by CM@Risk, upon request of CM@Risk, City may reduce the amount retained to five percent (5%) from CM@Risk's subsequent Payment Requests if CM@Risk's performance of Work has been satisfactory.

**7.3.2** In lieu of retention, CM@Risk may provide as a substitute, an assignment of time certificates of deposit (CDs) from a bank licensed by the State of Arizona, securities of or guaranteed by the United States of America, securities of counties, municipalities and school districts within the State of Arizona or shares of savings and loan institutions authorized to transact business in Arizona.

**7.3.2.1** CDs assigned to the City must be maintained at the City's single servicing bank, currently Wells Fargo, in the form of time deposit receipt accounts.

**7.3.2.2** Securities depoSited in lieu of retention must be depoSited into a separate account with a bank within the State of Arizona.

**7.3.2.3** CDs and Securities shall be assigned exclusively for the benefit of the City of Flagstaff pursuant to the City's form of Escrow Agreement. Escrow Agreement forms may be obtained from the Contracts Department by calling (928) 779-7685, extension 7318.

**7.4** **Substantial Completion**. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CM@Risk all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount up to two and one-half (2.5) times the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**7.5 Final Payment**

**7.5.1** After receipt of a final Payment Request, City shall make final payment within sixty (60) days after receipt by the City, provided that CM@Risk has completed all of the Work in conformance with the Contract Documents and a Final Completion Letter has been issued by the City.

**7.5.2** At the time of submission of its final Payment Request, CM@Risk shall provide the following information:

**7.5.2.1** An affidavit affirming that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which shall in any way affect City's interests;

**7.5.2.2** A general release executed by CM@Risk waiving, upon receipt of final payment by CM@Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment; and

**7.5.2.3** Consent of CM@Risk's surety, if any, to final payment.

**7.6 Payments To Subcontractors or Suppliers**

**7.6.1** CM@Risk shall pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. CM@Risk shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to CM@Risk shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CM@Risk shall pay Subcontractors or suppliers the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to CM@Risk. No agreement between CM@Risk and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.

**7.6.2** If CM@Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM@Risk agrees that the City may take such actions:

**7.6.2.1** To hold CM@Risk in default under this Agreement;

**7.6.2.2** Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;

**7.6.2.3** Reject all future offers to perform work for the City from CM@Risk for a period not to exceed one (1) year from Substantial Completion date of this Project; or

**7.6.2.4** Terminate this Agreement.

**7.6.3** If CM@Risk's payment to a Subcontractor or supplier is in dispute, it shall act in compliance with A.R.S. § 32-1129.02(D) and related statutes as amended, and shall further hold the City harmless from any ensuing damages, claims or costs.

**7.6.4** Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

**7.6.5** CM@Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

**7.7 Record Keeping and Finance Controls**

**7.7.1** Records of CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis and shall be available for three (3) years after Final Completion of the Project.

**7.7.2** The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.

**7.7.3** The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of CM@Risk's records, the audit discloses CM@Risk has provided false, misleading, or inaccurate cost and pricing data.

**7.7.4** CM@Risk shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

7.7.5 The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultant's and Subcontractor's Agreements, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

## Article 8- Claims and Disputes

**8.0 Requests for Agreement Adjustments and Relief.**

8.0.1 If either CM@Risk or City believes that it is entitled to relief against the other for any event arising out of or related to Work, such party shall provide written notice to the other party of the basis for its claim for relief.

8.0.2 Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.

8.0.3 In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

8.0.4 Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

**8.1 Dispute Avoidance and Resolution**

8.1.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

8.1.2 CM@Risk and City shall first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and City's Representative.

8.1.3 If a dispute or disagreement cannot be resolved through CM@Risk's Representative and City's Representative, CM@Risk's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties shall exchange relevant information that shall assist the parties in resolving their dispute or disagreement.

8.1.4 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, be self-administered and be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties.

1. Mediator Selection. Unless the parties agree otherwise, the mediator(s) shall be selected from the roster of attorney mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. If the parties are unable to agree upon a mediator within 10 business days, each party shall independently inform the Director of the Alternative Dispute Resolution Program of the Coconino County Superior Court (the "Director") of three attorney mediators from that roster that are acceptable to the party, and further, inform the Director of any preference as to matters such as the candidate's mediation style, subject matter expertise, or other factors pertinent to the case. The Director shall then select an attorney mediator from the parties' lists or such other attorney mediator from the above noted roster, as the Director may deem, in the Director's sole discretion, appropriate under the circumstances.

2. Fees and Costs. Each party agrees to bear its own fees and costs in mediation.

3. Subsequent or Contemporaneous Agreements. The parties shall include this provision in all subsequent or contemporaneous agreements relative to this matter, absent specific written agreement of the parties otherwise.

4. Participation in Mediation. The parties agree to encourage participation in mediation by all relevant parties. The parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation.

5. Waiver. This Section shall not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

**8.1.5** Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement shall be filed in the Coconino County Superior Court and Arizona law shall apply and control. In the event 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 its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

**8.2** **Duty to Continue Performance**. Unless provided to the contrary in the Contract Documents, CM@Risk shall continue to perform the Work and City shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute or disagreement between CM@Risk and City.

**8.3 Representatives of the Parties**

**8.3.1 The City's Representatives**

**8.3.1.1** City designates the individual listed below or his designee as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 8.1.3:

Erik Solberg, Division Head
211 West Aspen Avenue
Flagstaff, AZ 86001
(928)-213-2105

**8.3.1.2** City designates the individual listed below as its City's Representative, which individual has the authority and responsibility set forth in Section 8.1.2:

Dan Holmes, Sr. Project Manager
211 West Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2108

**8.3.2 CM@Risk's Representatives**

**8.3.2.1** CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 8.1.3:

Harvey Heckethorn, Owner
P. O. Box 551
Flagstaff, Arizona 86002
(928)-774-4133.

**8.3.2.2** CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibility set forth in Section 8.1.2:

Earl Heckethorn, President
P. O. Box 551
Flagtstaff, Arizona 86002
(928)-774-4133

## Article 9 – Suspension and Termination

**9.0 City's Right to Stop Work**

**9.0.1** City may, at its discretion and without cause, order CM@Risk in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive days.

**9.0.2** CM@Risk may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

**9.1 Termination for Convenience**

**9.1.1** Upon receipt of written notice to CM@Risk, City may, at its discretion and without cause, elect to terminate this Agreement. In such event, City shall pay CM@Risk only the direct value of its completed Work and materials supplied as of the date of termination. CM@Risk shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead.

**9.1.2** If the City suspends the Work for one hundred eighty-one (181) consecutive days or more, such suspension shall be deemed a termination for convenience.

**9.1.3** Upon such termination, CM@Risk shall proceed with the following obligations.

**9.1.3.1** Stop Work as specified in the notice.

**9.1.3.2** Place no further subcontracts or orders.

**9.1.3.3** Terminate all subcontracts to the extent they relate to the work terminated. CM@Risk shall ensure that all subcontracts contain this same termination for convenience provision set forth in Section 9.1 et seq.

**9.1.3.4** At the City's sole discretion and if requested in writing by the City, assign to the City all right, title and interest of CM@Risk under the subcontracts subject to termination.

**9.1.3.5** Take any action that may be necessary for the protection and preservation of the property related to this Agreement that is in the possession of CM@Risk and in which the City has or may acquire an interest.

**9.1.4** CM@Risk shall submit complete termination inventory schedules no later than one hundred twenty (120) days from the date of the notice of termination.

**9.1.5** The City shall pay CM@Risk the following:

**9.1.5.1** The direct value of its completed Work and materials supplied as of the date of termination.

**9.1.5.2** The reasonable and direct, actual costs and expenses attributable to such termination. Reasonable costs and expenses shall not include, among other things, anticipated profit, anticipated overhead, or costs arising from CM@Risk's failure to perform as required under this Agreement.

**9.1.5.3** CM@Risk shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead. If it is determined that CM@Risk would have sustained a loss on the entire Work had they been completed, CM@Risk shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.

**9.1.6** CM@Risk shall maintain all records and documents for three (3) years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 7.7.

**9.2 The City's Right to Perform and Terminate for Cause**

**9.2.1** If the City provides CM@Risk with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and CM@Risk fails to comply in a time frame specified, the City may have work accomplished by other sources at CM@Risk's sole expense.

**9.2.2** If CM@Risk persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Subsections 9.2.3 and 9.2.4 below.

**9.2.3** Upon the occurrence of an event set forth in Subsection 9.2.2 above, City may provide written notice to CM@Risk that it intends to terminate this Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of CM@Risk's receipt of such notice.

**9.2.3.1** If CM@Risk fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to CM@Risk of its intent to terminate within an additional seven (7) day period.

**9.2.3.2** If CM@Risk, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then City may declare this Agreement terminated for default by providing written notice to CM@Risk of such declaration.

**9.2.4** Upon declaring this Agreement terminated pursuant to Subsection 9.2.3.2 above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM@Risk hereby transfers, assigns and conveys to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

**9.2.5** In the event of such termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, CM@Risk shall only be entitled to be paid for Work performed and accepted by the City prior to its default.

**9.2.6** If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to City. Such costs and expenses shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the reprocurement and defense of claims arising from CM@Risk's default.

**9.2.7** If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.1.

## Article 10 - Insurance and Bonds

**10.0 Insurance Requirements**

**10.0.1** CM@Risk and Subcontractors 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 CM@Risk, its agents, representatives, employees or Subcontractors.

**10.0.2** The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

**10.0.3** The City in no way warrants that the minimum limits contained herein are sufficient to protect CM@Risk from liabilities that might arise out of the performance of the work under this Agreement by CM@Risk, its agents, representatives, employees, or subcontractors. CM@Risk is free to purchase such additional insurance as may be determined necessary.

**10.1** **Minimum Scope And Limits Of Insurance**. CM@Risk shall provide coverage with limits of liability not less than those stated below:

**10.1.1** Commercial General Liability – Occurrence Form
Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

| | |
|---|---|
| • General Aggregate/for this Project | $2,000,000/$1,000,000 |
| • Products – Completed Operations Aggregate | $1,000,000 |
| • Personal and Advertising Injury | $1,000,000 |
| • Each Occurrence | $1,000,000 |
| • Fire Damage | $ 100,000 |

The policy shall be endorsed to include the following additional insured language: **"The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of CM@Risk".**

**10.1.2** Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

| | |
|---|---|
| Combined Single Limit (CSL) | $1,000,000 |

The policy shall be endorsed to include the following additional insured language: **"The City of Flagstaff shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of CM@Risk, including automobiles owned, leased, hired or borrowed by CM@Risk".**

**10.1.3** Worker's Compensation and Employers' Liability

| | |
|---|---|
| Workers' Compensation | Statutory |
| Employers' Liability | |
| Each Accident | $500,000 |
| Disease - Each Employee | $500,000 |
| Disease – Policy Limit | $500,000 |

**10.1.4** **Builders' Risk Insurance or Installation Floater** $ N/A

In an amount equal to the initial Contract Amount plus additional coverage equal to Contract Amount for all subsequent change orders.

**10.1.4.1** The City of Flagstaff, CM@Risk, Subcontractors, Design Professional and Design Professional's consultant and any others with an insurable interest in the Work shall be **Named Insured's** on the policy.

**10.1.4.2** Coverage shall be written on an all risk, replacement cost basis and **shall include coverage for soft costs, flood and earth movement**.

**10.1.4.3** Coverage shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Flagstaff, has an insurable interest in the property required to be covered.

**10.1.4.4** Coverage shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

**10.1.4.5** CM@Risk shall provide coverage from the time any covered property becomes the responsibility of CM@Risk, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation Site, or awaiting installation, whether on or off Site.

**10.1.4.6** Coverage shall contain a **waiver of subrogation** against the City of Flagstaff.

**10.1.4.7** CM@Risk is responsible for the payment of all policy deductibles.

**10.2** **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:

**10.2.1** The City, its officers, officials, agents, employees and volunteers shall be additional insured to the full limits of liability purchased by CM@Risk even if those limits of liability are in excess of those required by this Agreement.

**10.2.2** CM@Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

**10.2.3** Coverage provided by CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

**10.2.4** The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, and employees for losses arising from work performed by the CM@Risk for the City.

**10.3** **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, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to the City Contracts Division and shall be sent by certified mail, return receipt requested.

**10.4** **Acceptability Of Insurers.** Insurance is to be placed with insurers who are duly licensed companies in the State of Arizona with an "A.M. Best" rating of A-,7, or as approved by the City and licensed in the State of Arizona with policies and forms satisfactory to the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect CM@Risk from potential insurer insolvency.

**10.5** **Verification Of Coverage**

**10.5.1** CM@Risk 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 are to be signed by a person authorized by that insurer to bind coverage on its behalf.

**10.5.2** All Certificates of Insurance and endorsements are to 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 the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

**10.5.3** All Certificates of Insurance required by this Agreement shall be sent directly to City's Contracts Division. The City project/contract number and project description shall be noted on the Certificate of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

**10.5.4** **If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the CM@Risk must:**

- **Submit a current Certificate of Insurance (dated within fifteen (15) days of the payment request submittal) with each payment request form. The payment request shall be rejected if the Certificate of Insurance is not submitted with the payment request.**

**10.6** **Subcontractors.** CM@Risks' Certificate(s) of Insurance shall include all Subcontractors as additional insured's under its policies. All coverage's for Subcontractors shall be subject to the minimum requirements identified above.

**10.7** **Approval.** Any modification or variation from the insurance requirements in this Agreement shall be made by the City's Legal Department, whose decision shall be final. Such action shall not require a formal contract amendment, but may be made by administrative action.

**10.8** **Bonds and Other Performance Security.**

**10.8.1** Prior to execution of this Agreement, CM@Risk shall provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the GMP.

**10.8.2** Each such bond shall be executed by a surety company, or companies, holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two (2) years prior to the execution of this Agreement.

**10.8.3** The bonds shall be made payable and acceptable to the City of Flagstaff.

**10.8.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in Arizona, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

**10.8.4.1** If one Power of Attorney is submitted, it shall be for twice the total GMP amount.

**10.8.4.2** If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.

**10.8.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, CM@Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**10.8.6** All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "A-,7, or better for the prior four quarters" by the A.M. Best Company.

## Article 11 - Indemnification

### 11.1 CM@Risk's Liability and Indemnification.

**11.1.1** To the fullest extent permitted by law, CM@Risk shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of CM@Risk, its employees, agents, or any tier of subcontractors in the performance of this Agreement. CM@Risk's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with the claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of CM@Risk or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services CM@Risk may be legally liable.

The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnity in this paragraph.

## Article 12 – General Provisions

### 12.1 Contract Documents

**12.1.1** Contract Documents are as defined in Article 1. This Agreement, Plans, Standard Specifications and Details, Special Provisions, Addenda (if any) dated "None" and used as the basis for the Guaranteed Maximum Price Proposal and Guaranteed Maximum Price Proposal,

as accepted by the Mayor and Council per Council Minutes 17th day of April, 2012, Performance Bond, Payment Bond, Certificates of Insurance, Construction Documents and Change Orders (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.

**12.1.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

**12.1.3** In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.

**12.1.3.1** On the drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small-scale drawings.

**12.1.3.2** Specifications take precedence over Plans.

**12.1.3.3** In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Design Phase Agreement, the Contract Documents take precedence over the Design Phase Agreement

**12.1.4** The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**12.1.5** The Contract Documents form the entire agreement between City and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

**12.2** **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

**12.3** **Time is of the Essence.** City and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**12.4** **Mutual Obligations.** City and CM@Risk commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

**12.5** **Cooperation and Further Documentation.** CM@Risk agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.

**12.6** **Assignment.** Neither CM@Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.

**12.7** **Successorship.** CM@Risk and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

**12.8** **Third Party Beneficiary.** Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents shall be for the sole and exclusive benefit of City and CM@Risk and not for the benefit of any other party.

12.9 **Governing Law.** This Agreement and all Contract Documents shall be deemed to be made under, and shall be construed, in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, Coconino County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

12.10 **Severability.** If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

12.11 **Compliance with All Laws.** CM@Risk will comply with all applicable Federal, State, County and City laws, regulations and policies, including but not limited to the mandatory statutory provisions in Exhibit __, attached and made a part of this Agreement. CM@Risk 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. CM@Risk agrees to comply with these laws in performing the Contract Documents and to permit the City to verify such compliance.

12.12 **Employment of Aliens.** CM@Risk shall comply with A.R.S. § 34-301, which provides that a person who is not a citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal public works project.

12.13 **Compliance with Federal Immigration Laws and Regulations.** Vendor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. 23-214.A. Vendor acknowledges that pursuant to A.R.S. 41-4401 a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the City retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

12.14 **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.

12.15 **Legal Requirements.** CM@Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

12.16 **Construction Documents.** It is not CM@Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if CM@Risk recognizes that portions of the Construction Documents are at variance therewith, CM@Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.

12.17 **Independent Contractor.** CM@Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct CM@Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that CM@Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.

12.18 **The City's Right Of Cancellation.** All parties hereto acknowledge that this Agreement is subject to cancellation by the City pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

**12.19** **Survival.** All warranties, representations and indemnifications by CM@Risk shall survive the completion or termination of this Agreement.

**12.20** **Covenant Against Contingent Fees**. CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of City has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**12.21** **No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

**12.22** **Notice.**

**12.22.1** Unless otherwise provided, any notice, request, instruction or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to CM@Risk:

Harvey Heckethorn, Owner
P. O. Box 551
Flagstaff, Arizona 86002
(928)-774-4133

to City:

City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attn: Erik Solberg, Division Head
Phone: (928) 213-2105
Fax: (928) 913-3200

With a copy to:

City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attn: Dan Holmes, Sr. Project Manager
Phone: (928) 213-2108
Fax: (928) 913-3200

Design Professional:

Plateau Engineering, Adam Miele, Project Manager
202 East Birch Avenue
Flagstaff, Arizona 86001
(928)-556-0311

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

**12.22.2** Notices Related to Payment, Securities-in-lieu, Bonds. Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to Contractor:

Harvey Heckethorn, Owner
P. O. Box 551
Flagstaff, Arizona 86002
(928)-774-4133

to City:

City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attn: Rick Compau, Purchasing Director
Phone: (928) 213-2275
Fax: (928) 213- 2209

With copies to:

City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attn: Patrick Brown, C.P.M., Senior Procurement Specialist
Phone: (928) 213-2277
Fax: (928) 213-2209

City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attn: Dan Holmes, City Representative (Sr. Project Manager)
Phone: (928) 213-2108
Fax: (928) 913-3200

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver

because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

**12.23 Confidentiality of Plans and Specifications**

**12.23.1** Any plans or specifications regarding this Project shall be for official use only. CM@Risk shall not share them with others except as required to fulfill the obligations of this Agreement with the City.

**12.23.2** All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by CM@Risk shall include the following language: "These plans are for official use only and may not be shared with others except as required to fulfill the obligations of the Street Maintenance Program 2011 Project Agreement with the City of Flagstaff."

**12.24** **CM@Risk and Subcontractor Employee Security Inquiries.** The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CM@Risk shall take such other measures, as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

**12.24.1** Security Inquiries. CM@Risk acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CM@Risk shall perform all such security inquiries and shall make the results available to City for all employees considered for performing work (including supervision and oversight) under this Agreement. City may make further security inquiries. Whether or not further security inquires are made by City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by CM@Risk for performing work under this Agreement. Employees rejected by City for performing services under this Agreement may still be engaged by CM@Risk for other work not involving the City. An employee rejected for work under this Agreement shall not be proposed to perform work under other City Agreements or engagements without City 's prior approval.

**12.24.2** Criteria for Evaluating Security Inquiries. Once formally adopted by City, criteria for excluding an individual from performing work under this Agreement shall be communicated by City to CM@Risk and used by CM@Risk as a factor in making its decision. Prior to such adoption, CM@Risk shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the Project, and standards used by City in evaluating its own personnel.

**12.24.3** Additional City Rights Regarding Security Inquiries. In addition to the foregoing, City reserves the right to: (1) have an employee/prospective employee of CM@Risk be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM@Risk 's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM@Risk performing work (including supervision and oversight) under this Agreement.

**12.24.4** Background and Security-Contracts and Subcontracts. CM@Risk shall include the security inquiry terms of this Section for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.

**12.24.5** Materiality of Security Inquiry Provisions. The security inquiry provisions of this Agreement, as set forth above, are material to City 's entry into this Agreement and any breach thereof by CM@Risk may, at City's sole and unfettered discretion, be considered to be a breach of contract

of sufficient magnitude to terminate this Agreement. Such termination shall subject CM@Risk to liability for its breach of this Agreement.

**12.25 Hazardous Materials**

**12.25.1** Unless included in the Work, if CM@Risk encounters material on the Site which it reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by applicable law, it shall immediately stop work and report the condition to the City.

**12.25.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by applicable law, CM@Risk shall not resume work in the affected area until the material has been abated or rendered harmless. CM@Risk and the City may agree, in writing, to continue work in non-affected areas on the Site.

**12.25.3** An extension of Contract Time may be granted in accordance with Article 6.

**12.25.4** CM@Risk shall comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

**12.26** **Computer Systems.** CM@Risk shall warrant fault-free performance in the processing of date and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of the Work. Fault-free performance shall include the manipulation of data when dates are in the 20th or 21st centuries and shall be transparent to the user. Failure to comply with "Year 2000" requirements shall be considered a breach of this Agreement.

**12.27** **Traffic Control.** CM@Risk shall comply with all provisions of the latest version of the Manual on Uniform Traffic Control Devices and any other traffic control provisions as may be provided in the technical specifications.

[Signature page follows.]

**THE CITY OF FLAGSTAFF, ARIZONA**

Street Maintenance Program 2012

Project No. 01-13001; GMP Number Three; Agreement No. 2012-28

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

CM@Risk agrees that this Agreement, as awarded, is for the stated Work and understands that payment for the total Work shall be made on the basis of the indicated amount(s), per the terms and conditions of this Agreement.

Guaranteed Maximum Price Three

**Nine Hundred Forty Three Thousand Seven Hundred Eighty Eight dollars**

**$ 943,788.00**

THE CITY OF FLAGSTAFF, ARIZONA

By:_____
Kevin Burke, City Manager

C and E Paving & Grading, LLC.

By:_____

Title:_____

(Corporate Seal)

ATTEST:

_____
City Clerk

_____
ATTEST: (Signature and Title)

APPROVED AS TO FORM:

_____
City Attorney

## EXHIBIT A - PROJECT DESCRIPTION

The Street Maintenance Program includes street overlay, chip seal, micro seal and crack sealing construction to preserve and maintain existing asphalt street and parking lot pavements. The contract work also includes removal and replacement of curb returns and sidewalks at many locations on the streets overlaid to bring these streets into compliance with the Americans With Disabilities Act (ADA). Traffic signal detection modifications may be required where the work disturbs existing detection equipment. Utility adjustments and pavement marking are also included in the work.

The overlay streets are selected after evaluation of the street condition using pavement management software owned by the City. One half of the City street pavements are evaluated and ranked each year. Each street pavement is assigned an overall condition index (OCI) based on the type and severity of the distress observed. A pavement that has no distress is given an OCI of 100. Each pavement distress such as cracking or roughness reduces the street's OCI. The street pavements are ranked by OCI and the pavements exhibiting the most severe distress are programmed for resurfacing with asphaltic concrete overlays as budget allows.

The goal of the Street Maintenance Program is to use the available funds in the most efficient manner to lengthen the service life of the City street pavements and avoid costly pavement reconstruction. The ADA improvements provide improved access for disabled citizens and visitors along existing streets and provide compliance with Federal requirements.

# EXHIBIT B – APPROVED GMP PROPOSAL

**PROJECT #: 01-13001** **DATE:**

**PROJECT NAME: Street Maintenance Program 2013**

**Attached**

# GMP SUMMARY 2013

# STREET MAINTENANCE PROGRAM

# GMP SUMMARY

| | |
|---|---|
| PROJECT NAME: | City of Flagstaff Street Maintenance Program 2013 |
| PROJECT NUMBER: | 01-13001 |
| LAST UPDATED: | 4/15/2013 |
| OWNER(S): | City of Flagstaff |
| BILLNG ADDRESS: | 211 West Aspen Avenue |
| JOB SITE ADDRESS: | various locations |
| OWNER PHONE: | (928) 779-7685 |

C and E
PAVING & GRADING L.L.C.

| GMP SUMMARY | | | | | AMOUNT |
|---|---|---|---|---|---|
| A | COST OF THE WORK (LABOR, MATERIALS, EQUIPMENT) | | | | $714,504.19 |
| B | CM@RISK'S CONTINGENCY | | | | $20,000.00 |
| | INDIRECT COSTS | | | | $734,504.19 |
| C | CONSTRUCTION FEE | | | 4.9052379 | $45,314.00 |
| D | GENERAL CONDITIONS | | | 9.8% | $90,531.22 |
| | D1 | PAYMENT AND PERFORMANCE BOND | $6,466.50 | 0.007% | |
| | D2 | INSURANCE | $1,616.60 | 0.175% | |
| E | SALES TAX | | (9.446%) | 5.784724 | $53,438.59 |
| | | | F: Total GMP | | $923,788.00 |
| | | | G: Owners Contingency | | $20,000.00 |
| | | | H: Contract Amount | | $943,788.00 |

CITY OF FLAGSTAFF
GENERAL CONDITIONS ESTIMATE

| | |
|---|---|
| PROJECT NAME: | City of Flagstaff Street MaintenanceProgram - 2013 |
| PROJECT NUMBER: | 01-13001 |
| LAST UPDATED: | 4/15/2013 |
| OWNER(S): | City of Flagstaff |
| BILLNG ADDRESS: | 211 West Aspen Avenue |
| JOB SITE ADDRESS: | various locations **2013 Streets** |
| OWNER PHONE: | (928) 779-7685 |

**C and E**
**PAVING & GRADING L.L.C.**

| PHASE # | | CATEGORY DESCRIPTION | NOTES / SCOPE | BUDGET |
|---|---|---|---|---|
| General Requirements | | | | |
| 1 | | VEHICLE / FUEL ALLOWANCE | | $3,250.00 |
| 1 | | PROJECT MANAGER | | $22,958.00 |
| 1 | | SUPERINTENDENT | | $22,958.00 |
| 1 | | OFFICE PERSONEL | | $7,338.24 |
| 1 | | OFFICE SUPPLIES AND EQUIPMENT | | $970.00 |
| 1 | | SITE SAFETY | | $365.00 |
| 1 | | TEMP SANITARY FACILITIES | | $375.00 |
| 1 | | ADDITIONAL PUBLIC NOTICES AND DELIVERY/ LIME / CONCRETE PLASTIC | | $985.00 |
| | | SURVEY | | $2,600.00 |
| 1 | | MOBILIZATION | | $11,411.00 |
| 1 | | WARRANTY RESERVE | 1% of Project | $9,237.88 |
| 1 | | GL INSURANCE | .175% of Project | $1,616.60 |
| 1 | | PERFORMANCE BOND | .007% of Project | $6,466.50 |
| | | | | |
| TOTAL | | | | $90,531.22 |

# COST SCHEDULE OF VALUES

# 2013 City Street Maintenance Program

Schedule of Values

**C and E Paving & Grading L.L.C.**

| BID NO. | DESCRIPTION | APPROX. QUANTITY | UNIT | Unit Cost | Cost |
|---|---|---|---|---|---|
| 1 | ADJUST MANHOLE FRAME & COVER (CITY DTL. 9-03-060) | 30.00 | EA | $532.30 | $15,969.00 |
| 3 | ADJUST WATER VALVE BOX (CITY DTL. 9-03-060) | 40.00 | EA | $487.00 | $19,480.00 |
| 6 | BITUMINOUS MATERIAL (CRS-2P) | 0.00 | T | $0.00 | $0.00 |
| 8 | CONTRACT ALLOWANCE | 1.00 | EA | $0.00 | $0.00 |
| 9 | COVER MATERIAL (CM-11) | 0.00 | T | $0.00 | $0.00 |
| 10 | CRACK SEALING | 11.53 | T | $3,610.00 | $41,623.30 |
| 11 | HOT MIX ASPHALT - (LARGE THERMAL CRACK FILLER) | 26.00 | T | $336.75 | $8,755.50 |
| 12 | LOWER MANHOLE FRAME & COVER, SEWER CLEANOUT, BLOWOFFS AND SURVEY HANDHOLDS | 12.00 | EA | $355.00 | $4,260.00 |
| 13 | MODIFIED ASPHALTIC CONCRETE | 2,070.82 | T | $113.25 | $234,520.37 |
| 15 | PAVEMENT MILLING | 10,680.91 | SY | $3.71 | $39,626.18 |
| 16 | REMOVE AND REPLACE CONCRETE APRON & VALLEY GUTTER | 4,155.20 | SF | $19.00 | $78,948.80 |
| 17 | REMOVE AND REPLACE CONCRETE DRIVEWAY (INCLUDING. 6"ABC) | 1,026.40 | SF | $19.00 | $19,501.60 |
| 18 | REMOVE AND REPLACE CURB AND GUTTER (ROLL- IN CLUDING 3" ABC) | 1,036.00 | LF | $34.50 | $35,742.00 |
| 19 | REMOVE AND REPLACE CURB AND GUTTER (VERTICAL- INCLUDING. 3"ABC) | 137.00 | LF | $34.50 | $4,726.50 |
| 20 | REMOVE AND REPLACE CURB IN APRON | 711.50 | LF | $35.00 | $24,902.50 |
| 22 | REMOVE AND REPLACE PAVEMENT (4" AC [C-3/4"]) PATCH | 261.29 | SY | $70.00 | $18,290.30 |
| 23 | REMOVE AND REPLACE SEWER MANHOLE | 0.00 | EA | $0.00 | $0.00 |
| 24 | REMOVE AND REPLACE SIDEWALK (INCLUDING. 3"ABC) | 6,127.21 | SF | $10.50 | $64,335.71 |
| 25 | REMOVE AND REPLACE SURVEY MONUMENTS | 17.00 | EA | $160.00 | $2,720.00 |
| 26 | REMOVE RAMP & INSTALL DETACHABLE WARNING (ADA Ramp MAG 235-3) INCLUDING 3" ABC | 25.00 | EA | $1,805.00 | $45,125.00 |
| 28 | REMOVE, REPLACE & ADJUST WATER VALVE BOX AND COVER | 5.00 | EA | $678.00 | $3,390.00 |
| 31 | STRIPING AND MARKING | 1.00 | LS | $0.00 | $0.00 |
| 32 | SUPPLY NEW VALVE TOP BOX & COVER | 9.00 | EA | $175.00 | $1,575.00 |
| 33 | TACK COAT (SS-1H) | 6.01 | T | $1,443.00 | $8,672.43 |
| 34 | TRAFFIC CONTROL | 1.00 | LS | $31,870.00 | $31,870.00 |
| 37 | LOWER WATER VALVE BOX | 18.00 | EA | $340.00 | $6,120.00 |
| 38 | ADJUST SEWER CLEANOUT, BLOWOFFS AND SURVEY HANDHOLDS (CITY DTL. 9-03-062) | 0.00 | EA | $470.00 | $0.00 |
| 41 | REMOVE RAMP & RETROFIT DETACHABLE WARNING (ADA Ramp MAG 232) INCLUDING 3" ABC | 3.00 | EA | $1,450.00 | $4,350.00 |
| | | | | TOTAL: | $714,504.19 |

COST BREAKDOWN REGISTER

| BID NO. | BID ITEM | DESCRIPTION | FORECAST QUANTITIES | UNIT | UNIT COST | UNIT COST FORECAST | TOTAL COST FORECAST |
|---|---|---|---|---|---|---|---|
| 1 | ADJUST MANHOLE FRAME & COVER (CITY DTL. 9-03-060) | SUBCONTRACTOR | 30.0 | EA. | $495.00 | $14,850.00 | |
| | | MATERIALS | | | | $0.00 | |
| | | EQUIPMENT | | | | $0.00 | |
| | | LABOR | | | | $1,119.00 | |
| | | | 30.0 | EA. | $532.30 | Total: | $15,969.00 |
| 3 | ADJUST WATER VALVE BOX (CITY DTL. 9-03-060) | SUBCONTRACTOR | 40.0 | EA. | $445.00 | $17,800.00 | |
| | | MATERIALS | | | | $0.00 | |
| | | EQUIPMENT | | | | $0.00 | |
| | | LABOR | | | | $1,680.00 | |
| | | | 40.0 | EA. | $487.00 | Total: | $19,480.00 |
| 6 | BITUMINOUS MATERIAL (CRS-2P) | SUBCONTRACTOR | | | | | |
| | | MATERIALS | 0.0 | T | $0.00 | $0.00 | |
| | | EQUIPMENT | | | | $0.00 | |
| | | LABOR | | | | $0.00 | |
| | | | 0.0 | T | $0.00 | Total: | $0.00 |
| 8 | CONTRACT ALLOWANCE | | | | | | |
| | | MATERIALS | 1.0 | EA. | | | |
| | | EQUIPMENT | | | | | |
| | | LABOR | | | | | |
| | | | 1.0 | EA. | | Total: | $0.00 |
| 9 | COVER MATERIAL (CM-11) | | | | | | |
| | | MATERIALS | 0.0 | T | $0.00 | $0.00 | |
| | | EQUIPMENT | | | | $0.00 | |
| | | LABOR | | | | $0.00 | |
| | | | 0.0 | T | $0.00 | Total: | $0.00 |

COST BREAKDOWN REGISTER

| BID NO. | BID ITEM | DESCRIPTION | FORECAST QUANTITIES | UNIT | UNIT COST | UNIT COST FORECAST | TOTAL COST FORECAST |
|---|---|---|---|---|---|---|---|
| 10 | CRACK SEALING | SUBCONTRACTOR | 11.53 | T | $3,500.00 | $40,355.00 | |
| | | MATERIALS | | | | $220.00 | |
| | | EQUIPMENT | | | | $404.00 | |
| | | LABOR | | | | $644.30 | |
| | | | 11.53 | T | $3,610.00 | Total: | $41,623.30 |
| 11 | HOT MIX ASPHALT - (LARGE THERMAL CRACK FILLER) | | | | | | |
| | | MATERIALS | 26.0 | T | $75.50 | $1,963.00 | |
| | | EQUIPMENT | | | | $4,255.00 | |
| | | LABOR | | | | $2,537.50 | |
| | | | 26.0 | T | $336.75 | Total: | $8,755.50 |
| 12 | LOWER MANHOLE FRAME & COVER, SEWER CLEANOUT, BLOWOFFS AND SURVEY HANDHOLDS | SUBCONTRACTOR | 12.0 | EA. | $325.00 | $3,900.00 | |
| | | MATERIALS | | | | $0.00 | |
| | | EQUIPMENT | | | | $0.00 | |
| | | LABOR | | | | $360.00 | |
| | | | 12.0 | EA. | $355.00 | Total: | $4,260.00 |
| 13 | MODIFIED ASPHALTIC CONCRETE | | | | | | |
| | | MATERIALS | 2070.82 | T | $99.50 | $206,046.59 | |
| | | EQUIPMENT | | | | $23,407.00 | |
| | | LABOR | | | | $5,066.78 | |
| | | | 2070.82 | T | $113.25 | Total: | $234,520.37 |
| 15 | PAVEMENT MILLING | SUBCONTRACTOR | 10680.91 | SY | $3.25 | $34,712.96 | |
| | | MATERIALS | | | | $230.00 | |
| | | EQUIPMENT | | | | $3,907.00 | |
| | | LABOR | | | | $776.22 | |
| | | | 10680.91 | SY | $3.71 | Total: | $39,626.18 |

COST BREAKDOWN REGISTER

| BID NO. | BID ITEM | DESCRIPTION | FORECAST QUANTITIES | UNIT | UNIT COST | UNIT COST FORECAST | TOTAL COST FORECAST |
|---|---|---|---|---|---|---|---|
| 16 | REMOVE AND REPLACE CONCRETE APRON & VALLEY GUTTER | SUBCONTRACTOR | 4155.2 | SF | $7.50 | $31,164.00 | |
| | | MATERIALS | | | | $2,660.00 | |
| | | EQUIPMENT | | | | $11,700.00 | |
| | | LABOR | | | | $33,424.80 | |
| | | | 4155.2 | SF | $19.00 | Total: | $78,948.80 |
| 17 | REMOVE AND REPLACE CONCRETE DRIVEWAY (INCLUDING 6"ABC) | SUBCONTRACTOR | 1026.4 | SF | $7.50 | $7,698.00 | |
| | | MATERIALS | | | | $583.00 | |
| | | EQUIPMENT | | | | $2,890.00 | |
| | | LABOR | | | | $8,330.60 | |
| | | | 1026.4 | SF | $19.00 | Total: | $19,501.60 |
| 18 | REMOVE AND REPLACE CURB AND GUTTER (ROLL- IN CLUDING 3" ABC) | SUBCONTRACTOR | 1036.0 | LF | $16.50 | $17,094.00 | |
| | | MATERIALS | | | | $420.00 | |
| | | EQUIPMENT | | | | $7,723.00 | |
| | | LABOR | | | | $10,505.00 | |
| | | | 1036.0 | LF | $34.50 | Total: | $35,742.00 |
| 19 | REMOVE AND REPLACE CURB AND GUTTER (VERTICAL- INCLUDING 3"ABC) | SUBCONTRACTOR | 137.0 | LF | $16.50 | $2,260.50 | |
| | | MATERIALS | | | | $100.00 | |
| | | EQUIPMENT | | | | $1,021.00 | |
| | | LABOR | | | | $1,345.00 | |
| | | | 137.0 | LF | $34.50 | Total: | $4,726.50 |
| 20 | REMOVE AND REPLACE CURB IN APRON | SUBCONTRACTOR | 711.5 | LF | $17.00 | $12,095.50 | |
| | | MATERIALS | | | | $524.00 | |
| | | EQUIPMENT | | | | $5,380.00 | |
| | | LABOR | | | | $6,903.00 | |
| | | | 711.5 | LF | $35.00 | Total: | $24,902.50 |

COST BREAKDOWN REGISTER

| BID NO. | BID ITEM | DESCRIPTION | FORECAST QUANTITIES | UNIT | UNIT COST | UNIT COST FORECAST | TOTAL COST FORECAST |
|---|---|---|---|---|---|---|---|
| 22 | REMOVE AND REPLACE PAVEMENT (4" AC (C-3/4")) PATCH | | | | | | |
| | | MATERIALS | 261.29 | SY | $18.36 | $4,797.28 | |
| | | EQUIPMENT | | | | $5,608.00 | |
| | | LABOR | | | | $7,886.02 | |
| | | | 261.29 | SY | $70.00 | Total: | $18,290.30 |
| 23 | REMOVE AND REPLACE SEWER MANHOLE | SUBCONTRACTOR | | | | | |
| | | MATERIALS | 0.0 | EA | $0.00 | $0.00 | |
| | | EQUIPMENT | | | | $0.00 | |
| | | LABOR | | | | $0.00 | |
| | | | 0.0 | EA | $0.00 | Total: | $0.00 |
| 24 | REMOVE AND REPLACE SIDEWALK (INCLUDING 3"ABC) | SUBCONTRACTOR | 6127.21 | SF | 3.95 | $24,202.48 | |
| | | MATERIALS | | | | $1,244.00 | |
| | | EQUIPMENT | | | | $8,987.00 | |
| | | LABOR | | | | $29,902.23 | |
| | | | 6127.21 | SF | $10.50 | Total: | $64,335.71 |
| 25 | REMOVE AND REPLACE SURVEY MONUMENTS | SUBCONTRACTOR | 17.0 | EA. | 150.00 | $2,550.00 | |
| | | MATERIALS | | | | $0.00 | |
| | | EQUIPMENT | | | | $0.00 | |
| | | LABOR | | | | $170.00 | |
| | | | 17.0 | EA. | $160.00 | Total: | $2,720.00 |
| 26 | REMOVE RAMP & INSTALL DETACHABLE WARNING (ADA Ramp MAG 235-3) INCLUDING 3" ABC | SUBCONTRACTOR | 25.0 | EA. | 875.00 | $21,875.00 | |
| | | MATERIALS | | | | $530.00 | |
| | | EQUIPMENT | | | | $7,490.00 | |
| | | LABOR | | | | $15,230.00 | |
| | | | 25.0 | EA. | $1,805.00 | Total: | $45,125.00 |

COST BREAKDOWN REGISTER

| BID NO. | BID ITEM | DESCRIPTION | FORECAST QUANTITIES | UNIT | UNIT COST | UNIT COST FORECAST | TOTAL COST FORECAST |
|---|---|---|---|---|---|---|---|
| 27 | REMOVE RAMP & INSTALL DETACHABLE WARNING (ADA Ramp MAG 235-4) INCLUDING 3" ABC | SUBCONTRACTOR | 0.0 | EA. | | $0.00 | |
| | | MATERIALS | | | | | |
| | | EQUIPMENT | | | | | |
| | | LABOR | | | | | |
| | | | 0.0 | EA. | | Total: | $0.00 |
| 28 | REMOVE, REPLACE & ADJUST WATER VALVE BOX AND COVER | SUBCONTRACTOR | 5.0 | EA. | 620.00 | $3,100.00 | |
| | | MATERIALS | | | | $0.00 | |
| | | EQUIPMENT | | | | $0.00 | |
| | | LABOR | | | | $290.00 | |
| | | | 5.0 | EA. | $678.00 | Total: | $3,390.00 |
| 31 | STRIPING AND MARKING | SUBCONTRACTOR | | | | | |
| | | MATERIALS | 1.0 | LS | | | |
| | | EQUIPMENT | | | | | |
| | | LABOR | | | | | |
| | | | 1.0 | LS | | Total: | $0.00 |
| 32 | SUPPLY NEW VALVE TOP BOX & COVER | SUBCONTRACTOR | 9.0 | EA. | 175.00 | $1,575.00 | |
| | | MATERIALS | | | | $0.00 | |
| | | EQUIPMENT | | | | $0.00 | |
| | | LABOR | | | | $0.00 | |
| | | | 9.0 | EA. | $175.00 | Total: | $1,575.00 |
| 33 | TACK COAT (SS-1H) | | | | | | |
| | | MATERIALS | 6.01 | T | $510.00 | $3,065.10 | |
| | | EQUIPMENT | | | | $4,819.00 | |
| | | LABOR | | | | $788.33 | |
| | | | 6.01 | T | $1,443.00 | Total: | $8,672.43 |

COST BREAKDOWN REGISTER

| BID NO. | BID ITEM | DESCRIPTION | FORECAST QUANTITIES | UNIT | UNIT COST | UNIT COST FORECAST | TOTAL COST FORECAST |
|---|---|---|---|---|---|---|---|
| 34 | TRAFFIC CONTROL | SUBCONTRACTOR | 1.0 | LS | | $28,700.00 | |
| | | MATERIALS | | | | $180.00 | |
| | | EQUIPMENT | | | | $855.00 | |
| | | LABOR | | | | $2,135.00 | |
| | | | 1.0 | LS | $31,870.00 | Total: | $31,870.00 |
| 37 | LOWER WATER VALVE BOX | SUBCONTRACTOR | 18.0 | EA. | 325.00 | $5,850.00 | |
| | | MATERIALS | | | | $0.00 | |
| | | EQUIPMENT | | | | $0.00 | |
| | | LABOR | | | | $270.00 | |
| | | | 18.0 | EA. | $340.00 | Total: | $6,120.00 |
| 38 | ADJUST SEWER CLEANOUT, BLOWOFFS AND SURVEY HANDHOLDS (CITY DTL. 9-03-062) | SUBCONTRACTOR | 0.0 | EA. | 0.00 | $0.00 | |
| | | MATERIALS | | | | | |
| | | EQUIPMENT | | | | | |
| | | LABOR | | | | | |
| | | | 0.0 | EA. | $0.00 | Total: | $0.00 |
| 41 | REMOVE RAMP & RETROFIT DETACHABLE WARNING (ADA Ramp MAG 232) INCLUDING 3" ABC | SUBCONTRACTOR | 3.0 | EA. | 702.00 | $2,106.00 | |
| | | MATERIALS | | | | $60.00 | |
| | | EQUIPMENT | | | | $730.00 | |
| | | LABOR | | | | $1,464.00 | |
| | | | 3.0 | EA. | $1,450.00 | Total: | $4,350.00 |

PROJECT TOTAL COST FORECAST: $714,504.19

# LIST OF PLANS AND SPECIFICATIONS

Flagstaff Street Maintenance Program - 2013
Plateau Engineering (928) 556-0311

Project No: 01-13001
Account No.

| Drawing No. | Drawing Title | Release Date |
|---|---|---|
| 1 of 4 | Cover Sheet | |
| 2 of 4 | Notes and Details | |
| 3 of 4 | Key Map - Overlay Streets | |
| 4 of 4 | Improvement Schedule and Estimated Quantities | |

Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction General Provisions

City of Flagstaff Amendments to Maricopa Association of Governments General Provisions

Plateau Engineering Special Provisions

C and E
PAVING & GRADING
L.L.C.

# LIST

# OF

# CLARIFICATIONS

# AND

# ASSUMPTIONS

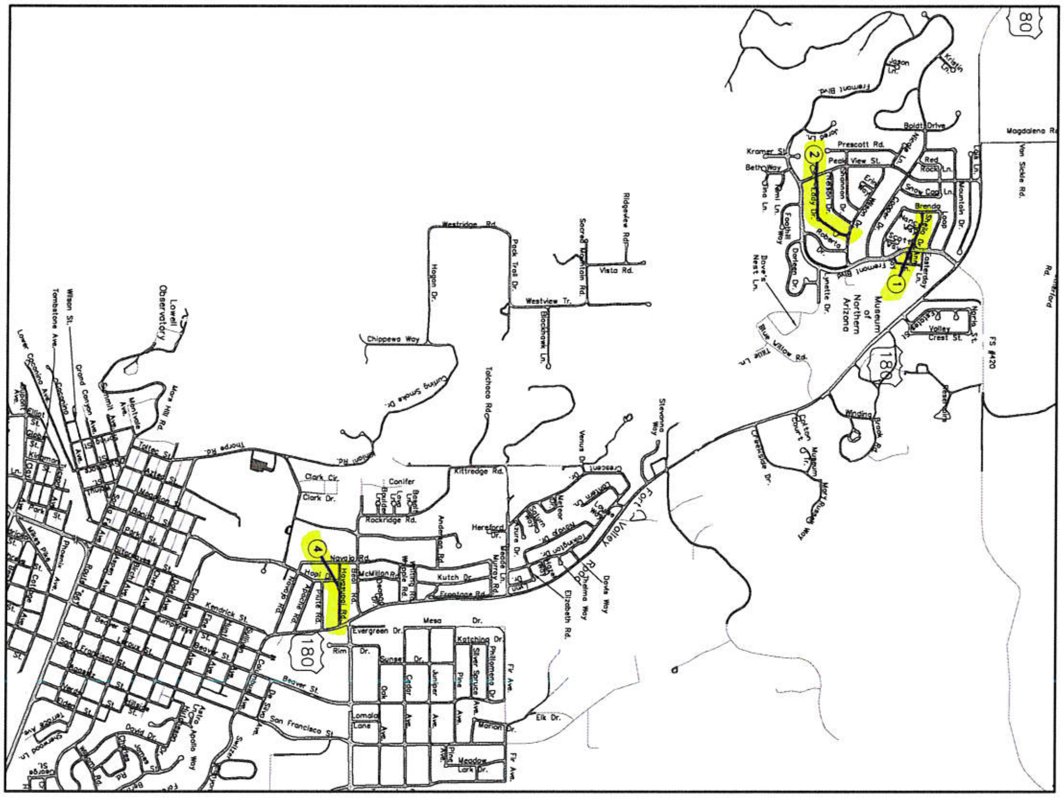
Project No: 01-13001

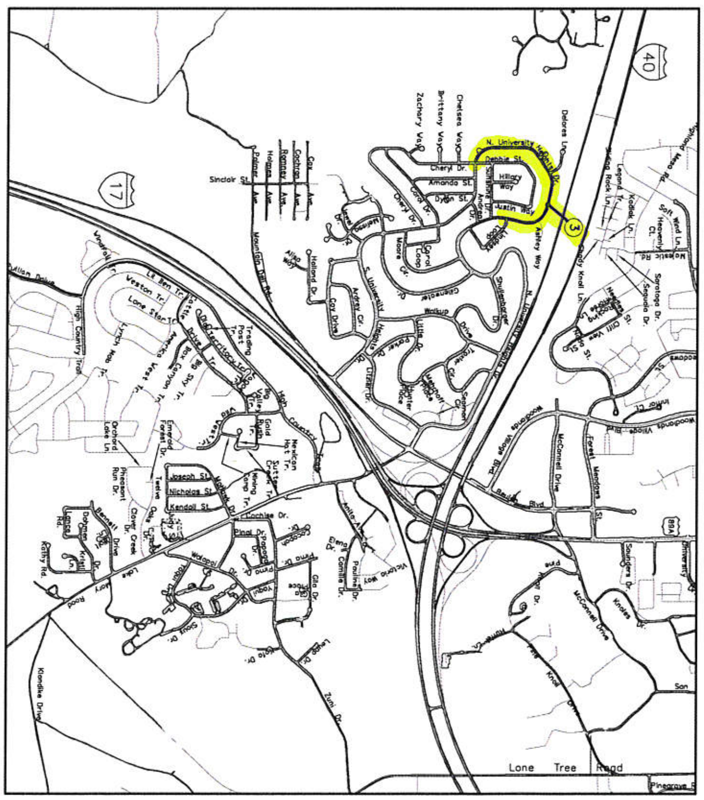
Account No: 040-33-32-600

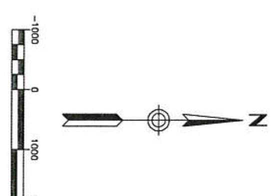
Clarifications and Assumptions

City of Flagstaff Street Maintenance Program – 2013 – Streets

1. It is assumed that City of Flagstaff team members will assess the contractor in identifying and marking the stop and start areas for pavement milling and chip seal.
2. In some cases, cross-streets shall be overlaid in the approach. The Engineer shall outline the location and extent of work on cross-streets prior to beginning the work.
3. We realize that no potable water will be utilized on this project. We will need to obtain a permit (no fee) at the Wildcat Hill Waste Water Treatment Plant and will be responsible for complying with all permit requirements.
4. The March 2013 ADOT Index was used to construct the GMP Asphalt prices for this project. Adjustments may have to be made during construction with variances in the Index.
5. It is assumed that during the term of this contract; 2008 MAG and C.O.F. Specifications will govern.
6. It is assumed that the City of Flagstaff will do all striping on the streets portion of this project.




(0) -CRACK SEAL & OVERLAY

Folder No. ________

Project No. 01-13001

| PROJECT TITLE: COF ASPHALT MAINTENANCE 2013 | | |
|---|---|---|
| DESIGN: SR | | 4/15/2013 |
| DRAWN: SR | | 4/15/2013 |
| CHECKED: NOR | | 4/15/2013 |
| HORZ: | VERT: | |
| SHEET NO. 3 OF 4 | | APRIL/13 |

**PLATEAU ENGINEERING**

CIVIL ENGINEERS AND LAND SURVEYORS
(928) 556-0311 FAX (928) 213-9614

**REVISIONS**

| NO. | DATE | DESCRIPTION | BY |
|---|---|---|---|
| △ | | | |
| △ | | | |
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PRELIMINARY

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Dan Holmes, PW Project Manager |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Approval of Construction Manager at Risk Design Phase Contract:** Westplex Taxi Lanes Reconstruction Project.

**RECOMMENDED ACTION:**

1) Award the Construction Manager at Risk Contract with Banicki Construction in an amount not to exceed $20,296.10, subject to approval by the Federal Aviation Administration (FAA) and ADOT Multi-Modal.
2) Authorize Change Order Authority of $1,014.81 (5%) to cover potential costs associated with unanticipated or additional items of work.
3) Authorize the City Manager to execute the necessary documents.

**Policy Decision or Reason for Action:**

- Provide improved airport safety and infrastructure maintenance.

**Financial Impact:**

The project is budgeted in FY 2013 account number 270-3776-783 in the amount of $3,433,050. Based on bids, the FAA grant will provide 95% of total project funding, ADOT grant will provide 2.5% of funding with the City grant match of 2.5%.

**Connection to Council Goal:**

Repair, replace, maintain infrastructure (streets & utilities)

**Has There Been Previous Council Decision on This:**

Yes, on June 15, 2012, Council approved an engineering design contract with Kimley-Horn and Associates for the project.

**Options and Alternatives:**

1) Approve the Construction Manager at Risk Design Phase Services Agreement as presented. This will allow timely execution of the project.

2) Reject approval of the Agreement and direct staff to pursue traditional design-bid-build project delivery. This would effectively delay progress on the project by three months.

**Background/History:**

On June 15, 2012, City Council approved Supplemental Agreement Number 2 for Consulting Services with Kimley-Horn and Associates to provide design and construction phase services for the Westplex Taxi Lanes Reconstruction project. Design is currently under way and is scheduled to be complete in May of 2013.

In recent years, the Arizona State Legislature has authorized the use of Alternative Project Delivery Methods (APDM) in lieu of the traditional Design-Bid-Build method of project delivery. The Federal Aviation Administration (FAA) has also authorized use of APDM. These alternative methods allow a contracting agency the opportunity to select a construction team utilizing a Qualifications Based Selection process to procure construction services from a firm deemed most qualified to perform the work.

On March 13, 2013, a Request for Statements of Qualifications for Construction Manager at Risk services was published in the Arizona Daily Sun and posted on the City's Purchasing website. On March 28, 2013, the City of Flagstaff received three Statements of Qualifications from firms wishing to provide CM at Risk services for the project. A selection committee of five members independently reviewed and evaluated those statements in accordance with guidelines established by the enabling legislation. Based on numerical evaluation of the statements received, the firm of Banicki Construction received the highest ranking and was deemed the most qualified among those submitting proposals to provide the desired design phase services.

The project consists of removal and replacement of taxi lane asphalt pavements between and around existing "tee" and shade hangars in the westplex area of Flagstaff Pulliam Airport. Work will include milling of existing pavement, excavation and disposal of existing soils, constructing sub-base, base and new asphalt pavements, pavement markings, tie-down installation, pavement marking and other related work. Existing asphalt pavements beneath three existing shade hangars will be replaced with new concrete pavements. Design phase services are scheduled to begin immediately upon approval of the Agreement. Construction is scheduled to begin in June of 2013 and be complete in December, 2013.

**Key Considerations:**

The pavements and aprons surrounding the existing "tee" and shade hangars are badly deteriorated and require extensive annual patching. Cracks in the pavements are in some cases obstructions to the safe movement of aircraft. These pavements have reached the end of their useful life and are in need of complete replacement.

**Expanded Financial Considerations:**

Funding for CM at Risk, Design Phase Services is to be provided by Federal Entitlement and Discretionary grant funds from the U. S. Department of Transportation, Federal Aviation Administration and ADOT Multi-Modal . The project is budgeted in FY 2013 in account number 270-3776-783 in the amount of $ 3,433,050. Based on bids the FAA grant will provide 95% of total project funding, an ADOT grant will provide 2.5% of funding with the City grant match of 2.5%.

**Community Benefits and Considerations:**

Construction of the project will increase the utility and safety of operations at the airport. New pavements surrounding existing hangars will benefit general aviation tenants by providing improved access and easier maneuverability into leased storage units.

Use of the Construction Manager at Risk method of project delivery will eliminate the need for an advertisement/bid/award process and will cut approximately two months off the project development schedule. In addition, value engineering, constructibility reviews and design input conducted as part of this service agreement have the potential to realize significant construction cost savings over the

traditional design-bid-build delivery method.

**Community Involvement:**

Involve - The project will require that tenants will not have access to their hangars during construction. To minimize that inconvenience, the project will be constructed in three phases, with access restrictions limited to several hangars in each phase. Tenants will be notified of the upcoming work by mail prior to construction. In addition, mass e-mails will be sent to all tenants advising of the upcoming work. During construction, weekly updates regarding progress and anticipated dates for reinstating hangar access will be posted on the City website in order that tenants may be advised of construction progress.

**Expanded Options and Alternatives:**

1. Approve the CM @ Risk Design Phase Services Agreement as presented. This will allow the project to move forward in a timely manner and accelerate commencement of construction.

2. Reject the Agreement and direct staff to pursue traditional design-bid-build project delivery. This would effectively delay progress on the project by three months.

---

**Attachments:** Westplex CMAR

**WESTPLEX TAXI LANES**
**RECONSTRUCTION PROJECT**

**AIP NO. 3-04-0015-36**
**ADOT NO. E-3S3E**
**PROJECT NO. 01-12003**
**ACCOUNT N0. 270-3776-783**

# *CONSTRUCTION MANAGER AT RISK*
## *Design Phase Services*

***Mayor***
*Gerald W. Nabors*

***Council***

*Karla Brewster*
*Scott Overton*
*Coral Evans*
*Celia Barotz*
*Jeff Oravits*
*Mark Woodson*

***City Manager***
*Kevin Burke*

***Interim Utilities Director***
*Brad Hill*

***Community Development Director***
*Mark G. Landsiedel*

***Public Works Director***
*Erik Solberg*

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# City of Flagstaff, Arizona

**WESTPLEX TAXI LANES RECONSTRUCTION PROJECT**
**CONSTRUCTION MANAGER AT RISK**
**DESIGN PHASE SERVICES**
**PROJECT NO. 01-12003**

THIS Agreement, made and entered by and between The City of Flagstaff, an Arizona municipal corporation, hereinafter designated the ("City") and Banicki Construction, an Arizona corporation, hereinafter designated the ("Construction Manager at Risk" or CM@Risk) is entered into on this ___ day of _____, 201___.

## RECITALS

A. The City Manager of the City of Flagstaff, Arizona, is authorized and empowered by provisions of the City Charter to execute Agreements for professional services and construction services.

B. The City intends to construct the Westplex Taxi Lanes Reconstruction Project, as more fully described in Exhibit "A" attached, hereinafter referred to as the ("Project".)

C. To undertake the design of said Project the City has entered into a Agreement with Kimley-Horn and Associates hereinafter referred to as the ("Design Professional").

D. CM@Risk has represented to the City the ability to provide design phase services and to construct the Project.

E. Based on this representation, the City intends to enter into an Agreement with CM@Risk for the design phase services identified in this Agreement. At the end of the design phase, at the City's discretion, the City may enter into a separate construction agreement with CM@Risk for construction phase services.

## AGREEMENT

**NOW THEREFORE,** for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and CM@Risk as follows:

## ARTICLE 1 – TERMS AND DEFINITIONS

"Addenda" – Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

"Agreement (Contract)" – This written document signed by the City and CM@Risk covering the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Agreement.

"Alternate Systems Evaluations" – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles which have the potential to reduce construction costs while still delivering a quality and functional Project that meets the City requirements.

"Change Order" – A type of Contract amendment issued after execution of the Contract Documents where unanticipated or unforeseen circumstances in the Work have been encountered. Each change Order shall be signed by the City and CM@Risk, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other Agreement terms.

"City (Owner)" — The City of Flagstaff, a municipal corporation, with whom CM@Risk has entered into this Agreement and for whom the services are to be provided pursuant to said Agreement.

"City's Representative" – The designated City Project Manager.

"City's Senior Representative" – The City of Flagstaff's designated Division/Department Head.

"Construction Contract Time(s)" – The number of days or the dates related to the construction phase that as stated in Construction Documents applies to the achievement of Substantial and final Completion of the Work.

"Construction Documents" - Certain plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements or dated plans and specifications specifically identified as the ("Construction Documents") herein or in an Exhibit or Addendum which is attached hereto.

"Construction Fee" – CM@Risk's administrative costs, home office overhead, and profit, as applicable to this project, whether at CM@Risk's principal or branch offices.

"Construction Manager at Risk (CM@Risk)" – The firm selected by the City to provide the Design Phase Services as detailed in this Agreement.

"CM@Risk Representative" – CM@Risk designates Melissa Holper as its CM@Risk Representative.

"CM@Risk Senior Representative" – CM@Risk designates Jerry Banicki as its Senior Representative.

"Contingency, CM@Risk's" – A fund to cover cost growth during the Project used at the discretion of CM@Risk usually for costs that result from Project circumstances. The amount of CM@Risk's Contingency shall be negotiated as a separate line item in each GMP package. Use and management of CM@Risk's Contingency is described in Section 2.7.

"Contingency, Owners' " – A fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from the City-directed changes or unforeseen Site conditions. The amount of the Owners' Contingency shall be set solely by the City and shall be in addition to the project costs included in CM@Risk's GMP packages. Use and management of the Owners' Contingency is described in Section 2.7.

"Contract Amount" – The cost for services for this Agreement as identified in Article 4.

"Contract Documents" – The following items and documents in descending order of precedence executed by the City and CM@Risk: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

"Cost of the Work" – Direct costs necessarily incurred by CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subAgreement costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include CM@Risk's Construction Fee, General Conditions Cost, or taxes.

"Critical Path Method" – A scheduling technique used to predict project duration by analyzing which sequence of activities has the least amount of scheduling flexibility thus identifying the path (sequence) of activities which represent the longest time required to complete the project. Delay in completion of the identified activities shall cause a delay in achieving Substantial Completion.

"Day(s)" – Indicates calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" – The work products prepared by CM@Risk in performing the scope of work described in this Agreement. Some of the major Deliverables to be prepared and provided by CM@Risk during the design phase

may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed Minority Business Enterprise/Women's Business Enterprise **("MBE/WBE")** Utilization as may be required or appropriate, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Agreement or required by the Project Team and other services set forth in this Agreement or reasonably inferable therefrom.

"Design Professional" – A licensed design professional who furnishes design, construction documents, and/or construction administration services required for the Project.

"Drawings (Plans)" – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by CM@Risk during the construction phase, and which have been prepared or approved by the Design Professional and the City. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but *"not for construction"*. Shop Drawings are not Drawings as so defined.

"Final Completion" – 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner's Project specifications and Owner training/start up activities.

"Float" – Number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"General Conditions Costs " - Includes, but is not limited to the following types of costs for CM@Risk during the construction phase: (i) payroll costs for Project manager or CM@Risk for Work conducted at the Site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the Site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities setup solely for this Project including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities and telephone services at the Site, (vii) costs of liability and other applicable insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of the CM@Risk or Subcontractors.

"Guaranteed Maximum Price (GMP)" – The sum of the maximum Cost of the Work; the Construction Fee, General Conditions Costs, taxes, and CM@Risk Contingency.

"GMP Plans and Specifications" – Plans and specifications upon which the Guaranteed Maximum Price Proposal is based.

"Guaranteed Maximum Price (GMP) Proposal" – The offer or proposal of CM@Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Agreement.

"Legal Requirements" - All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Notice to Proceed or "NTP" - The directive issued by the City, authorizing CM@Risk to start Work.

"Payment Request" – The form that is accepted by the City and used by CM@Risk in requesting progress payments or final payment and which shall include such supporting documentation as is required by the Contract Documents and or the City.

"Project" – Work to be completed in the execution of this Agreement as amended and as described in the Recitals above and in Exhibit "A" attached.

"Project Team" – Design phase services team consisting of the Design Professional, CM@Risk, the City's Representative, the City's Client Department representatives and other stakeholders who are responsible for making decisions regarding the Project.

"Schedule of Values (SOV)" – A statement furnished by CM@Risk to the City's Representative for approval, reflecting the portions of the GMP allotted for the various parts of the Work and used as the basis for evaluating CM@Risk's applications for progress payments.

"Shop Drawings" – All drawings, diagrams, schedules and other data specifically prepared for the Work by CM@Risk or a Subcontractor, Sub-Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Site" – Land or premises on which the Project is located.

"Specifications" – The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship, as applied to the Work and certain administrative details applicable thereto.

"Subconsultant" – A person, firm or corporation having an agreement with CM@Risk to furnish services required as its independent professional associate or consultant with respect to the Project.

"Subcontractor" – An individual or firm having a direct agreement with CM@Risk or any other individual or firm having an agreement with the aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the Site for which CM@Risk is responsible.

"Submittals" – Documents and/or things that may be produced or presented by one party for consideration review or such other actions as may be required by this Agreement by another party, entity or person. Examples of Submittals include, but are not limited to, preliminary or evolving drafts, product data samples, etc.

"Substantial Completion" – The established date when the Work or designated portion thereof is sufficiently complete, in accordance with the Contract Documents so that the Owner may occupy the Work, or designated portion thereof, for the use for which it is intended. This may include, but is not limited to: (i) Approval by the City or State Fire Marshall and/or other state or local authorities having jurisdiction over the Work or a portion thereof (Certificate of Occupancy); (ii) all systems in place, functional, and displayed to, and accepted by, the City or it's representative; (iii) City operation and maintenance training complete; (iv) HVAC test and balance completed with reports provided to the Design Professional for review; (v) Operational and Maintenance manuals and final Project Record Documents delivered to the City or Design Professional for review.

"Supplier" – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct Agreement with CM@Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

"Work" – The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

## ARTICLE 2 – BASIC DESIGN PHASE SERVICES

### 2.1 GENERAL

2.1.1 CM@Risk, to further the interests of the City, shall perform the services required by, and in accordance

with this Agreement, to the satisfaction of the City, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Flagstaff, Arizona would exercise at such time, under similar conditions. CM@Risk shall, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Agreement shall not alter any real property owned by the City.

2.1.2 Program Evaluation: As a participating member of the Project Team, CM@Risk shall provide to the City and Design Professional a written evaluation of the City's Project Program and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.

2.1.3 Project Meetings: CM@Risk shall attend Project Team meetings which may include, but are not limited to, monthly Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.

2.1.4 CM@Risk shall provide design phase services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. CM@Risk shall promptly notify the City in writing whenever CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

2.1.5 CM@Risk, when requested by the City, shall attend, make presentations and participate as may be appropriate in public agency and or community meetings, germane to the Project. CM@Risk shall provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

## 2.2 CONSTRUCTION MANAGEMENT PLAN

2.2.1 CM@Risk may, and at the written request of the City shall, prepare a Construction Management Plan ("CMP"), which may, and at the written request of the City shall, include CM@Risk's professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.

2.2.2 CM@Risk may, and at the written request of the City shall, add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may, and at the written request of the City shall, take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional or CM@Risk, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

## 2.3 PROJECT MASTER SCHEDULE

2.3.1 The fundamental purpose of the "Project Master Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team

to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Master Schedule requirements. CM@Risk shall develop and maintain the "Project Master Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Master Schedule shall be consistent with the most recent revised/updated CMP. The Project Master Schedule shall use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the City. CM@Risk shall use scheduling software to develop the Project Master Schedule that is acceptable to the City. The Project Master Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Master Schedule shall indicate milestone dates for the phases once determined.

2.3.2. The Project Master Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.

2.3.2.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities.

2.3.2.3 The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

2.3.2.4 The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.

2.3.2.5 The CPM diagram schedule shall show all Submittals associated with each work activity and the review time for each submittal.

2.3.2.6 The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with CM@Risk activities.

2.3.2.7 The schedule shall include a critical path activity that reflects anticipated weather delay during the performance of this Agreement. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on the information set forth on the City of Flagstaff's Table of "Monthly Anticipated Adverse Weather Calendar Days" and the explanatory paragraphs attached thereto. (See Section 4.5.5.7 of Construction Agreement)

2.3.3 The Project Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.

2.3.4 Float time shall be as prescribed below:

2.3.4.1 The total Float within the overall schedule, is not for the exclusive use of either the City or CM@Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Agreement milestones and the Project completion date.

2.3.4.2 CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions shall be granted nor delay damages paid until or unless a delay occurs which extends the Work beyond the Substantial Completion date.

2.3.4.3 Since Float time within the schedule is jointly owned, it is acknowledged that the City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path Submittals returned in less time than allowed by the Agreement, approval of substitution requests and credit changes which result in savings of time to CM@Risk, etc.). In such an event, CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

2.3.5 The Project Schedule shall be updated and maintained by CM@Risk throughout the design phase such that it shall not require major changes at the start of the construction phase to incorporate CM@Risk's plan for the performance of the construction phase Work. CM@Risk shall provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. CM@Risk shall include with such Submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions. (See Sections 2.7.6 and 2.7.6.1 of this Agreement)

2.3.6 Project Phasing: If phased construction is deemed appropriate and the City and Design Professional approve, CM@Risk shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. CM@Risk shall take into consideration such factors as natural and practical lines of Work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

## 2.4 DESIGN DOCUMENT REVIEWS

2.4.1 CM@Risk shall evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Master Schedule.

2.4.2 CM@Risk shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for CM@Risk to construct the Project. Before initiating construction operations, CM@Risk may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the Site condition information and data made available with the Construction Documents.

2.4.3 CM@Risk shall meet with the Project Team, as required, to review designs during their development. CM@Risk shall familiarize itself with the evolving documents through the various design phases. CM@Risk shall proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. CM@Risk shall advise the Project Team on proposed Site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. CM@Risk shall recommend cost effective alternatives.

2.4.4 CM@Risk shall conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team and at a minimum as scheduled and identified by milestones in the Project Master Schedule required in Article 2.3 above. The reviews shall attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.

2.4.4.1 Constructability Reviews: CM@Risk shall evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration, efficiency issues concerning; access and entrance to the Site, laydown and storage of materials, staging of Site facilities, construction parking, and other similar pertinent issues.

2.4.4.2 Bidability Reviews: CM@Risk shall check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing Site conditions.

2.4.4.3 Results of the reviews shall be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the City, CM@Risk shall meet with the City and Design Professional to discuss any findings and review reports.

2.4.4.4 CM@Risk's reviews shall be from a contractor's perspective, and though it shall serve to reduce the number of Requests for Information (RFI) and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Professional and not CM@Risk.

2.4.5 Notification of Variance or Deficiency: It is CM@Risk's responsibility to assist the Design Professional in ascertaining that, in CM@Risk's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.

2.4.6 Alternate Systems Evaluations: The Project Team shall routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, CM@Risk in cooperation with the Design Professional shall perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team shall decide which alternatives shall be incorporated into the Project. The Design Professional shall have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. CM@Risk shall include the cost of the alternatives into the cost estimate and any GMP Proposals.

## 2.5 COST ESTIMATES

2.5.1 Unless otherwise agreed by both parties, within fourteen (14 ) days after receipt of the documents for the various phases of design, CM@Risk shall provide a detailed cost estimate and a written review of the documents. The Design Professional and CM@Risk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City shall make the final determination.

2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project budget, CM@Risk shall make appropriate recommendations on methods and materials to the City and Design Professional that CM@Risk believes shall bring the Project back into the Project budget.

2.5.3 In between these milestone estimates, CM@Risk shall periodically provide a tracking report, which

identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of CM@Risk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.

2.5.4 If requested by the City, CM@Risk shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

**2.6** ***Section left intentionally blank***

**2.7 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS**

2.7.1 The proposed GMP for the entire Work (or portions thereof) shall be presented in a format acceptable to the City (see Exhibit "C" attached). The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by CM@Risk shall be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based. CM@Risk guarantees to complete the Project at or less than the final approved GMP Proposal amount, plus approved Change Orders, and agrees that it shall be responsible for any increase in the actual cost of the Work above that amount.

2.7.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.

2.7.2.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.

2.7.2.2 The General Conditions Costs and the Construction Fee are firm fixed lump sums.

2.7.2.3 CM@Risk's Contingency is an amount CM@Risk may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. CM@Risk's Contingency is assumed to be a direct Project cost so all applicable markups shall be applied at the time of GMP submission.

2.7.2.4 Taxes are deemed to include all sales, use, consumer and other taxes, which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective, or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

2.7.3 Owner's Contingency are funds to be used at the sole discretion of the Owner. Owner's Contingency shall be added to the Contract Price, for approval by Council, to cover any increases in Project costs that result from Owner directed changes or unforeseen Site conditions. At the time that Owner's Contingency is used, the appropriate markups shall be applied.

2.7.4 GMP amendments are cumulative except for CM@Risk's Contingency. The amount of CM@Risk's Contingency for each GMP shall be negotiated separately.

2.7.5 CM@Risk, in preparing any GMP Proposal, shall obtain from the Design Professional, three sets of signed, sealed, and dated plans and specifications (including all addenda). CM@Risk shall prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. CM@Risk shall mark the face of each document of each set upon which its proposed GMP is based. These documents shall be identified as the GMP Plans and Specifications. CM@Risk shall send one set of those documents to the City's Representative, keep one set and return the third set to the Design Professional.

2.7.6 An updated/revised Project Master Schedule shall be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Master Schedule updates/revisions shall continue to comply with the requirements of Section 2.3 above.

2.7.6.1 The Project Master Schedule required above shall include a preliminary Construction Schedule developed in a Critical Path Method (CPM) with the first requested GMP. If subsequent GMP's are requested, CM@Risk shall include an updated CPM Construction Schedule with their GMP submittal.

2.7.7 GMP savings resulting from a lower actual Project cost than anticipated by CM@Risk remaining at the end of the project, shall revert to the City.

**2.7.8 GMP Proposal(s) Review and Approval**

2.7.8.1 The City may request a GMP from CM@Risk at any time during the Design Phase. It is the City's expectation that the GMP shall not exceed the City-stated Project budget.

2.7.8.2 CM@Risk shall meet with the City and Design Professional to review the GMP Proposal(s) and the written statement of its basis. In the event the City or Design Professional discovers inconsistencies, inaccuracies or confusion in the information presented, CM@Risk shall make adjustments as necessary to the GMP Proposal, its basis or both.

2.7.8.3 CM@Risk's detailed construction cost estimates and GMP shall be reviewed by the Design Professional and the City for reasonableness and compatibility with the City's Project and the City's budget. CM@Risk shall provide a response to the Design Professionals and City's questions and an explanation of differences between the City's Project budget and CM@Risk's construction cost estimate and corresponding GMP. City may require that such responses and explanations be submitted in writing. CM@Risk, City and Design Professional shall engage in a mutually agreeable process in an effort to achieve a clearly understood mutually acceptable GMP.

2.7.8.4 In the event that the GMP exceeds the City's Project budget, the City reserves the right to direct CM@Risk (and CM@Risk shall) work in conjunction with the Design Professional to assist in the redesign of the Project as necessary to meet the agreed upon program and the stated Project budget as follows:

a) After direction from the City, CM@Risk shall coordinate and cooperate with the Project Team to assist the Design Professional in altering and re-drafting Construction Documents as necessary to accomplish the required reduction in cost.
b) CM@Risk shall develop and provide to the City a GMP in connection with the altered Construction Documents to accomplish the necessary reductions in cost.
c) CM@Risk shall analyze the Design Professional's original submittal and as altered and redrafted Construction Documents, and make recommendations to the City as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed the stated Project budget.

Notwithstanding anything in the RSOQ or CM@Risk's response to the contrary, CM@Risk shall perform the work set forth in this Section without additional compensation.

2.7.8.5 The City, upon receipt of any GMP proposal from CM@Risk, may submit the GMP Plans and Specifications to a third party for review and verification.

2.7.8.6 If CM@Risk GMP Proposal is greater than the third party estimate or if the City, for some other stated reason may desire, the City may require CM@Risk to reconfirm its GMP Proposal. CM@Risk shall accept the third party's estimate for the cost of Work as part of its GMP Proposal, or present a report within seven (7) days of a written request by the City for such a report identifying, explaining and substantiating the differences and/or explaining other concerns the City may raise. CM@Risk may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the City.

2.7.8.7 If during the review and negotiation of GMP Proposals design changes are required, the City shall authorize and cause the Design Professional to revise the Construction Documents to the extent

necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents shall be furnished to CM@Risk. CM@Risk shall promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

2.7.8.8 After final submission of the GMP Proposal, the City may do any of the following:

a) Accept CM@Risk original or revised GMP Proposal, if within the City's budget, without comment;
b) Accept CM@Risk original or revised GMP Proposal that exceeds the City budget, and indicate in writing to CM@Risk that the Project Budget has been increased to fund the differences; or
c) Reject CM@Risk original or revised GMP Proposal in which event, the City may terminate this Agreement and/or elect to not enter into a separate Agreement with CM@Risk for the construction phase associated with the scope of Work reflected in the GMP Proposal.

2.7.8.9 Upon acceptance by the City of a GMP Proposal, the City shall prepare and CM@Risk shall execute the City's specified form of Agreement to reflect the GMP, and the GMP as approved shall become part of the Construction Services Agreement. Within ten (10) days after execution of the Construction Services Agreement, CM@Risk shall provide to the City's Senior Procurement Specialist a Performance Bond and a Labor and Material Payment Bond, each for 100% of the full Agreement price.

## 2.8 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

2.8.1 There are two ways to select Subcontractors and major Suppliers prior to submission of any GMP Proposal. They are:

a) A combination of qualifications and price derived through competitive bidding; and
b) Qualitative selection with the subsequent negotiation of a price that is reasonable, a prudent use of public funds and in the City's best interest.

Absent special circumstances documented in writing by CM@Risk as set forth below, the combination of qualifications and price derived through the competitive bidding process shall be used to select Subcontractors and major Suppliers. The City has the sole discretion as to whether or not to allow the purely qualitative selection of Subcontractors and Suppliers. In any event, CM@Risk shall ensure compliance with Arizona Revised Statutes § 34-603 et seq. as amended in 2005 and as it may be further amended relative to the selection of Subcontractors and major Suppliers.

2.8.2 The City may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when CM@Risk can demonstrate, in writing, that it is in the best interest of the Project and that the selection process shall constitute a prudent use of public funds.

2.8.2.1 A purely qualification-based selection of a Subcontractor(s) or Supplier(s) shall only occur prior to the submittal of any applicable GMP Proposal.

2.8.2.2 CM@Risk shall prepare a Subcontractor or Supplier selection plan and submit the plan to the City for approval. CM@Risk shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation.

2.8.2.3 CM@Risk shall obtain City approval of the selected Subcontractor(s) or Supplier(s). If CM@Risk is to self-perform under this alternative, CM@Risk shall submit a detailed explanation and demonstration of the cost of the Work it shall self-perform. CM@Risk shall further provide documentation to demonstrate that for any Work that is self-performed, the cost of any such Work is a reasonable and prudent use of public funds. The City shall approve CM@Risk self-performance of any part of the Work and the cost therefore prior to accepting any GMP Proposal.

2.8.2.4 CM@Risk shall negotiate costs for services/supplies from each Subcontractor or Supplier selected under this method.

2.8.2.5 Within three (3) days of negotiating cost for services/supplies from all Subcontractors or Suppliers selected under this method, CM@Risk shall then prepare a report for the City's approval identifying the recommended Subcontractor or Supplier for each category of the Work to be performed. The report shall be in a format approved by the City's Representative and shall include, among other things, the amount of each such cost. CM@Risk shall, at its discretion or at the request of the City's Representative, request written verification of any costs selected. CM@Risk shall provide an explanation of the qualifying factors for each selection.

2.8.3 In all other cases, CM@Risk shall select Subcontractors and major Suppliers pursuant to the following process, which includes a combination of qualifications and price, derived through competitive bidding or as may otherwise be agreed in writing by the parties. CM@Risk shall ensure that any such process is fully compliant with the above-referenced Arizona law.

2.8.3.1 CM@Risk shall develop Subcontractor interest, submit the names of a minimum of three (3) qualified Subcontractors selected pursuant to a qualifications-based procedure, for each trade in the Project for approval by the City and solicit bids for the various construction categories. If there are not three (3) qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, CM@Risk may request approval by the City to submit less than three (3) names. Without prior written approval by the City, no change in the City-approved Subcontractors shall be allowed.

2.8.3.2 If CM@Risk desires to self-perform certain portions of the Work, it shall comply with, and be subject to, the requirements set forth in Subsection 2.8.2.3 above.

2.8.3.3 If the City objects to any nominated Subcontractor or to any nominated self-performed Work for good reason, CM@Risk shall nominate a substitute Subcontractor.

2.8.3.4 CM@Risk shall distribute drawings and specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

2.8.3.5 CM@Risk shall receive, open, record and evaluate the bids. The apparent low bidders shall be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals, CM@Risk, in addition to bid price, shall consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor bids shall be done with the City representative in attendance to observe and witness the process. CM@Risk shall resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the cost of the Work.

2.8.4 Upon completion of the Subcontractor selection process, CM@Risk shall submit a summary report to the City of the entire Subcontractor selection process. The report shall indicate, by bid process, all Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received and costs negotiated, compliance with Arizona law as cited in Subsection 2.8.1 above and the selected Subcontractors for each category of Work.

2.8.5 The selected Subcontractors shall provide a schedule of values, which shall be used to create the overall Project schedule of values.

2.8.6 CM@Risk shall employ only Subcontractors who are duly licensed in Arizona and qualified to perform the Work per the requirements of the Contract Documents.

2.8.7 Regardless of the selection procedure, CM@Risk is responsible for ensuring that the costs of the Subcontractor's and/or Supplier's services are reasonable and a prudent use of public funds.

2.8.8 Regardless of the selection procedure and in any case, CM@Risk is solely responsible for the cost and performance of the selected Subcontractors or Suppliers. The City's approvals under this section are not and shall not be construed to be a waiver, in part or in whole, of CM@Risk's responsibility and obligation to perform as set forth in this Agreement or any subsequent construction agreement or GMP and for the cost, or less than the cost, set forth in any GMP to which the parties agree.

## ARTICLE 3 – PERIOD OF SERVICES

3.1 The design phase services described in this Agreement shall be performed by CM@Risk in accordance with the most current updated/revised Project Master Schedule. Failure on the part of CM@Risk to adhere to the Project Master Schedule requirements for activities for which it is responsible shall be sufficient grounds for termination of this Agreement by the City.

3.1.1 Upon failure to adhere to the approved Project Master Schedule, the City may provide written notice to CM@Risk that it intends to terminate this Agreement unless the problem cited is cured, or commenced to be cured, within three (3) days of CM@Risk's receipt of such notice.

3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation shall be due and owing, and said time period shall expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein shall be timely made if completed no later than 4:00 p.m. (Flagstaff time) on the day of performance.

## ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

### 4.1 CONTRACT AMOUNT

4.1.1 Based on the design phase services fee proposal submitted by CM@Risk and accepted by the City (which by reference is made a part of this Agreement); the City shall pay CM@Risk a fee not to exceed $ 20,296.10 as follows:

| | |
|---|---|
| For the basic services described in Article 2, CM@Risk shall receive a fee not to exceed: | $ 19,603.10 |
| Additional services and allowances, as described in Section 4.3: Other Direct Costs | $ 693.00 |
| Total Contract Amount, not to exceed, | $ 20,296.10 |

### 4.2 PAYMENTS

4.2.1 Requests for monthly payments by CM@Risk for design phase services shall be submitted on the City's "Contract Payment Request" form and shall be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of Work completed during the preceding month. Services negotiated as a not-to-exceed fee shall be paid in accordance with the Work effort expended on that service during the preceding month.

4.2.2 Fees for CM@Risk and any Subconsultants shall be based upon the Hourly Rate Schedule included as Exhibit "B" attached hereto.

4.2.3 CM@Risk shall pay all sums due Subconsultants for services and reimbursable expenses within fourteen (14) calendar days after CM@Risk has received payment for those services from the City. In no event shall the City pay more than 90 percent (90%) of the Contract Amount until final acceptance of

all design phase services, and award of the final approved GMP for the entire Project by City Council.

4.2.4 CM@Risk agrees that no charges or claims for costs or damages of any type shall be made by it for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting CM@Risk to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.

4.2.5 No compensation to CM@Risk shall be allowed contrary to Article I, Chapter I, Title 34 of the Arizona Revised Statutes.

4.2.6 If any service(s) executed by CM@Risk is delayed or suspended in whole or in part, for a period of more than one hundred eighty (180) days through no fault of CM@Risk, CM@Risk shall be paid for the services performed prior to the delay or suspension.

**4.3 ADDITIONAL DESIGN PHASE SERVICES**

4.3.1 CM@Risk may be required to provide services in excess of those set forth in Article 2. Mark-ups are not authorized and only the reimbursables specifically identified below shall be reimbursed as authorized herein. Any additional services shall be requested by the City, in writing, prior to the delivery of said services. There shall be no payment by the City for any additional services provided prior to or without the written request of the City for said services.

4.3.2 When authorized by the City, CM@Risk shall be entitled to reimbursement at cost of design phase services related expenses incurred for the following items:

(a) Reasonable charges for air transportation (not to exceed standard coach rates), ground travel (for automobile rental, taxi, parking, etc. not to exceed $50 per day), and authorized expenses while traveling (not to exceed the corporate rate at major business hotels in the area and a per diem for meal and miscellaneous business expenses of $45) shall be reimbursed. CM@Risk shall provide detailed receipts for all reimbursable charges. Travel expenses shall not exceed $ without further approval of the City.

(b) Long-distance telephone and long-distance facsimile costs incurred on behalf of the Project shall be reimbursed. These costs shall not exceed $ 0.00 without further approval of the City.

(c) Non-overhead printing expenses incurred including the printing of Construction Documents for bidding, courier services or other Project-related services that may be requested by the City. The cost of such service shall not exceed $ 381.00 (reimbursable allowance) without further approval by the City.

## ARTICLE 5 - CITY'S RESPONSIBILITIES

5.1 The City, at no cost to CM@Risk, shall furnish the following information:

5.1.1 One (1) copy of data the City determines pertinent to the work. However, CM@Risk shall be responsible for searching the records and requesting information it deems reasonably required for the Project.

5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.

5.1.3 The name of the person designated to be the City's representative during the term of this Agreement. The City's Representative has the authority to administer this Agreement and shall monitor CM@Risk's

compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables shall be directed to the City's Representative.

5.2 The City additionally shall:

5.2.1 Contract separately, with one or more design professionals, to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional shall be provided to CM@Risk for its information. CM@Risk shall have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.

5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by CM@Risk except for those copies whose cost has been reimbursed by the City.

5.2.3 Provide CM@Risk with adequate information in its possession or control regarding the City's requirements for the Project.

5.2.4 Give prompt written notice to CM@Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CM@Risk that it intends to terminate this Agreement unless the problem cited is cured, or commenced to be cured, within three (3) days of CM@Risk's receipt of such notice.

5.2.5 Notify CM@Risk of changes affecting the budget allocations or schedule.

5.3 The City's Representative, shall have authority to approve the Project Budget and Project Master Schedule, and render decisions and furnish information the City's Representative deems appropriate to CM@Risk.

## ARTICLE 6 – AGREEMENT CONDITIONS

### 6.1 PROJECT DOCUMENTS AND COPYRIGHTS

6.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared specifically in the performance of this Agreement (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the City's Representative before the final payment is made to CM@Risk. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of CM@Risk, which consent CM@Risk shall not unreasonably withhold, the City agrees to hold CM@Risk harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the City's alteration, modification or adaptation of the Project Documents.

6.1.2 CM@Risk to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by CM@Risk, its Subconsultants or personnel, during the course of performing this Agreement or arising out of the Project shall belong to CM@Risk.

6.1.3 License to City for Reasonable Use: CM@Risk hereby grants, and shall require its Subconsultants to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Agreement. This license shall also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Project Documents, then Subsection 6.1.1 above applies.

6.1.4 Documents to Bear Seal: When applicable and required by state law, CM@Risk and its Subconsultants

shall endorse by an Arizona professional seal all plans, works, and Deliverables prepared by them for this Agreement.

## 6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

CM@Risk shall be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase Deliverables prepared or compiled pursuant to its obligations under this Agreement and shall at its sole expense correct its work or Deliverables. Any damage incurred by the City as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to CM@Risk to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CM@Risk in Flagstaff, Arizona would exercise under similar conditions. The fact that the City has accepted or approved CM@Risk's work or Deliverables shall in no way relieve CM@Risk of any of its responsibilities under this Agreement, nor does this requirement to correct the work or Deliverables constitute a waiver of any claims or damages otherwise available by law or Agreement to the City. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design Professional.

## 6.3 ALTERATION IN CHARACTER OF WORK

6.3.1 In the event an unanticipated or unforeseen alteration or modification in the character of Work or Deliverables results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Master Schedule, the Work or Deliverables shall nonetheless be performed as directed by the City. However, before any altered or modified Work begins, a Change Order or Amendment shall be approved and executed by the City and CM@Risk. Such Change Order or Amendment shall not be effective until approved by the City.

6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties.

6.3.3 No claim for extra work done, or materials furnished, by CM@Risk shall be allowed by City except as provided herein, nor shall CM@Risk do any work or furnish any material(s) not covered by this Agreement unless such work or material is first authorized in writing. Work or material(s) furnished by CM@Risk without such prior written authorization shall be at CM@Risk's sole jeopardy, cost, and expense, and CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished shall be made.

## 6.4 DATA CONFIDENTIALITY

6.4.1 As used in this Agreement, data **("Data")** means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by CM@Risk in the performance of this Agreement.

6.4.2 The parties agree that all Data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to CM@Risk in connection with CM@Risk's performance of this Agreement is confidential and proprietary information belonging to the City.

6.4.3 CM@Risk shall not divulge Data to any third party without prior written consent of the City. CM@Risk shall not use the Data for any purposes except to perform the services required under this Agreement. These prohibitions shall not apply to the following Data:

6.4.3.1 Data, which was known to CM@Risk prior to its performance under this Agreement unless such data was acquired in connection with work performed for the City;

6.4.3.2 Data which was acquired by CM@Risk in its performance under this Agreement and which was disclosed to CM@Risk by a third party, who to the best of CM@Risk's knowledge and belief, had the legal right to make such disclosure and CM@Risk is not otherwise required to hold such data in confidence; or

6.4.3.3 Data which is required to be disclosed by CM@Risk by virtue of law, regulation, or court.

6.4.4 In the event CM@Risk is required or requested to disclose Data to a third party, or any other information to which CM@Risk became privy as a result of any other Agreement with the City, CM@Risk shall first notify the City as set forth in this Article of the request or demand for the Data. CM@Risk shall timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such Data or other information from disclosure.

6.4.5 CM@Risk, unless prohibited by law, within ten (10) calendar days after completion of services for a third party on real or personal property owned or leased by the City, shall promptly deliver, as set forth in this section, a copy of all Data to the City. All Data shall continue to be subject to the confidentiality agreements of this Agreement.

6.4.6 CM@Risk assumes all liability for maintaining the confidentiality of the Data in its possession and agrees to compensate the City if any of the provisions of this section are violated by CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section shall be deemed to cause irreparable harm that justifies injunctive relief in court.

## 6.5 PROJECT STAFFING

6.5.1 Prior to the start of any work or Deliverables under this Agreement, CM@Risk shall submit to the City, an organization chart for CM@Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that shall be involved in performing the services prescribed in this Agreement. Unless otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such services under this Agreement. In the event CM@Risk desires to change such key personnel from performing such services under this Agreement, CM@Risk shall submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel shall include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

6.5.2 CM@Risk shall maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Agreement throughout the period of those services. If the City objects, with reasonable cause, to any of CM@Risk's staff, CM@Risk shall take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City.

## 6.6 INDEPENDENT CONTRACTOR

6.6.1 CM@Risk is and shall be an independent contractor and whatever measure of control the City exercises over the work or Deliverables pursuant to this Agreement shall be as to the results of the work only. No provision in this Agreement shall give, or be construed to give, the City the right to direct CM@Risk as to the details of accomplishing the work or Deliverables. These results shall comply with all applicable laws and ordinances.

## 6.7 SUBCONSULTANTS

6.7.1 Prior to beginning the work or Deliverables, CM@Risk shall furnish, for the City's approval, the names

of all Subconsultants to be used on this Project. All subsequent changes shall be subject to the approval of the City.

## 6.8 TERMINATION

6.8.1 The City and CM@Risk hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate any or all services provided for in this Agreement, or terminate any portion of the Project for which services have been performed by CM@Risk.

6.8.2 In the event the City terminates any or all of the services or any part of the services as herein provided, the City shall so notify CM@Risk in writing, and CM@Risk shall immediately after receiving such notice, discontinue advancing the Work specified under this Agreement and mitigate the expenditure, if any, of costs resulting from such termination.

6.8.3 CM@Risk, upon such termination, shall promptly deliver to the City all reports, estimates and other work or Deliverables entirely or partially completed, together with all unused materials supplied by the City.

6.8.4 CM@Risk shall appraise the work completed and submit an appraisal to the City for evaluation. The City shall have the right to inspect CM@Risk's Work or Deliverables to appraise the Work completed.

6.8.5 CM@Risk shall receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable direct costs and direct expenses attributable to such termination. The fee shall be paid in accordance with Article 4 of this Agreement, and shall be an amount mutually agreed upon by CM@Risk and the City. If there is no mutual agreement, the final determination shall be made in accordance with Section 6.9, "Disputes". However, in no event shall the fee exceed that set forth in Article 4 or as amended in accordance with Section 6.3 above, "Alteration in Character of Work". The City shall make the final payment within sixty (60) days after CM@Risk has delivered the last of the partially or otherwise completed Work items and the final fee has been agreed upon.

## 6.9 DISPUTE AVOIDANCE AND RESOLUTION

6.9.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

6.9.2 CM@Risk and the City shall first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and the City's Representative.

6.9.3 If a dispute or disagreement cannot be resolved through CM@Risk's Representative and the City's Representative, CM@Risk's Senior Representative and the City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties shall exchange relevant information that shall assist the parties in resolving their dispute or disagreement.

6.9.4 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, be self-administered and be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties.

1. Mediator Selection. Unless the parties agree otherwise, the mediator(s) shall be selected from the roster of attorney mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. If the parties are unable to agree upon a mediator within 10 business days, each party shall independently inform the Director of the Alternative Dispute Resolution Program of the Coconino County Superior Court (the "Director") of three attorney mediators from that roster that are acceptable to the party, and further, inform the Director of any preference as to matters such as the candidate's mediation style, subject matter expertise, or other factors pertinent to the case. The Director shall then select an attorney mediator from the parties' lists or such other attorney mediator from the above noted roster, as the Director may deem, in the Director's sole discretion, appropriate under the circumstances.

2. Fees and Costs. Each party agrees to bear its own fees and costs in mediation.

3. Subsequent or Contemporaneous Agreements. The parties shall include this provision in all subsequent or contemporaneous Agreements relative to this matter, absent specific written agreement of the parties otherwise.

4. Participation in Mediation. The parties agree to encourage participation in mediation by all relevant parties. The parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation.

5. Waiver. This section does not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

6.9.5 Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement shall be filed in the Coconino County Superior Court and Arizona law shall apply and control. In the event 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 its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

**6.10 WITHHOLDING PAYMENT**

6.10.1 The City reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against CM@Risk, until such time that a settlement on those claims has been reached.

**6.11 RECORDS/AUDIT**

6.11.1 Records of CM@Risk's direct personnel payroll, reimbursable expenses pertaining to the Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis and shall be available for up to three (3) years following final completion of the Project. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Agreement and any Change Orders. The City reserves the right to decrease Contract Amount and/or payments made on this Agreement if, upon audit of CM@Risk's records, the audit discloses CM@Risk has provided false, misleading, or inaccurate cost and pricing data.

6.11.2 CM@Risk shall include a provision similar to Subsection 6.11.1above in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Agreement to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease Contract Amount and/or payments made on this Agreement if the above provision is not included in Subconsultant, Subcontractor, and Supplier Agreements, and one or more of those parties do not allow the City to audit their records to verify the accuracy and

appropriateness of pricing data.

## 6.12 INDEMNIFICATION

6.12.1 To the fullest extent permitted by law, CM@Risk agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, and any jurisdiction or agency issuing permits for any Work included in the Project, their officers, agents and employees, hereinafter individually and collectively referred to as "indemnitee", from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the Work or Deliverables done in fulfilling the terms of this Agreement, or on account of any act, claim or amount arising out of or recovered under Workmen's Compensation Law, or arising out of the failure of CM@Risk to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that CM@Risk shall be responsible for primary loss investigation, defense and judgment costs where this Agreement of indemnity applies.

## 6.13 NOTICES

6.13.1 Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

| | |
|---|---|
| To City: | Patrick Brown, Senior Procurement Specialist<br>City of Flagstaff<br>211 West Aspen Avenue<br>Flagstaff, Arizona 86001 |
| To CM@Risk | Melissa Holper<br>Banicki Construction<br>6423 South Ash Avenue<br>Tempe, Arizona 85283 |
| To City: | Daniel Holmes<br>City of Flagstaff<br>211 West Aspen Avenue<br>Flagstaff, Arizona 86001 |
| Copy to: Design Professional (if applicable) | Steve Reeder<br>Kimley-Horn and Associates<br>7740 North 16th Street, Suite 300<br>Phoenix, Arizona 85020 |

Or to other such place and with such other copies as either party may designate as to itself by written notice to the other party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

## 6.14 COMPLIANCE WITH ALL LAWS

6.14.1 CM@Risk will comply with all applicable Federal, State, County and City laws, regulations and policies, including but not limited to the mandatory statutory provisions in Exhibit __, attached and made a part of this Agreement. CM@Risk 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. CM@Risk agrees to comply with these laws in performing the Contract Documents and to permit the City to verify such compliance.

## 6.15 CONFLICT OF INTEREST

6.15.1 To evaluate and avoid potential conflicts of interest, CM@Risk shall provide written notice to the City, as set forth in this section, of any work or services performed by CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice shall be given at least seven (7) business days prior to commencement of the Project by CM@Risk for a third party, or at least seven (7) business days prior to an adverse action as defined below. Written notice and disclosure shall be sent to:

Patrick Brown, C.P.M.
Senior Procurement Specialist
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

6.15.2 Actions considered to be adverse to the City under this Agreement include but are not limited to:

(a) Using Data, as defined in this Agreement, acquired in connection with this Agreement to assist a third party in pursuing administrative or judicial action against the City;

(b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and

(c) Using Data to produce income for CM@Risk or its employees independently of performing the services under this Agreement, without the prior written consent of the City.

6.15.3 CM@Risk represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by CM@Risk under this Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

6.15.4 CM@Risk's failure to provide a written notice and disclosure of the information as set forth in this section shall constitute a material breach of this Agreement.

## 6.16 CONTRACTOR'S LICENSE

6.16.1 Prior to award of this Agreement, CM@Risk shall provide to the City's Senior Procurement Specialist, its Contractor's License Classification and number and its Federal Tax I.D. number.

## 6.17 SUCCESSORS AND ASSIGNS

6.17.1 The City and CM@Risk and their partners, successors, assigns, and legal representatives shall each be bound to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither the City nor CM@Risk shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. In no event shall any Contractual relationship be created or be construed to be created as between any third party and the City.

## 6.18 FORCE MAJEURE

6.18.1 If either party is delayed or prevented from the performance of any service, in whole or part, required under this Agreement by reason of acts of God or other cause beyond the control and without fault of that party (financial inability excepted), performance of that act shall be excused, but only for the period of the delay. The time for performance of the act shall be extended for a period equivalent to the period of delay.

## 6.19 COVENANT AGAINST CONTINGENT FEES

6.19.1 CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City has any interest, financially, or otherwise, in CM@Risk. The City shall in the event of the breach or violation of this warranty, have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

## 6.20 NON-WAIVER PROVISION

6.20.1 The failure of either party to enforce any of the provisions of this Agreement or to require performance by the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

## 6.21 JURISDICTION

6.21.1 This Agreement shall be deemed to be made under, and shall be construed in accordance with, and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, Coconino County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

## 6.22 SURVIVAL

6.22.1 All warranties, representations and indemnifications by CM@Risk shall survive the completion or termination of this Agreement.

## 6.23 MODIFICATION

6.23.1 No supplement, modification, or amendment of any term of this Agreement shall be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Agreement, except as expressly provided herein to the contrary.

## 6.24 SEVERABILITY

6.24.1 If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

## 6.25 INTEGRATION

6.25.1 This Agreement contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

## 6.26 TIME IS OF THE ESSENCE

6.26.1 Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

## 6.27 THIRD PARTY BENEFICIARY

6.27.1 This Agreement shall not be construed to give any rights or benefits in the Agreement to anyone other than the City and CM@Risk. All duties and responsibilities undertaken pursuant to this Agreement shall be for the sole and exclusive benefit of the City and CM@Risk and not for the benefit of any other party.

## 6.28 COOPERATION AND FURTHER DOCUMENTATION

6.28.1 CM@Risk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Agreement.

## 6.29 CONFLICT IN LANGUAGE

6.29.1 All Work or Deliverables performed shall conform to all applicable City codes, ordinances and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and any Exhibits, the provisions in this Agreement shall prevail.

## 6.30 CANCELLATION FOR CONFLICT OF INTEREST

6.30.1 All parties hereto acknowledge that this Agreement is subject to cancellation for conflict of interest by the City pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

## 6.31 CONFIDENTIALITY OF PLANS & SPECIFICATIONS

6.31.1 Any plans or specifications received by CM@Risk regarding the Project are for official use only. CM@Risk may not share them with others except as required to fulfill Agreement obligations with the City.

# ARTICLE 7 - INSURANCE

CM@Risk shall procure and maintain for the duration of this Agreement, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work or Deliverables hereunder by CM@Risk, its agents, representatives, employees, Subconsultants, Subcontractors, and/or Suppliers. Insurance requirements related to any construction Work done during the design phase or during the construction phase shall be defined in a separate Agreement associated with the construction phase. CM@Risk shall cause all Subcontracts to contain identical terms and conditions to those included in this Article.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants that might arise out of the performance of the Work or Deliverables under this Agreement by CM@Risk, its agents, representatives, employees, Subconsultants, Subcontractors, or Suppliers and CM@Risk is free to purchase such additional insurance as it may determine necessary.

## 7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

7.1.1 CM@Risk shall provide coverage at least as broad and with limits of liability not less than those stated below.

7.1.1.1 Commercial General Liability-Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

| | |
|---|---|
| General Aggregate/per project | $2,000,000/$1,000,000 |
| Products-Completed Operations Aggregate | $1,000,000 |
| Personal & Advertising Injury | $1,000,000 |
| Each Occurrence | $1,000,000 |
| Fire Damage (Any one fire) | $ 100,000 |

7.1.1.2 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 |

7.1.1.3 Workers Compensation and Employers Liability

| | |
|---|---|
| Workers Compensation | Statutory |
| Employers Liability: | |
| Each Accident | $ 500,000 |
| Disease-Policy Limit | $ 500,000 |
| Disease-Each Employee | $ 500,000 |

7.1.2 Self-Insured Retentions Any self-insured retentions and deductibles greater than $10,000 shall be declared to and approved by the The City.

**7.2 OTHER INSURANCE REQUIREMENTS**

7.2.1 The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

7.2.1.1 The City, its officers, officials, agents, and employees, are to be named as additional insureds with respect to liability arising out of: activities performed by or on behalf of CM@Risk, including the City's general supervision of CM@Risk; products and completed operations of CM@Risk; and automobiles owned, leased, hired or borrowed by CM@Risk.

7.2.1.2 The Commercial General Liability Insurance shall contain broad form contractual liability coverage and shall not exclude liability arising out of the explosion, collapse or underground hazard ("EXU").

7.2.1.3 The City, its officers, officials, agents, and employees shall be additional insureds to the full limits of liability purchased by CM@Risk, even if those limits of liability are in excess of those required by this Agreement. The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B CG 20 10 11 85.

7.2.2 CM@Risk's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees. Insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of CM@Risk's insurance and shall not contribute to it.

7.2.3 CM@Risk'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. The coverage provided by CM@Risk and its Subcontractors shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

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

7.2.5 Workers' Compensation and Employers Liability polices are to contain, or be endorsed to contain, the following: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from work performed for the City.

**7.3 SUBCONSULTANT INSURANCE**

7.3.1 CM@Risk's certificate(s) shall include all Subcontractors as insureds under its policies. All coverages for Subcontractors shall be subject to the minimum requirements identified above.

**7.4 NOTICE OF CANCELLATION**

7.4.1 Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and not be suspended, voided, canceled by either party, reduced in coverage or in limits

except after thirty (30) days prior written notice has been given, by certified mail, return receipt requested to:

Patrick Brown, C.P.M.
Senior Procurement Specialist
The City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

**7.5 ACCEPTABILITY OF INSURERS**

7.5.1 Insurance is to be placed with insurers duly licensed companies in the State of Arizona, and with an A.M. Best's rating of no less than A-,7, or as approved by the City and licensed in the State of Arizona with policies and forms satisfactory to the City. The City in no way warrants that the above required minimum insurer rating is sufficient to protect CM@Risk from potential insurer insolvency.

**7.6 VERIFICATION OF COVERAGE**

7.6.1 CM@Risk shall furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) with original endorsements effecting coverage as required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsement(s) that restricts or limits coverages shall be clearly noted on the Certificate of Insurance.

7.6.2 All certificates and endorsements are to 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 the earlier of commencement of work under this Agreement or signing of this Agreement, and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of this Agreement.

7.6.3 All Certificates of Insurance required by this Agreement shall be sent directly to the Contracts Division. The Project Number and Project description shall be included on the Certificates of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

**7.7 APPROVAL**

7.7.1 Any modification or variation from the insurance requirements in this Agreement shall be approved by the City Attorney's Office, whose decision shall be final. Such action shall not require a formal Agreement amendment, but may be made by administrative action.

## ARTICLE 8 – GENERAL PROVISIONS

**8.1 COMPLIANCE WITH FEDERAL IMMIGRATION LAWS AND REGULATIONS**

8.1.1 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").

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

8.1.3 The City retains the legal right to inspect the papers of any Provider or Subcontractor employee who

works on this Agreement to ensure that the Provider or Subcontractor is complying with the Provider Immigration Warranty. Provider agrees to assist the City in regard to any such inspections.

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

8.1.5 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.

**8.2 BUSINESS OPERATIONS IN SUDAN/IRAN**

8.2.1 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.

This Agreement shall be in full force and effect only when it has been approved and executed by the duly authorized City officials.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on _____

THE CITY OF FLAGSTAFF, ARIZONA,
an Arizona Municipal Corporation
Kevin Burke, City Manager

By: _____
Kevin Burke
City Manager

Banicki Construction
an Arizona Corporation

By: _____

Title: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

# EXHIBIT A – PROJECT DESCRIPTION

Following is a brief description of the Project for which the design phase service services specified in this Agreement are to be performed:

The project consists of removal and replacement of taxi lane asphalt pavements between and around existing tee and shade hangars in the Westplex area of Flagstaff Pulliam Airport. Work will include milling of existing pavement, excavation and disposal of existing soils, constructing sub-base, base and new asphalt pavements, pavement markings, tie-down installation, pavement marking and other related work. Existing asphalt pavements beneath three existing shade hangars will be replaced with new concrete pavements.

# EXHIBIT B – GRANT PROVISIONS FAA AIP 36

CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

**1.1 Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**1.2 Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**1.4 Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

**1.5 Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
b. Cancellation, termination, or suspension of the contract, in whole or in part.

**1.6 Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Reference**
49 CFR Part 21
AC 150/5100-15

## AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

The contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

**Reference**
Airport and Airway Improvement Act of 1982, Section 520
Title 49 47123
AC 150/5100-15, Para. 10.c.

DISADVANTAGED BUSINESS ENTERPRISES

**Contract Assurance (§26.13)** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (§26.29)** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 14 days from the receipt of each payment the prime contractor receives from the City of Flagstaff. The prime contractor agrees further to return retainage payments to each subcontractor within [specify the same number as above] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the the City of Flagstaff. This clause applies to both DBE and non-DBE subcontractors.

**Reference**
49 CFR Part 26

## LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

**Reference**
49 CFR Part 20, Appendix A

ACCESS TO RECORDS AND REPORTS

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

**Reference**
49 CFR Part 18.36(i)
FAA Order 5100.38

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the contractor or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**Reference**
49 CFR Part 18.36

RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

**Reference**
49 CFR Part 18.36(i)(8)
FAA Order 5100.38

TRADE RESTRICTION CLAUSE

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

**Reference**
49 CFR Part 30.13
FAA Order 5100.38

TERMINATION OF CONTRACT

a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.

e.The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**Reference**
49 CFR Part 18.36(i)(2)
FAA Order 5100.38

CERTIFICATION REGARDING DEBAREMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

**Reference**
49 CFR Part 29
FAA Order 5100.38

# EXHIBIT C - SUBMITTAL REQUIREMENTS FOR THE GMP

GMP proposal(s) Submittals; one (1) copy for review, eight (8) copies shall be requested by the City's Project Representative prior to Agreement execution. The eight (8) copies shall be velo punched and bound.

Table of Contents:

1. Scope of Work
2. Summary of the GMP
3. Schedule of Values – summary spreadsheet and backup documents
4. List of Plans and Specifications used for GMP Proposal
5. List of clarification and assumptions
6. Project Master Schedule
7. MBE/WBE Requirements / Utilization Form / Letter of Intent

1. Scope of work shall consist of a brief description of the work to be performed by CM@Risk and major points that CM@Risk and the City shall be aware of pertaining to the scope.

2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

   The general condition fee includes bond and insurance cost. All costs should be listed individually for future use.

**PROJECT #:** **DATE:**
**PROJECT NAME:**

| GMP Summary | | | | | AMOUNT |
|---|---|---|---|---|---|
| A. | Cost of the Work (Labor, Materials, Equipment, Warranty) | | | | $ |
| INDIRECT COSTS | | | | RATE | |
| B. | CM@Risk's Contingency | | | % | $ |
| C. | Construction Fee | | | % | $ |
| D. | General Conditions | | | % | $ |
| | D1 | Payment and Performance Bond | $ | % | |
| | D2 | Insurance | $ | % | |
| E. | Sales Taxes | | | % | $ |
| | | | F. TOTAL GMP | | $ |
| | | | G. Owner's Contingency | | $ |

Formulas:
Total GMP: A+B+C+D+E = F

Rates (Percentages) are calculated by dividing each amount by F, such as B/F, D/F, and D1/F

**(Do not acquire bond or insurance until notified by the City's Project Representative.)**

3. Schedule of Values - spreadsheet with the estimated cost organized by subAgreement categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and CM@Risk's construction phase fee. The supporting document for the spreadsheet shall be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.

4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. (Date stamped and signed by Contractor)

5. A list of the clarifications and assumptions made by CM@Risk in the preparation of the GMP proposal, to supplement the information contained in the documents.

6. A Critical Path Method (CPM) diagram construction schedule.

NOTE: The submittal package shall be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading shall be kept to a minimum. If used, make sure the color or shading shall not affect the reproduction of the submittal in black and white.

For questions regarding the submittal requirements, please contact Daniel Holmes, Project Manager at (928) 213-2108

# EXHIBIT D – HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of CM@Risk and its Subconsultants follow and are based on the approved proposal submitted to the City on April 4, 2013.

**LIST OF CLASSIFICATIONS:**

See attached Fee Schedule.

# Design Services Cost Proposal

4/5/2013

## ESTIMATED DIRECT LABOR

| Classification | Estimated Hours | Average Hourly Rate | Labor Cost |
|---|---|---|---|
| Project Principal | 4 | $140.00 | $560.00 |
| Project Manager | 72 | $88.00 | $6,336.00 |
| Precon Mgr/ Proj Admin | 85 | $86.00 | $7,310.00 |
| Civil Supt | 40 | $56.00 | $2,240.00 |
| Project / Office Engr | 23 | $45.00 | $1,035.00 |
| Craft Labor | 10 | $34.00 | $340.00 |
| **Subtotal Direct Labor** | | | **$17,821.00** |

## OTHER DIRECT COSTS (ALLOWANCE)

| | Cost |
|---|---|
| Travel | $312.00 |
| Reproduction | $381.00 |
| Other | $0.00 |
| **Subtotal Other Direct Costs (Allowance)** | **$693.00** |

## ESTIMATED OUTSIDE SERVICES / CONSULTANTS

| Firm | Qty | Unit | Cost |
|---|---|---|---|
| | | | $0.00 |
| | | | $0.00 |
| | | | $0.00 |
| **Subtotal Outside Services and Consultants** | | | **$0.00** |

## SUMMARY

| | |
|---|---|
| Total Estimated Cost Direct Labor and Outside Services/Consultants | $17,821.00 |
| Fee (Direct Labor + Overhead x Multiplier) @ 10% | $1,782.10 |
| Total Fee | $19,603.10 |
| Total Other Direct Costs (Article 4.3) | $693.00 |
| **TOTAL ESTIMATED COST** | **$20,296.10** |

J. Banicki Construction, Inc.
6423 S Ash Ave
Tempe, AZ 85283
(480) 921-8016

# Estimated Direct Labor (Detail)

4/5/2013

## 2.1 GENERAL

| Activity | Total Hours | Project Principal | Project Manager | Precon Mgr/ Proj Admin | Civil Supt | Project / Office Engr | Craft Labor |
|---|---|---|---|---|---|---|---|
| 2.1.2 Written Evaluation of City's Project Program & Budget | 0 | | | | | | |
| 2.1.3 Weekly Meetings (2) | 12 | | 4 | 4 | 4 | | |
| Preliminary Site Visit(s) | 36 | | 16 | | 10 | | 10 |
| 2.1.5 Special Workshops or Public Meetings | 0 | | | | | | |
| | 0 | | | | | | |
| Subtotal | 48 | 0 | 20 | 4 | 14 | 0 | 10 |

## 2.2 CONSTR MANAGEMENT PLAN

| Activity | Total Hours | Project Principal | Project Manager | Precon Mgr/ Proj Admin | Civil Supt | Project / Office Engr | Craft Labor |
|---|---|---|---|---|---|---|---|
| 2.2.1 Prepare CMP (Written Document) | | | 2 | 2 | 2 | | |
| 2.2.1 CMP Review Meeting | | | 1 | 1 | 1 | | |
| 2.2.1 Incorporate CMP Review Comments | | | | 1 | | | |
| 2.2.1 Existing Utility Conflict/Constructability Review | | | | | | | |
| 2.2.2 Formal updates of CMP | | | | | | | |
| | | | | | | | |
| Subtotal | 0 | 0 | 3 | 4 | 3 | 0 | 0 |

## 2.3 PROJECT SCHEDULE

| Activity | Total Hours | Project Principal | Project Manager | Precon Mgr/ Proj Admin | Civil Supt | Project / Office Engr | Craft Labor |
|---|---|---|---|---|---|---|---|
| 2.3.1 Develop Project Master Schedule | | | 4 | 2 | 2 | 2 | |
| 2.3.5 Update Master Schedule Monthly | | | 1 | 1 | 1 | 1 | |
| 2.3.5 Monthly Schedule Narrative | | | | | | | |
| 2.3.6 Project Phasing | | 1 | 4 | 2 | 4 | 2 | |
| | | | | | | | |
| Subtotal | 0 | 1 | 9 | 5 | 7 | 5 | 0 |

## 2.4 DESIGN DOCUMENT REVIEW

| Activity | Total Hours | Project Principal | Project Manager | Precon Mgr/ Proj Admin | Civil Supt | Project / Office Engr | Craft Labor |
|---|---|---|---|---|---|---|---|
| 2.4.1 Evaluation of Construction Market | | | | | | | |
| 2.4.2 Subsurface Investigation Recommendations | | | 1 | 1 | 2 | | |
| 2.4.3 Design Review Meeting | | | 2 | 2 | | | |
| 2.4.4 Formal Plan Review / Scope Evaluation / Constructability/Biddability Reviews | | | 8 | 8 | 4 | 2 | |
| 2.4.5 Alternate Systems Evaluations | | | | | | | |
| | | | | | | | |
| Subtotal | 0 | 0 | 11 | 11 | 6 | 2 | 0 |

## 2.5 COST ESTIMATES

| Activity | Total Hours | Project Principal | Project Manager | Precon Mgr/ Proj Admin | Civil Supt | Project / Office Engr | Craft Labor |
|---|---|---|---|---|---|---|---|
| 2.5.1 Formal Cost Model and Write up for 90% Design Submittal | | 1 | 1 | 2 | | | |
| 2.5.2 Recommendations for Cost-Budget Alignment | | | | | | | |
| 2.5.3 Periodic Cost Evaluations and trends with Budget, Provide Written Reports, Trend Logs | | | | | | | |
| 2.5.4 Cash Flow Projection | | | | | | | |
| | | | | | | | |
| Subtotal | 0 | 1 | 1 | 2 | 0 | 0 | 0 |

## 2.6 DBE REQUIREMENTS

| Activity | Total Hours | Project Principal | Project Manager | Precon Mgr/ Proj Admin | Civil Supt | Project / Office Engr | Craft Labor |
|---|---|---|---|---|---|---|---|
| 2.6.1 Goal Setting Meeting | | | | | | | |
| 2.6.2 DBE Documentation | | | 2 | 4 | | 2 | |
| | | | | | | | |
| Subtotal | 0 | 0 | 2 | 4 | 0 | 2 | 0 |

## 2.7 GMP PROPOSALS

| Activity | Total Hours | Project Principal | Project Manager | Precon Mgr/ Proj Admin | Civil Supt | Project / Office Engr | Craft Labor |
|---|---|---|---|---|---|---|---|
| Prepare GMP Proposal(s) | | 2 | 16 | 32 | 4 | 8 | |
| Flagstaff GMP Review Meeting | | | 2 | 2 | 2 | | |
| Incorporate Flagstaff GMP Review Comments | | | | | | | |
| | | | | | | | |
| Subtotal | 0 | 2 | 18 | 34 | 6 | 8 | 0 |

## 2.8 SUB/SUPPLIER SELECTION

| Activity | Total Hours | Project Principal | Project Manager | Precon Mgr/ Proj Admin | Civil Supt | Project / Office Engr | Craft Labor |
|---|---|---|---|---|---|---|---|
| Prepare List of Potential Subcontractors | | | 1 | 1 | | | |
| Prepare Prequalification Packages | | | 1 | 4 | | | |
| Receive and Summarize Prequalification Process | | | | 4 | | | |
| Prepare GMP Bid Packages | | | 4 | 4 | 4 | 2 | |
| Summarize Subcontractor Bids | | | | 4 | | | |
| Prepare and Issue Subcontracts | | | 2 | 4 | | 4 | |
| | | | | | | | |
| Subtotal | 0 | 0 | 8 | 21 | 4 | 6 | 0 |

# Other Direct Costs (Allowances)

4/5/2013

## Travel

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Mileage to Site: | 306 | Miles x | 2 | Trips x | 1 | Months | | |
| | | | 612 | Total Miles @ | $ 0.510 | per mile = | $ | 312.00 |
| Mileage to Owner Office: | | Miles x | | Trips per Month x | | Months | | |
| | | | 0 | Total Miles @ | $ 0.510 | per mile = | $ | - |
| Auto Rental: | | Days @ | $100 | per day = | | | $ | - |
| Auto Rental (Fuel): | | Miles @ | 12 | mpg @ | $4.00 | per gallon = | $ | - |
| Lodging: | | People at | $55 | per day for | | days = | $ | - |
| Meals: | | People at | $30 | per day for | | days = | $ | - |
| Airfare | | People at | | per person for | | trips = | $ | - |
| Aircraft Rental (Dry): | | Trips at | | hours per trip x | $120.00 | per hour | $ | - |
| Aircraft Rental (Fuel): | 0 | Hours at | 17 | gallons per hour at | $5.00 | per gallon = | $ | - |
| | | | | | | **Subtotal** | $ | 312.00 |

## Reproduction

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Copies, 8.5"x11" | | Copies per Month x | | Months | $0.05 | per copy = | $ | - |
| Copies, 11"x17" | 20 | Copies per Month x | 1 | Months | $0.30 | per copy = | $ | 6.00 |
| Outside Reproduction, Black & White | 50 | Sheets x | 6 | sf per sheet | $1.25 | per sf = | $ | 375.00 |
| Outside Reproduction, Color | | Sheets x | | sf per sheet | $1.25 | per sf = | $ | - |
| | | | | | | **Subtotal** | $ | 381.00 |

## Other

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Digital Photo Printing: | | Photos per month x | | Months | $0.10 | per photo = | $ | - |
| Courier / Runner Delivery: | | Hours x | | | $35.00 | per hour = | $ | - |
| Mail Service: | | Packages x | | | $12.00 | per package = | $ | - |
| Other Supplies: | Desc: | | | for total amount = | | | $ | - |
| | Desc: | | | for total amount = | | | $ | - |
| | Desc: | | | for total amount = | | | $ | - |
| | | | | | | **Subtotal** | $ | - |

**TOTAL OTHER DIRECT COSTS (ALLOWANCES)** $ -

J. Banicki Construction, Inc.
6423 S Ash Ave
Tempe, AZ 85283
(480) 921-8016

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Dan Holmes, PW Project Manager |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Approval of Service Agreement:** Supplemental Agreement No.2, Pulliam Airport Master Plan Improvements, Construction Services for the Westplex Taxilanes Reconstruction Project.

**RECOMMENDED ACTION:**

1) Approve Supplemental Agreement Number 2 with Kimley-Horn and Associates, Inc. in the amount of $421,369.00 subject to acceptance of a grant from the Federal Aviation Administration and the Arizona Department of Transportation, Multimodal Planning Division, Aeronautics.
2) Authorize the City Manager to execute the necessary documents.

**Policy Decision or Reason for Action:**

Award of the Supplemental Agreement No. 2 will authorize provision of comprehensive construction phase services for reconstruction of all taxilanes in the Wesplex area in accordance with the Pulliam Airport Master Plan.

Subsidiary Decisions Points: Award of the agreement is subject to acceptance of a grant from the Federal Aviation Administration and ADOT Multi-modal Planning Division, Aeronautics, to be considered on a future agenda.

**Financial Impact:**

The project is budgeted in FY 13 in account No. 270-3776-783 in the amount of $3,433,050. Based on bids, the FAA grant will provide 91.06% of total project funding, ADOT grant will provide 4.47% of funding with the City grant match of 4.47%.

**Connection to Council Goal:**

Repair, Replace, Maintain infrastructure.

**Has There Been Previous Council Decision on This:**

Yes - Council approved the original five year term Professional Design Services Agreement with Kimley-Horn & Associates on April 17, 2012. Council also approved Supplemental Agreement # 1 for design of this project on December 4, 2012.

**Options and Alternatives**

Approve Supplemental Agreement No. 2. This will allow construction services work to proceed.
Do not approve Supplemental Agreement No.2. This will halt work on the construction phase of the project.

**Background/History:**

On April 17, 2012, City Council approved an Agreement for Consulting Services with Kimley-Horn and Associates to provide design services for the Concrete Ramp Joint Repair project. That staff report to Council indicated that Kimley-Horn had been selected and was to be retained for a five year period, and that future design elements would be presented for approval to Council, for FAA and ADOT Aeronautics grant awards as a Supplemental Agreement. The Concrete Ramp Joint Repair Project has already been completed under the original agreement. On December 4, 2012, Council approved Supplemental Agreement # 1 for award of design phase services for the Westplex Taxi Lanes Reconstruction project. Design is nearing completion with construction anticipated to begin in June of 2013.

A Scope of Work and fee estimate for comprehensive construction administration, inspection and materials testing services for the Westplex Taxilanes Reconstruction project has been formulated, negotiated and agreed upon in accordance with FAA guidelines for Supplemental Agreement No. 2. A copy of the Scope of Work and fee estimate is attached.

The project consists of removal and reconstruction of pavement on taxilanes for all hangars and tie-downs in the Westplex, and other related work.

**Key Considerations:**

The pavement in the taxilane areas to be removed and replaced is the final remaining pavement on the airport which was constructed prior to utilization of performance graded asphalts. The pavement is oxidized and has large transverse thermal cracks that require repeated patching and frequent maintenance. Replacement of these pavements will enhance pilot safety and provide significant improvements to tenants renting hangar space.

**Expanded Financial Considerations:**

Funding for Construction Phase Services is to be provided by Federal Entitlement and Discretionary grant funds from the U.S. Department of Transportation, Federal Aviation Administration and ADOT Multi-Modal. The project is budgeted in FY 2013 in account number 270-3776-783 in the amount of $3,433,050. Based on bids the FAA grant will provide 91.06% of total project funding, an ADOT grant will provide 4.47% of funding with the City grant match of 4.47%.

The fee estimate attached to Supplemental Agreement # 2 is a not-to-exceed amount. Total cost for this work will be made on a time and materials basis at the unit costs shown for actual work performed during construction.

**Community Benefits and Considerations:**

Construction of the project will increase the utility and safety of operations at the airport. New pavements surrounding existing hangars will benefit general aviation tenants by providing improved access and easier maneuverability into leased storage units.

**Community Involvement:**

Involve - The project will require that tenants will not have access to their hangars during construction. To minimize that inconvenience, the project will be constructed in three phases, with access restrictions limited to several hangars in each phase. Tenants will be notified of the upcoming work by mail prior to construction. In addition, mass e-mails will be sent to all tenants advising of the upcoming work. During construction, weekly updates regarding progress and anticipated dates for reinstating hangar access will be posted on the City web site in order that tenants may be advised of construction progress.

**Expanded Options and Alternatives:**

Approve Supplemental Agreement No. 2. This will allow the project to proceed in accordance with FAA and ADOT grant agreements.
Do not approve Supplemental Agreement No.2. This will halt progress on the project.

---

**Attachments:** Supplemental Agreement #2

# CITY OF FLAGSTAFF

## CONSULTING CONTRACT SUPPLEMENTAL AGREEMENT NO. 2

**PROJECT NO.** 270-3776-783 **PROJECT NAME:** Westplex Taxilane Reconstruction Project

**FILE NO.** 01-12003 **Project Manager:** Daniel Holmes

**TO:** Kimley-Horn and Associates, Inc.

**You are hereby directed to make the herein described changes to the Agreement for Consulting Services or do the following described work. Description of work to be done:**

Provide comprehensive construction administration, inspection and materials testing services for the WestplexTaxilane Reconstruction Project. Provide complete construction phase services in accordance with the attached Scope of Work and Fee Proposal for the project. Payment for this work shall be made on a time and materials basis in an amount not to exceed $ 421,369.00

**Supplemental Agreement originated by: [X] CITY OF FLAGSTAFF [] CONTRACTOR [] CONSULTANT [] OTHER**

| | | | |
|---|---|---|---|
| **Consulting Engineer(If applicable)** | N/A | **Approval Recommended** | |
| **Project Engineer/Manager** | | **Approval Recommended** | |
| **Public Works Director** | | **Approval Recommended** | |
| **City Attorney Approval Date** | | **Approval Recommended** | |
| **City Manager** | | **Approval Recommended** | |

| | | Date | | |
|---|---|---|---|---|
| ORIGINAL CONTRACT PERIOD | 120 Days | (08/29/12) | ORIGINAL CONTRACT VALUE | $ 34,700.00 |
| PRIOR TIME CHANGES | 455 Days | (11/27/13) | TOTAL PRIOR VALUE CHANGES | $ 203,176.00 |
| THIS TIME CHANGE | 60 Days | (01/26/14) | VALUE OF THIS CHANGE | $ 421,369.00 |
| NEW CONTRACT PERIOD | 635 Days | (01/26/14) | NEW CONTRACT VALUE | $ 659,245.00 |

**We, the undersigned contractor, have given careful consideration to the change proposed and hereby agree, if this proposal is approved, that we will provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services necessary for the work above specified, and will accept as full payment therefore the prices and time extensions shown above.**

**FIRM NAME:** Kimley-Horn and Associates, Inc.

**Accepted Date** _____ **By** _____

**Scope of Services**

**Flagstaff, Arizona, Pullium Airport**

**Taxilane Reconstruction**
**(Construction Administration)**

**A. PROJECT DESCRIPTION:** City of Flagstaff (COF), Pullium Airport requires construction administrative services for construction administration of the existing taxilanes between and around hangars and shades in the west-plex area (see attached exhibit). Construction administration/observation services will be provided during construction of the project. Anticipated construction cost for this project is approximately $6.0 Million. Construction of this project may be funded in two seasons and may be constructed under a Hard Bid process or by a Construction Manager at Risk (CMAR).

**B. PROJECT SCOPE:** The specific scope of service for this project is identified as follows:

**1. Construction Administration Services**

**Project Description** - COF requires engineering, construction administrative and quality assurance testing services for the construction of taxilane asphalt pavement and shade hangar concrete pad as shown on the attached exhibit. The project includes paving, grading, and minor drainage improvements. The ENGINEER will provide construction administration services for the project. KHA staff will act as full-time project representative and provide construction observation and material testing services during daytime work shifts.

Construction Administration services will consist of the following:
**General Administration of Construction Contract** - Engineer shall consult with COF, and act as COF's representative as provided in the Contract Documents. Provide pre-award assistance including recommendation for award. Conduct the Pre-Construction Conference. Meet with the City's Project Manager (or his representative) on a weekly basis during the critical portions of the work to update progress of the construction; and provide construction quality assurance services, including on-site surveillance during construction. The ENGINEER shall have no responsibility for any Contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices. The ENGINEER'S visits will be for the purpose of endeavoring to provide the COF a greater degree of confidence that the completed work of its Contractor's will generally conform to the construction documents. ENGINEER neither guarantees the performance of the Contractor(s), nor assumes responsibility for any Contractor's failure to perform its work in accordance with the Contract Documents.

**Resident Project Representative (RPR)** - ENGINEER shall provide services of an RPR for the taxilane project and provide construction observation of Contractor's work.

The RPR shall provide construction administrative services as required including the following: establish and maintain correspondence and project files, document Contractor's conformance to the contract documents, review and document Contractor's compliance for Davis Bacon wage standard requirements, review quantities and monthly payment request, conduct weekly progress meetings and prepare meeting minutes, provide field support, review Contractor shop drawing submittals, review change order request, assist with negotiations, review Contractor's quality control plan, review Contractor's on going quality control material testing program, provide weekly construction reports to the Federal Aviation Administration and ADOT Aeronautics Division, and submit any observed noncompliance or deficiency reports.

More specifically the duties of the RPR include the following:

- Submit weekly construction observation reports and attend weekly construction meetings.
- Review acceptance tests at the frequency stated in the specifications. If not stated in the specifications, make sure an adequate number of tests are taken to document an acceptable level.
- Inform the Contractor of deficiencies so that corrections can be made and retests performed prior to covering any substandard work with additional material.
- Maintain record of quality of materials used on the project.
- Maintain copies of acceptance test reports on site.
- Maintain set of working drawings which can be used to prepare "as-constructed" drawings.
- Maintain a diary, and the contents of a diary should include:
  - Weather conditions and temperature.
  - Work in progress and location.
  - Equipment in use - types and numbers.
  - Size of work force including supervision.
  - Hours worked per day for Contractor and subcontractors.
  - Materials delivered.
  - Any instructions to the Contractor.
  - Principal visitors.

**Independent Testing Laboratory** - The ENGINEER shall employee an independent materials testing laboratory to perform quality acceptance testing. All testing and analytical procedures shall conform to documented Federal Aviation Administration (FAA) requirements and criteria. FAA, ADOT and MAG standards shall be used as applicable and in the respective order of priority, unless otherwise stated in the Contract Documents. The RPR will review the reports and other information provided by the testing firm for conformance to the construction documents. The RPR will coordinate the testing schedule and transmittal of their reports and findings. KHA will not be responsible for the accuracy or completeness of the work and reports of the independent testing firm.

**Pre-Construction Conference** - The RPR shall conduct a Pre-Construction Conference prior to commencement of work at the site.

**Construction Surveys** - The construction Contractor shall perform construction staking as provided by the contract documents that provide baselines and benchmarks for locating work and provide limited construction control as identified in the Contract Documents. The ENGINEER will provide verification of the survey and staking as necessary to review the accuracy of the construction.

**Visits to Site and Observation of Construction** - The RPR will provide on-site construction observation services (RPR) during the construction phase of the subject project. Observations will vary depending on the type of work being performed by the Contractors, the location, and the Contractors' schedules. The design ENGINEER will make visits to the site at intervals as directed by the COF in order to observe the progress of the work. Based on information obtained during such visits and such observations, the RPR will determine if the Contractor's work is generally proceeding in accordance with the Contract Documents, and the RPR shall keep the COF informed of the general progress of the work. RPR shall not, during such visits or as a result of such observations of the Contractor's work in progress, supervise, direct or have control over the Contractor's work, nor shall the RPR have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by the Contractor, for safety precautions and programs incident to the Contractor's work, or for any failure of the Contractor to comply with laws and regulations applicable to the Contractor's finishing and performing the work. Accordingly, the RPR neither guarantees the performance of any Contractor nor assumes responsibility of any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

**Recommendations with Respect to Defective Work** - The RPR will recommend to the COF that the Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, the RPR believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that is will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

**Clarifications and Interpretations** - The RPR and design ENGINEER will issue necessary clarifications and interpretations of the Contract Documents to the COF as appropriate to the orderly completion of the Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Field Orders authorizing variations from the requirements of the Contract Documents will be authorized by COF.

**Change Orders and Field Orders** - The RPR will recommend Change Orders to the COF, as appropriate. Review and make recommendations related to Change Orders submitted or proposed by the Contractor.

**Shop Drawings and Samples** - The ENGINER will review and approve or take other appropriated action in respect to Shop Drawings, Submittals and Samples and other data which the Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

**Substitutes and "or-equal"** - The RPR will evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by the Contractor, but subject to the provisions of applicable standards of the Federal Aviation Administration and ADOT Aeronautics Division.

**Disagreements between COF and Contractor** - The RPR will, as necessary, render written decision on all claims of the COF and the Contractor relating to the acceptability of the Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, the RPR shall be fair and not show partiality to COF or the Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

**Applications for Payment** - Based on the observations and on review of applications for payment and accompanying supporting documentation, the RPR will: determine the amounts that the RPR recommends Contractor be paid.

**Substantial Completion** - Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with the COF and the Contractor, conduct a final punch list inspection to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items identified on the final punch list. If after considering any objections of the COF, RPR considers the Work substantially complete; RPR shall notify COF and the Contractor.

**Final Notice of Acceptability of the Work** - The RPR will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents so that RPR may recommend, in writing, final payment to the Contractor. Accompanying the recommendation for final payment, RPR shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of the RPR'S knowledge, information, and belief and based on the extent of the services provided by the RPR under this Authorization of Services.

**Limitation of Responsibilities** - The RPR shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. RPR shall not have the authority or responsibility to stop the work of any Contractor. The RPR may advise COF to suspend operations, wholly or in part, when safety violations or persistent nonconformance to the Contract Documents are noted.

**Post Construction Phase** - The RPR will provide assistance and consultation to COF for up a month following the Project final completion. This will include site visits to observe any Contractor deficiencies in their work and assist COF in recommendations in correcting such Contractor deficiencies. Any additional assistance beyond the one month period will be on a time and material basis for fee.

**Final Engineer's Report** - The ENGINEER will provide a Final Engineer's Report that includes Project Description, and copies of:

- **Pre-Construction Documents:** Contract schedule, agenda, minutes, Contractor's quality control plan, storm water pollution prevention plan;
- **Construction Documents:** Weekly Federal Aviation Administration inspection reports, monthly applications for payments, submittals and the submittal control log;
- **Final Documents:** Final quantity computations and quantities, and final change order;
- **Appendix Materials:** Contractor's certified payrolls, field test results and scale tickets.

**C. Contractor Coordination**

Upon election of the City to construct or complete construction of the Project pursuant to a Bid or the use of the CM@Risk delivery method, Engineer agrees to perform the duties and services set forth in this Agreement and duties and services reasonably inferable there from.

1. Engineer shall coordinate with the City and CM@Risk during the design of the Project. Coordinate within the context of this Contract means to fully cooperate with other relevant parties.

2. Engineer shall be responsible for responding to questions regarding the plans, specifications, shop drawing and material selections used in the preparation of the GMP.

**D. SCHEDULE:**

A project design schedule will be developed together with the Airport as a part of Project Administration, but it is anticipated that design will begin during the fall of 2012 and construction will begin in late spring of 2013 and may be completed in two construction seasons.

**E. DELIVERABLES:** Kimley-Horn shall provide the following deliverables:

- Daily Field Reports.
- Weekly FAA Construction Progress Reports
- General Review and archive of contractor's certified payroll.
- Final Construction Report – two (2) copies to the City and a total of five (5) electronic copies for the COF's use and distribution.
- Record Drawings.

**F. FEE AND BILLING:**

KHA's team will perform the services described in this Scope of Services for the **Not To Exceed** sum of:

***$421,369 as a Construction Administration Fee***

Fees and expenses will be invoiced monthly based, as applicable, upon the actual services performed and expenses incurred as of the invoice date. Payment will be due within 30 days of the date of the invoice. We will not perform any Additional Services without prior approval.

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UMENT OF SERVICE, IS INTENDED ONLY FOR THE SPECIFIC PURPOSE AND CLIENT FOR WHICH IT WAS PREPARED. MOSE
TION BY HOLCT-HEIN AND ASSOCIATES, INC. SHALL BE WITHOUT LIABILITY TO HOLCT-HEIN AND ASSOCIATES, INC.

**TAXILANE RECONSTRUCTION**
**FLAGSTAFF PULLIAM AIRPORT**
**CITY OF FLAGSTAFF**
**DATE: SEPTEMBER 24, 2012**

**KIMLEY-HORN ASSOCIATES**
**Phoenix, Arizona**

## EXHIBIT I - CONSTRUCTION ADMINSITRATION - ENGINEERING FEE
## TAXILANE RECONSTRUCTION

### DERIVATION OF COST OF PROPOSAL FEE

**1. DIRECT LABOR**

| TASK | DESCRIPTION | MANHOURS | TOTAL | EXTENDED TOTAL |
|---|---|---|---|---|
| 001 | Project Administration | 78 | 3,752.10 | |
| 002 | Construction Administration Services | 1,940 | 80,679.30 | |
| 003 | Post Construction Administration Services | 355 | 14,701.38 | |
| **TOTAL DIRECT LABOR** | | 2,373 | | **$99,132.78** |

**2. EXPENSES:**

| | | | |
|---|---|---|---|
| EXPENSE ALLOCATION (4.6%) | | 14,448.61 | |
| CONSTRUCTION ADMINISTRATION AND INSPECTION EXPENSES | | 48,720.00 | |
| **TOTAL EXPENSES:** | | | **$63,168.61** |

**3. CONSULTANTS:**

| | | | |
|---|---|---|---|
| SURVEY - VALIDATION/AS REQUIRED | | 4,500.00 | |
| QUALTIY ASSURANCE TESTING - TBD | | 37,500.00 | |
| SUBCONSULTANT ADMINISTRATION - 5% | | 2,100.00 | |
| **TOTAL CONSULTANTS** | | | **$44,100.00** |

**4. ENGINEERING FEE**

| | | | |
|---|---|---|---|
| TOTAL LABOR | | 99,132.78 | |
| OVERHEAD (%) | **182.90%** | 181,313.85 | |
| FEE (% OF NET) | **12%** | 33,653.60 | |
| DIRECT EXPENSES | | 63,168.61 | |
| CONSULTANTS | | 44,100.00 | |
| **TOTAL ENGINEERING FEE** | | | **$421,368.84** |

TAXILANE RECONSTRUCTION
FLAGSTAFF PULLIAM AIRPORT
CITY OF FLAGSTAFF
DATE: SEPTEMBER 24, 2012

KIMLEY-HORN ASSOCIATES
Phoenix, Arizona

## EXHIBIT II - CONSTRUCTION ADMINSITRATION - ENGINEERING FEE
## TAXILANE RECONSTRUCTION

### DERIVATION OF COST OF PROPOSAL FEE

**1. Direct Salary Costs**

| Title | HOURS | Rate | Total Labor | EXTENDED TOTAL |
|---|---|---|---|---|
| Project Manager | 170 | 53.10 | 9,027.00 | |
| Principal Engineer | 24 | 73.29 | 1,758.96 | |
| Professional Engineer | 4 | 41.10 | 164.40 | |
| CADD | 48 | 32.92 | 1,580.16 | |
| Lead Inspector | 2043 | 41.22 | 84,212.46 | |
| Clerical/Accounting Admin | 84 | 28.45 | 2,389.80 | |
| **Total Direct Salary Costs** | 2,373 | | | $99,132.78 |

**2. Labor and General & Administrative Overhead**

| | |
|---|---|
| **Percentage of Direct Salary Costs By 182.9%** | $181,313.85 |

| | |
|---|---|
| **3. Subtotal of Items 1 and 2** | **$280,446.63** |

**4. Fixed Payment**

| | |
|---|---|
| **12 % of Item No. 3:** | **$33,653.60** |

**5. Direct Non-Salary Expenses**

| | | |
|---|---|---|
| EXPENSE ALLOCATION (4.6%) | 14,448.61 | |
| CONSTRUCTION ADMINISTRATION AND INSPECTION EXPENSES | 48,720.00 | |
| **Total Direct Non-Salary Expenses** | | **$63,168.61** |

**6. Subcontract Costs**

| | | |
|---|---|---|
| SURVEY - VALIDATION/AS REQUIRED | 4,500.00 | |
| QUALTIY ASSURANCE TESTING - TBD | 37,500.00 | |
| SUBCONSULTANT ADMINISTRATION - 5% | 2,100.00 | |
| **Subtotal of subcontract Costs** | | **$44,100.00** |

| | |
|---|---|
| **7. TOTAL ENGINEERING FEE** | **$421,368.84** |

**TAXILANE RECONSTRUCTION**
**FLAGSTAFF PULLIAM AIRPORT**
**CITY OF FLAGSTAFF**
**DATE: SEPTEMBER 24, 2012**

***TAXILANE RECONSTRUCTION***

| | | Project Manager | Principal Engineer | Prof Engineer | Engineer in Train | CADD Tech | Lead Inspector | Admin/ Account | TOTAL MAN-HRS | TOTAL LABOR COST |
|---|---|---|---|---|---|---|---|---|---|---|
| **001 Project Administration** | | | | | | | | | | |
| 1 | Prepare Project Scope of Work and Contract | 8 | | | | | | | 8 | $424.80 |
| 2 | Develop and Monitor Project Budgets | 24 | 2 | | | | | 24 | 50 | $2,103.78 |
| 3 | Meetings (FAA, ADOT, Client, etc) | 12 | 8 | | | | | | 20 | $1,223.52 |
| | **Subtotal Task 001** | 44 | 10 | | | | | 24 | 78 | $3,752.10 |
| **002 Construction Administration Services** | | | | | | | | | | |
| | **Preconstruction Activities** | | | | | | | | | |
| 1 | Awarding of Contract and Notice to Proceed Coordination | 4 | 2 | | | | 8 | 4 | 18 | $802.54 |
| 2 | Pre-Construction Conference | 8 | | | | | 24 | 4 | 36 | $1,527.88 |
| | - Resident Inspector/Project Engineer | | | | | | | | | |
| | - Electrical Engineer | | | | | | | | | |
| 3 | Pre-Construction Activities | | 2 | | | | 24 | 4 | 30 | $1,249.66 |
| | - Review Contractor's Quality Control Program | 2 | | | | | | | 2 | $106.20 |
| | - RFI Response | 12 | | 4 | | | | | 16 | $801.60 |
| | - Review Submittals, Mix Designs and Shop Drawings | 12 | | | | | | | 12 | $637.20 |
| | - Mobilize to Project and Field Office Set-up | 4 | | | | | | | 4 | $212.40 |
| | **Construction Activities - 2 (4 months seasons)** | | | | | | | | | |
| 1 | Construction Observation | | | | | | | | | |
| | - On-Site Observation- 5 days per week. | | | | | | 1720 | | 1,720 | $70,898.40 |
| | - On-Site Observation - remobilize | 12 | | | | | 40 | | 52 | $2,286.00 |
| 2 | Construction Administration | 24 | 2 | | | 12 | | 12 | 50 | $2,157.42 |
| | - Establish and Maintain Correspondence and Project Files | | | | | | | | | |
| | - Daily Field Reports, Weekly FAA Reports | | | | | | | | | |
| | - Verify and Review Contractor's Quality Control Program | | | | | | | | | |
| | - Review Project Submittals and Shop Drawings | | | | | | | | | |
| | - Document Contractor Work for Conformance | | | | | | | | | |
| | - Review QA and QC Materials Testing Reports | | | | | | | | | |
| | - Noncompliance and Deficiency Reports | | | | | | | | | |
| | - Quantities Review and Monthly Progress Payments | | | | | | | | | |
| | **Subtotal Task 002** | 78 | 6 | 4 | | 12 | 1816 | 24 | 1,940 | $80,679.30 |
| **003 Post Construction Administration Services** | | | | | | | | | | |
| | **Post Construction -1 Month** | | | | | | | | | |
| 1 | Final Close-out | 12 | 4 | | | | 215 | 12 | 243 | $10,134.06 |
| | - Final Change Order for Final Quantities | | | | | | | | | |
| | - Contract Close-out - Final Payment | | | | | | | | | |
| 4 | Post Construction Assistance | | | | | | | | | |
| | - Answer Questions and Provide Assistance on Warranty, Work and Operations | 12 | 2 | | | | 12 | | 26 | $1,278.42 |
| 8 | Final Construction Report | | | | | | | | | |
| | - As-built drawings, assemble documentation, | 24 | 2 | | | 36 | | | 62 | $2,606.10 |
| | - Bind/scan report | | | | | | | 24 | 24 | $682.80 |
| | **Subtotal Task 003** | 48 | 8 | | | 36 | 227 | 36 | 355 | $14,701.38 |
| **SUBTOTAL DESIGN** | | **170** | **24** | **4** | | **48** | **2,043** | **84** | **2,373** | **$99,132.78** |

## *CONSTRUCTION ADMINISTRATION AND INSPECTION EXPENSES*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| ***1. POSTAGE:*** on Site | $50.00 | / mo. X | 5 | mos. = | | 250.00 | **250.00** |
| ***2. COMMUNICATIONS:*** | | | | | | | |
| Cell Phones | $100.00 | / mo. X | 8 | months | 1 | 800.00 | |
| Router | $50.00 | / mo. X | 8 | months | 1 | 400.00 | **1,200.00** |
| ***3. PER DIEM/MEALS:*** | | | | | | | |
| Per Diem (office) | $60.00 | / day X | 3 | people = | 1 | 180.00 | |
| Per Diem (Field Insp) | $60.00 | / day X | 200 | people = | 1 | 12,000.00 | |
| Meals /other | | / day X | | people = | | 600.00 | **12,780.00** |
| ***4. LODGING:*** | $60.00 | /night X | 10 | nights = | 1 | 600.00 | |
| | $1,900.00 | / month X | 9 | months = | 1 | 17,100.00 | **17,700.00** |
| | | | (2-Four Month Periods and Re-Mobilization) | | | | |
| ***5. TRANSPORTATION:*** | | | | | | | |
| Vehicle Rental and Fuel (RE) | $900.00 | / mon X | 9 | months X | 1 | 8,100.00 | |
| Airfare | $550.00 | / ticket X | | trips for | 1 | 0.00 | |
| Vehicle Mileage (Office) | 6 | trips X | 300 | miles X | 0.450 | 810.00 | **8,910.00** |
| ***6. PRINTING:*** | | | | | | | |
| Reports | 0 | xerox @ | $0.50 | per copy | 10 | 0.00 | |
| Record Drawings, Black Lines | 1 | plan sheets | $3.00 | per copy | 40 | 120.00 | |
| Specifications | 0 | spec docume | $0.08 | per copy | 10 | 0.00 | |
| Final Engineer's Report | 3 | docs | $500.00 | per copy | 3 | 4,500.00 | |
| Construction Photographs | | set | $1,000.00 | per copy | 2 | 0.00 | **4,620.00** |
| ***7. COMPUTER (Software/Hardwar)*** | | | | | | | |
| Drafter | - CADD Stations | | 24 | hours X | $15.00 | 360.00 | |
| Admin | - Word Process | | 0 | hours X | $15.00 | 0.00 | |
| Field Team, 1 Computers | - Field Computer | | 8 | months X | $300.00 | 2,400.00 | **2,760.00** |
| ***8. FIELD SUPPLIES*** | | | | | | | |
| Field Office | 1 | L.S. | 1 | = | 1 | 500.00 | |
| Furniture Rental | 0 | / Mon | 5 | = | 1 | 0.00 | |
| Utilities | 0 | / Mon | 5 | = | 1 | 0.00 | **500.00** |
| ***10. LICENSES & PERMITS:*** | 0 | @ | | = | | 0.00 | **0.00** |
| ***11. ADVERTISING*** | 0 | X | 0 | days = | 1 | 0.00 | **0.00** |

**TOTAL EXPENSES =** **$ 48,720.00**

SPEEDIE AND ASSOCIATES
Geotechnical • Environmental • Materials Engineers

# ENGINEERING SERVICES

## *2012 Fee and Rate Schedule*

*Fees for services will be based upon the time worked on the project at the following rates:*

| Title | Rate Per Hour |
|---|---|
| Principal | $ 130.00 |
| Project Manager | 100.00 |
| Sr. Geologist/Engineer | 100.00 |
| Project Engineer/Geologist | 90.00 |
| Environmental Specialist | 85.00 |
| Architectural Special Inspector | 85.00 |
| Structural Special Inspector | 75.00 |
| Staff Engineer/Geologist | 70.00 |
| Sr. Engineering Technician | 55.00 |
| Draftsman | 50.00 |
| Materials Testing Technician | 45.00 |
| Clerical/Administrative | 40.00 |

**REIMBURSABLE EXPENSES**
Light Truck Mileage Rate: $0.50 per mile
The following items are reimbursable to the extent of actual expenses plus 25%:

1. Transportation, lodging and subsistence for out of town travel
2. Special mailings and shipping charges
3. Special materials and equipment unique to the project
4. Duplication or reprinting/copying reports

**TEST BORINGS AND FIELD INVESTIGATIONS**
On projects requiring test borings, test pits, or other explorations, the services of reputable contractors to perform such work shall be obtained.

**SUBCONTRACTORS/SUBCONSULTANTS CHARGES**
Any charges for subcontractors/subconsultants are subject to a 25% handling fee if invoiced by Speedie & Associates or such charges can be directly paid by the CLIENT.

**SPECIAL RATES**
The following rates may be subject to a 35% increase:

- Overtime – time over 8 hours per weekday and on Saturday
- Sunday and Holidays
- Rush orders

**EXPERT WITNESS**
Deposition and testimony; 4-hour minimum, $250.00 per hour.

***The following Terms and Conditions are included and hereto made a part of this agreement.***



**Initials** _____
**Initials** _____

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Randall Groth, Project Manager |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Approval of Construction Contract:** Butler Avenue Median Improvements Project (Phase 3).

**RECOMMENDED ACTION:**

1) Approve the construction contract with RTR Paving and Resurfacing, LLC. in the amount of $373,896.50 including a $37,000 contract allowance and a contract time of 105 calendar days;
2) Approve Change Order Authority in the amount of $33,690.00 (10% of contract amount, less the allowance) for potential costs associated with unanticipated items of work; and
3) Authorize the City Manager to execute the necessary documents.

**Policy Decision or Reason for Action:**

Award of the contract will authorize construction of the Butler Avenue Median Improvements (Phase 3), remedial median work on Butler Avenue at Lumber Street and construction of a bus pullout on Butler Avenue at Elden Street.

Subsidiary Decisions Points:
The third phase of the Butler Median Improvements is scheduled in the Capital 5-year plan for Division 74.

**Financial Impact:**

The Butler Avenue Median Improvements are funded through Division 74, by the Beautification component of Bed, Board and Beverage (BBB) revenues in the budgeted amount of $125,765 for FY13 and the budget request amount of $388,135 for FY14. (Acct. 051-7458-631).

The remedial work on Butler Avenue at Lumber Street and the Elden bus pullout are funded through Division 92, Miscellaneous Street/Transportation fund. (Acct. 040-9230-607). The $155,000 funding for this work would draw from both the FY13 and FY14 budgets.

**Connection to Council Goal:**

Below are the Council Goals.

1. Repair Replace maintain infrastructure (streets & utilities)

**Has There Been Previous Council Decision on This:**

The Council adopted the FY13 budget at the June 5, 2012 meeting. The Council will consider the FY14 budget at an upcoming meeting.

**Options and Alternatives:**

1. Approve award as recommended. This would allow the project to be constructed in 2013.
2. Reject the approval of the award. This option would delay the construction start and likely cause the work to be deferred until 2014. Provide additional direction to staff.

**Background/History:**

The Butler Avenue Median Improvement (Phase 3) is an infill project, building landscaped medians between Phase 1 (in front of the High Country Conference Center) and Phase 2 (in front of Aspen Place at the Sawmill development). With the completion of Phase 3, landscaped medians on Butler Avenue will be continuous from Milton Avenue, easterly to Sawmill Road.

The work on Butler Avenue medians at Lumber Street will remove a portion of the existing median and construct a turn lane to allow queuing for left turning vehicles headed into the light industrial area accessed via Lumber Street.

The Elden bus pullout will be built in the southwest quadrant of the Elden Street and Butler Avenue intersection in order to move an existing bus stop off of the east bound travel lane of Butler Avenue which is an arterial roadway. The City has discussed the development of this bus pullout with NAIPTA and the potential developer of the adjacent property.

**Key Considerations:**

The Elden St. bus pullout will be built in the southwest quadrant of the Elden St. and Butler Ave. intersection using a portion of a City owned parcel. The remaining portion of the parcel is in the process of sale for private development.

**Expanded Financial Considerations:**

The bid solicitation was published on the City website and twice in the Daily Sun on March 17 and March 24, 2013. Eight bids were received on April 2, 2013 at the office of the City Purchasing Agent. A summary of bids received is below:

| | |
|---|---|
| RTR Paving & Resurfacing | $ 373,896.50 |
| Alliance Streetworks | $ 374,959.20 |
| McDonald Brothers | $ 386,347,65 |
| *Engineer's Estimate* | *$ 387,294.00* |
| Eagle Mtn. Construction | $ 400,453.00 |
| Hunter Contracting | $ 423,644.70 |
| Woodruff Construction | $ 433,719.00 |
| Kinney Construction | $ 462,857.00 |
| Standard Construction | $ 524,821.50 |

**Community Benefits and Considerations:**

The goal of the Butler Median project is to increase street beautification and improve traffic safety. Landscaped areas within the street corridor provide green space to improve the aesthetics of the streetscape and to assimilate stormwater. Medians reduce collisions caused by cross over traffic, provide queuing pockets as a safe place of refuge for turning vehicles and help articulate traffic flow patterns.

**Community Involvement:**

Inform - A public open house was held on April 19, 2012 in Council chambers. Staff and consultant representatives were present to answer questions and concerns of the public. Six members from the public attended including a representative from NAU. Public comments were all positive about the median construction with no written comments received.

Consultant - City staff conducted door-to-door meetings and/or telephoned the 26 adjacent business owners and residence to inform them about the project and to notify them of the public open house.

Collaborate - During construction, City staff and the contractor will coordinate construction activities with adjacent property owners to help facilitate site accessibility for the property owners.

---

**Attachments:** Vicinity Map
Construction Contract
Proposed Location Map
Removal Drawing

# Butler Medians (Phase 3) / Elden Bus Pullout / Lumber Renovation
## Vicinity Map

1 inch = 300 feet

| Butler Ave. Medians (Phase 3) - San Francisco St. to Lumber St.

| Elden Bus Pullout

| Lumber Street Renovation

# CONSTRUCTION CONTRACT

**City of Flagstaff, Arizona**
**And**
**RTR Paving and Resurfacing, Inc.**

This Construction Contract ("Contract") is made and entered into this _____ day of _____ 2013, by and between the City of Flagstaff, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("Owner") and RTR Paving and Resurfacing, LLC, and Arizona limited liability company ("Contractor") with offices in Flagstaff, Arizona. Contractor and the Owner may be referred to each individually as a "Party" and collectively as the "Parties."

## RECITALS

A. Owner desires to obtain construction service and

B. Contractor has available and offers to provide personnel and materials necessary to accomplish the work and complete the Project as described in the Scope of Work within the required time in accordance with the calendar days included in this Contract.

NOW, THEREFORE, the Owner and Contractor agree as follows:

**1. Scope of Work.** The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for the construction of the **Butler Avenue Median Improvements Phase III Project** (the "Project"). Contractor shall construct the Project for the Owner in a good, workmanlike and substantial manner and to the satisfaction of the Owner through its engineers and under the direction and supervision of the City Engineer or his properly authorized agents including but not limited to project managers and project engineers. Contractor's work shall be strictly pursuant to and in conformity with the Contract.

1.1 A Pre-Construction Conference will be held with the successful Contractor after the Notice of Award is issued. The location, date and time of the Conference will be agreed upon between the Contractor and the Engineer. The purpose of the meeting is to outline specific construction items and procedures that the City of Flagstaff (the "Owner") feels require special attention on the part of the Contractor. The Contractor may also present any variations in procedures to improve the workability of the Project, reduce the cost or reduce inconvenience to the public. The Contractor shall submit a written proposal at this conference outlining intended plans for maintaining continuous access to residences and businesses along the construction site and traffic control.

**2. Contract; Ownership of Work.** Contractor shall furnish and deliver all of the materials and perform all of the work in accordance with this Contract; Construction Plans; Special Provisions; the City of Flagstaff Engineering Design and Construction Standards and Specifications; the latest version of the Maricopa Association of Governments ("MAG") Specifications for Public Works Construction and City revisions to the MAG Specifications for

Public Works Construction ("Exhibit A"); and any Arizona Department of Transportation (A.D.O.T.) Standards that may be referenced on the Plans or in the specifications, incorporated in this Contract by reference, plans and associated documents. All provisions of the Invitation for Construction Bids, Performance Bond, Payment Bond, Certificates of Insurance, Addenda, Change Orders and Field Orders, if any, are hereby incorporated into this Contract. All materials, work, specifications and plans shall be the property of the Owner.

The following exhibits are incorporated by reference and are expressly made a part of this Contract:

2.1.1 Revisions of MAG Standard Specifications for Public Works Construction ("Flagstaff Addendum to MAG") Exhibit A
2.1.2 Special Provisions Exhibit B

**3. Payments.** In consideration of the faithful performance of the work described in this Contract, the Owner shall pay an amount not to exceed **$373,896.50** to the Contractor for work and materials provided in accordance with the bid schedule, which amount includes all federal, state, and local taxes, as applicable. This amount shall be payable through monthly progress payments, subject to the following conditions:

3.1 Contractor shall promptly submit to the Owner all proper invoices necessary for the determination of the prices of labor and materials;

3.2 Progress payments shall be made in the amount of ninety percent (90%) of the value of labor and materials incorporated in the work, based on the sum of the Contract prices of labor and material and of materials stored at the worksite, on the basis of substantiating paid invoices, as estimated by the Owner, less the aggregate of all previous payments, until the work performed under this Contract is fifty percent (50%) complete. When and after such work is fifty (50%) complete, the ten percent (10%) of value previously retained may be reduced to five percent (5%) of value completed if Contractor is making satisfactory progress as determined by the Owner, and providing that there is no specific cause or claim requiring a greater amount to be retained. If at any time the Owner determines that satisfactory progress is not being made, the ten percent (10%) retention shall be reinstated for all subsequent progress payments made under this Contract;

3.3 The City Engineer shall have the right to determine the final amount due to Contractor;

3.4 Monthly progress payments shall be made by the Owner, on or before fourteen (14) calendar days after the receipt by the Owner of an approved estimate of the work completed;

3.5 Contractor agrees that title to materials incorporated in the work, and stored at the site, shall vest with the Owner upon receipt of the corresponding progress payment;

3.6 The remainder of the Contract price, after deducting all such monthly payments and any retention, shall be paid within sixty (60) days after final acceptance of completed work by the Owner. The release of retention or alternate surety shall be made following the Owner's receipt and acceptance of: Contractor's Affidavit Regarding Settlement of Claims, Affidavit of Payment, Consent of Surety for Final Payment, and Unconditional Full and Final lien waivers from all subcontractors and suppliers who have filed an Arizona Preliminary 20 Day Lien Notice in accordance with A.R.S. §§ 33-992.01 and 33-992.02.

**4. Time of Completion.** Contractor agrees to complete all work as described in this Contract within **105 calendar days** from the date of the Owner's Notice to Proceed free of all liens, claims and demands of any kind for materials, equipment, supplies, services, labor, taxes and damages to property or persons, in the manner and under the conditions specified within the time or times specified in this Contract.

**5. Performance of Work.** All work covered by this Contract shall be done in accordance with the latest and best accepted practices of the trades involved. The Contractor shall use only skilled craftsmen experienced in their respective trades to prepare the materials and to perform the work.

**6. Acceptance of Work; Non-Waiver.** No failure of the Owner during the progress of the work to discover or reject materials or work not in accordance with this Contract shall be deemed an acceptance of, or a waiver of, defects in work or materials. No payment shall be construed to be an acceptance of work or materials, which are not strictly in accordance with the Contract.

**7. Delay of Work.** Any delay in the performance of this Contract due to strikes, lockouts, fires, or other unavoidable casualties beyond the control of the Contractor and not caused by any wrongful act or negligence of the Contractor shall entitle the Contractor to an extension of time equal to the delay so caused. The Contractor shall notify the Owner in writing specifying such cause within twenty-four (24) hours after its occurrence. In the event such delay is caused by strikes, lockouts, or inability to obtain workmen for any other cause, the Owner shall have the right but shall not be obligated to complete the work on the same basis as is provided for in Section 13 below (Contract Violations).

**8. Failure to Complete Project in Timely Manner.** If Contractor fails or refuses to execute this Contract within the time specified in Section 4 above, or such additional time as may be allowed, the proceeds of Contractor's performance guaranty shall become subject to deposit into the Treasury of the municipality as monies available to compensate the Owner for damages as provided by A.R.S. § 34-201 for the delay in the performance of work under this Contract, and the necessity of accepting a higher or less desirable bid from such failure or refusal to perform this Contract as required. If Contractor has submitted a certified check or cashier's check as a performance guaranty, the check shall be returned after the completion of this Contract.

**9. Labor Demonstration.** It is understood that the work covered by this Contract is for the Owner's business purposes and that any unfavorable publicity or demonstrations in connection with the work will have a negative effect upon the Owner. If Contractor's actions in performance of the

Contract result in any public demonstration on behalf of the laborers or organized labor in the vicinity of the Owner's premises, whether such demonstration is in the form of picketing, posting of placards or signs, violence, threats of violence or in any other form, which in the Owner's judgment, might convey to the public the impression that the Owner or the Contractor or any subcontractor is unfair to laborers or to organized labor, the Owner shall have the right to terminate this Contract immediately, unless the Contractor shall have caused such demonstration to be discontinued within two (2) days after request of the Owner to do so. In the event any such demonstration is attended by violence, the Owner may fix lesser time within which a discontinuance shall be accomplished. In the event of Contract termination, the Contractor agrees to remove from the Premises within twenty-four (24) hours of termination, all machinery, tools, and equipment belonging to it or to its subcontractors. All obligations or liabilities of the Owner to the Contractor shall be discharged by such termination, except the obligation to pay to the Contractor a portion of the Contract price representing the value based upon the Contract prices of labor and materials incorporated in the work as established by the Owner, less the aggregate of all previous payments, but subject to all of the conditions pertaining to payments generally.

**10. Material Storage.** During the progress of the work, the Contractor shall arrange for office facilities and for the orderly storage of materials and equipment. Contractor shall erect any temporary structures required for the work at his or her own expense. The Contractor shall at all times keep the premises reasonably free from debris and in a condition, which will not increase fire hazards. Upon completion of the work, the Contractor shall remove all temporary buildings and facilities and all equipment, surplus materials and supplies belonging to the Contractor. Contractor shall leave the Premises in good order, clean, and ready to use by the Owner. The establishment of any temporary construction yard, material storage area or staging area to be located within City of Flagstaff limits and outside the public right-of-way or Project limits generally requires a Temporary Use Permit. (See Exhibit A, Section 107.2.1.)

**11. Assignment.** Contractor shall not assign this Contract, in whole or in part, without the prior written consent of the Owner.

**12. Notices.** All notices or demands required to be given, pursuant to the terms of this Contract, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

| **If to Owner:** | **If to Contractor:** |
|---|---|
| Patrick Brown, C.P.M.<br>Senior Procurement Specialist<br>211 West Aspen Avenue<br>Flagstaff, AZ 86001 | Richard Walters<br>President<br>P.O. Box 30536<br>Flagstaff, AZ 86003 |

**13. Contract Violations.** In the event of any of the provisions of this Contract are violated by the Contractor or by any of Contractor's subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate such Contract (the "Notice to Terminate"). The Contract shall terminate within five (5) days of the date Contractor receives the Notice to Terminate, unless the violation ceases and Contractor makes arrangements for correction satisfactory to the Owner. In the event of any such termination, the Owner shall immediately serve notice of the termination upon the Surety by registered mail, return receipt requested. The Surety shall have the right to take over and perform the Contract. If the Surety does not commence performance within ten (10) days from the date of receipt of the Owner's notice of termination, the Owner may complete the work at the expense of the Contractor, and the Contractor and his or her Surety shall be liable to the Owner for any excess cost incurred by the Owner to complete the work. If the Owner completes the work, the Owner may take possession of and utilize such materials, appliances and plants as may be on the worksite site and necessary for completion of the work.

**14. Contractor's Liability and Indemnification.** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the Owner, its agents, representatives, officers, directors, officials and employees shall arise in connection with the claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable. The amount and type of insurance coverage requirements set forth in the Contract (Section 103.6 of Exhibit A) will in no way be construed as limiting the scope of the indemnity in this paragraph.

**15. Non Appropriation.** In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Owner to meet the Owner's obligations under this Contract, the Owner will notify Contractor in writing of such occurrence, and this Contract will 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 Contract are exhausted. No payments shall be made or due to the other party under this Contract beyond these amounts appropriated and budgeted by the Owner to fund the Owner's obligations under this Contract.

**16. Amendment of Contract.** This Agreement may not be modified or altered except in writing and signed by duly authorized representatives of the parties.

**17. Subcontracts.** Contractor shall not enter into any subcontract, or issue any purchase order for the completed work, or any substantial part of the work, unless in each instance, prior written approval shall have been given by the Owner. Contractor shall be fully responsible to the Owner

for acts and omissions of Contractor's subcontractors and all persons either directly or indirectly employed by them.

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

**19. Compliance with All Laws.** Contractor shall comply with all applicable laws, statutes, ordinances, regulations and governmental requirements in the performance of this Contract.

**20. Employment of Aliens.** Contractor shall comply with A.R.S. § 34-301, which provides that a person who is not a citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal public works project.

**21. Compliance with Federal Immigration Laws and Regulations.** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. 23-214.A. Contractor acknowledges that pursuant to A.R.S. 41-4401 a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the City retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

**22. Business Operations in Sudan/Iran.** In accordance with A.R.S. § 35-397, the Contractor certifies that the Contractor 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.

**23. Contractor's Warranty.** Pursuant to MAG specifications 108.8, The Contractor shall guarantee the work against defective workmanship or materials for a period of one year from the date of its final acceptance under the contract, ordinary wear and tear and unusual abuse or neglect excepted.

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

**25. 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.

**26. Time is of the Essence.** Contractor acknowledges that the completion of the Contract by the dates specified final completion is critical to the Owner, time being of the essence of this Contract.

**27. 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 Contract.

**28. Severability**. If any part of this Contract 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 Contract shall remain in full force and effect unless the stricken provision leaves the remaining Contract unenforceable.

**IN WITNESS WHEREOF,** the Owner and Contractor, by their duly authorized representatives, have executed this Contract as of the date written above.

*(Please sign in blue ink. Submit original signatures – photocopies not accepted)*

**Owner, City of Flagstaff**

_____
Kevin Burke, City Manager

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

**RTR Paving and Resurfacing, LLC**

_____
Signature

_____
Printed Name

**CITY OF FLAGSTAFF, ARIZONA**
**PAYMENT BOND**

PROJECT NAME: Butler Ave Median Improvements Phase III Project
PROJECT NUMBER: 03-11025 BID NUMBER: 2013-37

STATUTORY PAYMENT BOND PURSUANT TO TITLE 34
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (Hereinafter called the Principal), as Principal, and, _____ _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ ("Surety"), as Surety, are held and firmly bound unto the City of Flagstaff, Arizona ("Obligee"), in the amount of _____ _____Dollars ($_____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated this _____ day of_____, 20___, to the City of Flagstaff, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, the condition of this obligation is such, that if the principal promptly pays all monies due to all persons supplying labor or materials to the principal or the principal's subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise it remains in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Title and Chapter, to the same extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____ 20___.

| | |
|---|---|
| _____ | _____ |
| Principal (Seal) | Surety (Seal) |
| By: _____ | By: _____ |
| _____ | _____ |
| Agency of Record | Agency Address |

**CITY OF FLAGSTAFF, ARIZONA**
**PERFORMANCE BOND**

PROJECT NAME: Butler Ave Median Improvements Phase III Project
PROJECT NUMBER: 03-11025 BID NUMBER: 2013-37

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____

(hereinafter called the Principal), as Principal, and, _____

_____, a corporation organized and existing under the laws of the State of _____

_____, with its principal office in the City of _____

("Surety"), as Surety, are held and firmly bound unto the City of Flagstaff, Arizona ("Obligee"), in the amount of _____Dollars ($_____

_____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated this ____day of _____ 20__ in the City of Flagstaff which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, the condition of this obligation is such, that if the principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of contract during the original term of the contract and any extension of the contract, with or without notice to the surety, and during the life of any guaranty required under the contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

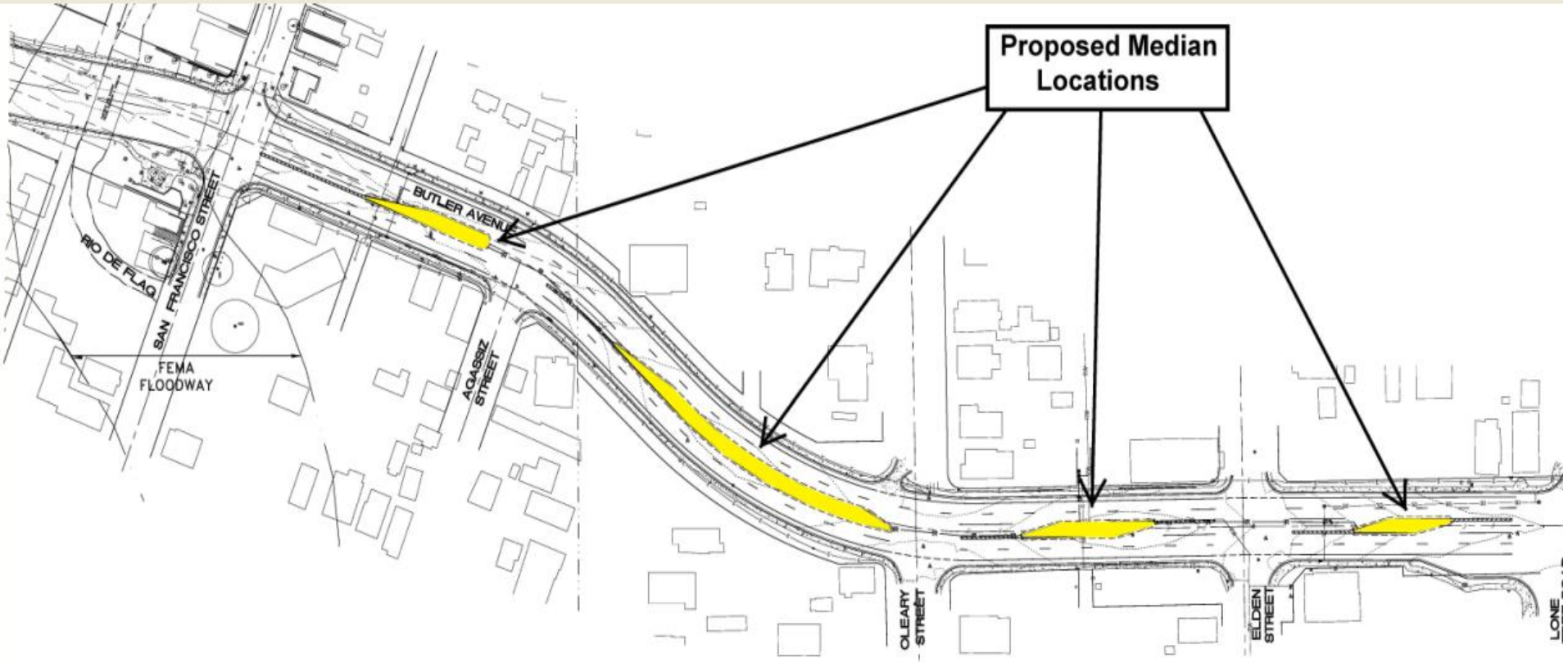
Provided, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in

accordance with the provisions of said Title and Chapter, to the extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

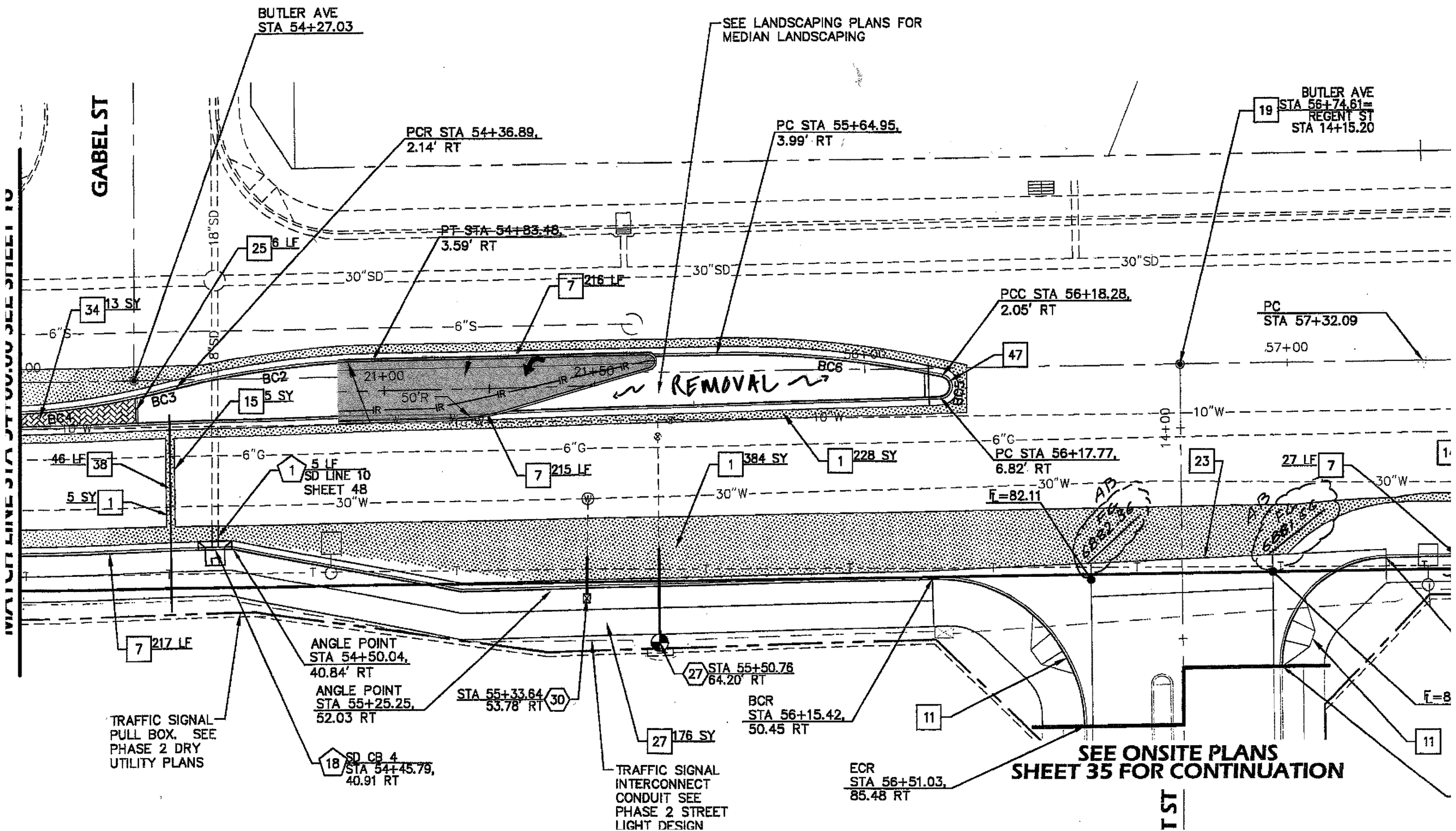
Witness our hands this _____ day of _____20__.

| | |
|---|---|
| _____ | _____ |
| Principal (Seal) | Surety (Seal) |
| By: _____ | By: _____ |
| _____ | _____ |
| Agency of Record | Agency Address |




# BUTLER MEDIANS PHASE III

Lumber Street Median Removal



# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Kevin Burke, City Manager |
| **Co-Submitter:** | Stephanie Smith |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Approval of Amendment to Lease Agreement:** Amendment to the Lease Agreement with Boys and Girls Club for the Cogdill Recreation Center.

**RECOMMENDED ACTION:**

Adopt the amendments to the Cogdill recreation Center lease Agreement.

**Policy Decision or Reason for Action:**

The current lease agreement was entered into in July of 2012. The intention of the agreement is to enable a non-profit to operate a public program for Flagstaff youth with diminishing City financial support for operations, but continued financial support for providing the facility. Specifically, the City budgeted approximately $200,000 a year to provide recreational services when it operated the facility. The City provided $100,000 start-up assistance to the Boys & Girls Club in FY13, and will provide $40,000 in FY14 exclusively for utility and maintenance expenses. This action asks Council to consider amendments to the lease to be more consistent with a landlord-tenant relationship.

Subsidiary Decisions Points:
A) Section 1.3 of the Lease Amendment allows for the term to be extended by written mutual consent for an additional five-year term.

B) Section 5.2 of the Lease Amendment clarifies repairs and and maintenance responsibilities for the Lessee and the City. Specifically, the Amendment acknowledges that the City will provide a maximum annual allowance of $20,000, on a fiscal year basis, to cover the costs of Maintenance and Repair work on the premises. The Lessee will be responsible for the cost of all Damage.

C) Section 6.1.1 (ii) of the Lease Agreement requires that the Lessee provides ~~insurance for the contents of the building while the City will provide insurance for the replacement of the building.~~ Special Form Property insurance against “all risks” at least as broad as the current ISO Special Form policy, including earthquake and flood, for loss to any tenant improvements or betterments and Tenant’s business personal property on a full insurable replacement cost basis with no coinsurance clause, and Business Income insurance covering at least twelve (12) months loss of income, rents, and continuing expense.

**Financial Impact:**

The financial impact of the City insuring the replacement cost of Cogdill Recreation Center is $1,400 per year. This would be added to our current insurance premium and paid through the Self Insurance Trust. This cost was previously paid by the City when it operated the Cogdill Recreation Center. The City will provide an annual allowance for utility bill expenses ($20,000) and maintenance and repairs ($20,000).

**Connection to Council Goal:**

Below are the Council Goals relevant to this agenda item.

1. Repair, Replace and Maintain Infrastructure
2. Fund existing and consider expanded recreational services

**Has There Been Previous Council Decision on This:**

Council approved the lease agreement January 3, 2012.

**Options and Alternatives:**

Option 1: Approve amendment to the Lease Agreement. Said Amendment increase costs to the City of Flagstaff but are consistent with the intent of the agreement to provide a facility for a non-profit to operate a youth program available to all Flagstaff children. This option also provides greater financial viability for the Boys & Girls Club to provide their program.
Option 2: Do not approve the Amendment to the Lease Agreement. The Boys & Girls Club agreed to the terms of the lease in January of 2012. The term of the agreement end June 30, 2017. This arrangement was entered into to reduce City expenditures and said Amendments will reduce those savings.
Option 3: Approve a portion of the Amendment's subsidiary decisions.

**Background/History:**

The Cogdill Recreation Center has been utilized to provide youth enrichment activities to our local Flagstaff community. The Cogdill Recreation Center specifically serves several nearby neighborhoods, including 127 units of Housing Urban Development (HUD) managed housing with developed educational, recreational, fine arts and leadership development programs for school age youth with special focus on children dealing with disadvantaged circumstances.

The City conducted a formal competitive Request For Proposals process and received a total of one (1) proposal response from the Boys and Girls Club of Flagstaff (BGCF). The evaluation Committee, comprised of five members, evaluated and scored BGCF and determined its proposal response to be acceptable that outlined a presented approach that has been deemed to be in the best interest of the City. The Boys and Girls Club is one of the nation’s oldest and largest youth service organizations with a primary mission of service to young people from disadvantaged circumstances.

**Key Considerations:**

The recommended amendments will increase costs to the City of Flagstaff but are consistent with the intent of the agreement to provide a facility for a non-profit to operate a youth program available to all Flagstaff children. These amendments will also provide greater financial viability for the Boys & Girls Club to provide their program.

**Community Benefits and Considerations:**

The Flagstaff community will benefit from the following:

- To be consistent and satisfy the intent of the agreement to provide a facility for a non-profit to operate a youth program available to all Flagstaff children. These amendments will also provide greater financial viability for the Boys & Girls Club to provide their program.
- The BGCF will provide age appropriate programs and activities for all school age youth who utilize and participate in the programs offered.
- The BGCF will provide recreational programs that specialize in developing, coordinating and providing programs offered in the five (5) core areas: Sports, Fitness and Recreation, Health and Life Skills, The Arts, Education and Character and Leadership Development.
- The BGCF will also provide after school enrichment and summer camp experiences that are key elements in delivering the programs that are offered.
- The Head Start Program will remain housed at Cogdill and the BGCF will work collaboratively with the program, both in terms of schedule/facility space but also in support of joint programming when possible.
- The BGCF will identify and engage collaborative community partners to develop and/or deliver programs (FUSD, YMCA, Law Enforcement, non-profits, etc.)

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**Attachments:** Original Lease Agreement
Updated Amendment

# COGDILL RECREATION CENTER
# LEASE AGREEMENT

THIS Lease Agreement ("Lease") is entered into this 1st, day of July, 2012, by and between the City of Flagstaff, an Arizona municipal corporation ("Lessor"), and the Boys & Girls Club of Flagstaff, an Arizona nonprofit corporation ("Lessee"), with offices located at 2736 Rio de Flag, Flagstaff, Arizona.

**RECITALS**

A. The City seeks services from a non-profit community-based organization, through a Lease Agreement for the Cogdill Recreation Center, to provide and enhance youth-related recreational programs within the Flagstaff community;

B. Lessee is a non-profit community-based organization dedicated to developing, coordinating and providing programs offered in the following five (5) core areas that have been determined, through significant community outreach, to meet the specific needs of the Flagstaff Community: sports, fitness and recreation, health and life skills, and arts, education and character and leadership development;

C. The City will obtain a significant public benefit through this Lease by decreasing expenditures related to recreational staffing, minor building maintenance, and recreational administration while ensuring that high quality recreational programming is provided to Flagstaff residents.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth below, the Lessor and Lessee agree as follows:

## 1. Lease of the Premises and Possession.

1.1. Lease of Premises. The Lessor leases to the Lessee and the Lessee leases from the Lessor the real property and improvements situated at 301 S. Paseo Del Flag, City of Flagstaff, Coconino County, Arizona, (the "Premises" or "Cogdill Recreation Center") in accordance with the terms and conditions of this Lease.

1.2. Condition of Premises. The Lessor makes no representations or warranties regarding the condition or tenant ability of the Premises. The Premises are leased to the Lessee "AS IS, AND WITH ALL DEFECTS, LATENT OR PATENT."

1.3. Term and Commencement Date. The term of this Lease shall commence on July 1, 2012 ("Commencement Date") and shall end at midnight on June 30, 2017, unless terminated earlier as provided in Section 8 ("Termination of Lease").

1.4. Required Use. The Lessee's required use under this Lease is to operate the Cogdill Recreation Center and develop, coordinate and provide recreational programs serving youths in the City of Flagstaff, offered in five (5) core areas: sports, fitness and recreation, health and life skills, the arts, education and character/leadership development ("Required Use") as described in the Project Description/Scope of Work Section of City of Flagstaff Request For Proposals No. 2012-18, incorporated by reference in this Lease. Lessee shall not charge public housing residents a membership fee, or shall cover the membership fee for such residents through scholarships or other arrangements that result in no cost to public housing residents for access to the Premises. The Head Start Program will remain housed at the Premises and the Lessee shall work collaboratively with that program, both in terms of schedule/facility space but also in support of joint programming when possible. The Lessee shall identify and engage community

organizations to develop and/or deliver programs, including but not limited to Flagstaff Unified School District ("FUSD"), YMCA, other nonprofit entities, and law enforcement agencies.

1.5. Base Rent. The Lessee shall pay the annual rent of Twelve Dollars ($12.00) (the "Base Rent").

**2. Possession.**

2.1. Possession of Premises. The Lessor shall deliver possession of the Premises to the Lessee on the Commencement Date. The Lessor covenants on behalf of itself, and its successors and assigns, not to disturb the quiet enjoyment, possession or Required Use of the Lessee during the Term of this Lease, subject to the Lessor's rights set forth in this Lease.

2.2. Early Possession. If the Lessee occupies the Premises prior to the Commencement Date, then (i) such occupancy shall be subject to all provisions of this Lease, (ii) such occupancy shall not change the termination date, and (iii) the Lessee shall pay rent for such occupancy.

**3. Rent.**

3.1. Time of Payment. The Base Rent shall be due and payable annually in advance on the Commencement Date of this Lease and on the anniversary of the Commencement Date for each subsequent year of this Lease.

3.2. Late Charges. The Lessee shall pay to the Lessor a late payment charge equal to five percent (5%) of any amount due and owing for any rental payment not paid within seven (7) days of the due date thereof. Any late payments not paid as described above shall bear interest until paid at the lesser of two percent (2%) per month or the highest rate permitted by law.

3.3. Form and Payment of Rent. The Lessee shall pay rent in the form of cash, a check or money order made payable to the Lessor. The Lessee shall deliver the payment to the Lessor at the Lessor's address set forth in Section 9.1 on or before the due date for the rent payment.

3.4. Taxes. The Lessor shall pay, as the same become due and payable, all general real estate taxes and all special assessments levied upon or assessed against, or which become due and payable in connection with, the Premises. In addition, the Lessee shall be liable for and shall pay before the same shall be past due all taxes levied against its trade fixtures and equipment and other personal property placed upon, or owned by the Lessee in, on or about the Premises, plus those levied against the personal property, if any, being leased to the Lessee under this Lease.

3.5. Start-up Costs. The City agrees to provide start-up costs to Lessee that shall be phased over a three (3) year period ("Start-up Costs"). The City will pay Start-up Costs of up to One Hundred Thousand Dollars ("$100,000") for Year 1 (July 1, 2012 – June 30, 2013), up to Fifty Thousand Dollars ("$50,000") for Year 2 (July 1, 2013 – June 30, 2014), and up to Twenty-Five Thousand Dollars ("$25,000") for Year 3 (July 1, 2014 – June 30, 2015). Acceptable Start-up Costs for which the City would provide reimbursement would include hiring of an executive director, hiring additional staff, marketing and advertising costs, matching grant funds as needed, or any other necessary costs associated with the successful operation and programming of the Cogdill Recreation Center. The City shall make all payments on a reimbursement basis upon presentation by Lessee of documentation of costs satisfactory to the Purchasing Director. Lessee shall make its books and records available to Lessor for inspection upon request and shall retain records with regard to the Start-up Costs for five (5) years from the date any Start-up Costs were incurred.

**4. Representations, Warranties and Covenants of Lessee**.

4.1. Use of Premises. The Lessee shall occupy and use the Premises for the Required Use as outlined in the Project Description/Scope of Work Section of City of Flagstaff Request For Proposals No. 2012-18, and no other purpose, and the Lessee shall occupy the entire Premises during the Term of this Lease and any renewal thereof. The Lessee shall conduct no industrial, manufacturing or processing activity on the Premises. Lessee shall not (i) cause or permit any auction, fire, closing out or bankruptcy sales in or about the Premises; (ii) make or permit any noise or odor objectionable to the public to emit from the Premises; (iii) create, maintain or permit a nuisance in or about the Premises; (iv) permit or do anything that is contrary to any law or regulation of any federal , state or local governmental body or agency; or (v) permit or do anything that is contrary to any covenant, condition or restriction affecting the Premises.

4.2. Hazardous Material. The Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by the Lessee, its agents, employees, contractors or invitees, without the prior written consent of the Lessee, which consent may be withheld for any reason or for no reason.

4.2.1. Hazardous Material Indemnity. The Lessee shall indemnify, defend and hold the Lessee, its officers, officials, employees and agents, harmless from and against any and all claims, judgements, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, sums paid in settlement of claims and attorneys' fees, consultant fees and expert fees) which arise during or after the Lease Term as a result of (i) the Lessee's breach of the obligations stated in this Section 4.2, or (ii) the presence of Hazardous Material on the Premises caused or permitted by the Lessee. This indemnification of the Lessor by the Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil on or groundwater under or within the Premises caused or permitted by the Lessee results in any contamination of the Premises or elsewhere, the Lessee shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises.

4.2.2. Definitions. As used in this Lease, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, which is or becomes regulated by any local governmental authority, the State of Arizona or the United States. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under applicable law, (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6903, (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 or (vii) defined as a "regulated substance" pursuant to Section 9001, Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. Section 6991.

4.3. Alterations, Improvements and Additions. The Lessee shall not make any alteration, improvement or addition to the Premises without the prior written consent of the Lessor, which consent shall not be

unreasonably withheld. Notwithstanding the foregoing, the Lessor consents to, and the Lessee shall be responsible for any alteration, improvement or addition to the Premises mandated by the Americans With Disabilities Act of 1990, as amended, and applicable rules and regulations as promulgated from time to time. All alterations, improvements and additions (i) shall be performed at the sole cost and expense of the Lessee in compliance with all applicable laws and regulations of any federal, state or local governmental body or agency, and (ii) shall become and remain the property of the Lessor. In contracting for the performance of any alterations, improvements or additions, the Lessee shall not act as the agent of the Lessor.

4.4. Covenant Against Liens. The Lessee covenants and agrees not to suffer or permit any lien (including, but not limited to, tax liens, mechanics' liens and material men's liens) to be placed against the Premises. If a lien is placed against the Premises that is directly or indirectly related to an act or failure to act of the Lessee, the Lessee agrees to pay off and remove such lien within five (5) days' of receipt by the Lessee of notice thereof, irrespective of whether the Lessee contests the validity of the lien. The Lessee has no authority or power to cause or permit any lien or other encumbrance created by act of the Lessee, operation of law, or otherwise, to attach to or be placed upon the Lessor's title or interest in the Premises. Any such lien or encumbrance shall attach, if at all, only to the Lessee's leasehold interest in the Premises.

4.5. Waiver of Claims. Exclusive of direct or consequential damages caused by the gross negligence or willful misconduct of the Lessor, its officers, officials, employees or agents, the Lessee agrees that the Lessor, its officers, officials, employees or agents, shall not be liable for any direct or consequential damages (including damage claimed for actual or constructive eviction) either to persons or property sustained by the Lessee, or its officers, directors, employees, agents, invitees, licensees or contractors due to (i) any part of the Premises not being in repair or (ii) the happening of any incident on the Premises. This provision shall include, but not be limited to, damage caused by water, snow, frost, sewage, gas or malfunction of any electrical, heating, cooling or ventilation systems or installations on the Premises.

4.6. Indemnification. The Lessee agrees to indemnify, defend, save and hold harmless the Lessor, its, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claim processing, investigation and litigation) (collectively referred to as "Claims") for personal injury (including death) or property damage caused, in whole or in part, by the acts, errors, omissions, negligence, or alleged negligence of Lessee or any of Lessee's directors, officers, agents and employees. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Lessee 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 Lessee from and against any and all Claims. It is agreed that Lessee will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable.

4.6.1 The foregoing indemnity by the Lessee shall extend, but not be limited, to:

4.6.1.1 construction by or through the Lessee of any improvements or any other work or thing done in, on or about the Premises or any part thereof;

4.6.1.2 any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises and improvements, areas adjacent thereto or improvements thereon by or through the Lessee, or any nuisance made or suffered thereon or any failure by the Lessee to keep the Premises or any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof in a safe condition;

4.6.1.3 any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises and improvements, areas adjacent thereto or improvements thereon or any part thereof or in, on or about any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof;

4.6.1.4 any lien or claim which may be alleged to have arisen against or on the Premises or improvements thereon or any part thereof or any of the assets of, or funds appropriated to, the Lessor or any liability which may be asserted against the Lessor with respect thereto;

4.6.1.5 any acts of the Lessee or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

4.6.1.6 any failure on the part of Lessee to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by the Lessor of any remedy provided in this Lease with respect thereto;

4.6.1.7 any failure on the part of Lessee to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the improvements or any part thereof, on Lessee's part to be kept, observed or performed;

4.6.1.8 any tax which Lessee is obligated to pay or cause to be paid, including any tax attributable to the execution, delivery or recording of this Lease.

4.6.2 The foregoing provisions shall survive the expiration or earlier termination of this Lease to the extent the act, error, omission, negligence or alleged negligence arose prior to such expiration or termination.

4.6.3 The Lessee will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at the sole risk of Lessee, and, to the extent set forth above, save the Lessor harmless from any loss or damage thereto by any cause whatsoever.

4.6.4 The obligations of Lessee under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the project.

4.6.5 If any claim, action or proceeding is made or brought against the Lessor by reason of any event, specified or unspecified, which is the subject of the Lessee's foregoing indemnity, then, upon demand by the Lessor, the Lessee, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the Lessor's name. Notwithstanding the foregoing, the Lessor may engage its own attorneys to defend it or to assist in its defense and Lessee shall pay the reasonable fees and disbursements of such attorneys.

4.7. Waiver of Notice. The Lessee expressly waives the service of any demand for payment of rent or for possession.

4.8. Acceptance of Premises and Disclaimer of Representations. The Lessee is fully familiar with the condition of the Premises and accepts the Premises in their present condition "AS IS, AND WITH ALL DEFECTS, LATENT OR PATENT."

4.9. Subordination and Attornment.

4.9.1. Subordination . The Lessee agrees that this Lease is and shall remain subordinate to any existing or subsequent mortgage or deed of trust covering the fee title to the Premises, together with any renewals, modifications or extensions of such existing or subsequent mortgages or deeds of trust. Upon the request of the Lessor, the Lessee shall execute such instruments as are reasonably required to subordinate this Lease to mortgages or deeds of trust made by the Lessor.

4.9.2. Attornment. The Lessee shall attorn to, and recognize as successor Lessor under this Lease, any person that purchases or obtains title to the Premises pursuant to (i) foreclosure proceedings, (ii) exercise of the power of sale under a deed of trust or (iii) a deed in lieu of foreclosure or similar transfer.

**5. Services, Repairs and Maintenance.**

5.1. Services to be Provided by the Lessor. Lessor shall provide, at its own expense, all reasonably necessary services for the Premises, including electricity, water, sewer, garbage disposal and snow removal in an amount up to Twenty Thousand Dollars ($20,000) annually; Lessee shall be responsible for any amounts above Twenty Thousand Dollars ($20,000) for these services, to be reconciled annually. During snow events, Lessor shall plow the Cogdill Recreation Center site twice during the day starting at approximately 7:00 a.m. at the latest, depending on Public Work's start time for any given day with snow accumulation. Lessee shall be responsible for snow removal on the sidewalks. The Lessee is not obligated to supply or maintain any service or equipment to the Premises. The Lessor shall put, keep and maintain all portions of the Premises, including sidewalks, curbs and passageways adjoining the same in a clean and orderly condition, free of dirt, rubbish, snow, ice and obstructions.

5.2. Repairs and Maintenance. The Lessee shall provide and pay for minor maintenance and repair work on the Premises, at minimum, in a condition not less than the condition of the Premises existing as of the Commencement Date, normal wear and tear excepted. The parties agree that the exception for "normal wear and tear" shall not relieve the Lessee of the obligations to maintain in good working order and provide and pay for minor repairs for the roof, paved parking areas and the heating, ventilating, air conditioning, plumbing, electrical and telecommunication systems and to operate the Premises as a high grade and reputable facility. All repairs made by the Lessee shall be at least equal to the original work in class and quality. If the Lessee fails to provide and pay for such maintenance or repairs, the Lessor or its agents may, but shall not be required to, enter the Premises at all reasonable times to make such maintenance or repairs, and the Lessee shall pay to the Lessor the cost of such maintenance or repairs

within five (5) days of receipt of a bill for such maintenance or repairs.

**6. Insurance**

6.1. Insurance. The Lessee shall procure and maintain for the duration of this Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by the Lessee, Lessee's agents, representatives, employees, volunteers, or contractors. The insurance requirements herein are minimum requirements for this Lease and in no way limit the inderrmity covenants contained herein. The Lessor does not represent or warrant that the minimum limits set forth herein are sufficient to protect the Lessee from liabilities that might arise out of this Lease, and Lessee is free to purchase such additional insurance as Lessee may determine is necessary.

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

(i) Commercial General Liability- Occurrence Form *(Form CG 0001, ed. 10/93 or any replacement thereof)*
General Aggregate -- $1,000,000
Personal and Advertising Injury -- $1,000,000
Each Occurrence -- $1,000,000
Fire Damage (any one fire) -- $50,000
Medical Expense (any one person) -- Optional

(ii) Commercial Property Insurance
Building -- Replacement Cost
Loss of Rents -- Per Lease
(Broad Form, 90% coinsurance -- to be placed in force upon completion of building prior to occupancy)

6.1.2 Self-insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by the Lessor.

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

6.1.3.1 Commercial General Liability and Automobile Liability Coverages.

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

6.1.3.1.2 The Lessee's insurance shall contain broad form contractual liability coverage.

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

6.1.3.1.4 The Lessee's insurance coverage shall be primary insurance with respect to the Lessor, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the Lessor, its officers, officials, agents and employees, shall be in excess to the coverage of the Lessee's insurance and shall not contribute to it.

6.1.3.1.5 The Lessee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.1.3.1.6 Coverage provided by the Lessee shall not be limited to the liability assumed under the indemnification provisions of this Lease.

6.1.3.1.7 The policies shall contain a waiver of subrogation against the Lessor, its officers, officials, agents and employees for losses arising from Lessee's operations, occupancy and use of the Premises subject to this Lease.

6.2 Property Insurance. The City of Flagstaff shall be named as loss payee as its interests may appear. The Lessee may carry any insurance required to be maintained under this Section 6.1 under a "blanket policy" covering other properties of the Lessee and/or its Affiliates.

6.3 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the Lessor. Such notice shall be sent directly to the City of Flagstaff's Risk Manager, in care of the Purchasing Director, at the address provided in Section 9 herein.

6.4 Acceptability of lnsurers. Lessee shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than 6.5 The Lessor does not represent or warrant that the above required minimum insurer rating is sufficient to provide the Lessee from potential insurer insolvency.

6.5 Verification of Coverage. The Lessee shall furnish the Lessor with certificates of insurance *(ACORD form)* as required by this Lease. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The Lessor must receive and approve all certificates of insurance before the Lessee takes possession of the Premises. The Lessee's failure to maintain the insurance policies as required by this Lease or to provide timely evidence of renewal will be considered a material breach of this Lease. All certificates of insurance shall be sent directly to the City of Flagstaff's Risk Manager at the address set forth in Section 9 hereof. A description of the Premises shall be noted on the certificates of insurance. The Lessor reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Lease at any time.

6.6 Approval. Any modification or variation from the insurance requirements in this Lease must have the prior approval of the Lessor's Risk Manager. Such action will not require a formal lease amendment but may be made by administrative action.

6.7 Policy Review and Adjustment. Such policies of insurance shall be subject to review and adjustment on the fifth (5th) anniversary of the effective date of this Lease and on each subsequent fifth (5th) anniversary during the term hereof in order to determine the adequacy of the insurance amounts in light of the then existing circumstances.

6.8 Failure to Maintain Insurance. If the Lessee fails or refuses to provide copies of the renewal insurance policies, together with evidence of payment of premiums therefore, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, the Lessor shall have the right, at the Lessor's election, and upon five (5) days' notice to the Lessee, to procure and maintain such insurance. Any premiums paid by the Lessor hereunder shall be due and payable by the Lessee to the Lessor on the first day of the month following the date on which the premiums were paid. The Lessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s).

**7. Default.**

7.1. Default by Lessee. The Lessee shall be in default under this Lease if any of the following occurs: (i) Lessee fails to pay when due any monthly rental amount or other payment required to be paid by the Lessee under this Lease in accordance with Section 3 hereof; (ii) the Lessee fails to perform or observe any other covenant, agreement or condition which the Lessee is required to perform or observe and such failure shall not be cured within thirty (30) days after delivery of written notice to the Lessee of such failure; (iii) the Lessee is named as a debtor in any voluntary or involuntary bankruptcy proceeding; (iv) substantially all of the Lessee's assets are placed in receivership or are subjected to attachment or other judiciary seizure; (v) the Lessee makes or suffers a general assignment for the benefit of creditors; (vi) the Lessee vacates or abandons the Premises; or (vii) the Lessee breaches any other provision of this Lease.

7.2. Lessor's Remedies. In the event of Lessee's default hereunder, the Lessor shall have available the remedies set forth in this Section 7.2. Except as expressly, otherwise, provided in this Lease, and to the extent permitted by law, the Lessor's remedies shall be cumulative and not alternative remedies.

> 7.2.1. Legal and Equitable Remedies. The Lessor shall have all remedies available at law or in equity.
>
> 7.2.2. Advances. In the event of any breach of this Lease by the Lessee, the Lessor may remedy such breach for the account of and at the expense of the Lessee. If the Lessor at any time, by reason of such breach, is compelled to pay, or elects to pay, any sum of money or perform any act, which will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees, in instituting or processing any action or proceeding to enforce the Lessor's rights under this Lease, the sum or sums so paid by the Lessor, with interest from the date of payment, shall be deemed to be additional rental and shall be due from the Lessee to the Lessor on the first day of the month following such payment.
>
> 7.2.3. Definition of Rent. For purposes of this Section 7, the term "rent" shall include any Base Rent, additional rent or other existing or future amounts payable by the Lessee to the Lessor under this Lease if default had not occurred.

7.3. Lessor's Default. The Lessor shall be in default under this Lease if the Lessor fails to perform or observe any covenant, agreement or condition, which the Lessor is required to perform or observe and such failure is not cured within thirty (30) days after delivery of written notice to the Lessor of such failure.

7.4. Lessee's Remedies. In the event of the Lessor's default hereunder, the Lessee shall have all remedies available at law or in equity; provided, however, the Lessee hereby expressly waives any right to abatement or withholding of rent or other amounts payable to the Lessor under this Lease.

**8. Termination of Lease**.

8.1 Events of Termination. The Lease shall terminate upon the occurrence of one or more of the following events: (i) by written agreement between the Lessor and Lessee; (ii) by the Lessor pursuant to this Lease; (iii) by the Lessee pursuant to this Lease; (iv) upon lapse of the Term of the Lease; or (v) by reason of Sections 9.6 or 9.7 relating to destruction or condemnation of the Premises.

8.2. Surrender of Possession. Upon termination of this Lease, the Lessee shall immediately surrender possession of the Premises to the Lessor. If the Lessee does not surrender possession immediately, the Lessor may re-enter and repossess the Premises and remove all persons or property using such force as may be necessary without being deemed guilty of, or liable for, any trespass, forcible entry, detainer or damage to persons or property.

8.3. Condition of Premises Upon Termination or Abandonment. The Lessee, upon termination or abandonment of this Lease or termination of the Lessee's right of possession, covenants and agrees as follows:

8.3.1. Removal of Property. The Lessee shall not remove any alterations, improvements or additions made to the Premises by the Lessee or others without the prior written consent of the Lessor, which consent may be withheld for any reason or for no reason. The Lessee shall immediately remove, in a good and workmanlike manner, all personal property of the Lessee, and such alterations, improvements and additions made to the Premises by the Lessee during the Term as the Lessor may request in writing to be removed. All damage occasioned by such removal shall be promptly repaired by the Lessee in a good and workmanlike manner. If the Lessee fails to remove any such property, the Lessor may accept the title to such property without credit or compensation to the Lessee or remove and store such property, at the Lessee's expense, in any reasonable manner that the Lessor may choose.

8.3.2. Restoration of the Premises. The Lessee shall restore the Premises to the condition existing on the Commencement Date, with the exception of ordinary wear and tear, and alterations, improvements and additions which the Lessor has not directed the Lessee in writing to remove.

8.4. Holding Over. If the Lessee fails to deliver actual possession of the Premises to the Lessor upon termination of this Lease, the Lessor shall have all remedies available at law or in equity to a Lessor of commercial real property in the State of Arizona.

**9. General Provisions**.

9.1 Notices. All notices or other communications under this Lease shall be in writing and shall be deemed to be delivered on the date of delivery if delivered in person or on the date of receipt indicated on the return receipt if delivered by U.S. Mail, certified or registered, return receipt requested, postage prepaid and addressed, or to such other address as a party may provide to the other by written notice, as follows:

**If to Lessor:**

Elizabeth Anderson, Enrichment Services Director
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 86001

**If to Lessee**:

Don Lindner, Steering Committee Chair
Boys & Girls Club of Flagstaff
2736 Rio de Flag
Flagstaff, Arizona 86004

With a copy to:
Purchasing Director
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 8600 l

9.2. Successors and Assigns. This Lease shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and the Lessee.

9.3. Assignment and Subletting.

9.3.1. Prohibition Without Written Consent. The Lessee shall not, without the prior written consent of the Lessor, (i) assign this Lease or any interest therein; (ii) permit or suffer any assignment of this Lease by operation of law; (iii) sublet all or any portion of the Premises; or (iv) permit the use of the Premises by any party other than the Lessee and its officers and employees.

9.3.2. Standards for Consent. The Lessor's consent to any proposed assignment or subletting may be withheld for any reason or no reason unless the credit history, financial strength and reputation of the subtenant or assignee and the proposed uses of the Premises by the subtenant or assignee are acceptable to the Lessor.

9.3.3. No Release of Lessee. No assignment or subletting shall release the Lessee from any of the obligations set forth in this Lease.

9.4. Nonwaiver of Remedies. A waiver of any condition expressed in this Lease shall not be implied by any failure of the Lessor or Lessee to enforce any remedy available by reason of the failure to observe or perform such condition. A waive·r by the Lessor or the Lessee shall not affect any condition other than the one specified in such waiver and a waiver shall waive a special condition only for the time and in the manner specifically stated in the waiver. The acceptance by the Lessor of any rent or other money from the Lessee, after termination of the Lessee's right of possession, after the occurrence of a default by the Lessee or after institution of any remedy by the Lessor shall not alter, diminish, affect or waive such lease termination, termination of possession, default or remedy.

9.5. Rights Cumulative. Except as expressly provided in this Lease, and to the extent permitted by law, the Lessor's or Lessee's remedies described in this Lease are cumulative and not alternative remedies.

9.6. Fire and Casualty.

9.6.1. Termination or Repair. If all or a portion of the Premises are damaged or destroyed by fire or other casualty, the Lessor shall deliver to the Lessee written notice thereof within thirty (30) days of such damage or destruction stating whether the construction work for repairing or rebuilding the damaged or destroyed portion of the Premises to the same condition as existed immediately prior to such damage can be completed within one hundred eighty (180) days of such damage or destruction. In the event that any part of the Premises is damaged by fire or other casualty, the Lessor shall have no obligation to expend more in repairing, restoring or rebuilding than the proceeds of insurance available for such purposes after any amount required to be paid to any mortgagee of the Lessor has been paid. If, in the Lessor's opinion, the permit and construction work for repairing and rebuilding the damaged or destroyed portion of the Premises can be completed within such period with the available insurance proceeds, the Lessor shall

promptly proceed to repair or rebuild the damaged or destroyed portion of the Premises. If, in the Lessor's opinion, the permit and construction work for repairing and rebuilding the damaged or destroyed portion of the Premises cannot be completed within such period with the available insurance proceeds, either the Lessor or the Lessee may terminate this Lease upon thirty (30) days' written notice to the other party.

9.6.2. Abatement of Apportionment of Rent. If the Lease is not terminated and if the damage or destruction to the Premises is not caused by the act or failure to act of the Lessee, its officers, employees, agents, guests or invitees, then a just portion of the rent shall abate as of the date of the damage or destruction until the Premises are repaired or rebuilt. If the Lease is terminated, the rent shall be apportioned as of the date of the damage or destruction.

9.6.3. Alterations, Improvements and Additions. With respect to any damage or destruction of alterations, improvements or additions made to the Premises by the Lessee, (i) this Section 9.6 shall be inapplicable; (ii) no abatement of rent shall occur; and (iii) the Lessor shall not be obligated to repair or rebuild such alterations, improvements or additions.

9.7. Condemnation. If all of the Premises are taken or condemned by any authority for any use or purpose, this Lease shall terminate upon, and the rent shall be apportioned as of the date when actual possession of the Premises is required for such use or purpose. If less than all of the Premises are taken or condemned by any authority for any use or purpose, then (i) the Lessor may terminate this Lease upon thirty (30) days' written notice thereof, or (ii) the Lessor may continue the Lease and a just portion of the rent will abate as of the date when actual possession of such portion of the Premises is required for such use or purpose. The Lessor reserves all rights to damages to the Premises for any taking or condemnation of all or any portion of the Premises, provided that the taking authority is an entity other than the Lessor. The Lessee hereby assigns to the Lessor any right that the Lessee may have to such award or damages. The Lessee shall have the right to claim and recover from the condemning authority compensation for any loss for moving expenses and for interruption of or damage to the Lessee's business only if such award or damages are awarded separately and not as part of the award or damages recoverable by the Lessor.

9.8. Effect of Lessor's Insurance on Lessee's Obligations. From time to time and without obligation to do so, the Lessor may purchase insurance against damage or liability arising out of or related to the Premises. The purchase or failure to purchase such insurance shall not release or waive the obligations of the Lessee set forth in this Lease. The Lessee waives all claims on insurance purchased by the Lessor.

9.9. Attorneys' Fees and Costs. If either party brings an action to enforce the terms of this Lease or declare rights hereunder, the prevailing party in such action, at trial or on appeal, shall be entitled to its reasonable attorneys' fees and costs as may be determined by the court.

9.10. Governing Law, Jurisdiction and Forum. This Lease shall be construed and interpreted in accordance with the laws of the State of Arizona. The parties agree that the courts of Arizona shall have exclusive jurisdiction and that Coconino County shall be the proper venue.

9.11. Estoppel Certificate. The Lessee agrees that, from time to time upon not less than ten (10) days' prior written request by the Lessor, the Lessee will deliver to the Lessor a statement in writing certifying (i) that the Lease is unmodified and in full force and effect (or that the Lease as modified is in full force and effect, describing the modifications), (ii) that the rents and other charges have been paid to date without any prepayments or defaults (or if any prepayments or defaults, the nature of such prepayments or defaults), and (iii) that the Lessor is not in default under any provision of this Lease (or, if in default, the nature of the default). The certificate may be relied on by a mortgagee, assignee of a mortgage or a

purchaser of the Lessor's interest in the Premises. If the Lessee shall fail to respond within ten (10) days of receipt by the Lessee of a written request from the Lessor as herein provided, the Lessee shall be deemed to have given such certificate as provided above without modification.

9.12. Relationship of the Parties. Nothing contained in this Lease shall be construed as creating the relationship of principal or agent or of partnership or joint venture. Neither the method of computation of rent nor any other provision of this Lease, nor any act of the parties, shall be deemed to create any relationship other than that of landlord or tenant.

9.13. Effect of Conveyance. If, during the term of this Lease, the Lessor should sell its interest in the Premises, then from and after the effective date of such sale, the Lessor shall be released and discharged from any and all further obligations and responsibilities under this Lease (except those already accrued) upon written assumption by the buyer of the Lessor's liabilities under this Lease.

9.14. Time of the Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

9.15. Severability. The invalidity of any portion of this Lease, as determined by a court of competent jurisdiction, shall not affect the validity of any other portion of this Lease.

9.16. Cancellation Notice. The Lessee acknowledges that the Lessor is an Arizona municipal corporation and a political subdivision of the State of Arizona, and, as such, is required by Arizona Revised Statutes Section 38-511 to include notice in this Lease that this Lease is subject to cancellation under said statute if any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease on behalf of the City is at any time while the Lease is in effect an employee or agent or consultant of the Lessee with respect to the subject matter of this Lease. (See A.R.S. Section 38-511 for further details.)

9.17 Effective Date. This Lease shall become effective on the date the Internal Revenue Service of the United States Department of the Treasury issues a determination letter to Lessee which recognizes tax exempt status for Boys & Girls Club of Flagstaff.

9.18 Background Checks. Lessee will check all its employees/volunteers for criminal records to ensure that all laws and that City of Flagstaff policies and regulations concerning contact with minors, older adults or the disabled in recreational programs are enforced.

IN WITNESS WHEREOF, the Lessor and Lessee have caused this Lease to be executed by their duly authorized representatives on the signature page immediately following.

**City of Flagstaff, Lessor**

Kevin Burke, City Manager

Attest:

City Clerk

Approved as to form:

City Attorney

**Boys & Girls Club of Flagstaff, Lessee**

Don Lindner, Steering Committee Chair

I hereby attest that Don Lindler, Steering Committee Chair, is authorized by resolution of the Board of Directors for Boys and Girls Club of Flagstaff (BGCF), dated _____, to Execute this Lease on behalf of BGCF

# AMENDMENT TO COGDILL RECREATION CENTER LEASE AGREEMENT

THIS Amendment to the Cogdill Recreation Center Lease Agreement ("Amendment") is entered into this _____ day of_____, 2013, by and between the City of Flagstaff, an Arizona municipal corporation ("Lessor"), and the Boys & Girls Club of Flagstaff, an Arizona nonprofit corporation ("Lessee"), with offices located at 2736 Rio de Flag, Flagstaff, Arizona.

## RECITALS

The City entered into the Cogdill Recreation Center Lease Agreement ("Lease") with the Boys and Girls Club of Flagstaff on July 1, 2012.

The Parties wish to amend the lease to change Sections 1.3, 5.2 and 6.1.1(ii) regarding the term of the Lease, repairs and maintenance, and property insurance requirements.

NOW, THEREFORE, all of the provisions of the Lease remain in full force with the following exceptions:

The language in Section 1.3 is deleted in its entirety and replaced with the following:

**1.3. Term and Commencement Date.** The term of this Lease shall commence on July 1, 2012 ("Commencement Date") and shall end at midnight on June 30, 2017, unless terminated earlier as provided in Section 8 ("Termination of Lease"). The term may be extended by written mutual consent for an additional five (5) year term. The City Manager may sign the consent to extension on behalf of the Lessor. The City Manager will consult with the Facilities Maintenance Supervisor to determine compliance with Paragraph 5.2 before consenting to the extension.

The language in Section 5.2 is deleted in its entirety and replaced with the following:

**5. Services, Repairs and Maintenance.**

…

5.2. Repairs and Maintenance.

The Lessee shall contact the Lessor when Maintenance and Repair work is required on the Premises. Lessor shall arrange for the Maintenance and Repair work and keep an account of all dollars spent on Maintenance and Repair work of the Premises. The Lessor shall provide a maximum annual allowance of Twenty Thousand Dollars ($20,000.00), on a fiscal year basis, to cover the costs of Maintenance and Repair work on the premises. The annual allowance will not carry forward from year-to-year and there will be no refund of any portion of the allowance that is unspent at the end of the fiscal year. If the entire annual allowance is spent before the conclusion of the fiscal year, and the Lessee believes additional Maintenance and Repair work is required before the new fiscal year, the Lessee shall notify Lessor. The Parties agree to negotiate regarding the additional work, with the Lessor making the final determination of whether or

when the Maintenance and Repair work will be completed, however, Lessee may effectuate Maintenance and Repair work at their own cost if the annual allowance is exhausted. Lessee must use a licensed contractor to do any Maintenance and Repair work on the Premises.

~~The Lessee is responsible for the cost of all Damage. In the case of Damage, the Lessee shall contact Lessor and Lessor will arrange for the necessary repair, but such costs shall be borne entirely by Lessee. Lessee shall pay all invoices for repairs caused by Damage within five (5) days of presentation.~~

Lessor or its agents may enter the premises at all reasonable times to make any and all repairs to the Premises.

Lessee has no claim against Lessor for claims arising from a lack of Maintenance and Repair if Lessee did not notify Lessor of the need for the Maintenance and Repair.

Damage:

The Lessee is responsible for the cost of all Damage. In the case of Damage, the Lessee shall contact Lessor and Lessor will arrange for the necessary repair, but such costs shall be borne entirely by Lessee. Lessee shall pay all invoices for repairs caused by Damage within five (5) days of presentation.

Inspections:

The Lessee will be responsible for inspections as needed for pest control. The Lessee will be responsible for yearly inspections for fire extinguishers. The Lessor will complete an annual assessment inspection and will review findings with the Lessee.

Disputes:

Any disputes arising under this Section will be resolved by negotiation between the Executive Director of the Boys & Girls Club of Flagstaff and the Flagstaff Facilities Maintenance Superintendent with an appeal to the City Manager or his or her designee.

Definitions:

The following definitions apply to this subsection:

Maintenance and Repair: includes but is not limited to repairs to paved parking area, light fixtures, electrical repairs (equipment motors), plumbing fixtures (including water heaters, water fountains, and kitchen appliances), flooring (including gym flooring maintenance and refinishing), counters, cabinets, and exterior pedestrian doors (and related components), other fixtures, and the heating ventilating, air conditioning (HVAC), and building exterior including but not limited to roof, drainage, and windows. Maintenance and Repair shall not include Janitorial Services, but shall include work required as a result of criminal action resulting in harm to the Premises.

Janitorial Services: includes but is not limited to changing light bulbs, circuit breakers, floor coverings, painting, drywall, wallpaper and interior doors, cleaning floors, snaking toilets, and pest control.

Damage: includes misuse or negligent use of the Premises caused by Lessee resulting in harm to the Premises outside of normal wear and tear. Damage does not include criminal action resulting in harm to the Premises.

…

The language in Section 6.1.1(ii) is deleted in its entirety and replaced with the following:

**6. <u>Insurance</u>**

…

6.1. <u>Insurance</u>.

…

6.1.1 <u>Minimum Scope and Limits of Insurance</u>.

…

(ii) <u>Commercial Property Insurance</u>

Special Form Property insurance against "all risks" at least as broad as the current ISO Special Form policy, including earthquake and flood, for loss to any tenant improvements or betterments and Tenant's business personal property on a full insurable replacement cost basis with no coinsurance clause, and Business Income insurance covering at least twelve (12) months loss of income, rents, and continuing expense.

**City of Flagstaff, Lessor**

_____

Kevin Burke, City Manager

B. Attest:

_____

City Clerk

Approved as to form:

_____

City Attorney

**Boys & Girls Club of Flagstaff, Lessee**

_____

A. Don Lindner, Steering Committee Chair

I hereby attest that Don Lindler, Steering Committee Chair, is authorized by resolution of the Board of Directors for Boys and Girls Club of Flagstaff (BGCF), dated _____, to Execute this Lease on behalf of BGCF

_____

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council

**From:** Glorice Pavey, Senior Recreation Coordinator

**Date:** 05/01/2013

**Meeting Date:** 05/07/2013

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**TITLE:**

**Consideration and Approval of Street Closure(s):** NACo (WIR) Western Interstate Regional Conference and **Consideration of Alcohol Service on Heritage Square:** NACo (WIR) Western Interstate Regional Conference

**RECOMMENDED ACTION:**

1) Approve the street closure at Aspen Ave between San Francisco and Leroux on Wednesday, May 22, 2013, from 2:30pm-8pm.
2) Approve the serving of alcohol on Heritage Square: 5:30pm-8pm.

**Policy Decision or Reason for Action:**

Subsidiary Decisions Points: By allowing the NACo Western Interstate Regional Conference, as an exception to the special event permit regulations regarding the full closure of Aspen Ave between San Francisco Street and Leroux street, the City is providing a safe location for an important community event. Whenever alcohol is served on Heritage Square, permission by City Council has been sought.

**Financial Impact:**

Street closures have the potential to change traffic patterns for local businesses.

**Connection to Council Goal:**

Effective governance.

**Has There Been Previous Council Decision on This:**

Other events have received this exception for both street closures and the serving of alcohol.

**Options and Alternatives:**

Deny the request to close the proposed downtown streets.

- Pro: Closure of streets in the north downtown area area has the potential to negatively impact business in this area. By not allowing the closure, these north downtown businesses and residents could count on the ordinary flow of traffic and parking.
- Con: This is a significant event for Flagstaff to host, showcasing unique aspects of our community. Confining the event to Heritage Square, without the street closure, limits its scope and impact.

**Background/History:**

In May of 2011 Coconino County was selected as the host for the 2013 National Association of Counties (NACo) Western Interstate Regional (WIR) Conference. The conference is scheduled May 22 through May 24 2013.

WIR is affiliated with NACo and is dedicated to the promotion of Western interests within NACo. These interests include public land issues, economic development and other issues critical to the western region of the United States. The membership consists of 15 Western states.

The conference will provide county officials with the opportunity to hear speakers, discuss legislation and network with other officials. The WIR conference is expected to attract between 350 and 450 attendees to the City of Flagstaff and Coconino County.

The car show portion of the event is open to the public.

Alcohol will not be sold to the public (served only to invited guests) and will be served in a controlled environment and will not be allowed outside of Heritage Square.

**Key Considerations:**

The current special event permit regulations do not allow for the full closure of one-way downtown streets. Deviations from the special event permit packet have been approved by City Council on a case-by-case basis.

Whenever alcohol is served on Heritage Square, permission by City Council has been sought.

**Expanded Financial Considerations:**

Street closures have the potential to change traffic patterns for local businesses.

**Community Benefits and Considerations:**

Counties who have hosted the WIR conference have experienced a significant economic benefit. These benefits include hotel bookings, food sales and increased visitation to the area. Currently, three hotels have been reserved for the conference, the Drury Inn, Embassy Suites and the Radisson. Currently, the Drury Inn is completely booked and the Embassy Suites is expected to fill shortly. The county is also using local vendors to provide food at local events. The event that will be hosted at Heritage Square will feature the Route 66 car club and will bring individuals, other than conference attendees, to the downtown area. The county expects the conference to be an economic boom to the City of Flagstaff for the event at Heritage Square, as well as throughout the entire conference.

**Community Involvement:**

The Public Participation Goal of Inform has been chosen: The April and May Downtown Newsletter informed residents and local downtown businesses of the date and time that this agenda item will be presented to City Council. County representatives have conducted additional outreach with businesses around Heritage Square and the Downtown Business Alliance.

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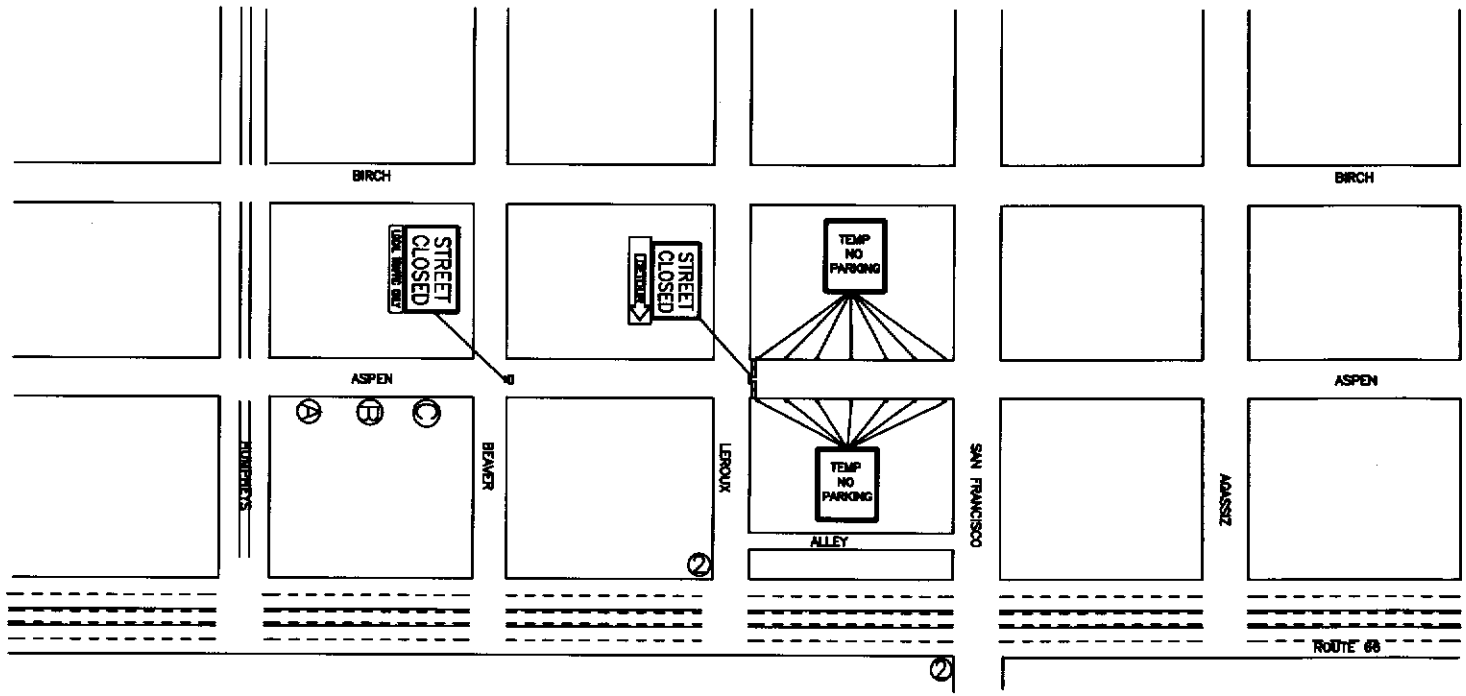
**Attachments:** Traffic Control Plan




RoadSafe TRAFFIC SYSTEMS

*Life on the road*

NORTH

NOT TO SCALE

SPEED LIMIT 30

EXISTING SPEED LIMIT

## LEGEND

SIGN AND LIGHT TYPE (IF APPLICABLE)
SIZE: 36" x 36" X 48" x 48" ___
LIGHT: TYPE A X TYPE B ___

CHANNELIZING DEVICE
SPACING TAPER 40' TANGENT 50' CENTERLINE N/A

HIGH LEVEL ☐ TYPE I/TYPE II ▥ TYPE III

## TRAFFIC CONTROL PLAN # 1

| | |
|---|---|
| CONTRACTOR: COCONINO COUNTY | DATE: 9 APR 13 |
| LOCATION: LEROUX & ASPEN | |
| TIME USAGE: | START DATE: |
| AGENCY: FLAGSTAFF | DRAWN BY: GREG MONTEZ |

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Barbara Goodrich, Management Services Director |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Approval of Intergovernmental Agreement:** Master Intergovernmental Agreement between the City of Flagstaff (City), Coconino County (County) , Northern Arizona University (NAU), and the Coconino County Community College District (CCC) for the support of the Northern Arizona Intergovernmental Public Transit Authority (NAIPTA).

**RECOMMENDED ACTION:**

Consider and approve the Amended and Restated Master Intergovernmental Agreement (IGA).

**Policy Decision or Reason for Action:**

Update the Master IGA to primarily allow for membership changes. Cottonwood and Sedona have withdrawn from NAIPTA effective June 30, 2012;Coconino County Community College District wishes to join NAIPTA.

The Transit Advisory Committee (TAC) membership has changed to exclude the Yavapai County Administrator, the Cottonwood City Manager, and the Sedona City Manager, and added the ~~**City of Winslow City Manager, the**~~ CCC Vice President, the FMPO Executive Director, a Coconino County citizen appointed by the Board of Supervisors, the NAU Student Senate President, and the CCC Student Senate President.

**Financial Impact:**

There is a positive financial impact to the City as the annual assessment has reduced from $3,000 to $500.

**Connection to Council Goal:**

Effective governance.

**Has There Been Previous Council Decision on This:**

Yes. The Master Intergovernmental Agreement was last adopted with an effective date of March 14, 2006.

**Options and Alternatives:**

Adopt the Amended and Restated Master Intergovernmental Agreement as presented.
Proposed changes to the Amended and Restated Master Intergovernmental Agreement and adopt as amended.
Do not adopt the Amended and Restated Master Intergovernmental Agreement.

**Background/History:**

In May 2000, City of Flagstaff voters approved a transaction privilege tax specific to providing transit services in our community for a ten year period at a rate of 0.25%. The transit tax has since been extended by City voters to 2020 and the rate has increased to 0.295%. The City coordinates with its local partners to provide public transportation services to meet regional transportation needs.

The IGA provides a foundation for this ongoing working relationship.

**Key Considerations:**

It is important to have the partners in the IGA correctly identified.

**Expanded Financial Considerations:**

None.

**Community Benefits and Considerations:**

A regional approach to transit issues provides a greater benefit to the community as programming is not duplicated and resources can be maximized.

**Community Involvement:**

Inform

**Expanded Options and Alternatives:**

Adopt the Amended and Restated Master Intergovernmental Agreement as presented.
Proposed changes to the Amended and Restated Master Intergovernmental Agreement and adopt as amended.
Do not adopt the Amended and Restated Master Intergovernmental Agreement.

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**Attachments:** Master IGA - Amended

**AMENDED AND RESTATED**
**MASTER INTERGOVERNMENTAL AGREEMENT**

This Amended and Restated Master Intergovernmental Agreement (this "**Restated Master IGA**") is made effective as of the 1st day of July, 2013 (the "**Effective Date**") by and among Coconino County, a body politic and corporate of the State of Arizona ("**Coconino County**"); the City of Flagstaff, an Arizona municipal corporation ("**Flagstaff**"); the Arizona Board of Regents, acting for and on behalf of Northern Arizona University, an Arizona state university ("**Northern Arizona University**") and **Coconino County Community College District**, an Arizona community college district. The parties to this Restated Master IGA may be referred to herein collectively as the Parties or each individually as a Party.

## RECITALS

A. Arizona Revised Statutes Title 28, Chapter 26 (the "**Statutes**"), authorizes the formation of an intergovernmental public transportation authority ("**IPTA**") in any county having a population of two hundred thousand persons or less. The board of the IPTA is to conduct a periodic survey of transportation needs in the authority and determine an appropriate public transportation system to meet those needs and the means to finance the system.

B. On or about March 15, 2006, and pursuant to the authority vested in them by the Statutes, Coconino County, Yavapai County, Flagstaff, the City of Cottonwood ("**Cottonwood**") and the City of Sedona ("**Sedona**") entered into a Master Intergovernmental Agreement (the "**Master IGA**") for the formation of the Northern Arizona Intergovernmental Public Transportation Authority ("**NAIPTA**"). Pursuant to the provisions of the Statutes, Northern Arizona University became a member of NAIPTA by intergovernmental agreement dated October 19, 2007. The goal of the parties in creating NAIPTA was to take a regional, collaborative approach to creating a comprehensive integrated Regional Transportation System.

C. The governing bodies of Cottonwood and Sedona subsequently determined that they wished to resign from NAIPTA and that Cottonwood should assume responsibility for the operation of the CAT system. Pursuant to the approvals of their respective city councils, Cottonwood and Sedona withdrew from NAIPTA effective June 30, 2012.

D. On or about February 19 2013, the Yavapai County Board of Supervisors voted to withdraw from NAIPTA, effective June 30, 2013.

E. In 2009, the state legislature amended Arizona Revised Statutes Title 28, Chapter 26 to provide that a community college that is located in a municipality that is a member of an IPTA may become a member of the authority by Intergovernmental Agreement. Coconino County Community College District now wishes to join NAIPTA.

F. The purpose of this Restated Master IGA is to provide for the continuation of the IPTA, for the addition of new members and amended boundaries, and for changes to the composition of the Transit Advisory Committee ("**TAC**").

## AGREEMENTS

1. **Goals.** The goals of the Parties in creating the IPTA are to take a regional, collaborative approach to creating a comprehensive integrated Regional Transportation System that provides a seamless transition from various transportation modes while serving the transportation needs of the region efficiently. The Regional Transportation System will have a strong central system with excellent frequency provided to outlying areas and their communities in a way that addresses each Party's unique transit needs. The Regional Transportation System will provide services that assist each of the Parties to meet federal transit-related requirements, with an equitable allocation of costs.

2. **Names and Authority.** The name of the IPTA is the Northern Arizona Intergovernmental Public Transportation Authority ("**NAIPTA**"). NAIPTA is a corporate body and political subdivision of the State of Arizona, with all of the power and privileges granted to it by law. The terms "NAIPTA" and "IPTA" may both be used in this Restated Master IGA to refer to the intergovernmental public transportation authority created hereby.

3. **Members and Board of Directors**.

3.1. **Members.** The Members of NAIPTA, pursuant to the terms of this Restated Master IGA are:

A. Coconino County
B. Flagstaff
C. Northern Arizona University
D. Coconino County Community College District

3.2. **Board of Directors.** NAIPTA shall be governed by a Board of Directors consisting of at least five (5) and not more than nine (9) members (the "**Board**"). Upon the approval and execution of this Restated Master IGA by all Parties, the Board shall be comprised of five (5) directors, consisting of one (1) member of the Coconino County Board of Supervisors or designee; two (2) members of the Flagstaff City Council or designees; one (1) member of the Northern Arizona University administration appointed by the Northern Arizona University President, and the President of Coconino County Community College District or designee. In the event that additional municipalities join NAIPTA, the number of directors may be increased (to a maximum of nine (9) directors) by a vote of the Board. In the event that additional Board positions are created by the Board pursuant to this section, the Board shall, subject to the statutory requirement that Board membership shall be apportioned among the participating municipalities according to their respective populations, request one or more member municipalities to appoint a director to fill the new position.

3.2.1. Directors serve five-year staggered terms on the Board. The Coconino County Community College District director shall serve an initial term of four (4) years, and thereafter shall serve five-year terms. Directors appointed to the Board prior to the Effective Date shall continue to serve their existing terms on the Board.

3.2.2. A member agency may remove its appointed director for cause, as determined by the governing body of such member agency.

3.2.3. The Board shall elect a chairperson and other officers from among its members and shall, by Rules of Procedure approved by a majority of the Board, prescribe their functions and terms and conditions of appointment.

3.2.4. Alternate directors may be appointed pursuant to the NAIPTA Rules of Procedure.

3.3. **Powers of Board of Directors.** The Board shall have all of the powers set forth in A.R.S. § 28-9122 (the "**Statutory Powers**"), and those powers necessary to implement the Statutory Powers.

3.4. **Membership Fees.** Membership fees shall be assessed against Members represented on the Board, to offset the Board's administrative expenses and to establish a NAIPTA general fund, as further described in Section 9.3.2 of this Restated Master IGA (the "**General Fund**"). Fees shall be Five Hundred Dollars ($500.00) per seat for the fiscal year commencing July 1, 2013. The annual fee may be adjusted by the Board through the budget process.

3.5. **End of Year Funds**. At the end of the fiscal year, any shortfall in the NAIPTA budget shall be charged to the Members in a manner consistent with the NAIPTA Cost Allocation methodology set forth in Section 10.3 and with the terms of the Service IGA's then in effect. Monies remaining in NAIPTA's accounts at the end of the fiscal year shall be deposited in the General Fund.

4. **Boundaries.** The boundaries of NAIPTA include all territory within the corporate boundaries of Flagstaff and the portions of unincorporated territory in Coconino County described on Exhibit "A" and depicted on Exhibit "B."

5. **Changes in Membership and Boundaries.**

5.1. **Addition of New Members**. The Board may, by a vote of a majority of those voting thereon, increase the membership of NAIPTA to include additional municipalities located in counties that have a population of two hundred thousand (200,000) or less on the Effective Date (a "**New Member**").The vote to add a New Member shall be taken upon written application of the proposed New Member. The application shall include:

A. A complete description of any transportation system or transit services operated in or by the New Member, including but not limited to the routes, ridership, assets, and liabilities of such system or service;

B. A Service IGA and Service Provider IGA, as appropriate, between the New Member and NAIPTA that provides for the integration of any transportation system or transit service operated in or by the New Member, into the Regional Transportation System.

5.2. **Amendment to Boundaries of the IPTA**.

5.2.1. At such time as a New Member is admitted to NAIPTA, this Restated Master IGA shall be amended to include the New Member as a Party to this Restated Master IGA and to increase the boundaries of NAIPTA to include the jurisdictional area of the New Member as well as any unincorporated areas of a county that are between the New Member and the existing boundaries of NAIPTA and any unincorporated areas that a Board of Supervisors has determined should be included in NAIPTA in order to serve the needs of the New Member. A depiction of the amended boundaries shall be attached to this Restated Master IGA as an exhibit and be incorporated herein by reference without the need to formally amend this IGA.

5.2.2. In the event that a member resigns from NAIPTA as further set forth in Section 6.4, this Restated Master IGA and the boundaries of NAIPTA shall be amended in a manner consistent with such resignation.

6. **Dissolution/Resignation**.

6.1. **Proposal to Dissolve the IPTA.** A majority of all of the directors appointed to the Board may propose at a public meeting that NAIPTA be dissolved, provided that all contractual obligations and debts of NAIPTA are satisfied or transferred to another governmental entity or entities, and provided further that such governmental entity or entities will accept dedication of all NAIPTA property and assume all NAIPTA obligations. A public hearing on the proposed dissolution shall be held not less than fifteen (15) nor more than thirty (30) days after the proposal is made.

6.2. **Plan of Termination.** Following the public hearing held pursuant to Section 6.1, the Board shall adopt by resolution a plan of termination to be executed within a stated period of time after it is adopted. The plan of termination shall include a schedule for transferring the assets and obligations of NAIPTA to a governmental entity or entities named in the Plan.

6.3. **Growth of County Population.** The growth of a county's population to more than two hundred thousand persons shall not cause the dissolution of NAIPTA by operation of law.

6.4. **Resignation.** A member may resign from NAIPTA upon consultation with the Board, in which case the boundaries shall be amended pursuant to Section 5.2.2. Prior to the Resignation of a Member pursuant to this Section, the Board must determine how the resignation will impact the Regional Transportation System or the services provided to the remaining Members.

7. **Power and Authority.** NAIPTA has sole authority for designing, operating and maintaining the Regional Transportation System, including a regional bus

system (the "**Bus System**") and community funded transportation services including dial-a-ride programs and special needs transportation services in the boundaries established by, and subject to the terms and conditions of, this Restated Master IGA and the Service IGAs.

7.1. **Existing and New Services.** The Parties understand and agree that Existing Transit Services are currently provided by one or more of the Parties to this Restated Master IGA, and that it is in the interest of achieving the goals of this Restated Master IGA, that such Parties continue to provide the Existing Transit Services during the planning and initial implementation period for the Regional Transportation System (the "**Transition Period**"). No new Transit Services may be provided by a Party after the Effective Date, except as provided in the plans for the Regional Transportation System.

7.2. **Coordination.** The Board shall be responsible for coordinating and implementing among the Parties the establishment of the Regional Transportation System, subject to the terms of this Restated Master IGA, the Service IGA's and the Service Provider IGA's.

7.3. **Contract for Operation of Bus System.** The Board may enter into a contract with public or private entities to operate the Bus System or any part thereof.

7.4. **Rules and Regulations.** The Board shall adopt rules (the "**Rules and Regulations**") that are proper and necessary to the use, operation and maintenance of its Regional Transportation System, property, facilities and service. The Board shall hold one public hearing within the boundaries of NAIPTA prior to adopting Rules and Regulations and any amendments or additions to such Rules and Regulations.

7.5. **Committees.** In addition to the Transit Advisory Committee established pursuant to Section 11 of this Restated Master IGA, The Board may appoint subcommittees as it deems necessary to provide input to the Board concerning operational matters of NAIPTA, including but not limited to finance, personnel, and customer service matters.

8. **Planning and Programming**.

8.1. **Survey of Public Transportation.** The Board will conduct a survey of public transportation needs in NAIPTA, or may adopt, with such additions and updates as it deems appropriate, a survey which has been conducted within the last two (2) years for all or part of the area included in NAIPTA (the **"Transportation Survey**").

8.2. **Public Transportation System.** The Board shall determine an appropriate Regional Transportation System to serve the public transportation needs identified in the Transportation Survey, and the means to finance the Transportation System:

8.3. **Transportation Program.** Each year, on or before the 31st day of March, the Board will produce a five-year public transportation program (the "**Transportation Program**") that is consistent with the regional transportation plan approved by the Northern Arizona Council of Governments ("**NACOG**") and the Flagstaff Metropolitan Planning Organization ("**FMPO**"). The Transportation Program shall:

8.3.1. Contain public transportation projects financed with monies from federal, state and local funding;

8.3.2. Contain a description of each project, including a schedule of expenditures and a source of funding for each project;

8.3.3. Identify the entity that is responsible for implementing each project or phase of the Transportation Program;

8.3.4. Define and identify regional public transportation corridors;

8.3.5. Define the public transportation problems, goals and needs for each corridor and policies and priorities for meeting those goals and needs;

8.3.6. Determine a mix of public transportation modes appropriate for development in light of the public transportation goals and needs for each corridor;

8.3.7. Locate routes and access points to the public transportation system.

8.3.8. Determine the ridership capacity and use of public transportation systems.

8.3.9. Include the capital and operating costs of the Regional Transportation System, presented on an individual fiscal year basis.

8.3.10. Set forth the revenue needed by source, according to A.R.S. § 28-9142, to fund the Regional Transportation System, presented on an individual fiscal year basis.

8.4. **Advertising Policy.** The Board shall, with input from the Members, prescribe a uniform advertising policy for all vehicles and equipment utilized to provide Transit Services as part of the Regional Transportation System (the "**Advertising Policy**"). The Advertising Policy shall be deemed incorporated by reference into each Service IGA, provided however, that entities that operate Existing Transit Services for the period provided in Section 7.1 shall be exempt from the Advertising Policy for the Transition Period, to the extent the Advertising Policy conflicts with an adopted advertising policy of the entity providing the Existing Transit Services. Advertising Revenues arising out of contracts entered into after the Effective Date of this Restated Master IGA shall be deposited into the General Fund.

9. **Budgeting and Finance**.

9.1. **Fiscal Year.** The fiscal year of the IPTA shall be July 1 – June 30.

9.2. **IPTA Treasurer and Accounting System**.

9.2.1. **Treasurer.** NAIPTA shall appoint an IPTA treasurer or may enter into an intergovernmental agreement with the Coconino County Treasurer to provide financial services for NAIPTA. The treasurer shall furnish a surety bond to be approved by the Board, to be conditioned upon the faithful performance of his duties. The premium for the bond shall be paid by NAIPTA.

9.2.2. **Budget Controls**.

9.2.2.1. The NAIPTA accounting system and financial management shall comply with generally accepted accounting principles.

9.2.2.2. NAIPTA will comply with Federal Transit Administration ("FTA") guidelines for finance, procurement, performance and disposition of assets and shall be in compliance with the FTA requirements.

9.2.2.3. NAIPTA will institute a program of proper internal controls for business conducted by the IPTA.

9.3. **Public transportation authority fund**.

9.3.1. **Establishment of Fund.** NAIPTA treasurer shall maintain a Public Transportation Authority Fund (the "**Transportation Fund**") consisting of all monies received by NAIPTA including:

A. Monies appropriated or paid to NAIPTA by Members;

B. Monies received by NAIPTA from the federal government or the State of Arizona

C. Grants, gifts and other donations from any source.

D. Revenues collected by NAIPTA as fares and other proceeds from operating the public transportation system.

9.3.2. **General Fund**. Within the Transportation Fund there shall be created a special General Fund, consisting of End of Year Funds as set forth in Section 3.5 and Advertising Funds, as set forth in Section 8.4, together with any grants, gifts or other donations given to NAIPTA for the specific purpose of maintaining a General Fund.

9.3.2.1. Monies in the General Fund are intended to provide NAIPTA with the flexibility to respond to unforeseen crises or unanticipated

emergencies, when such response is in the best interest of the NAIPTA member agencies, as determined by the Board.

9.3.2.2. To the extent possible, General Fund uses will be identified during the annual budget process and adopted by the Board. The Board may, by vote taken at a public meeting, authorize additional uses of General Fund monies to address needs that were not identified during the budget process.

9.3.2.3. NAIPTA may attach repayment provisions to grants and loans from the General Fund, on a case-by-case basis.

9.3.3. **Use of Funds.**

9.3.3.1. Except as otherwise provided in Section 9.3.2, monies in the Transportation Fund may be used for any lawful purpose of NAIPTA.

9.3.3.2. The NAIPTA treasurer may invest any unexpended monies in the Transportation Fund as provided by state law, including the local government investment pool if authorized by the state treasurer. Interest and other income from investments shall be credited to the Transportation Fund.

9.3.3.3. The NAIPTA treasurer shall invest monies to mature at the times when the fund assets will be required for the purposes of this article. If the liquid assets in the fund become insufficient to meet NAIPTA's obligations, the board of directors shall:

A. Direct the IPTA treasurer to liquidate sufficient securities to meet all of the current obligations; and

B. Immediately notify the auditor general of the insufficiency. The auditor general shall investigate and audit the circumstances surrounding the depletion of the Transportation Fund and report the findings to the board.

9.3.3.4. The Board shall cause an annual audit to be conducted of the Transportation Fund by an independent certified public accountant within one hundred twenty days after the end of the fiscal year. The Board shall formally approve and thereafter immediately file a certified copy of the audit with the auditor general. The auditor general may make further audits and examinations as necessary, but if the auditor general takes no official action within thirty days after the audit is filed, the audit is considered to be sufficient. The Board shall pay all fees and costs of the certified public accountant and auditor general under this subsection from the fund.

9.4. **Annual Budget**. No later than June 30 of each year, the Board shall hold a public hearing to adopt and submit to the governing body of each of the Members a budget for the following fiscal year that includes:

A. Receipts during the past fiscal year;
B. Expenditures during the past fiscal year;

C. Estimates of amounts necessary for expenses during the following fiscal year including amounts proposed for:

1. Costs of maintaining, operating and managing the public Transportation System;

2. Promotional and marketing expenses of NAIPTA for the following year;

D. Anticipated revenue to NAIPTA in the following fiscal year;
E. A complete asset and liability statement;
F. A statement of profit or loss from operations;
G. Cash on hand as of the date the budget is adopted and the anticipated balance at the end of the current fiscal year.
H. An itemized statement of commitments, reserves and anticipated obligations for the following fiscal year.

9.4.1. The Board may amend the budget on the finding of good cause.

9.4.2. The first year of said annual Transportation Program shall form the basis for the budget of NAIPTA.

10. **Responsibilities of the Members**.

10.1. **Planning**.

10.1.1. Each of the Members shall, upon request, collaborate with the planning staff of NAIPTA as required by the FTA to maintain the Transportation Plan.

10.1.2. Each of the Members shall, upon request, provide NAIPTA planning staff with updates for inclusion in the Transportation Plan and/or Transportation Program as appropriate.

10.2. **Funding**.

10.2.1. Each Member will maintain a fund balance with NAIPTA equal to three (3) months of the Member's annual transit operating budget. This fund balance will be deposited to and managed by NAIPTA for the benefit of the Member's operations. At no time shall the fund balance fall below a three (3) month reserve.

10.2.2. NAIPTA is the designated recipient of federal funds for the area included in the boundaries of NAIPTA. Each of the Members shall, at the request of NAIPTA, take such actions as are necessary to secure federal funds for the area included in the boundaries of NAIPTA, and will support the pursuit of federal funds that will benefit NAIPTA.

10.3. **Cost Allocation for Transportation Services**.

10.3.1. All direct costs to provide Transportation Services shall be the responsibility of the Member requesting the Transportation Services, who shall provide evidence satisfactory to the Board that funds to meet such costs are or will be available when needed.

10.3.2. Administrative Costs will be allocated among the Members based upon an agreed upon methodology and consistent with OMS A87 where applicable.

10.3.3. Working capital is the amount to be paid by each Member to NAIPTA, in proportion to the impacts of service provided to that Member by NAIPTA and as further defined in the Service IGA's.

10.4. **Capital Transportation Costs.** Capital costs shall be allocated in the Service IGA's.

11. **Transit Advisory Committee**.

11.1. **Membership.** The Transit Advisory Committee ("**TAC**") shall consist of the Coconino County Manager or designee; a Coconino County citizen appointed by the Board of Supervisors; Flagstaff City Manager or designee; a Flagstaff citizen appointed by the City Council; Northern Arizona University Vice President of Administration or designee; Coconino County Community College District Vice-President or designee; the Manager of the Flagstaff Metropolitan Planning Organization; the Student Senate President from Northern Arizona University or designee; the Student Senate President from Coconino County Community College or designee; and, at the discretion of the Board, a representative of a business or economic development association. Additional guest members from surrounding communities may be invited by the TAC Chair as needed to hold meaningful regional discussions. Such invitations are intended to be for a temporary period as necessary for the particular topic. The Student Senate Presidents and guest members shall be ex-officio, non-voting members.

11.2. **Terms of Office.** Citizen members of the TAC shall serve for terms of three years each.

11.3. **Responsibilities.** The TAC shall: (i) serve an advisory role to the NAIPTA CEO and General Manager; (ii) meet monthly or as required to discuss operational and intergovernmental issues; review financial plans; review funding opportunities; review staffing, administration and capital plans; review ridership enhancement policies; and consider liability issues; (iii) consider and comment upon staff and consultant recommendations related to transit service; (iv) convene public meetings on behalf of NAIPTA transit services to gain citizen feedback and input; and, (v) review and comment upon policies affecting NAIPTA.

12. **Service IGA's.** Each agency wishing to purchase transit services from NAIPTA shall be required to enter into a Service IGA that describes the services to be

purchased and assigns responsibilities for construction, operation and maintenance of the services and related capital improvements.

Each agency wishing to provide services as part of the Regional Transportation System shall be required to enter into a Service Provider IGA that describes the services to be provided, including routes, schedules, and equipment.

13. **Records and Audit Rights.** Each Member's work and accounting records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by NAIPTA or a funding agency to substantiate charges and claims related to this Restated Master IGA shall be open to inspection and subject to audit and/or reproduction by authorized representatives of NAIPTA, the FTA, and the Auditor General of the State of Arizona ("**Auditors**"), as applicable to the extent necessary to adequately permit evaluation and verification of the performance of the work, and to conduct and prepare all audits and reports required by law. Auditors shall be afforded access, at reasonable times and places, to all of a Member's records and personnel, pursuant to the provisions of this Section, throughout the terms of this Agreement, and for a period of five (5) years after last or final payment.

14. **Mediation**.

14.1. **Dispute Resolution.** 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.

14.2. **Mediation Venue and Procedure.** Mediation will take place in Flagstaff, Arizona, be self-administered and be conducted under the CPR Mediation Procedures established by the CPR · Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties.

14.3. **Commencement of Mediation.** Either Party may refer the dispute to mediation by sending by U.S. mail, certified and return receipt requested, to the other Party or Parties a written notice (the "**Mediation Notice**") calling on the other Party or Parties to proceed to mediation. The Party or Parties who have received a Mediation Notice shall contact the Party calling for mediation seven (7) days from receipt of the Notice to confirm receipt of the Mediation Notice and to begin the mediator selection process.

14.4. **Mediator Selection.** Unless the Parties agree otherwise, the Parties shall select the mediator(s) from the roster of attorney mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. If the Parties are unable to agree upon a mediator within ten business days of the confirmation of receipt of Mediation Notice, each Party shall independently inform the Director of the Alternative Dispute Resolution Program of the Coconino County Superior Court (the **"Director"**) of three attorney mediators from that roster that are acceptable

to the Party, and further, inform the Director of any preference as to matters such as whether co-mediation is preferable, mediation style, subject matter expertise, or other factors pertinent to the case. The Director shall then select one or more attorney mediators from the Parties' lists or such other attorney mediator(s) from the above noted roster as the Director may deem, in the Director's sole discretion, appropriate under the circumstances.

14.5. **Fees and Costs**. Each Party agrees to bear its own fees and costs in mediation. The Parties shall enter into a written agreement with the mediator(s) regarding the mediator(s)' fees and expenses before the first mediation session. The Parties shall share equally the mediators' fees and mediation expenses.

14.6. **Subsequent or Contemporaneous Contracts**. The Parties shall include the provisions of this Section 14 in all subcontracts relating to the Services.

14.7. **Participation in Mediation**. The Parties agree to encourage participation in mediation by all relevant parties. The Parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation.

14.8. **No Waiver**. This section does not constitute a waiver of the Parties' rights to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

15. **Term**. This IGA shall be for an Initial Term of twenty-five (25) years, commencing on the Effective Date of this Agreement.

16. **Insurance and Indemnification**.

16.1. **NAIPTA Liability Insurance**. NAIPTA shall maintain insurance for activities associated with operating a public transportation system. Insurance provided by NAIPTA will include property, general liability, business/auto transit, public officials' errors and omissions, employment practices liability and umbrella liability at levels deemed appropriate by the NAIPTA Board of Directors. NAIPTA will purchase the insurance policies and keep them on file for all members to review, and provide certificates of insurance naming each member as additional insured. Such insurance shall be in an amount of not less than Thirty Million Dollars ($30,000,000.00).

16.2. **Member Liability Insurance**. NAIPTA is not responsible or liable for transit operations that member agencies conduct on their own.

16.3. **Additional Insurance**. Service IGA's and Service Provider IGA's may require additional insurance to be maintained against risks arising from or related to the services provided pursuant to such IGA. The requirements of this Section 16 shall not be interpreted or construed to relieve members that currently or in the future elect to provide transportation or transit services under their own auspices, from the obligation to maintain insurances coverage in amounts they deem necessary.

16.4. **Insurance Policies.** Insurance required hereunder shall be in companies rated AA or better in "Best's Insurance Guide."

16.5. **Indemnification.** Each Party to this Restated Master IGA (as "**Indemnitor**") agrees to defend, indemnify and hold harmless the other Parties, and their officers, officials, employees, agents, representatives and directors (collectively the "**Indemnitees**") from and against any and all claims, demands, losses, liabilities, causes of action and costs (including expert witness fees, attorneys' fees and other reasonable costs of defense and any appeals) (collectively "**Claims**"), which may be imposed upon, incurred by or asserted against the Indemnitees, attributable (directly or indirectly) to, or arising in any manner by reason of, the act, omission, negligence, misconduct or other fault of the Indemnitor, or of any agent, officer, servant or employee of the Indemnitor, or anyone for whom Indemnitor may be legally liable in the performance of this Restated Master IGA.

Insurance provisions set forth in this Restated Master IGA are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section shall not be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

17. **Conflict of Interest.** This Agreement is subject to termination for conflict of interest, pursuant to the provisions of A.R.S. § 38-511.

18. **Adherence to Laws.** NAIPTA and all committees, subcommittees and advisory committees appointed by the Board agree that they are subject to and shall adhere to all of the requirements of the Arizona Open Meeting Law (A.R.S. §38-431 et seq.), the Conflicts of Interest Law (A.R.S. § 38-501 et seq.) and the Public Records Law (A.R.S. §39-121 et seq.) as they may from time to time be amended.

19. **General Provisions**.

19.1. **Incorporation of Recitals.** The Recitals are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

19.2. **Entire Agreement.** This Restated Master IGA constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended, except by a written document, signed by authorized representatives of each Party.

19.3. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

19.4. **Assignability.** This Agreement is nonassignable in whole or in part by any Party hereto without the written consent of all Parties.

19.5. **Modifications.** Except as otherwise specifically provided in this Restated Master IGA, any amendment, modification or variation from the terms of this Restated Master IGA requires the written approval of all Parties.

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

19.7. **Notices.** All notices or demands required to be given, pursuant to the terms of this Agreement, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express services at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

| | |
|---|---|
| If to: Coconino County: | County Manager<br>219 E. Cherry Ave.<br>Flagstaff, Arizona 86001<br>Tel: 928-779-6690<br>Fax: 928-779-6687 |
| If to Flagstaff: | City Manager<br>211 W. Aspen Ave.<br>Flagstaff, Arizona 86001<br>Tel: 928-779-6504<br>Fax: 928-214-2415 |
| If to Northern Arizona University: | Vice President for Administration & Finance<br>P. O. Box 4088<br>Flagstaff, Arizona 86011<br>Tel: 928-523-2708<br>Fax: 928-523-4230 |
| If to Coconino County Community College District: | Vice President for Business and Administration<br>2800 South Lone Tree Rd.<br>Flagstaff, Arizona<br>Tel: 928-226-4209<br>Fax: 928-226-4501 |

19.8. **Force Majeure.** No Party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but 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.

19.9. **Counterparts**. This Restated Master IGA may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Restated Master IGA shall be deemed to possess the full force and effect of the original.

19.10. **Captions.** The captions used in this Restated Master IGA are solely for the convenience of the Parties, do not constitute a part of this Restated Master IGA and are not to be used to construe or interpret this Restated Master IGA.

19.11. **Severability.** If any term or provision of this Restated Master IGA shall be found to be illegal or unenforceable, then outstanding such illegality or unenforceability, this Restated Master IGA shall remain in full force and effect, and such term or provision shall be deemed to be deleted.

19.12. **Authority.** Each Party hereby warrants and represents that it has full power and authority to enter into and perform this Restated Master IGA, and that the person signing on behalf of each has been properly authorized and empowered to enter this Restated Master IGA. Each Party further acknowledges that it has read this Restated Master IGA, understands it, and agrees to be bound by it.

19.13. **No Third-Party Beneficiaries.** This Agreement shall not create any rights to enforcement of the provisions herein to any person or entity that is not a Party to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Master IGA.

Attest:

_____
Clerk of Board of Supervisors

COCONINO COUNTY,
a body corporate and politic of the State of Arizona limited partnership

By: _____

Its: _____

Attest:

_____
City Clerk

CITY OF FLAGSTAFF,
an Arizona municipal corporation

By: _____

Its: _____

ARIZONA BOARD OF REGENTS for and on behalf of Northern Arizona University

By: _____

Its: _____

COCONINO COUNTY COMMUNITY COLLEGE DISTRICT

By: _____

Its: _____

## PROPER FORM AND AUTHORITY

This Restated Master IGA has, prior to its execution, been submitted to the attorney for each Party, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this state to such Party.

Dated this _____ day of _____, 201_

By:_____

Coconino County Attorney

Dated this _____ day of _____, 201_

By:_____

Flagstaff City Attorney

Dated this _____ day of _____, 201_

By:_____

Attorney for Arizona Board of Regents

Dated this _____ day of _____, 201_

By:_____

Attorney for Coconino County Community College District

Dated this _____ day of _____, 201_

By:_____

NAIPTA General Counsel

# EXHIBIT A

# BOUNDARIES OF NAIPTA

# LEGAL DESCRIPTION

## EXHIBIT A

Five hundred and twenty five square miles, more or less, situated in Coconino County, Arizona, more particularly described as follows;

BEGINNING at the southeast corner of Section 26, Township 20 North, Range 9 East, Gila and Salt River Meridian (G&SRM);

Thence westerly along the south line of Sections 26 through 30, Township 20 North, Range 9 East, G&SRM, the south line of Sections 25 through 30, Township 20 North, Range 8 East, G&SRM, the south line of Sections 25 through 30, Township 20 North, Range 7 East, G&SRM, the south line of Sections 25 through 30, Township 20 North, Range 6 East, G&SRM, and the south line of Sections 25 and 26 Township 20 North, Range 5 East, G&SRM, to the southwest corner of said Section 26, Township 20 North, Range 5 East;

Thence northerly along the west line of Sections 26, 23, 14, 11, and 2, Township 20 North, Range 5 East, G&SRM, to the northwest corner of said Section 2, Township 20 North, Range 5 East;

Thence easterly along the north line of said Section 2 to the southwest corner of Section 35, Township 21 North, Range 5 East, G&SRM;

Thence northerly along the west line of Sections 35, 26, 23, 14, 11, and 2, Township 21 North, Range 5 East, G&SRM, the west line of Sections 35, 26, 23, 14, 11, and 2, Township 22 North, Range 5 East, G&SRM, the west line of Sections 35, 26, 23, and 14, Township 23 North, Range 5 East, G&SRM, to the northwest corner of said Section 14, Township 23 North, Range 5 East;

Thence easterly along the north line of Sections 14 and 13, Township 23 North, Range 5 East, G&SRM, the north line of Sections 18 through 13, Township 23 North, Range 6 East, G&SRM, the north line of Sections 18 through 13, Township 23 North, Range 7 East, G&SRM, to the northeast corner of said Section 13, Township 23 North, Range 7 East;

Thence northerly along the west line of Section 18, Township 23 North, Range 8 East, G&SRM, to the northwest corner of said Section 18;

Thence westerly along the northerly line of Sections 18 through 13, Township 23 North Range 8 East, G&SRM, to the northeast corner of said Section 13;

Thence southerly along the east line of said Section 13 to the northwest corner of Section 18, Township 23 North, Range 9 East, G&SRM;

Thence easterly along the north line of Sections 18 through 14, Township 23 North, Range 9 East, G&SRM, to the northeast corner of said Section 14, Township 23 North, Range 9 East;

Thence southerly along the east line of Sections 14, 23, 26, and 35, Township 23 North, Range 9 East, G&SRM, the east line of Sections 2, 11, 14, 23, 26, and 35, Township 22 North, Range 9 East, G&SRM, and the east line of Sections 2, 11, 14, 23, 26, and 35, Township 21 North, Range 9 East, G&SRM, to the southeast corner of said Section 35, Township 21 North, Range 9 East;

Thence westerly along the south line of said Section 35, Township 21 North, Range 9 East, G&SRM, to the northeast corner of Section 2, Township 20 North, Range 9 East, G&SRM;

Thence southerly along the east line of Sections 2, 11, 14, 23, and 26, Township 20 North, Range 9 East, G&SRM, to the southeast corner of said Section 26, Township 20 North, Range 9 East, and the POINT OF BEGINNING.

All shown on the attached Exhibit A-1, which is made a part hereof by this reference.

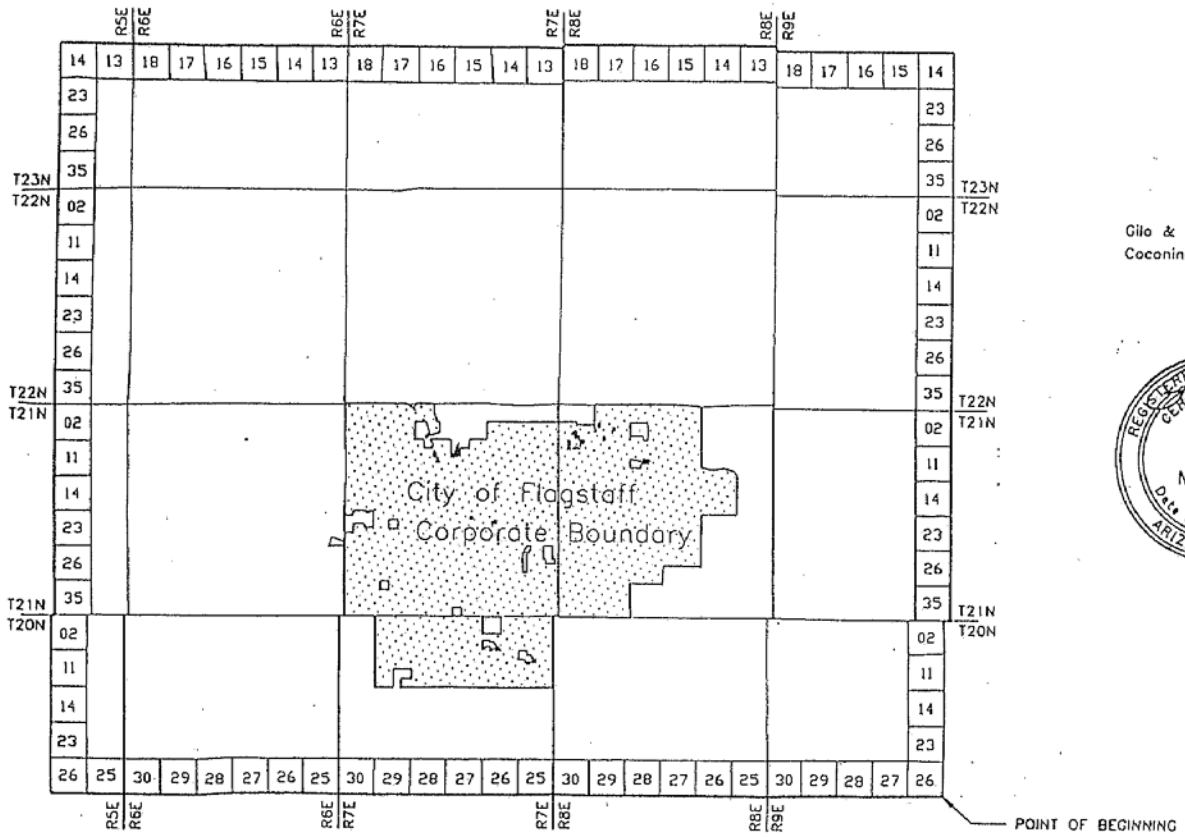
REGISTERED LAND SURVEYOR
CERTIFICATE NO.
18221
PERRY
MASSEY
Date Signed 5-22-96
ARIZONA, U. S. A.

MPO
DESCRIPTIVE TITLE

10-96015
C.O.F. FILE NO.

# FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION BOUNDARY

(525 +/- SQUARE MILES)




N.T.S.
Gila & Salt River Meridian,
Coconino County, Arizona.

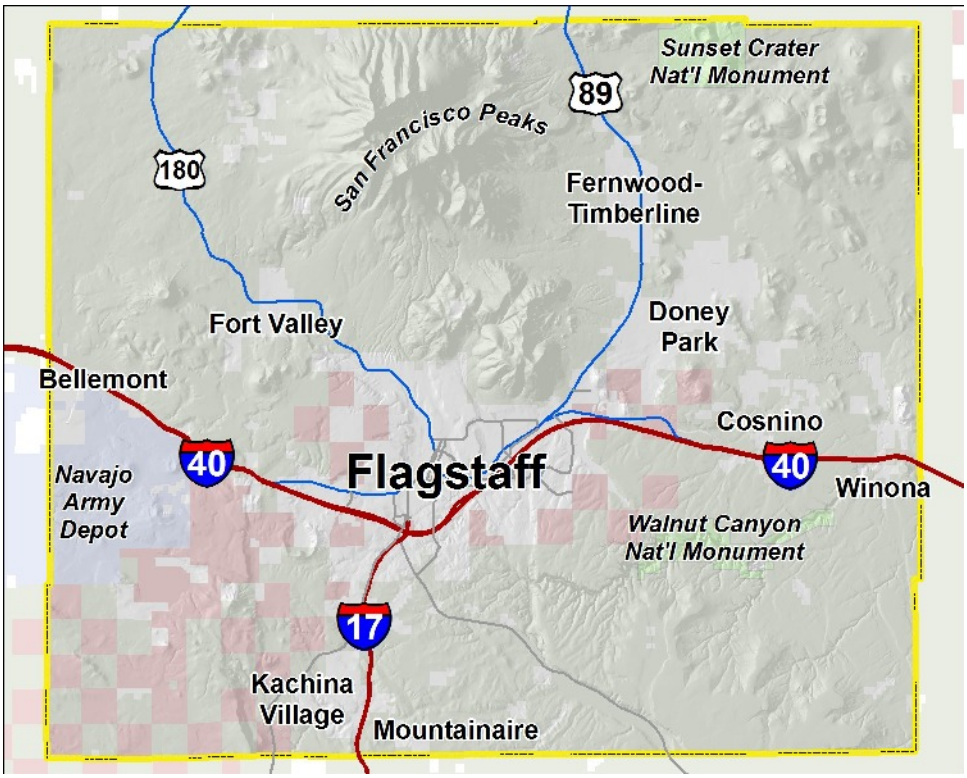
REGISTERED LAND SURVEYOR
CERTIFICATE NO.
18221
PERRY
MASSEY
Date Signed 5-22-96
ARIZONA, U.S.A.

| | | |
|---|---|---|
| EXHIBIT A-1 | CITY OF FLAGSTAFF | Drawn by: R. BLACK |
| CITY FILE NO. 10-96015 | ENGINEERING DIVISION | Date: 5/14/96 |

**EXHIBIT B**

**BOUNDARIES OF NAIPTA**

**DEPICTION**

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# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Barbara Goodrich, Management Services Director |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Adoption of Ordinance No. 2013-10:** An ordinance of the City Council of the City of Flagstaff approving the form and authorizing the execution and delivery of an Equipment Lease/Purchase Agreement for Renewable Energy Equipment; delegating authority to the Management Services Director of the City to determine certain matters and terms with respect to the foregoing; authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this ordinance; and authorizing clerical corrections.

**RECOMMENDED ACTION:**

1) Read Ordinance No. 2013-10 by title only for the first time on May 7, 2013.
2) City Clerk reads Ordinance No. 2013-10 by title only (if approved above)
3) Read Ordinance No. 2013 -10 by title only for the final time on May 7, 2013. (This requires a unanimous vote of the Council members present. City Charter, Article VII, Section 6)
4) City Clerk reads Ordinance No. 2013-10 by title only for the final time (if approved above)
5) City Council makes a finding that an emergency exists.
6) Adopt Ordinance No. 2013-10 on May 7, 2013 (Requires six affirmative votes because of the emergency clause)

**Policy Decision or Reason for Action:**

To provide authorization to enter into a fifteen year capital lease for solar photovoltaic equipment to be placed at the Aquaplex, Rio de Flag, and the Wildcat Wastewater plant.

**Financial Impact:**

All costs related to the solar projects will be financed. Banc of America Public Capital Corporation has been awarded this financing at a rate of 2.86% for fifteen years with no lump-sum payout at the end of the period.

**Connection to Council Goal:**

Effective governance

**Has There Been Previous Council Decision on This:**

Yes.
April 2, 2013: Capital financing award to Banc of America Public Capital
March 15, 2010: Solar system installation award to Ameresco

**Options and Alternatives:**

1. Approve the financing to be completed by the Management Services Director. Recommended.
2. Approve the financing, but direct other staff to manage the process. Impact: May slow the process to bring other staff up to speed.
3. Do not approve the financing. Impact: The proposed rate would expire and a higher rate may result. The incentives would have to returned 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 (kw). Phase 3 initially proposed four (4) additional sites including the Airport, Aquaplex, Rio de Flag Wastewater Treatment Facility,and Wildcat Wastewater Treatment Facility totaling 927 kw, however the Airport project has been withdrawn due to length of time it would take to complete the Environmental Assessment. This revises the project size to 802 kw.

The City received incentives from the Arizona Public Service Schools and Government and Performance Based Incentive Programs ranging between $0.06 - $0.12 per kw 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).

The City has awarded the contract for the lease purchase of this project to Banc of America Public Capital. This action completes the needed authorization through an ordinance for the execution and delivery of the lease purchase agreement.

**Key Considerations:**

The interest rate as offered by Banc of America is only valid until May 28, 2013. If the financing is not culminated by that time, the City will either have to renegotiate a rate with Banc of America or reissue the capital lease financing RFP. In addition, the APS incentives expire October 2013 and the construction needs to be complete at that time. Future APS renewable energy incentives are unavailable for an indeterminate amount of time.

**Expanded Financial Considerations:**

Approving the financing for these projects will not increase overall City costs. Rather, this will be paid from the projected savings per site after allowing for the additional operational, maintenance, insurance, and interest costs. The lease term is 15 years and the equipment is anticipated to have a minimum 15 year life. It is between years sixteen (16) and twenty (20) that will generate the greatest return to the City.

**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:**

1. Approve the financing to be completed by the Management Services Director. Recommended.
2. Approve the financing, but direct other staff to manage the process. Impact: May slow the process to bring other staff up to speed.
3. Do not approve the financing. Impact: The proposed rate would expire and a higher rate may result. The incentives would have to returned to Arizona Public Service.

---

**Attachments:** Solar Lease Ordinance
Agreement

**ORDINANCE NO. 2013-10**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT FOR RENEWABLE ENERGY EQUIPMENT; DELEGATING AUTHORITY TO THE MANAGEMENT SERVICES DIRECTOR OF THE CITY TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE; AND AUTHORIZING CLERICAL CORRECTIONS.

WHEREAS, the Mayor and Council of City of Flagstaff, Arizona (the "City"), have determined to lease-purchase certain renewable energy equipment constituting personal property used by the City to perform essential government functions (the "Renewable Energy Equipment"); and

WHEREAS, in order to lease-purchase the Renewable Energy Equipment, the Mayor and Council of the City (the "Council") have decided to enter into an Equipment Lease/Purchase Agreement (Acquisition Fund - Arizona) (the "Agreement") with Banc of America Public Capital Corp (or one of its affiliates) (the "Lessor") and an Acquisition Fund and Account Control Agreement (the "Acquisition Fund Agreement") with the Lessor and the "Acquisition Fund Custodian" therein identified; and

WHEREAS, there have been presented to the Council at the meeting at which this Ordinance is being adopted the proposed form of the Agreement and the Acquisition Fund Agreement (together, the "Agreements"); and

WHEREAS, no source of funds will be pledged by the City to make the lease payments pursuant to the Agreement, and such lease payments will be funded through an annual appropriation of legally available moneys at the discretion of the Council each year for inclusion in the annual budget of the City; and

WHEREAS, the Renewable Energy Equipment is composed of items which are utilities for purposes of Amendment No. 2 of the Charter of the City; and

WHEREAS, all acts, conditions and items required by the Constitution of the State of Arizona and the City to happen, exist and be performed precedent to and as a condition to the adoption of this Ordinance and the execution and delivery of the Agreements have happened, exist and have been performed in the time and manner required;

**ENACTMENTS:**

**BE IT ORDAINED** BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

Section 1. The form, terms and provisions of the Agreements, in substantially the forms of such documents (including the exhibits thereto) presented at the meeting of the Council at which this Ordinance is being adopted are approved, the execution of each such document being conclusive evidence of such approval, and the Mayor of the City or any other member of the Council and the Clerk of the City, where applicable, are authorized and directed, for and on behalf of the City, to execute and deliver and attest or approve the Agreement and to take all action to carry out and comply with the terms of such documents.

Section 2. The Management Services Director of the City is authorized to determine on behalf of the City the date the Agreement is to be sold; the total aggregate principal amount of the Agreement which is to be executed and delivered but not to exceed in total the aggregate principal amount of $4,000,000; the date the Agreement is to be dated; the date on which interest on the Agreement is to be payable and the interest rates per annum the Agreement is to bear (but not in excess of that rate provided in the "Summary of Terms and Conditions" provided by the Lessor in the letter from the Lessor to the City, dated March 15, 2013); the date the Agreement is to mature but not later than twenty (20) years from the date of the execution and delivery of the Agreement, the principal amount to mature on such date and the provisions for repayment thereof in advance of such date and the terms upon which the Agreement is to be sold (including determinations of price and original issue discount and premium).

Section 3. The Mayor, the Manager and the Management Services Director and other officers of the City, on behalf of the City, are authorized and directed, without further order of the Mayor and Council of the City, to do all such acts and things and to execute and deliver all such certificates, proceedings, agreements and other documents as may be necessary or convenient to be executed and delivered on behalf of the City (including agreements for the sale or placement of the Agreement and disposition of the proceeds of such sale or placement) and to evidence compliance with, or further the purposes of, all the terms and conditions of this Ordinance and the consummation of the transactions contemplated by, and as may be necessary to carry out the terms and intent of, this Ordinance.

Section 4. All actions of the officers and agents of the City which conform to the purposes and intent of this Ordinance and which further the sale and execution and delivery of the Agreement as contemplated by this Ordinance, whether heretofore or hereafter taken, are ratified, confirmed and approved.

Section 5. If any section, paragraph, clause or phrase of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Ordinance. All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

Section 6. The City Clerk is hereby authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary, and to make formatting changes needed for purposes of clarity, form, or consistency.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff, Arizona, this 7th day of May, 2013.

….....
Mayor

ATTEST:

.....
City Clerk

APPROVED AS TO FORM:

.....
City Attorney

CERTIFICATION

I hereby certify that the foregoing Ordinance No. 2013-10 was duly passed and adopted by the Mayor and Council of the City of Flagstaff, Arizona, at a regular meeting held on the 7th day of May, 2013, and the vote was ……. ayes and ……. nays.

.....
City Clerk

# EQUIPMENT LEASE/PURCHASE AGREEMENT
# (ACQUISITION FUND – ARIZONA)

This Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (as further hereinafter defined, this *"Agreement"*) dated as of May __, 2013, and entered into between Banc of America Public Capital Corp, a Kansas corporation (as further hereinafter defined, the *"Lessor"*), and the City of Flagstaff, a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona (*"Lessee"*).

## WITNESSETH:

WHEREAS, Lessee desires to lease and acquire from Lessor certain Renewable Energy Equipment (as such term is defined herein), subject to the terms and conditions hereof;

WHEREAS, Lessee is authorized under the constitution and laws of the State of Arizona to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

## ARTICLE I

*Section 1.01. Definitions.* The following terms will have the meanings indicated below unless the context clearly requires otherwise:

*"Acquisition Amount"* means $_____. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with other funds of Lessee (if any) that are legally available for the purpose, to acquire and install the Renewable Energy Equipment and to pay a portion of the Delivery Costs.

*"Acquisition Fund"* means the fund established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement.

*"Acquisition Fund Agreement"* means the Acquisition Fund and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Acquisition Fund Custodian, pursuant to which the Acquisition Fund is established and administered.

*"Acquisition Fund Custodian"* means the Acquisition Fund Custodian identified in the Acquisition Fund Agreement, and its successors and assigns.

*"Acquisition Period"* means the period ending five (5) business days prior to _____.

"*Agreement*" means this Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), including the exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.04 hereof.

"*Code*" means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

"*Commencement Date*" means the date when Lessee's obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Acquisition Fund Custodian.

"*Contract Rate*" means the rate identified as such in the Payment Schedule.

"*Delivery Costs*" means the costs incurred in connection with the execution and delivery of the Agreement, including counsel fees, fees and expenses of the Acquisition Fund Custodian and similar costs, fees and expenses.

"*Determination of Taxability*" means and shall be deemed to have occurred on the first to occur of the following: (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Rental Payment is includable in the gross income of the holder thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment is includable in the gross income of the holder thereof; or (c) receipt by Lessor or Lessee of a written opinion of Bond Counsel that the interest component of any Rental Payment has become includable in the gross income of the holder thereof for federal income tax purposes.

"*Equipment Acceptance*" means, with respect to each portion of the Renewable Energy Equipment that may operate for its intended purpose as a separate and independent functional unit, that the Renewable Energy Equipment constituting such portion has been acquired and installed by the Vendor, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted by Lessee for all purposes of this Agreement.

"*Equipment Costs*" means the total cost of the Renewable Energy Equipment, including related costs such as freight, installation and taxes and capitalizable costs incurred in connection with the acquisition, installation and/or financing of the Renewable Energy Equipment.

"*Equipment Schedule*" means the equipment schedule attached hereto as Exhibit A and made a part hereof.

"*Event of Default*" means an Event of Default described in Section 12.01 hereof.

"*Event of Taxability*" means the circumstance of the interest component of any Rental Payment paid or payable pursuant to this Agreement becoming includable for federal income tax

purposes in a holder's gross income as a consequence of any act, omission or event whatsoever, as determined by a Determination of Taxability.

"*Lease Term*" means the Original Term and all Renewal Terms, with a final Renewal Term ending on October __, 2028.

"*Lessor*" means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to this Agreement, including the right, title and interest of Lessor in and to the Renewable Energy Equipment, the Rental Payments and other amounts due hereunder, pursuant to Section 11.01 hereof, or the Acquisition Fund, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

"*Material Adverse Change*" means any change in Lessee's creditworthiness that could have a material adverse effect on (a) the financial condition or operations of Lessee, or (b) Lessee's ability to perform its obligations under this Agreement.

"*Original Term*" means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at such Commencement Date.

"*Payment Schedule*" means the payment schedule attached hereto as Exhibit B and made a part hereof.

"*Rebates*" means, collectively, all incentives, rebates or credits available with respect to the Renewable Energy Equipment, and any additional incentives, rebates or credits that Lessee or Vendor may be entitled to as a result of the Renewable Energy Equipment.

"*Renewable Energy Equipment*" means the property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V hereof. Whenever reference is made in this Agreement to Renewable Energy Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Renewable Energy Equipment.

"*Renewal Terms*" means the renewal terms of this Agreement, each having a duration of one year and a term coextensive with Lessee's fiscal year.

"*Rental Payments*" means the basic rental payments payable by Lessee hereunder pursuant to Section 4.01 hereof, consisting of a principal component and an interest component.

"*State*" means the State of Arizona.

"*Taxable Date*" means the date on which the interest component of any Rental Payment is first includable in gross income of any holder thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

*"Taxable Rate"* means an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any payment date would, after such interest was reduced by the amount of any federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

*"Termination Value"* means the amount provided in the Payment Schedule.

*"Vendor"* means the manufacturer, installer or supplier of the Renewable Energy Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessor arranged Lessee's acquisition, installation, maintenance and/or servicing of the Renewable Energy Equipment.

*"Vendor Agreement"* means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Renewable Energy Equipment.

## ARTICLE II

*Section 2.01. Representations and Covenants of Lessee.* Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof as follows:

(a) Lessee is a municipal corporation duly incorporated and validly existing under the constitution and the laws of the State, with full power and authority to enter into this Agreement and the Acquisition Fund Agreement and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder.

(b) Lessee has duly authorized the execution and delivery of this Agreement and the Acquisition Fund Agreement by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Acquisition Fund Agreement.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a municipal corporation.

(e) Lessee has complied materially with such public bidding requirements as may be applicable to this Agreement and the acquisition and installation by Lessee of the Renewable Energy Equipment.

(f) During the Lease Term, the Renewable Energy Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority. Lessee

does not intend to sell or otherwise dispose of the Renewable Energy Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid hereunder.

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor, or provide written notice to Lessor that the same are available at an internal website: (i) annual audited financial statements (including, so long as required by such generally accepted accounting principles and practices (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within 210 days of its fiscal year end, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or the following fiscal. The financial statements described in subsection (g)(i) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(h) Lessee has an immediate need for the Renewable Energy Equipment and expects to make immediate use of the Renewable Energy Equipment. Lessee's need for the Renewable Energy Equipment is not temporary and Lessee does not expect the need for any item of the Renewable Energy Equipment to diminish during the Lease Term.

(i) The payment of the Rental Payments or any portion thereof is not directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. Lessee shall not permit the Federal government to guarantee any Rental Payments. The Renewable Energy Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Renewable Energy Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may materially adversely affect Lessee's financial condition or impair its ability to perform its obligations under this Agreement or the Acquisition Fund Agreement. Lessee will, at its expense, maintain its legal existence in good standing and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Renewable Energy Equipment and the Acquisition Fund and Lessor's rights, interests and benefits under this Agreement and the Acquisition Fund Agreement.

(k) Lessee is the fee owner of the real estate where the Renewable Energy Equipment is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate (other than (i) liens for general ad valorem taxes and assessments, (ii) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law, and (iii) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record, in each case described in (i) through (iii), which will not, in the reasonable opinion of the Lessee, subject such real estate or any part thereof, to loss or forfeiture or materially impair the use of the real estate for its intended purposes).

(l) During the past ten (10) years, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No material event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

## ARTICLE III

*Section 3.01. Lease of Renewable Energy Equipment.* Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire and install the Renewable Energy Equipment and pay certain of the Delivery Costs. Lessor hereby demises, leases, transfers and lets to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Renewable Energy Equipment. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term as set forth in the Payment Schedule.

*Section 3.02. Continuation of Lease Term.* Lessee intends, subject to Section 3.03 hereof, to continue the Lease Term and to pay the Rental Payments under the Lease through the Original Term and all Renewal Terms. Lessee affirms that sufficient funds are available for its current fiscal year to pay any Rental Payments when due during the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law, to have such portion of the budget or appropriation request approved and to exhaust all available reviews and appeals in the event such portion of the budget or appropriation request is not approved.

*Section 3.03. Nonappropriation.* Lessee is obligated only to pay such Rental Payments from its general fund and from any other funds legally available for the purpose as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay

Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees to cease use of the Renewable Energy Equipment and peaceably remove and deliver at Lessee's expense the Renewable Energy Equipment to Lessor at the location(s) to be specified by Lessor.

*Section 3.04. Conditions to Lessor's Performance*. (a) As a prerequisite to the performance by Lessor of any of its obligations under this Agreement, Lessee shall deliver to Lessor the following:

(i) An Acquisition Fund Agreement in the form set forth in Exhibit H hereto, satisfactory to Lessor and executed by Lessee and the Acquisition Fund Custodian;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as Exhibit C-1, authorizing the execution and delivery of this Agreement and the Acquisition Fund Agreement and performance by Lessee of its obligations under this Agreement and the Acquisition Fund Agreement;

(iii) A Certificate executed by the City Clerk or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit C-2, completed to the satisfaction of Lessor;

(iv) Opinions of counsel to Lessee, which taken as a whole, are substantially in the form attached hereto as Exhibit D and otherwise satisfactory to Lessor;

(v) Evidence of insurance as required by Section 7.02 hereof;

(vi) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time pursuant to Section 6.02 hereof;

(vii) A waiver or waivers of interest in the Renewable Energy Equipment, satisfactory to Lessor, from any mortgagee or any other party having an interest in the real estate on which the Renewable Energy Equipment will be located and/or landlord of the real estate on which the Renewable Energy Equipment will be located;

(viii) A copy of a fully completed and executed Form 8038-G and a fully completed and executed Arbitrage Certificate with respect to the Agreement;

(ix) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04 hereof, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, *provided, however,* that no "Disbursement Request"

pursuant to the Acquisition Fund Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 hereof have been delivered to Lessor;

(x) A copy of each completed and executed application that Lessee is required to file, and has filed, in order to obtain the Rebates with respect to the Renewable Energy Equipment and evidence of such Rebates;

(xi) A copy of the fully executed Master Solar Agreement dated as of _____, 2013 between Ameresco Southwest, Inc. f/k/a APS Energy Services Company, Inc. (*"Ameresco"*) and the Lessee including an energy savings guarantee from Ameresco with respect to the Renewable Energy Equipment; and

(xii) Such other items reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations under this Agreement and the Acquisition Fund Agreement shall be subject to: (i) no Material Adverse Change in the financial condition of Lessee since the date of this Agreement, and (ii) no Event of Default having occurred and continuing.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Acquisition Fund Custodian for deposit into the Acquisition Fund as provided in the Acquisition Fund Agreement.

## ARTICLE IV

*Section 4.01. Rental Payments*. Subject to Section 3.03 hereof, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the dates and in such amounts as provided in the Payment Schedule. Interest on the Acquisition Amount shall begin to accrue as of the Commencement Date. Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less, from such date.

*Section 4.02. Interest and Principal Components*. A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal as more fully detailed on the Payment Schedule.

*Section 4.03. Rental Payments to Constitute a Current Expense of Lessee*. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee.

*Section 4.04. Rental Payments to be Unconditional.* Except as provided in Section 3.03 hereof, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation by reason of any failure of the Renewable Energy Equipment to perform in the manner or to the extent that the Lessee anticipated from and after its acceptance or any failure to achieve cost or other savings that the Lessee anticipated, any other failure of the Renewable Energy Equipment, any defects, malfunctions, breakdowns or infirmities in the Renewable Energy Equipment, any disputes with the Vendor of any Renewable Energy Equipment or Lessor, any failure or inability (for whatever reason) of Lessee to receive (or delay in receipt of) all or any portion of any Rebate or any payment for guaranteed energy savings by Vendor under the Vendor Agreement, any failure of the Vendor under any Vendor Agreement to perform any of its obligations thereunder for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Vendor under any Vendor Agreement, or any accident, condemnation or unforeseen circumstances, or failure of any Vendor to deliver any Renewable Energy Equipment or otherwise perform any of its obligations.

*Section 4.05. Tax Covenants.* (a) Lessee will not make or direct the making of any investment or other use of the proceeds of this Agreement which would cause this Agreement to be an "arbitrage bond" as that term is defined in section 148 (or any successor provision thereto) of the Code or a "private activity bond" as that term is defined in section 141 (or any successor provision thereto) of the Code, and Lessee will comply with the requirements of the Code sections and related Regulations throughout the Lease Term. (Particularly, Lessee shall be the owner of the Equipment for federal income tax purposes. Lessee shall not enter into any management or service contract with any entity other than a governmental entity for the operation of any portion of the Equipment unless the management or service contract complies with the requirements of Revenue Procedure 97-13 or such other authority as may control at the time or any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion of the Equipment.) Also, the payment of the Rental Payments shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of this Agreement, or amounts treated as proceeds of this Agreement, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds may be so invested for an initial temporary period until needed for the purpose for which this Agreement is being executed and delivered, may be so used in making investments in a *bona fide* debt service fund or may be invested in obligations issued by the United States Treasury.

(b)(i) Lessee shall take all necessary and desirable steps, as determined by the Council of Lessee upon the advice of Bond Counsel, to comply with the requirements hereunder in order to ensure that the interest component of Rental Payments is excluded from gross income for federal income tax purposes under the Code; *provided, however,* compliance with any such requirement shall not be required in the event Lessee and Lessor receive an opinion of Bond Counsel signed by an attorney or firm of attorneys of national recognized standing in the field of law relating to municipal bonds selected by Lessee and reasonably acceptable to the Lessor that either (i) compliance with such requirement is not required to maintain the exclusion from gross income of the interest component of Rental Payments, or (ii) compliance with some other

requirement will meet the requirements of the Code. In the event Lessee and Lessor receive such opinion, this Agreement shall be amended to conform to the requirements set forth in such opinion. (In consideration of the execution and delivery of this Agreement by Lessor and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, Lessee covenants, and the appropriate officials of Lessee are hereby directed, to take all action required or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion from gross income of the interest component of Rental Payments.)

(ii) In addition to Section 4.06 hereof, if for any reason any requirement hereunder is not complied with, Lessee shall take all necessary and desirable steps, as determined by the Council of Lessee upon the advice of Bond Counsel, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence, and Lessee shall pay any required interest or penalty under Regulations section 1.148-3(h) with respect to the Code.

(c) Lessee shall comply with the procedures and covenants contained in any arbitrage rebate provision or separate agreement executed in connection with the issuance of this Agreement (initially those specified in the Arbitrage Certificate delivered simultaneously herewith) for so long as compliance is necessary in order to maintain the exclusion from gross income for federal income tax purposes of the interest component of Rental Payments. Such experts and consultants shall be employed, as necessary, to make, as necessary, any calculations in respect of rebates to be made to the United States of America in accordance with Section 148(f) of the Code, particularly those specified in the Arbitrage Certificate delivered simultaneously with the original issuance of this Agreement.

*Section 4.06. Event of Taxability.* Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the Taxable Date, and Lessee will pay such additional amount as will result in the holder thereof receiving the interest component of Rental Payments (from and after the Taxable Date) at the Taxable Rate.

*Section 4.07. Mandatory Prepayment.* Any funds not applied to Equipment Costs and remaining in the Acquisition Fund on the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate (in the form attached hereto as Exhibit E), shall be applied by Lessor on any Rental Payment date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in the inverse order of Rental Payment dates.

## ARTICLE V

*Section 5.01. Delivery, Installation and Acceptance of Renewable Energy Equipment.* (a) Lessee shall order the Renewable Energy Equipment, cause the Renewable Energy Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all Equipment Costs and other costs in connection therewith. When the Renewable

Energy Equipment has been delivered and installed, Lessee shall promptly accept such Renewable Energy Equipment and evidence said acceptance by executing and delivering to Lessor an "Acceptance Certificate" in the form attached hereto as Exhibit E.

(b) Lessee shall deliver to Lessor original invoices (and proof of payment of such invoices) and bills of sale (if title to such Renewable Energy Equipment has passed to Lessee) relating to each item of Renewable Energy Equipment accepted by Lessee.

*Section 5.02. Quiet Enjoyment of Renewable Energy Equipment*. So long as Lessee is not in default hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Renewable Energy Equipment during the Lease Term.

*Section 5.03. Location; Inspection*. Once installed, no item of the Renewable Energy Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Renewable Energy Equipment is located for the purpose of inspecting the Renewable Energy Equipment.

*Section 5.04. Use and Maintenance of the Renewable Energy Equipment*. Lessee shall not install, use, operate or maintain the Renewable Energy Equipment (or cause the Renewable Energy Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall obtain and provide all permits and licenses, if any, necessary for the installation and operation of the Renewable Energy Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Renewable Energy Equipment or its interest or rights hereunder.

Lessee agrees that it will maintain, preserve, and keep the Renewable Energy Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Renewable Energy Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Renewable Energy Equipment as eligible for manufacturer's maintenance upon the return of the Renewable Energy Equipment to Lessor as provided for herein.

Lessee shall not alter any item of Renewable Energy Equipment or install any accessory, equipment or device on an item of Renewable Energy Equipment if that would impair any applicable warranty, the originally intended function or the value of that Renewable Energy Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Renewable Energy Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

## ARTICLE VI

*Section 6.01. Title to the Renewable Energy Equipment.* During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Renewable Energy Equipment shall be vested in Lessee immediately upon its acceptance of each item of Renewable Energy Equipment, subject to the terms and conditions hereof. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Renewable Energy Equipment from and against all claims, liens and legal processes of its creditors, and keep all Renewable Energy Equipment free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Renewable Energy Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Renewable Energy Equipment to Lessor in accordance with Section 12.02 hereof. Upon payment of all amounts due and owing under this Agreement in accordance with Section 10.01 hereof (including upon payment of all Rental Payments and other amounts payable under this Agreement), Lessor's security interest or other interest in the Renewable Energy Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security interest in the Renewable Energy Equipment. During the Lease Term, Lessor will not claim ownership of the Renewable Energy Equipment for the purposes of any tax credits, benefits or deductions with respect to the Renewable Energy Equipment.

*Section 6.02. Security Interest.* As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Renewable Energy Equipment, (b) moneys and investments held from time to time in the Acquisition Fund and (c) any and all proceeds of any of the foregoing. Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Renewable Energy Equipment, the Acquisition Fund and the proceeds thereof, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the Uniform Commercial Code of the State and treating Chapter 9, Title 47 of the Arizona Revised Statutes as applicable to Lessee notwithstanding the express provisions of Section 47.9109.D.14 thereof, and any attempts to realize on the security interests granted by Lessee will be conducted in accordance with the Arizona law.

*Section 6.03. Personal Property, No Encumbrances.* Lessee agrees that the Renewable Energy Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Renewable Energy Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other

encumbrance of any nature whatsoever on any of the real estate where the Renewable Energy Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; *provided*, that if Lessor or its assigns is furnished with a waiver of interest in the Renewable Energy Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

## ARTICLE VII

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges*. Lessee shall keep the Renewable Energy Equipment free of all levies, liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Renewable Energy Equipment will be used for a governmental or proprietary purpose of Lessee and that the Renewable Energy Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Renewable Energy Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Renewable Energy Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Renewable Energy Equipment. Lessee shall pay such taxes or charges as the same may become due; *provided* that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term.

*Section 7.02. Insurance*. Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Renewable Energy Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Termination Value of the Renewable Energy Equipment or (ii) the replacement cost of the Renewable Energy Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least $1,000,000 per occurrence/$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least $5,000,000, and in all events in form and amount satisfactory to Lessor; and (c) worker's compensation coverage as required by the laws of the State; *provided* that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and/or (b). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as Exhibit F. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification.

*Section 7.03. Risk of Loss*. Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any

persons or property arising from the Renewable Energy Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Renewable Energy Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Renewable Energy Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Renewable Energy Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

*Section 7.04. Surety Bonds*; *Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties*. Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Renewable Energy Equipment, a payment and performance bond (*"Surety Bond"*) executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Renewable Energy Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, installation, construction, maintenance and/or servicing of the Renewable Energy Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Renewable Energy Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee's obligations hereunder.

*Section 7.05. Advances*. In the event Lessee shall fail to keep the Renewable Energy Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lessor may, but shall be under no obligation to, maintain and repair the Renewable Energy Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less.

## ARTICLE VIII

*Section 8.01. Damage, Destruction and Condemnation*. If, prior to the termination of the Lease Term, (a) the Renewable Energy Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Renewable Energy Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Renewable Energy Equipment or such part thereof and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to prepay the obligations hereunder in accordance with Section 10.01(b) hereof.

If Lessee elects to replace any item of the Renewable Energy Equipment (the *"Replaced Equipment"*) pursuant to this Section, the replacement equipment (the *"Replacement Equipment"*) shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Renewable Energy Equipment" for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to equipment in accordance with Section 10.01(b) hereof.

For purposes of this Article, the term *"Net Proceeds"* shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of

condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

*Section 8.02. Insufficiency of Net Proceeds*. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01 hereof, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Termination Value for the Renewable Energy Equipment, and, upon such payment, the Lease Term shall terminate and Lessor's security interest in the Renewable Energy Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after paying the applicable Termination Value for such Renewable Energy Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

## ARTICLE IX

*Section 9.01. Disclaimer of Warranties*. Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Renewable Energy Equipment, or any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee's acquisition of the Renewable Energy Equipment shall be on an "as is" basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Renewable Energy Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

*Section 9.02. Indemnification.* To the fullest extent permitted by applicable law, the Lessee hereby agrees to indemnify and hold harmless Lessor, its directors, officers, shareholders, employees, agents and successors from and against any loss, claim, damage, expense, and liability resulting from or attributable to the acquisition, installation, construction, or use of the Equipment. Notwithstanding the foregoing, Lessor shall not be indemnified for any liability solely and directly resulting from the gross negligence or willful misconduct of Lessor.

*Section 9.03. Vendor's Agreements; Warranties*. Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default under this Agreement, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Renewable Energy Equipment that Lessor may have against Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendors of the Renewable Energy Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor hereunder, including the right to receive full and timely Rental Payments. Lessee expressly acknowledges that Lessor makes,

and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Renewable Energy Equipment.

## ARTICLE X

*Section 10.01. Prepayment Option.* Lessee shall have the option to prepay or satisfy all its obligations hereunder, at the following times and upon the following terms:

(a) From and after the date specified (if any) in the Payment Schedule (the *"Prepayment Option Commencement Date"*), on the Rental Payment dates specified in the Payment Schedule, upon not less than 30 days' prior written notice, and upon payment in full of the sum of all Rental Payments then due *plus* all other amounts then owing hereunder *plus* the then applicable Termination Value, which may include a prepayment premium on the unpaid balance as set forth in the Payment Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Renewable Energy Equipment, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment date or 60 days after the casualty event) upon payment in full to Lessor of the sum of (i) all Rental Payments then due *plus* (ii) the then applicable Termination Value (or, in the event such prepayment occurs on a date other than a Rental Payment date, the sum of (x) the Termination Value relating to the Rental Payment immediately prior to the date of such prepayment plus (y) accrued interest on the aggregate unpaid principal portion of Rental Payments immediately prior to the date of such prepayment) *plus* (iii) all other amounts then owing hereunder; or

(c) Upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder to Lessor.

After payment of the applicable Termination Value and all other amounts owing hereunder, Lessor's security interests in and to such Renewable Energy Equipment will be terminated and Lessee will own the Renewable Energy Equipment free and clear of Lessor's security interest in the Renewable Energy Equipment.

## ARTICLE XI

*Section 11.01. Assignment by Lessor.* (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Acquisition Fund Agreement, its security interest in the Renewable Energy Equipment and Acquisition Fund, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 11.01 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve

funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust; *provided* such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933; *provided further*, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Renewable Energy Equipment and all rights in, to and under this Agreement related to such Renewable Energy Equipment, and all of Lessor's security interest in and to the Acquisition Fund, or all rights in, to and under the Acquisition Fund Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of Exhibit G attached hereto within five (5) business days after its receipt of such request.

*Section 11.02. Assignment and Subleasing by Lessee.* **None of Lessee's right, title, and interest in, to and under this Agreement or any portion of the Renewable Energy Equipment or the Acquisition Fund Agreement or the Acquisition Fund may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.**

## ARTICLE XII

*Section 12.01. Events of Default Defined.* Any of the following events shall constitute an "*Event of Default*" under this Agreement:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within 10 days after the date when due as specified herein or (ii) maintain insurance as required herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided* that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default remains uncured following the applicable cure period, if any, and (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregate amount in excess of $1,000,000.00;

(e) A moratorium, debt restructuring (other than a refinancing or refunding), debt adjustment (other than a refinancing or refunding) or comparable restriction is imposed on or declared with respect to any obligations of the Lessee or Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, moratorium or insolvency proceeding; or

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator

for the Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days.

*Section 12.02. Remedies on Default*. Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Renewable Energy Equipment is located and retake possession of such Renewable Energy Equipment or require Lessee at Lessee's expense to promptly return any or all of such Renewable Energy Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Renewable Energy Equipment or, for the account of Lessee, sublease such Renewable Energy Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder or the Renewable Energy Equipment that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder , including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Renewable Energy Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03 hereof. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or the Renewable Energy Equipment;

(c) Lessor may terminate the Acquisition Fund Agreement and apply any proceeds in the Acquisition Fund to the Rental Payments due hereunder; and

(d) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement or the Acquisition Fund Agreement or as a secured party in any or all of the Renewable Energy Equipment or the Acquisition Fund.

*Section 12.03. No Remedy Exclusive*. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice other than such notice as may be required in this Article.

## ARTICLE XIII

*Section 13.01. Notices*. All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

*Section 13.02. Binding Effect*. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

*Section 13.03. Severability*. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 13.04. Amendments, Changes and Modifications*. This Agreement may only be amended by Lessor and Lessee in writing.

*Section 13.05. Execution in Counterparts*. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Section 13.06. Applicable Law*. This Agreement shall be governed by and construed in accordance with the laws of the State.

*Section 13.07. Captions*. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

*Section 13.08. Business with Iran and Sudan.* Pursuant to Arizona Revised Statutes Sections 35-391.06 and 35-393.06, Lessor certifies that it does not have scrutinized business operations in either Iran or the Sudan.

*Section 13.09. Transactional Conflicts of Interest.* As required by the provisions of Arizona Revised Statutes Section 38-511, as amended, notice is hereby given that Lessee may, within three (3) years of the execution hereof, cancel this Agreement without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Agreement on behalf of Lessee is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of Lessor or a consultant to Lessor with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice from Lessee is received by Lessor unless the notice specifies a later time.

*Section 13.10. Immigration Laws and Regulations.* As required by the provisions of Arizona Revised Statutes Section 41-4401, Lessor warrants Lessor's compliance with all Federal

and State immigration laws and regulations that relate to Lessor's employees, as well as subcontractors of Lessor of any tier relating to this Agreement, and their compliance with Arizona Revised Statutes Section 23-214(A); and acknowledges that a breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to including termination of this Agreement. Lessee retains the legal right to inspect the records of Lessor and any contractor's or subcontractor's employee of any tier who performed work pursuant to this Agreement, to ensure compliance with the warranty set forth herein.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:
Banc of America Public Capital Corp
11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration
Fax No.: (443) 556-6977

By:_____
Name: _____
Title: _____

LESSEE:
City of Flagstaff, Arizona
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attention: _____
Fax No.: _____

By: _____
Name: _____
Title: _____

(Seal)

Attest:

By:_____
Name: _____
Title: _____

Counterpart No. _____ of **3** manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

LIST OF EXHIBITS


| | | |
|---|---|---|
| Exhibit A | — | Equipment Schedule |
| Exhibit B | — | Payment Schedule |
| Exhibit C-1 | — | Form of Authorizing Ordinance |
| Exhibit C-2 | — | Form of Incumbency and Authorization Certificate |
| Exhibit D | — | Form of Opinion of Counsel Form |
| Exhibit E | — | Form of Acceptance Certificate |
| Exhibit F | — | Form of Self-Insurance Certificate |
| Exhibit G | — | Form of Notice and Acknowledgement of Assignment |
| Exhibit H | — | Form of Acquisition Fund and Account Control Agreement |

## EXHIBIT A

## EQUIPMENT SCHEDULE

Location of Equipment: [To be provided by Lessee]

Equipment Description (Scope of Work): [To be provided Lessee]

## EXHIBIT B

## PAYMENT SCHEDULE

| Rental Payment Date | Rental Payment Amount | Interest Portion | Principal Portion | Outstanding Balance | Termination Value (including prepayment premium, if applicable) |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

*Contract Rate*. The Contract Rate is ____% per annum.

*Prepayment Option Commencement Date*. For purposes of Section 10.01(a) of the Agreement, the Prepayment Purchase Option Commencement Date is _____.

LESSOR:
Banc of America Public Capital Corp

By:_____
Name: _____
Title: _____

LESSEE:
City of Flagstaff, Arizona

By: _____
Name: _____
Title: _____

## EXHIBIT C-1

## FORM OF AUTHORIZING ORDINANCE

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF FLAGSTAFF, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT (ACQUISITION FUND – ARIZONA) WITH RESPECT TO THE ACQUISITION, INSTALLATION, PURCHASE, FINANCING AND LEASING OF CERTAIN RENEWABLE ENERGY EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Flagstaff (the *"Lessee"*), a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona, is authorized by the laws of the State of Arizona to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain Renewable Energy Equipment with a cost not to exceed $ _____ constituting personal property necessary for the Lessee to perform essential governmental functions (the *"Renewable Energy Equipment"*); and

WHEREAS, in order to acquire such Renewable Energy Equipment, the Lessee proposes to enter into that certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the *"Agreement"*) with Banc of America Public Capital Corp (or one of its affiliates) (the *"Lessor"*) and that certain Acquisition Fund and Account Control Agreement (the *"Acquisition Fund Agreement"*) among the Lessee, the Lessor and the Acquisition Fund Custodian therein identified, and the forms of the Agreement and the Acquisition Fund Agreement have been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the Acquisition Fund Agreement (collectively, the *"Financing Agreements"*) and the documentation relate to the financing of the Renewable Energy Equipment for the purchase, acquisition and leasing of the Renewable Energy Equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the governing body of the Lessee as follows:

*Section 1. Approval of Financing Agreements* The form, terms and provisions of the Agreement and the Acquisition Fund Agreement are hereby approved in substantially the forms

presented at this meeting, with such insertions, omissions and changes as shall be approved by the [City Manager] of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the [City Manager] of the Lessee is hereby authorized and directed to execute, and the [City Manager] of the Lessee is hereby authorized and directed to attest and countersign, the Agreement (including any related Exhibits attached thereto) and the Acquisition Fund Agreement and to deliver the Agreement (including such Exhibits) and the Acquisition Fund Agreement to the respective parties thereto, and the [City Manager] of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

*Section 2. Other Actions Authorized*. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Financing Agreements to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with either of the Financing Agreements.

*Section 3. No General Liability*. Nothing contained in this Ordinance, either Financing Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Ordinance, either Financing Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

*Section 4. Appointment of Authorized Lessee Representatives*. The _____ _____ and _____ of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement and the Acquisition Fund Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement and the Acquisition Fund Agreement.

*Section 5. Severability*. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

*Section 6. Repealer*. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

*Section 7. Effective Date*. This Ordinance shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the governing body of the Lessee this ____ day of _____.

CITY OF FLAGSTAFF, ARIZONA,
as lessee

[SEAL]

By:_____
Printed Name: _____
Title: _____

ATTEST:

By:_____
Printed Name: _____
Title: _____

## EXHIBIT C-2

### FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting City Clerk of the City of Flagstaff, Arizona (*"Lessee"*) certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the *"Officials"*) in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May __, 2013 by and between Lessee and Banc of America Public Capital Corp (*"Lessor"*), the Acquisition Fund and Account Control Agreement dated as of May __, 2013 among Lessor, Lessee and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, and all documents related thereto and delivered in connection therewith (collectively, the *"Agreements"*), and the Agreements are each the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

| NAME OF OFFICIAL | TITLE | SIGNATURE |
|---|---|---|
| Kevin Burke | City Manager | _____ |
| Barbara Goodrich | Management Services Director | _____ |
| Jerry Nabours | Mayor | _____ |

Dated: _____

By:_____
Name: _____
Title: City Clerk

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)

**EXHIBIT D**

**FORM OF OPINION OF COUNSEL TO LESSEE**
(to be typed on letterhead of counsel)

[Closing Date]

Banc of America Public Capital Corp
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), dated as of May __, 2013 between Banc of America Public Capital Corp, as Lessor, and the City of Flagstaff, Arizona, as Lessee

Ladies and Gentlemen:

As legal counsel to the City of Flagstaff, Arizona (*"Lessee"*), I have examined (a) an executed counterpart of a certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), dated as of May __, 2013, and Exhibits thereto by and between Banc of America Public Capital Corp (*"Lessor"*) and Lessee (the *"Agreement"*), which, among other things, provides for the lease of certain property (the *"Renewable Energy Equipment"*) and an executed counterpart of a certain Acquisition Fund and Account Control Agreement among Lessor, Lessee, and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, dated May __, 2013 (the *"Acquisition Fund Agreement"*), (b) an executed counterpart of the ordinances or resolutions of Lessee which with respect to the transaction contemplated by the Agreement, the Acquisition Fund Agreement, and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Acquisition Fund Agreement and the documents relating thereto are referred to collectively as the "Transaction Documents."

Based on the foregoing, I am of the following opinions:

1. Lessee a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona, and **[**has a substantial amount of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power**][**is a political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the *"Code"*) and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code**]**.

2. Lessee has the requisite power and authority to lease and acquire the Renewable Energy Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee enforceable in accordance with their respective terms.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Renewable Energy Equipment, the Acquisition Fund or other collateral thereunder.

**[6. The portion of rental payments designated as and constituting interest paid by Lessee and received by Lessor is excluded from Lessor's gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of Arizona personal income taxes; and such interest is not a specific item of tax preference or other collateral for purposes of the federal individual or corporate alternative minimum taxes.]**

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

Sincerely,

## EXHIBIT E

## FORM OF ACCEPTANCE CERTIFICATE

Banc of America Public Capital Corp
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), dated as of May __, 2013 between Banc of America Public Capital Corp, as Lessor, and the City of Flagstaff, Arizona, as Lessee

Ladies and Gentlemen:

In accordance with the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the "*Agreement*"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Renewable Energy Equipment (as such term is defined in the Agreement) has been delivered, installed and accepted on the date hereof.

2. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Renewable Energy Equipment for all purposes.

3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.

4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.

5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Date: _____

LESSEE:
CITY OF FLAGSTAFF, ARIZONA

By:_____
Name: _____
Title: _____

(SEAL)

## EXHIBIT F

## FORM OF SELF INSURANCE CERTIFICATE

Banc of America Public Capital Corp
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona), dated as of May __, 2013 (the *"Agreement"*) between Banc of America Public Capital Corp, as Lessor, and the City of Flagstaff, Arizona, as Lessee

In connection with the above-referenced Agreement, the City of Flagstaff, Arizona (the *"Lessee"*), the Lessee warrants and represents to Banc of America Public Capital Corp the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

1. The Lessee is self-insured for damage or destruction to the Renewable Energy Equipment. The dollar amount limit for property damage to the Renewable Energy Equipment under such self-insurance program is $_____. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for property damage to the Renewable Energy Equipment which policy has a dollar limit for property damage to the Renewable Energy Equipment under such policy of $_____.]

2. The Lessee is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Renewable Energy Equipment. The dollar limit for such liability claims under the Lessee's self-insurance program is $_____. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Renewable Energy Equipment in the amount of $_____.

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund [are/are not] subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Lessee's self-insurance liabilities is $_____. [Amounts paid from the Lessee's self-insurance fund are subject to a dollar per claim of $_____.]

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to pay claims for which it has self-insured from the following sources: _____. Amounts payable for claims from the such sources are limited as follows: _____.

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by Lessee.

LESSEE:
CITY OF FLAGSTAFF, ARIZONA

By:_____
Name: _____
Title: _____

## EXHIBIT G

## FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

**DATED _____**

BANC OF AMERICA PUBLIC CAPITAL CORP (*"Assignor"*) hereby gives notice that it has assigned and sold to _____ (*"Assignee"*) all of Assignor's right, title and interest in, to and under the Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) (the *"Agreement"*) dated as of _____, between Assignor and the City of Flagstaff, Arizona (*"Lessee"*), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor's right, title and interest in the Renewable Energy Equipment (as defined in the Agreement), and all of Assignor's right, title and interest in, to and under the Acquisition Fund and Account Control Agreement dated May __, 2013 (the *"Acquisition Fund Agreement"*) by and among Lessee, Assignor and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, together with the Acquisition Fund related thereto (collectively, the *"Assigned Property"*).

1. Pursuant to the authority of Ordinance _____ adopted on _____, Lessee hereby **[**consents to and**]** acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Renewable Energy Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all rights and remedies thereunder; and (ii) except as provided in Section 3.03 of the Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this *"Acknowledgement"*), the following information about the Agreement is true, accurate and complete:

| | | |
|---|---|---|
| Number of Rental Payments Remaining | – | _____ |
| Amount of Each Rental Payment | – | $_____ |
| Total Amount of Rents Remaining | – | $_____ |
| Frequency of Rental Payments | – | _____ |
| Next Rental Payment Due | – | _____ |

Funds Remaining in Acquisition Fund – $_____

4. The Agreement remains in full force and effect, has not been amended and no nonappropriation or Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder.

5. Any inquiries of Lessee related to the Agreement and any requests for disbursements from the Acquisition Fund, if applicable, and all Rental Payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

_____
_____
_____

**ACKNOWLEDGED AND AGREED:**

LESSEE:
CITY OF FLAGSTAFF, ARIZONA

By:_____
Name: _____
Title: _____

ASSIGNOR:
BANC OF AMERICA PUBLIC CAPITAL CORP

By:_____
Name: _____
Title: _____

## EXHIBIT H

## FORM OF ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement (this *"Agreement"*), dated as of May __, 2013, by and among Banc of America Public Capital Corp (hereinafter referred to as *"Lessor"*), the City of Flagstaff, Arizona, a municipal corporation duly incorporated and validly existing under the laws of the State of Arizona (hereinafter referred to as *"Lessee"*) and Deutsche Bank Trust Company Americas (hereinafter referred to as *"Acquisition Fund Custodian"*).

Reference is made to that certain Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May __, 2013 between Lessor and Lessee (hereinafter referred to as the *"Lease"*), covering the acquisition, installation and lease of certain Renewable Energy Equipment described therein (the *"Renewable Energy Equipment"*). It is a requirement of the Lease that the Acquisition Amount ($_____) be deposited into an escrow under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the acquisition and installation of and payment for the Renewable Energy Equipment and payment of a portion of the Delivery Costs.

The parties agree as follows:

1. *Creation of Acquisition Fund.*

(a) There is hereby created a special trust fund to be known as the "City of Flagstaff, Arizona Renewable Energy Equipment Acquisition Fund" (the *"Acquisition Fund"*) to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from Lessee. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and Lessee agrees to and does hereby release the Acquisition Fund Custodian and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. For purposes of this Agreement, "Qualified Investments" means any investment permitted in accordance with Arizona Revised Statutes Section 35-323; *provided, however,* that each such investment shall be insured at all times by United States federal deposit insurance and the investment shall never be placed in an off-shore account.

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition and installation of the Renewable Energy Equipment. Any moneys remaining in the Acquisition Fund on or after the earlier of (i) the expiration of the Acquisition Period and (ii) the date on which Lessee executes an Acceptance Certificate shall be applied as provided in Section 4 hereof and in accordance with Section 4.07 of the Lease.

(d) The Acquisition Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund or (ii) written notice given by Lessor of the occurrence of a default under the Lease or termination of the Lease due to non-appropriation.

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) Unless the Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this Agreement; and in connection therewith, does to the extent permitted by law indemnify the Acquisition Fund Custodian against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Acquisition Fund Custodian shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(h) The Acquisition Fund Custodian may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Acquisition Fund Custodian shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) Lessee shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for extraordinary administration of the Acquisition Fund and the performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Acquisition Fund.

2. *Acquisition of Property*.

(a) *Acquisition Contracts*. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition and installation of the Renewable Energy Equipment, with moneys available in the Acquisition Fund. Lessee represents that the estimated costs of the Renewable Energy Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition, installation or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Renewable Energy Equipment, and the operation and maintenance thereof.

(b) *Authorized Acquisition Fund Disbursements*. Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Renewable Energy Equipment and a portion of the Delivery Costs.

(c) *Requisition Procedure*. No disbursement from the Acquisition Fund shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Acquisition Fund for the payment of Delivery Costs there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 2, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due, and that: (i) an obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for Delivery Costs identified in the Lease, and has not been paid and attached thereto is the original invoice with respect to such obligation, (ii) the Renewable Energy Equipment is insured in accordance with the Lease, (iii) no event of nonappropriation or Event of Default, and no event which with notice or lapse of time, or both, would become an event of nonappropriation or Event of Default, under the Lease has occurred and is continuing at the date thereof, (iv) the disbursement shall occur prior to _____, 2013, (v) no Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease and (vi) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date thereof. Prior to disbursement from the Acquisition Fund for payment of Equipment Costs there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due and certifying the date of Equipment Acceptance for the portion of Renewable Energy Equipment for which disbursement is requested. Each such requisition shall be signed by an authorized representative of Lessee (an "*Authorized Representative*") and by Lessor, and shall be subject to the following:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:

(i) Equipment Acceptance has occurred as of the date identified therein with respect to the portion of Renewable Energy Equipment for which disbursement is requested; (ii) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Acquisition Fund for costs relating to the Renewable Energy Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof) and the Renewable Energy Equipment relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment relating to such obligation as it deems necessary and appropriate in order to determine the Renewable Energy Equipment's operability and functionality in order to accept such Renewable Energy Equipment; (iii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iv) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (v) the Renewable Energy Equipment is insured in accordance with the Lease; (vi) no event of nonappropriation or Event of Default (nor any event which, with notice or lapse of time or both, would become an event of nonappropriation or an Event of Default) has occurred and is continuing; (vii) no Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease; and (viii) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date thereof.

2. Delivery to Lessor of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Renewable Energy Equipment has passed to Lessee) therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and

3. The disbursement shall occur during the Acquisition Period.

Notwithstanding anything in this Agreement to the contrary, an amount may not be disbursed from the Acquisition Fund to pay Equipment Costs relating to a portion of the Renewable Energy Equipment prior to the date on which Lessee has certified to Acquisition Fund Custodian in the related disbursement request that Equipment Acceptance has occurred with respect to such portion of Renewable Energy Equipment for which funds are requested for disbursement from the Acquisition Fund.

3. *Deposit to Acquisition Fund*. Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited in the Acquisition Fund. Lessee agrees to pay any costs with respect to the Renewable Energy Equipment in excess of amounts available therefor in the Acquisition Fund and to pay Delivery Costs in excess of amounts available therefor in the Acquisition Fund.

4. *Excessive Acquisition Fund*. Any funds remaining in the Acquisition Fund on or after the earliest of (a) the expiration of the Acquisition Period, (b) the date on which Lessee executes an Acceptance Certificate, or (c) a termination of the Acquisition Fund as otherwise provided herein, shall be applied by the Acquisition Fund Custodian to amounts owed under the Lease in accordance with Section 4.07 of the Lease.

5. *Security Interest*. The Acquisition Fund Custodian and Lessee acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by Acquisition Fund Custodian for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to investments as set forth in this Agreement, such investments shall be made in the name of Acquisition Fund Custodian and the Acquisition Fund Custodian hereby agrees to hold such investments as bailee for Lessor so that Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. *Control of Acquisition Account*. In order to perfect Lessor's security interest by means of control in (i) the Acquisition Fund established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund, (iii) all of Lessee's rights in respect of the Acquisition Fund, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "*Collateral*"), Lessor, Lessee and Acquisition Fund Custodian further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the State of Arizona (the "*Commercial Code*") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement, treating Chapter 9, Title 47 of the Arizona Revised Statutes as applicable to Lessee notwithstanding the express provisions of Section 47.9109.D.14 thereof, and any attempts to realize on the security interests granted by Lessee will be conducted in accordance with the Arizona law.

(b) Acquisition Fund Custodian will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee.

(c) Acquisition Fund Custodian hereby represents and warrants (a) that the records of Acquisition Fund Custodian show that Lessee is the sole owner of the Collateral, (b) that the Acquisition Fund Custodian has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or

any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (c) that the Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Acquisition Fund Custodian is obligated to accept from Lessor under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Acquisition Fund Custodian shall promptly notify Lessor if any person requests Acquisition Fund Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(c) hereof, Acquisition Fund Custodian may allow Lessee to effect sales, trades, transfers and exchanges of Collateral within the Acquisition Fund, but will not, without the prior written consent of Lessor, allow Lessee to withdraw any Collateral from the Acquisition Fund. Acquisition Fund Custodian acknowledges that Lessor reserves the right, by delivery of written notice to Acquisition Fund Custodian, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Acquisition Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lessor to Acquisition Fund Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lessor to Acquisition Fund Custodian.

(g) Acquisition Fund Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Acquisition Fund Custodian will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Acquisition Fund Custodian and Lessee hereby agree that any property held in the Acquisition Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code,

notwithstanding any contrary provision of any other agreement to which Acquisition Fund Custodian may be a party.

(i) Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 7 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to Lessee with respect to the Acquisition Fund.

7. *Information Required Under USA PATRIOT ACT.* The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Acquisition Fund Custodian such information as it may request, from time to time, in order for the Custodian to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. *Miscellaneous*. (a) *Transactional Conflicts of Interest.* As required by the provisions of Arizona Revised Statutes Section 38-511, as amended, notice is hereby given that Lessee may, within three (3) years of the execution hereof, cancel this Agreement without penalty or further obligations, if any person significantly involved in initiating, negotiation, securing, drafting or creating this Agreement on behalf of Lessee is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of Acquisition Fund Custodian or a consultant to Acquisition Fund Custodian with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice from Lessee is received by Acquisition Fund Custodian unless the notice specifies a later time.

(b) Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This Agreement may not be amended except in writing signed by all parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lessor: Banc of America Public Capital Corp
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, Maryland 21031
Attn: Contract Administration
Fax: 443-556-6977

| | |
|---|---|
| If to Lessee: | City of Flagstaff, Arizona<br>211 West Aspen Avenue<br>Flagstaff, Arizona 86001<br>Attn: _____<br>Fax: _____ |
| If to Acquisition Fund Custodian: | Deutsche Bank Trust Company Americas<br>60 Wall Street, 27th Floor<br>New York, New York 10005<br>Attn: Lisa McDermid<br>Phone: 212-250-6674<br>Fax: 917-472-1575 |

(c) *Business with Iran and Sudan.* Pursuant to Arizona Revised Statutes Sections 35-391.06 and 35-393.06, Acquisition Fund Custodian certifies that it does not have scrutinized business operations in either Iran or the Sudan.

(d) *Immigration Laws and Regulations.* As required by the provisions of Arizona Revised Statutes Section 41-4401, Acquisition Fund Custodian warrants Acquisition Fund Custodian's compliance with all Federal and State immigration laws and regulations that relate to Acquisition Fund Custodian's employees, as well as subcontractors of Acquisition Fund Custodian of any tier relating to this Agreement, and their compliance with Arizona Revised Statutes Section 23-214(A); and acknowledges that a breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to including termination of this Agreement. Lessee retains the legal right to inspect the records of Acquisition Fund Custodian and any contractor's or subcontractor's employee of any tier who performed work pursuant to this Agreement, to ensure compliance with the warranty set forth herein.

IN WITNESS WHEREOF, the parties have executed this Acquisition Fund and Account Control Agreement as of the date first above written.

LESSOR:
Banc of America Public Capital Corp

By:_____
Name: _____
Title: _____

LESSEE:
City of Flagstaff, Arizona

By: _____
Name: _____
Title: _____

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Acquisition Fund Custodian

By:_____
Name: _____
Title: _____

By:_____
Name: _____
Title: _____

**SCHEDULE 1**
**to the Acquisition Fund and Account Control Agreement**

**FORM OF DISBURSEMENT REQUEST FOR EQUIPMENT COSTS**

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May __, 2013 by and between Banc of America Public Capital Corp, as Lessor and the City of Flagstaff, Arizona, as Lessee (the *"Lease"*) (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of May (the *"Acquisition Fund and Account Control Agreement"*) by and among Banc of America Public Capital Corp (*"Lessor"*), the City of Flagstaff, Arizona (*"Lessee"*) and Deutsche Bank Trust Company Americas, (the *"Acquisition Fund Custodian"*), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement for the following purposes:

| PAYEE'S NAME AND ADDRESS | INVOICE NUMBER | DOLLAR AMOUNT | PURPOSE |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

The undersigned hereby certifies as follows:

(i) The date on which Equipment Acceptance occurred with respect to the portion of the Renewable Energy Equipment for which disbursement is hereby requested is _____, and such portion of Renewable Energy Equipment is hereby accepted by Lessee for all purposes of the Lease.

(ii) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for costs relating to the Renewable Energy Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Renewable Energy Equipment relating to such obligation has been delivered, installed, is operating in a manner consistent with the manufacturer's intended use and has been inspected and finally accepted for all purposes by Lessee. Lessee has conducted such inspection and/or testing of the Renewable Energy Equipment relating to such obligation as it deems

necessary and appropriate in order to determine the Renewable Energy Equipment's operability and functionality in order to accept such Renewable Energy Equipment. Attached hereto is the original invoice with respect to such obligation.

(iii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(v) The Renewable Energy Equipment is insured in accordance with the Lease.

(vi) No event of nonappropriation or Event of Default, and no event which with notice or lapse of time, or both, would become an event of nonappropriation or Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vii) The disbursement shall occur during the Acquisition Period.

(viii) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

(ix) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

Dated: _____

CITY OF FLAGSTAFF, ARIZONA

By:_____
Authorized Representative

Disbursement of funds from the Acquisition
Fund in accordance with the foregoing
Disbursement Request hereby is authorized

BANC OF AMERICA PUBLIC CAPITAL CORP,
as Lessor under the Lease

By:_____
Name: _____
Title: _____

**SCHEDULE 2**
**to the Acquisition Fund and Account Control Agreement**

**FORM OF DISBURSEMENT REQUEST FOR DELIVERY COSTS**

Re: Equipment Lease/Purchase Agreement (Acquisition Fund – Arizona) dated as of May __, 2013 by and between Banc of America Public Capital Corp, as Lessor and the City of Flagstaff, Arizona, as Lessee (the *"Lease"*) (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of May (the *"Acquisition Fund and Account Control Agreement"*) by and among Banc of America Public Capital Corp (*"Lessor"*), the City of Flagstaff, Arizona (*"Lessee"*) and Deutsche Bank Trust Company Americas, (the *"Acquisition Fund Custodian"*), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts constituting Delivery Costs from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement for the following purposes:

| PAYEE'S NAME AND ADDRESS | INVOICE NUMBER | DOLLAR AMOUNT | PURPOSE |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for Delivery Costs identified in the Lease, and has not been paid. Attached hereto is the original invoice with respect to such obligation.

(ii) The Renewable Energy Equipment is insured in accordance with the Lease.

(iii) No event of nonappropriation or Event of Default, and no event which with notice or lapse of time, or both, would become an event of nonappropriation or Event of Default, under the Lease has occurred and is continuing at the date hereof.

(iv) The disbursement shall occur prior to _____, 2013.

(v) No Material Adverse Change in Lessee's financial condition shall have occurred since the date of the execution of the Lease.

(vi) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

Dated: _____

CITY OF FLAGSTAFF, ARIZONA

By:_____
Authorized Representative

Disbursement of funds to pay Delivery Costs
from the Acquisition Fund in accordance with the
foregoing Disbursement Request hereby is authorized

BANC OF AMERICA PUBLIC CAPITAL CORP,
as Lessor under the Lease

By:_____
Name: _____
Title: _____

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | David McIntire, Permanent Affordability Administrator |
| **Date:** | 04/29/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Approval of Ordinance 2013-07 authorizing the trade of City-Owned Property:** If approved, Ordinance 2013-07 will authorize the trade of city-owned land. Parcel number 104-01-007, which is located at the Southwest corner of Elden Street and Butler Avenue, will be combined with the parcel to the South of it for development purposes. The City will receive an improved parcel for the community land trust program from the six unit subdivision created through the trade.

**RECOMMENDED ACTION:**

Should the Council wish to move forward with this exchange:
1) Read Ordinance No. 2013-07 by title only for the final time
2) City Clerk reads Ordinance No. 2013-07 by title only (if approved above)
3) Adopt Ordinance No. 2013-07

**Policy Decision or Reason for Action:**

Approving the ordinance and authorizing the exchange would:

- generate one permanently affordable unit with no financial contribution in the exchange
- make possible private residential investment in Southside, a designated target neighborhood
- remove City maintenance responsibilities for the landscaping and snow removal on the parcel
- generate additional tax producing privately held parcels

Subsidiary Decision Points:
Council considered a request for preliminary plat for Elden Townhomes and approved it, with an effective date consistent with adoption of this Ordinance.

**Financial Impact:**

The trade exchanges a parcel with limited alternative uses and limited value for a parcel in an improved subdivision with a townhome on it. There is no cash as part of the exchange and no costs other than potential recording fees and title update costs. The use of the City's Incentive Policy for Affordable Housing has also been requested for the development. The exchange will eliminate City responsibilities for items such as irrigation, landscaping and snow removal on the existing parcel, thus reducing ongoing City costs, and replace it with a lot that will generate a $30 per month ground lease fee and be taxed based on the restricted resale value of the townhome. Maintenance will become the responsibility of the new homeowner. Additionally, the exchange provides the opportunity for the development of five market rate townhomes which will generate tax revenue that would not exist otherwise.

**Connection to Council Goal:**

5. Retain, expand, and diversify economic base

**Has There Been Previous Council Decision on This:**

City Council provided direction to use existing and underutilized City owned land to provide permanently affordable housing without the use of City financial resources whenever possible.

**Options and Alternatives:**

- Approve Ordinance 2013-07
- Not approve Ordinance 2013-07 and retain the parcel in the current use as greenspace
- Not approve Ordinance 2013-07 and offer the parcel to the general public through an acceptable procurement process

**Background/History:**

City Council requested staff work with underutilized existing parcels of City owned land to generate affordable housing and provide other benefits with minimal financial resources. Staff performed a limited inventory of City owned land and has identified a small number of parcels with viability. The developer, Southside Development, LLC approached Housing staff regarding a parcel that had been identified and offered the exchange. The parcel is on the south side of Butler in the Southside Neighborhood. It is currently acting as landscaped greenspace along the Butler corridor and given its irregular configuration, limited size and unfavorable location, possesses, in isolation, an extremely limited potential for development. The parcel was received in 1961 due to non-payment on an improvement district lien. Negotiations were positive and the developer is currently in the submittal process for the subdivision.

**Key Considerations:**

The land exchange:

- makes private redevelopment investment in the Southside Neighborhood possible
- generates one permanently affordable home providing ownership opportunities to a qualified low-income household (80% of Area Median Income - currently $49,700 for a household of four)
- reduces City maintenance costs by eliminating a parcel currently requiring landscaping, irrigation and snow removal
- generates taxable units through the creation of both traditional market rate and affordable ownership housing
- utilizes a parcel with limited alternative value
- is allowed under the Arizona Revised Statutes
- requires nominal City financial resources in the exchange to generate the benefit

**Expanded Financial Considerations:**

Increases revenue and reduces costs for the City while generating affordable housing through:

- revenue received through the construction, sale and taxation of six new ownership units
- ongoing receipt of the $30 per month ground lease fee for the land trust unit
- elimination of ongoing costs for the City maintenance requirements for the existing parcel
- the permanently affordable unit will be a part of the City's inventory and will become more affordable in relationship to the market over time

**Community Benefits and Considerations:**

This land exchange will:

- make private investment in Southside, a target neighborhood, possible
- provide a permanently affordable unit to a low/moderate income homebuyer
- provide jobs for the construction industry
- generate revenue for the City
- reduce ongoing expenses
- increase the inventory of permanently affordable homes in the Land Trust Program

**Community Involvement:**

Inform

The Community Housing Policy Task Force recommended the use of City land to support the development of permanently affordable housing.

Council direction in 2009 was to use City owned land to provide affordable housing without a City financial contribution whenever possible.

The developer approached City staff about the use of the parcel.

**Expanded Options and Alternatives:**

Not approve Ordinance 2013-07 and retain the parcel as greenspace - this would prevent the market home development as well as the affordable housing.

Not approve Ordinance 2013-07 and offer the parcel to the public through a procurement process - this would significantly delay, and potentially prevent, the development as well as possibly preventing the City from receiving the same value of the exchange. It would have the potential to identify an advantageous alternative.

---

**Attachments:** Exchange Agreement
Ordinance 2013-07
Elden Property Map

**PROPERTY EXCHANGE AGREEMENT BETWEEN SOUTHSIDE DEVELOPMENT, LLC AND THE CITY OF FLAGSTAFF**

THIS PROPERTY EXCHANGE AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2013 by and between the City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona ("City") and Southside Development, LLC an Arizona corporation ("Developer").

## RECITALS

A. WHEREAS, City is the owner of that certain real property generally located at the southwest corner of Butler Avenue and Elden Street, and more particularly described in Exhibit "A," attached hereto ("City Property");

B. WHEREAS, the City Property is currently being used for landscaping and sidewalk purposes and, given its irregular configuration, limited size and unfavorable location, possesses, in isolation, an extremely limited potential for development; and

C. WHEREAS, Developer is the owner of that certain real property located adjacent to the City Property, more particularly described in Exhibit "B," attached hereto ("Developer Property");

D. WHEREAS, in order to fully utilize Developer Property for housing purposes, Developer desires to acquire City Property in order to subdivide the combined properties and construct a six unit townhome development (the "Project");

E. WHEREAS, in exchange for City Property, Developer agrees, at the time of sale to a qualified homebuyer, to transfer the parcel beneath one of the townhome's units to the City and agrees to the imposition of permanent affordability restrictions on the unit itself;

F. WHEREAS, pursuant to A.R.S. § 9-407, the City is authorized to exchange real property for any other property within the City of Flagstaff of substantially equal value;

NOW, THEREFORE, in consideration of the mutual covenants entered between the parties, and in consideration of the benefits to accrue to each, it is agreed as follows:

## AGREEMENT

**1.** **Recitals.** The above recitals are true and correct and are incorporated herein and made a part hereof.

**2.** **Conveyance of Real Property by City.** Immediately prior to, or concurrent with, the recordation of the Final Plat for the Project, City shall convey title to City Property to Developer in exchange for Developer transferring title to the real property beneath a fully constructed unit of the Project (the "Unit") to City, as set forth in Section 3, below. The method of conveyance shall be by special warranty deed. Documents conveying City Property shall be recorded in the office of the County Recorder of Coconino County, Arizona.

**3.** **Conveyance of Real Property by Developer.** Concurrent with the sale of the Unit to a Qualified Homebuyer, Developer shall transfer title to the real property beneath the Unit ("Unit Property") to the City. The method of conveyance shall be by warranty deed. Documents conveying title to the real property beneath the Unit shall be recorded in the office of the County Recorder of Coconino County, Arizona. For purposes of this Agreement, "Qualified Homebuyer" means a member(s) of a household earning less than eighty percent (80%) of the current Area Median Income at the time of conveyance.

**4.** **Terms and Conditions.** This Agreement is subject to the following terms and conditions:

a. Developer shall do the following:

1. Construct the Unit in a manner and with materials comparable to the other units in the Project with the exterior appearance of the Unit indistinguishable from that of other units.
2. Market the Unit to the Eligible Population in a manner substantially similar to the marketing of the other units in the Project. For purposes of this Agreement, "Eligible Population" means those households' seeking homeownership with the potential to be Qualified Homebuyers based on eligibility criteria.
3. Cooperate with the City in ensuring that the sale of the Unit to a Qualified Homebuyer, the transfer of the Unit Property to the City, and the lease of the Unit Property to a Qualified Homebuyer, are coordinated in such a manner that the close of escrow is not unreasonably delayed.
4. Developer shall dedicate by plat all right-of-way needed for road improvements including, but not limited to, a bus pull-out area to allow for the loading and unloading of passengers out of the travel lanes of the roadway.

b. City shall do the following:

1. Provide an approved permanent affordability application, the "Community Land Trust Program Eligibility Application," to prospective buyers of the Unit as well as certify the eligibility of potential buyers identified by the Developer.
2. Provide technical assistance related to the marketing of the Unit, as well as provide documentation and technical assistance regarding the City's Land Trust Program.

3. Assist Developer in ensuring that potential buyers within the Eligible Population are aware of available lending programs and resources.
4. Work with the Developer to provide appropriate incentives through the "Incentive Policy for Affordable Housing," as approved by Council.
5. Cooperate with the Developer in ensuring that the sale of the Unit to a Qualified Homebuyer, the transfer of the Unit Property to the City, and the lease of the Unit Property to a Qualified Homebuyer, are coordinated in such a manner that the close of escrow is not unreasonably delayed.

**5. <u>Costs and Fees.</u>**

a. City shall bear the cost of any fees and any other closing costs incidental to Developer conveying the Unit Property to the City.

b. Developer shall bear the cost of any fees and any other closing costs incidental to City conveying the City Property to Developer.

**6. <u>Consideration.</u>** The Parties agree that City Property and Unit Property are of substantially equal value. The Unit Property, together with Developer's agreement to impose permanent affordability restrictions on the Unit, provide a significant public benefit as a whole and constitute adequate consideration for the City Property, and no monetary consideration shall be exchanged. In order to ensure that value of the Unit Property at the time it is transferred to the City is substantially equivalent to the City Property at the time it is transferred to Developer, Developer agrees to procure a bond guaranteeing the substantial equivalency of the property values during the period lasting from the transfer of the City Property by the City, as set forth in Section 2, above, until the transfer of the Unit Property by the Developer, as set forth in Section 3, above, or the reversion of the City Property back to the City as set forth in Section 10.

**7. <u>Environmental Matters.</u>** Developer and City covenant that, as of the date of their respective property transfers, they have not placed or brought onto the City Property or the Unit Property, nor permitted to be brought onto the City Property or the Unit Property, hazardous substances [as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601(14)] or materials including, but not limited to, petroleum products, the removal of which is required or the maintenance of which is prohibited or penalized by and applicable local, state, or federal law, ordinance, rule, regulation or requirement, and to the best knowledge of Developer an City, the City Property and the Unit Property are free of all such hazardous substances and materials.

**8. <u>Condition of Title of Unit Property.</u>** Developer agrees to convey Unit Property to City free and clear of any conflicting liens and encumbrances, leases, assessments, easements, and other possessory or non-possessory interests in the real property, except for recorded public utility easements. At least thirty (30) days prior to conveyance, Developer shall submit a current preliminary title report for Unit Property to confirm the acceptability of title in advance of the actual conveyance.

**9. <u>Agreement Does Not Bind or Commit The Future Actions of the Flagstaff City Council</u>.** By entering into this Agreement, the City only agrees to the exchange of properties set forth herein. City staff retains its discretion to recommend denial of any application submitted by Developer related to the Project, and the City Council retains its discretion to deny any application related to the Project forwarded to them. No application shall be approved until the City and City Council has followed all legally required procedures.

**10. <u>Reversion of City Property.</u>** The City Property shall revert back to the City, and all the rights and obligations of the parties granted herein shall cease, upon the earlier of the following:

a. Developer ceases to use City Property for the Project as described in this Agreement.

b. March 26, 2015.

**11. <u>Waiver.</u>** No delay or omission in the exercise of any right or remedy of a non-defaulting party regarding any default by the other party shall impair such right or remedy, or be construed as a waiver. A party's consent or approval or any act by the other party requiring consent approval shall not be deemed to waive or render unnecessary said party's consent to or approval of any subsequent act of the other party. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

**12. <u>Notices.</u>** Any notice, demand, request, consent, approval or communication under this Agreement shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed given (a) upon personal delivery or (b) forty-eight (48) hours from deposit of such notice in the United States mail, postage prepaid.

To City:

City Manager
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

To Developer:

David Carpenter
Southside Development, LLC
495 South River Run Road, Suite 100
Flagstaff, Arizona 86001

**13.** **Assignment.** Developer shall not assign, transfer, convey or otherwise dispose of this Agreement or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.

**14.** **Amendment.** This Agreement may be amended at any time by the mutual consent of the parties by a written instrument signed by both parties.

**15.** **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement, the parties hereto are formally bound to the provisions of this Agreement.

**16.** **Interpretation.** The paragraph headings of this Agreement are for reference and convenience only, are not made part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof. The provisions of this Agreement shall be construed in a reasonable manner to implement the purposes of the parties and of this Agreement.

**17.** **Indemnification.** Developer shall defend, indemnify and hold harmless the City or its agents, officers and employees from any claim, action, or proceeding against the City or its agents, officers or employees arising out of or relating to the City's approval of this Agreement. The City shall promptly notify Developer of any claim, action or proceeding received by the City.

**18.** **Entire Agreement.** This Agreement represents the entire understanding of City and Developer as to the matters contained herein, and no prior oral or written understanding shall be of any force or effect with respect to the matters covered in this Agreement.

IN WITNESS WHEREOF, the Parties, duly authorized, have executed this Development Agreement by and through their authorized representatives.

SOUTHSIDE DEVELOPMENT, LLC

_____

By:
Its: _____

CITY OF FLAGSTAFF, an
Arizona Municipal Corporation

_____

Mayor

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____
City Attorney

State of Arizona )
) ss
County of Coconino )

SUBSCRIBED AND SWORN to before me this ___ day of _____, 2013, by _____ the _____ of SOUTHSIDE DEVELOPMENT, LLC an Arizona Corporation, for and on behalf thereof.

_____
Notary Public

My Commission expires:

_____

**ORDINANCE NO. 2013-07**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AUTHORIZING CONVEYANCE OF CERTAIN REAL PROPERTY NEAR BUTLER AVENUE AND ELDEN STREET AS PART OF AN EXCHANGE AGREEMENT WITH SOUTHSIDE DEVELOPMENT, LLC; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT**

**RECITALS:**

WHEREAS, the City is the owner of a .167 acre lot located at the southwest corner of Butler Avenue and Elden Street (the "Property"); and

WHEREAS, the Property is currently being used for landscaping and sidewalk purposes and, given its irregular configuration, limited size and unfavorable location, possesses, in isolation, an extremely limited potential for development; and

WHEREAS, Southside Development, LLC (the "Developer") is the owner of a .167 acre lot located immediately south of, and adjacent to, the Property; and

WHEREAS, in order to fully utilize their property for housing purposes, Developer desires to acquire the Property in order to subdivide the combined properties and construct a six unit townhome development (the "Project"); and

WHEREAS, pursuant to Article VII, Section 5, of the Flagstaff City Charter, an ordinance is required for the "acquisition, sale, or exchange of public real property"; and

WHEREAS, the Parties have determined that the value of the properties to be exchanged are substantially equal;

**ENACTMENTS:**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. That the property exchange with Southside Development, LLC is hereby approved.

SECTION 2. That the Property Exchange Agreement attached to the staff summary submitted in support of this Ordinance is hereby approved, and the City Council hereby authorizes the City Manager to execute said document on behalf of the City.

SECTION 3. That the City Manager be and hereby is authorized to execute any documents that may be necessary to carry out the provisions of this Ordinance and the Property Exchange Agreement and City staff is authorized and directed to take all steps necessary and proper to implement this Ordinance and the Property Exchange Agreement and give them effect. All documents shall be in a form approved by the City Attorney.

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

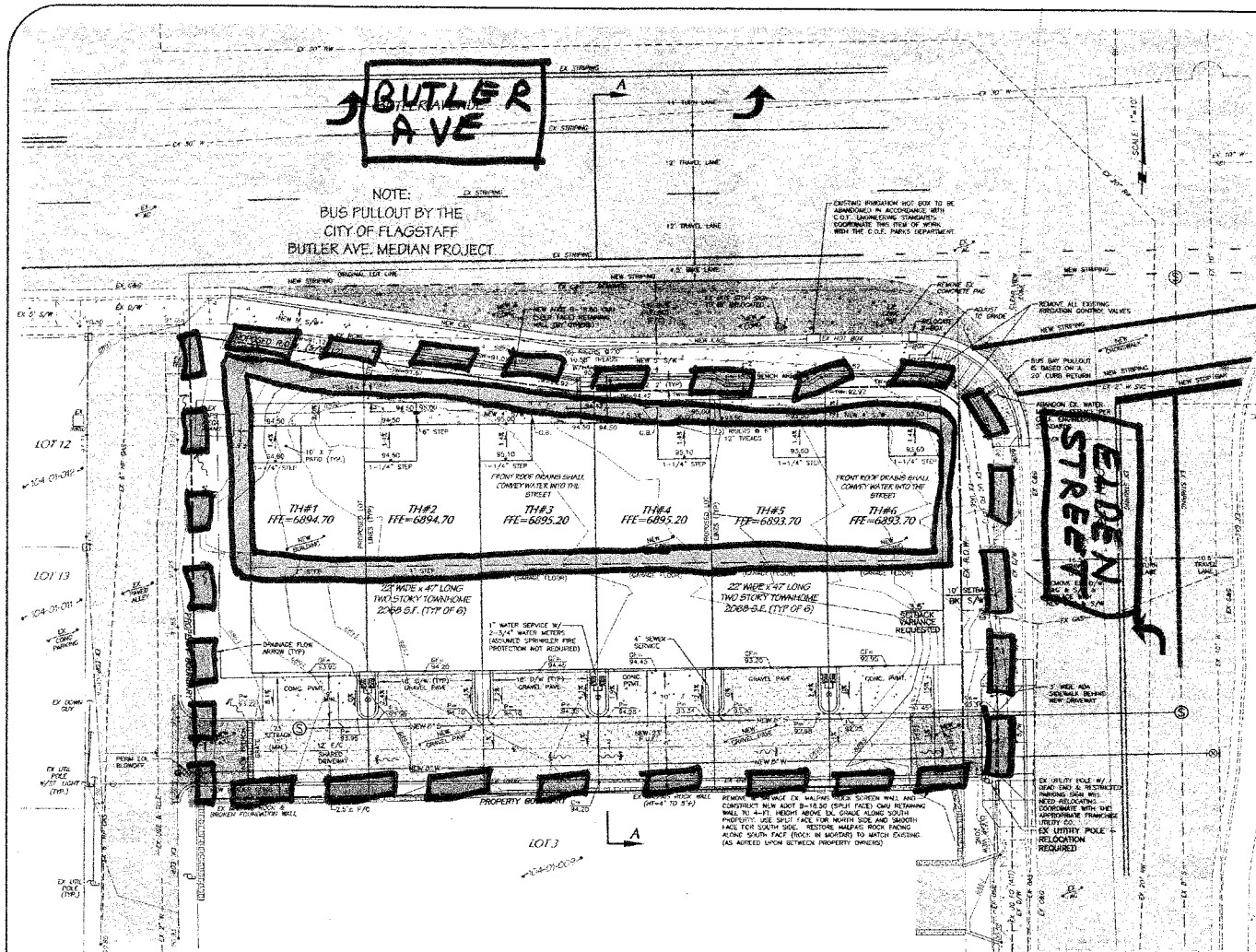
APPROVED AS TO FORM:

_____
CITY ATTORNEY

FUTURE COMBINED PARCEL
CURRENT CITY-OWNED PARCEL

# PRELIMINARY PLAT FOR ELDEN TOWNHOMES

A SUBDIVISION OF LOTS 1 & 2, BLOCK 17
REVISED PLAT OF BRANNEN ADDITION
BOOK 1, PAGE 42 RECORDS OF COCONINO COUNTY
LOCATED IN THE NW 1/4 OF SECTION 22,
TOWNSHIP 21 NORTH, RANGE 7 EAST, G&S.R.M.
FLAGSTAFF, COCONINO COUNTY, ARIZONA




## L.I.D. - DETENTION AND RAINWATER HARVEST IMPERVIOUS SURFACE CALCULATIONS

EXISTING SITE (17322 S.F.)
EX. A.C. DRIVEWAY = 1069 S.F.
EX. CONCRETE DRIVEWAY = 110 S.F.
EX. ROOF AREA = 1027 S.F.
EX. CONCRETE STAIRS = 36 S.F.
EX. ROCK WALL = 170 S.F.
EX. MULPAS WALL = 54 S.F.
TOTAL EX. IMPERVIOUS SURFACE = 2467 S.F.

DEVELOPED SITE (11342 S.F., 0.26 AC.)
NEW TOWN HOMES (6 x 1024) = 6204 S.F.
NEW GRAVEL PAVE ACCESS DRIVE (1524 S.F.) = 0 S.F.
NEW A.C. PAVEMENT ACCESS DRIVE (20x12) = 240 S.F.
NEW GRAVEL PAVE DRIVEWAYS (16x16x3=640) = 0 S.F.
NEW CONCRETE DRIVEWAYS (18 x 9 x 2) = 486 S.F.
NEW CONCRETE SIDEWALKS = 323 S.F.
TOTAL DEVELOPED IMPERVIOUS SURFACE = 7853 S.F.

CONCLUSION:
INCREASE IN IMPERVIOUS SURFACE AREA (7853-2467) = 5386 S.F.
ALLOWED IMPERVIOUS SURFACE WITHOUT LID = 6300 S.F.
CONCLUSION: NO ADDITIONAL L.I.D. OR DETENTION ARE REQUIRED
POTENTIAL STORM DRAINAGE SURPLUS WILL BE ESTABLISHED WITH FORMAL PRELIMINARY PLAT SUBMITTAL

RAINWATER HARVESTING REQUIREMENTS:
USE ALL NATIVE/DROUGHT TOLERANT PLANTS IN COMPLIANCE WITH COF LANDSCAPING STANDARDS AND UTILIZE PASSIVE RAINWATER HARVESTING

OPTIONAL USE OF EXISTING REDLAND WATER SERVICE FOR ALL LANDSCAPING WATER DEMANDS

## APPROXIMATE EARTHWORK

CUT = 1560 C.Y.
FILL = 10 C.Y.

SHEET NO. 4 OF 4

COF PROJECT # N/A

Mogollon ENGINEERING & SURVEYING INC
41 W. Santa Fe Avenue, Flagstaff, AZ. 86001
Phone: 928-774-1214 • Fax: 928-774-1282
928-214-0041 • Tel: 928-855-2015

ELDEN TOWNHOMES
PRELIMINARY PLAT
GRADING, DRAINAGE & UTILITIES

12/11/12
MES#1113

REVISIONS PER C.O.F. COMMENTS DATED 11-29-12

PROJECT NO. 1113
FIELD BOOK NO.
DATE: 01/13
DESIGNED BY: RJC
DRAWN BY: RCT/MB
CHECKED BY: RJC
PLOT SHEET-24 DWG
VERT. SCALE: 1"=5'
HOR. SCALE: 1"=10'

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council

**From:** Shannon Anderson, Human Resources Manager

**Date:** 05/01/2013

**Meeting Date:** 05/07/2013

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**TITLE:**

**Consideration and Adoption of Ordinance No. 2013-09:** An Ordinance adopting that Public Document entitled *2013 Addendum 5 of the Flagstaff Employee Handbook Regulations* by reference.

**RECOMMENDED ACTION:**

1) Read Ordinance No. 2013-09 by title only for the final time
2) City Clerk reads Ordinance No. 2013-09 (if approved above)
3) Adopt Ordinance No. 2013-09

**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:**

City Council discussed this item at the April 2, 2013, City Council meeting. Additionally, on April 16, 2013, City Council read and adopted Resolution No. 2013-08 and held first reading of Ordinance No. 2013-09.

**Options and Alternatives:**

1) Adopt recommended changes; 2) Provide alternate language for adoption; 3) Recommend different types of leave; 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.

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**Attachments:** Res. No. 2013-08
Ord. No. 2013-09
Addendum 5 - with track changes
Addendum 5 - no track changes

**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

**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

**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.

DRAFT

"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.

DRAFT

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.

DRAFT

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.~~

DRAFT

~~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

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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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**2013 ADDENDUM 5 OF THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS**

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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**2013 ADDENDUM 5 OF THE FLAGSTAFF EMPLOYEE HANDBOOK OF REGULATIONS**

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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# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Mark Richardson, Operations Manager |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Consideration and Approval of Purchase Under National Intergovernmental Purchasing Alliance Contract:** Purchase one (1) Four Wheel Drive Backhoe Loader with Attachments.

**RECOMMENDED ACTION:**

Purchase (replace) one (1) four wheel drive backhoe loader with attachments - 420F Backhoe Loader from Empire Caterpillar Equipment of Flagstaff, Arizona in the amount of $103,037.00 plus tax and added fees for a replacement of the Water Distribution Section's 1991 John Deere 510D backhoe loader with attachments.

**Policy Decision or Reason for Action:**

The Utilities Division - Water Distribution Section needs to replace this older equipment with newer more efficient equipment that will allow the Water Distribution Section to maintain its current level of service.

**Financial Impact:**

The Utilities Division - Water Distribution Section has budgeted $130,000.00 in fiscal year 2013 in account 201-49-01-731-4401. The bid list price of the 420 Backhoe Loader with attachments is 103,037.00 plus tax and added fees. A portion of the remaining funds will be used for additional lighting, radios, and safety equipment.

**Connection to Council Goal:**

1. Repair Replace maintain infrastructure (streets & utilities)

**Has There Been Previous Council Decision on This:**

No

**Options and Alternatives:**

Option A: Accept state contract bid from Empire Caterpillar as the lowest responsive bidder for the amount of $103,037.00 (One Hundred and Three Thousand, Thirty-Seven Dollars) plus taxes and fees for one (1) four wheel drive backhoe loader with attachments.

Option B: Reject the proposal and continue to use the existing 1991 backhoe loader while increasing repair & maintenance and decreasing reliability of this 22 year old piece of equipment.

**Background/History:**

The existing 1991 John Deere 510D backhoe loader is 22 years old and has been experiencing high maintenance costs. This piece of equipment was budgeted and approved for replacement for this fiscal year. The Fleet committee has also approved this vehicle replacement and it meets the new "fleet replacement policy."

**Key Considerations:**

The warranty on the new backhoe is 3 years or 5,000 hours including a 12 month travel time and warranty. The warranty does not cover items that are considered to be operating and maintenance items (tires, oil changes, brakes etc.). Replacement of this older piece of equipment is critical to improve the reliability of our water system maintenance during emergency breaks by minimizing equipment failures.

**Expanded Financial Considerations:**

The Purchase / replacement of old equipment has been built into the Capital program of the Utilities Division and is part of the rate structure. The purchase of this equipment is included in account 201-49-01-731-4401. The bid list price of $103,037.00 plus tax and other fees is attached. A portion of the remaining funds will be used for additional lighting, radios, and safety equipment. The total estimated cost for the backhoe loader with attachments, safety equipment, lighting and radio is $130,000.00.

**Community Benefits and Considerations:**

Currently the Utilities - Water Distribution Section has two (2) backhoe loaders in its fleet. The replacement of one old, four wheel drive backhoe loader with attachments will allow for the Utilities – Water Distribution Section to meet the expected level of service to the community, as it will improve our operation. Breakdowns associated with older equipment could increase response times and delay the repairs to the water distribution system when breaks occur.

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**Attachments:** Caterpillar Bid Price

**Empire Southwest, LLC**

1725 S. Country Club Dr.
Mesa, AZ 85210-6003
480.633.4300 tel
480.633.4489 fax

City of Flagstaff
211 West Aspen Ave
Flagstaff, AZ 86001-5399

Re: City of Tucson / National IPA Contract – RFP #120377

| PART # | BASE MODEL | LIST PRICE |
|---|---|---|
| **398-3668** | **420F BACKHOE LOADER DC2……** | **$116,970** |
| | 340-1678 420F BHL ST TIER 4I | |
| | 337-9696 COUNTERWEIGHT, 1070 LBS | |
| | 340-1712 ENGINE, 74.5KW, C4.4 DITA, T4I | |
| | 340-1729 STICK, EXTENDABLE, 14FT | |
| | 340-1747 RIDE CONTROL | |
| | 347-5941 STORAGE, GP-BOX | |
| | 373-4212 CAB, DELUXE, AC | |
| | 373-4257 HYDRAULICS, MP, 6FCN/8BNK, ST | |
| | 374-6824 PT, 4WD, STD SHIFT | |
| | 377-0022 COLD WEATHER PACKAGE, 120V HRC | |
| | 140-3668 BEACON LIGHT | |
| | 372-3178 CYLINDER (STABILIZER GUARDS) | |
| **387-6456** | **KIT, HYD, Combined E-STK……** | **$3,856** |
| **231-0700** | **Forks & Hooks for Front Bucket……** | **$1,435** |
| **337-7436** | **BUCKET-MP, 1.3 CYD……** | **$6,708** |
| | 1.35 CYD (1.03CUM) SAE capacity Multi Purpose. | |
| | Drilled to Accept bolt-on teeth or cutting edge (not included) | |
| **9R-5321** | **CUTTING EDGE, TWO PIECE……..** | **$325** |
| | Bolt-on reversible cutting edge for Loader Bucket | |
| **380-8961** | **TIRES, 4WD, BIAS, FIRESTONE……** | **$1,435** |
| | Front: Firestone 12.5/ 80- 18, 12 ply, I-3 Super Traction | |
| | Directional tire with low profile design that provides excellent | |
| | Traction and flotation. Tough sidewall for long wear. | |
| | Rear: Firestone 19.5L-24, 12 ply All Traction Utility | |
| | Directional tire provides excellent traction and flotation | |
| | Characteristics. Shock nylon-cord body resists impacts, | |
| | cuts, and punctures. Designed for superior noise and vibration | |
| | cancellation. | |
| **206-1748** | **SEAT BELT 3" SUSPENSION……** | **$105** |
| **9R-6007** | **STABILIZER PADS, FLIP-OVER……** | **$324** |
| | Flip-over pads for use on asphalt, concrete or soil | |
| **219-3387** | **BUCKET-HD, 24", 6.2 CFT……** | **$1,667** |

Empire Southwest, LLC

1725 S. Country Club Dr.
Mesa, AZ 85210-6003
480.633.4300 tel
480.633.4489 fax

| | | |
|---|---|---|
| **219-3386** | **BUCKET-HD, 18", 4.2 CFT……** | **$1,464** |
| **219-3411** | **BUCKET-HD, 12", 2.8CFT……** | **$1,414** |

**City of Tucson/ National IPA Contract #120377**

**Pricing Summary**

| | | |
|---|---|---|
| **List Price** | | **$135,703** |
| **Contract Discount** | **21%** | **($28,498)** |
| **Sub Total** | | **$107,205.00** |
| **Freight Zone Charge** | | **$7,219.00** |
| **Added Discount** | | **($11,388)** |
| **Net Total Less Tax** | | **$103,037.00** |

**Warranty:**
**3 Yr 5000 Hr PT Hyd – No Deductible**
**12 Months Travel Time Included**

**Thank you for your consideration of this proposal and we look forward to the continued business partnership with the CITY OF FLAGSTAFF.**

**Sincerely,**

**Todd Owen**
**Account Manager**

**This proposal is good for 90 days and prices are subject to change.**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Heidi Hansen, CVB Director |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE**

**Presentation**: *National Tourism Week*.

**RECOMMENDED ACTION:**

For information only

**INFORMATION**

The Flagstaff Convention and Visitors Bureau (CVB), along with Sherry Henry, Director of Arizona Office of Tourism, will be presenting on the impact of tourism in Flagstaff and Arizona as a whole. They will give a brief overview of their efforts and role in supporting this national event.

**Attachments:**

Memorandum

**14. B.**

# CITY OF FLAGSTAFF

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Mark Di Lucido, Comm Design & Redevel Proj Adm |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**Presentation**: *Vision Flagstaff*.

**DESIRED OUTCOME:**

Input, Review, and Help Disseminating the Concept to Our Constituents

**INFORMATION:**

Simply put, Vision Flagstaff (VF) facilitates place making by our constituents. VF is an online forum where Flagstaff residents and businesses help shape and thereby take ownership of our city. It is an outreach tool developed and managed by the City of Flagstaff's Community Design & Redevelopment Program toward the goal of making an already great city even better. Through VF, any resident, group of residents, neighborhood, friends, HOAs, districts, and businesses—any group having investment in the favorable outcome of a project, can suggest an idea and then lobby for it by getting other stakeholders to 'like' it and 'comment' on it via the website.

VF debuted about six weeks ago and so far community response has been strong—VF already has 192 members. To put this in perspective, Hilo, Hawaii's version of VF has been in place for over 18 months and has 431 members. VF's members have voiced 55 comments, and offered 193 'likes' across 18 entries.

Entries for projects are limited to the five areas that CD & R manages: beautification and landscaping, historic preservation and interpretation, public art, community design, and redevelopment. After an entry (idea) receives 50 'likes' on the site, it's assessed for feasibility and implementation. The quantity of 'likes' is a little bit arbitrary at this point and as we gauge member responses it may be increased or decreased for future entries (other cities have their benchmark for feasibility study status at 60 'likes'). The time allotted to receive 50 'likes' is currently not limited. However, this too may change as the community becomes familiar with the site and separate entries compete with each other for support and funding. In the six weeks that VF has been online, three projects are approaching 30 'likes' so we believe the '50' threshold is about right for determining whether an idea has community support and should merit further study by staff and possible implementation.

After an idea receives 50 'likes' we anticipate the following process: First, a feasibility study is conducted. This will include analysis by staff including budget team, legal, traffic, utilities and water, parking, business development, fire and police, and other agencies with abutting or shared rights-of-way. Next, meetings will be held with supporters of the entry to conduct a more comprehensive review of the idea. Also at this juncture, city commissions whose purview the project falls under may be involved, as may City Council. Third, and depending on the size and complexity of the project, potential partners may be identified. Partners may include individual stakeholders, organizations, agencies, or developers willing to take on the day-to-day administration of the project. Last, construction plans (where required), and mobilization of the project will begin.

VF will also document the actual construction or implementation of the project. We believe this is important to show constituents that we really do listen to them, and when feasible, give form to their ideas. Online photographic and narrative coverage of the project will include project kick-off/media events, documentation of noteworthy project milestones, and dedication ceremony when applicable.

Finally, VF provides CD & R with additional outreach and project administration tools. CD & R has already used VF as a virtual charrette. Following the 4th Street Gateway public meeting, one stakeholder group actually submitted their idea for the Gateway on VF for consideration by the larger 4th Street community. We envision continued use of VF for this secondary function at future public meetings whose purposes include projects within the five areas that CD & R manages. Entries generated by city staff will also occasionally populate the site so anyone wanting to know what projects CD & R is planning can see the project ideas, and ‘comment on’ and ‘like’ them.

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**Attachments:**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council

**From:** Rick Compau, Purchasing Director, Management Services

**Co-Submitter:** Don Jacobson

**Date:** 05/01/2013

**Meeting Date:** 05/07/2013

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**TITLE:**

**Consideration of Proposals**: New Municipal Court Building.

**RECOMMENDED ACTION:**

Reject all proposals as submitted for Request for Proposals (RFP) 2012-14, property and design-build construction for a new municipal court building

**Policy Decision or Reason for Action:**

City staff were unable to negotiate a successful agreement with the highest scoring proposer.

**Financial Impact:**

N/A

**Connection to Council Goal:**

Maintain and deliver quality, reliable infrastructure: address the need for a new Municipal Court Building.

**Previous Council Decision on This:**

No

**Options and Alternatives:**

1.) Reject the proposals as submitted
2.) Reject the proposals as submitted and re-solicit
3.) Reject the proposals as submitted and revisit all options, including re-solicit and/or re-evaluate other City owned property and funding sources

**Background/History:**

The existing court facility is located at 15 North Beaver St., Flagstaff, Arizona. This facility was originally built as a retail store and later purchased by the City of Flagstaff and remodeled to be the City Hall facility. It was remodeled again in 1984 to be the court facility. At just under 10,000 GSF, it is currently in need of significant repair and maintenance and is no longer adequate to keep up with the significant increase in case load over the years. There are only three (3) courtrooms and we need improved security, zoning, and prisoner transport.

In January of 2012, the City conducted a Request for Proposals (RFP) that allowed proposers to offer property only, property and construction, or construction only. There were a total of seven (7) proposal responses submitted, which were evaluated and scored according to the evaluation criteria outlined in the RFP document as follows:

**Property**

| | |
|---|---|
| 1.) General Site Description | 50% |
| 2.) Conditions of Sale | 40% |
| 3.) Description of Site/Surrounding Areas | 10% |
| | 100% |

**Design/Construction**

| | |
|---|---|
| 1.) Qualifications and Expertise of Firms on the Team | 60% |
| 2.) Experience of Project Manager and Key Personnel to be Assigned to the Project | 50% |
| 3.) Understanding of the Project and Presented Approach | 70% |
| 4.) Value Added Knowledge and Experience | 20% |
| | 200% |

After the initial evaluation and scoring of all seven (7) proposal responses, the evaluation committee shortlisted to the top three (3) highest scoring proposers to participate in the interview and presentation phase of the overall evaluation process. After the interview and presentation phase, the evaluation committee scored Kinney Construction Services the highest, based on both the initial scoring results and the interviews and presentations. In July of 2012, City staff began negotiations with Kinney Construction Services. Despite everyone's efforts, we were not able to come to a mutual agreement, given the City's available funding. The City's RFP contained language allowing the City to reject any and all offers, or portions thereof; or cancel and reissue an RFP.

**Key Considerations:**

The City and Kinney Construction Services were not able to negotiate a mutual agreement. Rejecting all proposals as submitted will allow the City to consider other City owned property that were not proposed in any of the proposal responses, as well as funding sources.

**Community Benefits and Considerations:**

The community could benefit from potential savings in City funds being spent through consideration of utilizing other City owned properties to construct the new court facility.

**Community Involvement:**

Inform

**Expanded Options and Alternatives:**

1.) Reject the proposals as submitted
2.) Reject the proposals as submitted and re-solicit
3.) Reject the proposals as submitted and revisit all options, including re-solicit and/or re-evaluate other City owned property and funding sources

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**Attachments:**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council

**From:** Neil Gullickson, Planning Development Manager

**Submitted For:** Jim Cronk, Planning Director

**Date:** 05/01/2013

**Meeting Date:** 05/07/2013

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**TITLE:**

**Consideration and Approval of Settlement and Release Agreement:** Canyon Del Rio.

**RECOMMENDED ACTION:**

Approve the Settlement and Release Agreement between the Canyon Del Rio Investors, LLC and the City of Flagstaff, AZ, authorize the City Manager to sign the Agreement and any other necessary and appropriate documents; and authorize staff to take other actions as needed to further the Council direction.

**Policy Decision or Reason for Action:**

In 2008, CDR filed suit against the City of Flagstaff in Coconino County Superior Court seeking declaratory relief, monetary damages, and injunctive relief relative to CDR property. (This suit relates to the appropriate Zoning Code to be used to allow CDR to proceed to plan & develop their property.)

In 2010, the City of Flagstaff filed suit against CDR in Maricopa County Superior Court seeking monetary damages relating to CDR property and CDR filed counter claims. (This suit relates to CDR reimbursing the City for past improvements to Butler Avenue.)

Both lawsuits remain unresolved and are still pending.

The City and CDR have been negotiating for approximately 2 years under the Rule 408 Confidential Process. The attached Settlement and Release Agreement is a result of those negotiations.

This Agreement sets out the framework on how CDR and the City will move forward on processing a large rezoning request the attached Agreement includes additional details. It also requires CDR to place the remaining $123,781.50 owed to the City for Butler Avenue improvements identified in the Maricopa Co. lawsuit, in escrow within 10 days of this Agreement becoming final.

If the Council approves this Agreement, both CDR and the City will jointly file with the Courts in both, Coconino County Action and the Maricopa County Action, a Notice of Tentative Settlement and Stipulation to Stay Action pending City Council formal action on the Entitlement Documents.

Subsidiary Decisions Points:
There are no additional decision points relating to this Agreement.

**Financial Impact:**

This agreement will reduce outside attorney's fees during the period of the Stay and could reduce them permanently. CDR will also place the remaining funds sought by the City for the Butler Avenue case in escrow as per the Agreement.

**Connection to Council Goal:**

Effective governance.

**Has There Been Previous Council Decision on This:**

This will be the Council's first action on this Settlement and Release Agreement.

**Options and Alternatives:**

Modify or reject the Agreement.

**Community Involvement:**

Inform

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**Attachments:** Settlement Agreement

ORIGINAL

# SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT ("Agreement") is made and entered into as of the __ day of _____, 2013 ("Execution Date"), by and between: (i) CANYON DEL RIO INVESTORS, LLC, an Arizona limited liability company ("CDR"); and (ii) THE CITY OF FLAGSTAFF, an Arizona municipal corporation ("City"). CDR and the City will be referred to collectively in the Agreement as the "parties," or each individually as a "party".

## RECITALS

A. In May 2002, CDR purchased a parcel of real property ("Initial Property") from the Arizona State Land Department ("ASLD"), at public auction. The Initial Property is located within the City.

B. Between 2002 and 2006, CDR sold portions of the Initial Property to third party purchasers. That portion of the Initial Property held by CDR (or CDR's wholly owned subsidiaries) as of the Execution Date ("CDR Property") is described in Table Four, below.

C. In 2008, CDR filed suit against the City in Coconino County Superior Court, CV 2008-0245 ("Coconino County Action"), seeking, *inter alia*, declaratory relief, monetary damages, and injunctive relief relating to CDR Property.

D. In 2010, the City filed suit against CDR in Maricopa County Superior Court, CV 2010-017142, seeking, *inter alia*, monetary damages relating to CDR Property, and CDR filed Counterclaims (collectively, "Maricopa County Action").

E. The Coconino County Action and the Maricopa County Action (collectively, "Lawsuits") have not been resolved and remain pending.

F. Each party to this Agreement has made a careful and independent investigation into all of the facts deemed by such party to be material. Because of the expense and uncertain outcome of any litigation involving the claims asserted in the Lawsuits, the parties desire to enter into this Agreement in order to forever resolve all past, and present disputes or claims existing between them which relate to the Lawsuits or the CDR Property.

G. Each party acknowledges this Agreement is the product of arm's length negotiation and the compromise and settlement of disputed claims. The parties further agree and acknowledge that this Agreement is not intended to be, and shall not be construed as, a confession or admission of liability by any party or an admission of any fact. Without

limiting the foregoing, the parties further agree that this Agreement does not manifest an acceptance of the factual or legal positions taken or asserted by the other party in the Lawsuits.

IN CONSIDERATION OF the mutual representations, warranties, covenants, agreements and releases set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## AGREEMENT

1. **Recitals.** The foregoing Recitals are incorporated as a part of this Agreement, and the parties represent and warrant the truth of all that is contained in the Recitals. The parties agree the Recitals are contractual and not mere recitals.

2. **Development of CDR Property.** CDR and the City have agreed to settle and resolve the Lawsuits by implementing a comprehensive zoning and development plan for the CDR Property. CDR and the City shall use their best efforts to negotiate and implement the settlement using the following framework:[1]

a. ***Specific Plan Amendment.*** The Canyon del Rio 1984 Specific Plan ("1984 Plan") will be amended as required to make the 1984 Plan compatible and consistent with the terms and provisions of this Agreement and the City's current 2011 zoning code ("2011 Zoning Code"). The 1984 Plan, as amended ("Amended 1984 Plan"), will be re-confirmed as the applicable planning document governing the development on those portions of the Canyon del Rio project currently owned by CDR ("CDR Property"), in conjunction with the MRPA and the DA. CDR, through the adoption of the Amended 1984 Plan, will be identified as the successor to the ASLD with respect to the CDR Property. In case of conflict between the Amended 1984 Plan and the 2011 Zoning Code, the Amended 1984 Plan will control as to the non-rezoned parcels identified in Table Four, and the 2011 Zoning Code will control as to the rezoned parcels identified in Table Four. In all cases, the terms and conditions of this Agreement will control.

b. ***Development Agreement.*** The Development Agreement ("DA") will be a separate component of the Entitlement Documents and will identify physical and financial responsibilities for specific and necessary public improvements, project phasing, and other related items, as outlined in this Agreement.

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[1] The Amended 1984 Plan, the Zoning Application, the DA, the MRPA and the Block Plats (all as defined in this Agreement) will be referred to collectively as the "Entitlement Documents."

c. ***Regional Plan Amendment.*** A Minor Regional Plan Amendment ("MRPA") that modifies the existing Regional Plan as required to accommodate the Amended 1984 Plan, the DA and the Final Zoning will be processed for COF Council action.

d. ***Zoning Application.*** An application and supporting documentation ("Zoning Application") which proposes to implement the Final Zoning will be submitted by CDR and processed by the City. The Zoning Application will reflect the terms and conditions set forth in this Agreement, will meet the threshold requirements for a "Large Scale Zoning Map Amendment" and will be processed by the City concurrently with the balance of the Entitlement Documents.

e. ***Timing and Procedures.*** The DA, the MRPA, the Zoning Application, the Amended 1984 Plan, and all ancillary zoning and land use documents will be completed for submission to the COF Council within 180 days following CDR's formal submission of the rezoning applications. The COF Council will then have 60 days to approve or reject the entire settlement package. The 240 day aggregate period described in the preceding two sentences ("Final Approval Period") may be extended by the mutual written agreement of CDR and the City if, notwithstanding the parties' diligent and good faith efforts, additional time is required to complete any required task. If, for any reason, the COF Council has not granted final approval to the entire settlement package within the Final Approval Period (including any extensions), the Settlement Agreement will be null and void and the parties will resolve their disputes through the Lawsuits.

3. **Substantive Provisions of the Entitlement Documents**. The Entitlement Documents, as applicable, will contain and/or incorporate the following concepts and/or provisions:

a. ***Resource, Open Space & Easement Requirements.*** The forest and slope resources (collectively, "Resources") previously calculated by Nasser Turk and Shepard Wesnitzer ("Resource Report") may be used by CDR and incorporated in the DA and the Zoning Application and used as the basis for the Resource Report. The Resources may exist in the two "resource banks" and will be allocated by CDR within CDR Property as Parcels are sold and/or developed. This "banking" will allow Resources within residential areas to be transferred and reallocated to other residential areas and, similarly, Resources within commercial areas to be transferred and reallocated to other commercial areas. Accordingly, while Resource allocations for specific Parcels may vary from applicable zoning requirements, the aggregate Resource allocations for the residential and commercial areas within the CDR Property will be consistent with the City's 1991 Zoning Code or the 2011 Zoning Code, at CDR's election, and the resource plan approved as part of the zoning. CDR and the City will incorporate a specific

"Resource Plan" for the CDR Property in the Amended 1984 Plan, MRPA and as part of the Zoning Application, and that Resource Plan will govern resource allocation within the CDR Property. CDR anticipates granting a deed of conservation easement to the Nature Conservancy (or similar non-profit organization) as part of the overall Resource Plan, which may (in CDR's discretion) include the establishment of a public park, open spaces and/or City's trail system. In addition, CDR (or CDR's successors) will grant and/or reconfirm existing and future easements for utilities, drainage, FUTS, *etc.*, which will be included in the final recorded plat for each Parcel within the CDR Property (each, a "Final Plat").

b. ***Block Plat Approval.*** Subject to the terms and conditions set forth in this Agreement, the Amended 1984 Plan, the Zoning Application and the DA will be based on a block plat concept for the CDR Property, with specific zoning and densities applied to each Parcel. The Block Plats will reflect spine infrastructure and large development tracts (*i.e.*, Parcels). The final Block Plats will be consistent with the structure outlined in this Agreement and the Zoning Application and will be incorporated in the Amended 1984 Plan and, as applicable, the MRPA. The City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with this Agreement and the City's Subdivision Ordinance. As used in this Agreement, the term "Block Plat" means plats for the individual Parcels listed in Table Four, below, that are consistent with the City's Subdivision Ordinance, but do not include or reflect internal roadway or utility plans or lot, building or amenity locations.

c. ***Zoning Confirmation.*** City Staff will support the zoning and, as applicable, the residential densities set forth in the following Table Four, which will be incorporated in the Zoning Application:

**Table Four**

| Parcel | Zoning | Use | Development Units[2] |
|---|---|---|---|
| E-1* | UC-Commercial | Office / Retail | N/A |
| E-2* | UC- | Office / Retail | N/A |

[2] Notwithstanding the maximum densities set forth in Table Four, CDR will retain the right to make minor density transfers between/among residential Parcels, provided that any proposed density transfer by CDR complies with the underlying zoning.

| | | | |
|---|---|---|---|
| | Commercial | | |
| F* | UC-Commercial | Office / Retail | N/A |
| G* | MR-Med Density | Attached Residential | 50 |
| H* | UC-Commercial | Office / Retail | N/A |
| I | R1-SFR | Detached Residential | 50 |
| J-1* | HR-High Density | Attached Residential / Multi-Family/Apartments | 240 |
| J-2* | HR-High Density | Attached Residential / Multi-Family/Apartments | 432 |
| K-1* | UC-Commercial | Retail | N/A |
| K-2* | UC-Commercial | Retail | N/A |
| N* | MR-Med Density | Attached Residential / Duplex Units | 42 |
| O* | MR-Med Density | Attached Residential / Church or School | 49 |
| P* | MR-Med Density | Attached Residential / Church or School | 40 |
| Q-1 | R1-SFR | Detached Residential | 41 |

| | | | |
|---|---|---|---|
| Q-2 | R1-SFR | Detached Residential | 21 |
| Q-3 | MR-Med Density | Attached Residential / Duplex Units | 80 |
| R 1-5 | MR-Med Density | Planned Community | 367 |
| S | SR-LG Lot Residential | Detached Residential | 14 |

All zoning relating to the CDR Property as set forth above ("Final Zoning") will be confirmed and approved in connection with the adoption and approval of the Entitlement Documents by the COF Council. Parcels marked with an * in Table Four, above, are to be re-zoned. A future Parcel owner may elect to seek a change to the zoning of any Parcel from the Final Zoning set forth above. If that occurs, the zoning change will be subject to the City's then applicable rules and procedures. CDR acknowledges that the City may not "pre-commit" to grant the Final Zoning and that approval and implementation of the Final Zoning is subject to the COF Council final approval in accordance with the 2011 Zoning Code, the Amended 1984 Plan and this Agreement. The City, however, acknowledges that implementation of the Final Zoning (and all of the Entitlement Documents) is a condition precedent to the implementation of the final settlement.

d. ***Parcels I, Q-1, Q-2, R & S.*** CDR will be permitted to develop Parcels I, Q-1, Q-2, R and S (collectively, "Residential Parcels") as residential properties, with no required attached residential product, based on the zoning designations and densities set forth in Table Four, above. Final Plat approval for the Residential Parcel(s) may be considered as part of a separate subdivision application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. The Amended 1984 Plan will reflect the densities set forth in Table Four, above. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

e. ***Parcels G, N, O & P.*** The 1984 Plan provides an alternative medium density residential zoning classification for Parcels G, N, O and P (collectively, "Med-Den Reserve Parcels"). CDR will be permitted to develop the Med-Den Reserve Parcels as attached single-family residential properties, based on the zoning designations and densities set forth in Table 4, above. Final Plat approval for the Med-Den Reserve

Parcel(s) may be considered as part of a separate application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. The Amended 1984 Plan will reflect the densities set forth in Table Four, above. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

f. ***Parcels J-1 and J-2.*** The 1984 Plan provides an alternative high density residential zoning classification for Parcels J-1 and J-2 ("High-Den Reserve Parcels"). CDR will develop the High-Den Reserve Parcels as multi-family residential properties (apartments), based on the zoning designations and densities set forth in Table Four, above. Final Plat approval for the High-Den Reserve Parcels may be considered as part of a separate application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. The Amended 1984 Plan will reflect the densities set forth in Table Four, above. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

g. ***Parcels E-1, E-2, F, H, K-1 & K-2.*** CDR and the COF Staff agree that the Urban Commercial ("UC") zoning is the appropriate zoning under the 2011 Zoning Code for Parcels E-1, E-2, F, H, K-1 and K-2 (collectively, "UC Parcels"). Final Zoning of the UC Parcels will occur concurrently with the final adoption of the Entitlement Documents. Final Plat approval for the UC Parcel(s) may be considered as part of a separate application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

h. ***Transfer of Parcel Q3 to the City.*** The DA will include the transfer of Parcel Q3 ("COF Residential Parcel") to the City, at no cost to the City, for its use in providing affordable housing ("AH"). The COF Residential Parcel represents approximately five percent (5%) of the overall residential density for CDR and satisfies the AH requirement for the CDR Property as a whole. CDR recognizes the City target for receiving AH incentives is ten percent (10%) of the overall residential density; therefore, if any developer of portions of the CDR Property (other than Q3) elects to include additional AH, the City will credit 5% or one-half of the 10% requirement when making its incentive calculations. AH development in addition to Parcel Q3 will not, however, be a prerequisite or condition to the development of any portion(s) of the CDR Property or the issuance of Final Plats in accordance with the terms and conditions set forth in this memo and the Entitlement Documents. The COF Residential Parcel will be

provided on an unimproved basis with the Q-3 Utility Infrastructure (as defined below) brought to the COF Residential Parcel property line. CDR will also be responsible for dedicating the Harold Ranch Road ROW and for the completion of the Q-3 Roadway Improvements (as defined below). The term "Q-3 Utility Infrastructure" will mean improvements identified by the Impact Studies (as defined below) that meet City's municipal requirements and are of sufficient size and capacity to accommodate the development of Parcel Q-3 for AH purposes and extending these water, sewer, traffic and drainage etc. improvements for that portion of Harold Ranch Road which is located on the CDR Property. The term "Q-3 Roadway Improvements" will mean the dedication of the Harold Ranch Road ROW and completing the roadway improvements required to finish that portion of Harold Ranch Road which is located on the CDR Property in a manner consistent with the City's Engineering Standards, the Impact Studies and the Final Zoning. The exact size and scope of the Q-3 Utility Infrastructure and the Q-3 Roadway Improvements will be set forth in the DA, provided, however, that the Q-3 Roadway Improvements East of Parcel Q-3 shall be limited to one lane of pavement in each direction installed to meet ten-year storm requirements, with no curb and gutter required. CDR's obligation to install the Q-3 Utility Infrastructure and the Q-3 Roadway Improvements will be subject to the Phasing Plan (to be developed in the rezoning case, as outlined below) and will be triggered by the recordation of a Final Plat for Parcel R-4 within the CDR Property.

i. ***Infrastructure; Development Phasing & Drainage.*** CDR will provide the infrastructure improvements required for the development of the CDR Property on a phased basis. City and CDR will work together in good faith to prepare, as part of the Zoning Application, a development and infrastructure phasing plan ("Phasing Plan") which is consistent with the Amended 1984 Plan and the Final Zoning. The Phasing Plan will be incorporated in the DA and/or the Amended 1984 Plan, as appropriate. CDR anticipates completing specific infrastructure improvements for the CDR Property at the point(s) required for the development of individual Parcels, based on sales and the overall demand for property in the Flagstaff market. The Phasing Plan will include applicable requirements for fire access, water and sewer service, and other public facilities. The City's current ordinances impose a rainwater harvesting regulation and an LID (low impact design) regulation of one inch (1") on-site storm water retention. The 1984 Plan does not include LID or rainwater harvesting provisions. CDR has agreed to comply with the City's LID requirements up to (but not exceeding) on-site stormwater retention of one-half inch (½"). CDR requests COF Council approval of: (i) an exemption from the rainwater harvesting regulations for the CDR Property; and (ii) application of a one-half inch (½") maximum LID requirement to the CDR Property (collectively "Waiver"). In all cases, CDR will obtain a Drainage Impact Analysis ("DIA") based on the City's LID/Stormwater standards at the time of preparation, as part of the Impact Studies. Drainage for the CDR Property will be handled, and LID calculations will be made, on a master-planned basis, with the use of regional drainage

facilities. The Waiver will be submitted to the COF Council for approval as part of the Settlement Agreement.

j. ***Butler Avenue / Butler & Fourth Street Intersection.*** CDR will agree to make all remaining payments relating to the existing Butler Avenue and Fourth Street Assessment ("Existing Assessment") immediately upon final approval and adoption of the Entitlement Documents and all associated zoning. The DA will include a budget for, and an allocation of, costs associated with anticipated future improvements to Butler Avenue, the Butler & Fourth Street intersection ("Intersection") and any other off-site/regional improvements reasonably required by the City and accepted by CDR as part of the approved DA (collectively, "Off-Site Improvements") based on the following structure:

(A) Promptly following execution of this Agreement, CDR will obtain an updated Traffic Impact Analysis, Water and Sewer Impact Analysis and DIA (collectively, "Impact Studies"), as reasonably required based on the Final Zoning.

(B) Subject to terms approved by the City and CDR, the DA will impose an obligation on CDR to pay for its proportionate share of the actual cost of the Off-Site Improvements attributable to the CDR Property's anticipated impact on public infrastructure as determined by the Impact Studies ("CDR Share").

(C) CDR will not be required to pay for (and the CDR Share will not include) Off-Site Improvements that are required to:

(i) elevate the existing Butler Avenue and Fourth Street intersection;

(ii) elevate the existing Butler Avenue roadway leading to or from the Butler Avenue and Fourth Street intersection;

(iii) elevate the existing north leg of Fourth Street roadway leading to or from the Butler Avenue and Fourth Street intersection;

(iv) Off-Site Improvements that are not necessitated by the CDR Property's anticipated impact on public infrastructure as determined by the Impact Studies; and

(v) Any drainage features or infrastructure required to convey stormwater under Butler Avenue and/or the Butler Avenue and Fourth Street intersection.

CDR understands and acknowledges the Final Zoning may require a new calculation of the CDR Share based on the Impact Studies. The revised CDR Share and the Phasing Plan will be an Exhibit to the DA in order to avoid any potential for future dispute.

k. ***Fourth Street South of Butler Avenue.*** With respect to the Fourth Street roadway south (from Butler Avenue through Parcel M), CDR will agree to pay for those improvements attributable to the CDR Property's anticipated impact on public infrastructure as determined by the Impact Studies. CDR also acknowledges that the City's Engineering Standards may require certain improvements to the Fourth Street roadway extending south from the Butler and Fourth Street intersection which otherwise exceed the CDR Property's anticipated impact on public infrastructure as determined by the Impact Studies and the City agrees, in connection with the preparation of the DA, to work with CDR, in good faith, to minimize any expense CDR may be required to incur in connection with the Fourth Street roadway south of the Butler and Fourth Street intersection which otherwise exceed the CDR Property's anticipated impact on public infrastructure and/or the CDR Share ("Additional Expense"). CDR will not be obligated to construct any other east-half roadway or edge improvements adjacent to Parcels D and L. CDR shall be free to seek a contribution agreement from the ASLD for the Additional Expense or any other aspect of the existing (or expected future) improvement of the Fourth Street roadway south of the Butler and Fourth Street intersection.

l. ***Parcel O & P Sale.*** CDR and the City agree Parcels O and P may be sold to, and developed as, a church – using the City's CUP process. Otherwise, the zoning for Parcels O and P will be as outlined in **Paragraphs 3(c) and (e)**, above.

4. **Settlement Implementation.** CDR and the COF Staff have approved the terms of this Agreement. CDR and the COF Staff will act diligently to submit this Agreement to the COF Council for approval at the earliest possible date (anticipated to be during the month of May 2013). Upon COF Council approval (including the Waiver), CDR and the City will promptly execute this Agreement, and CDR will promptly make the Deposit required by **Paragraph 5**, below. Upon execution of this Agreement ("Effective Date"), the parties will take the following actions to implement and carry out the terms of this Agreement as expeditiously as possible:

(A) CDR and the City will begin work on the MRPA and the DA;

(B) CDR will obtain the Impact Studies and initiate and diligently pursue the Zoning Application; and

(C) once finalized, the MRPA, the Zoning Applications, the DA and any other Entitlement Documents reasonably required to obtain final COF Council approval will be submitted to the City Planning and Zoning Commission for review and recommendation, and thereafter to the COF Council for final approval.

5. **Existing Butler Avenue Assessment**. Within ten (10) days of the Effective Date, CDR shall deposit, by wired or cashiered funds, the sum of $123,781.50 ("Deposit"), representing the remaining principal amount of the Butler Avenue assessment at issue in the Maricopa County Action, in a mutually-agreed interest bearing escrow account ("Account") with First American Title Insurance Company, Phoenix, Arizona ("Escrow Agent"), to be disbursed by Escrow Agent (with accrued interest) upon the first of the following events to occur:

(A) To the City upon the COF Council's formal and final approval of the Entitlement Documents;

(B) In accordance with written mutual instructions to the Escrow Agent executed by the City and CDR; or

(C) By order of the Court in the Maricopa County Action, in accordance with **Paragraph 6**, below.

CDR and the City will enter into Escrow Agent's standard form escrow instructions with respect to the Account. Any fees charged by Escrow Agent in connection with the Account will be deducted from the Account.

6. **Disposition of the Lawsuits.**

a. ***Interim Stay***. Following the Effective Date and upon CDR's delivery of the Deposit to Escrow Agent pursuant to **Paragraph 5**, above, CDR and the City shall authorize and instruct their respective counsel to jointly file with the Courts in both the Coconino County Action and the Maricopa County Action, a Notice of Tentative Settlement and Stipulation to Stay Action, in substantially the form of Exhibit "A" to this Agreement. CDR and the City, through their respective counsel, will take any and all necessary and appropriate actions to obtain an order of the Court to stay the Lawsuits pending the COF Council's formal and final approval of the Entitlement Documents. If either Court declines to issue such an order, CDR and the City agree to enter into an appropriate tolling agreement with respect to and to preserve their respective claims and defenses in that action, pending final approval of the Entitlement Documents.

b. ***Final Dismissal.*** Upon the formal and final approval of the Entitlement Documents and the Escrow Agent's disbursement of the Deposit to the City as contemplated in **Paragraph 5(A)**, above, and provided that CDR and the City have each fully performed their respective obligations under this Agreement, CDR and the City shall authorize and direct their respective counsel to file with the Courts in the Maricopa County Action and the Coconino County Action a Stipulation for Dismissal With Prejudice.

c. ***Return to Litigation.*** If, despite the good faith and diligent efforts of COF Staff and CDR, final approval of the Entitlement Documents has not occurred within the time provided in **Paragraph 2(e)**, above, or such additional period as the parties agree to in writing, CDR and the City shall authorize and instruct their respective counsel to jointly file a motion to reinstate the Lawsuits on the Courts' active calendars in order to determine the merits of the parties' respective claims and defenses, including, but not limited to, the disposition of the Deposit. CDR and the City shall further authorize and instruct their respective counsel to work in good faith to establish a revised scheduling order that will permit the disclosure, discovery and motion practice reasonably required to properly and efficiently adjudicate the Lawsuits. In addition to awarding the Deposit to the appropriate party, the Court may award any other relief to which a party is entitled at law or in equity, including, but not limited to interest, attorneys' fees, and costs.

7. **Mutual Release of Claims.** Effective upon the COF Council's final approval of the Entitlement Documents and dismissal of the Lawsuits in accordance with **Paragraph 6(b)**, above, the parties mutually release each other as follows:

a. ***Release by CDR.*** Except as otherwise expressly provided in this Agreement or the Entitlement Documents, CDR, hereby irrevocably releases and discharges the City, and its current and former mayors, council members, department managers, employees, agents, representatives, and attorneys, from any claim, cause or right of action, liability, or obligation of any kind, type, or nature, whether presently known or unknown, accrued or not accrued, which arises out of or which in any manner relate to the CDR Property, the zoning of the CDR Property, the 1984 Plan, and/or the existing Butler Avenue assessment, including, but not limited to any claims which were or which could have been asserted in either of the Lawsuits.

b. ***Release by City.*** Except as otherwise expressly provided in this Agreement or the Entitlement Documents,, the City hereby irrevocably releases and discharges CDR, and its current and former members, agents, subsidiaries, employees, managers, partners, shareholders, representatives, and attorneys, from any claim, defense, cause or right of action, liability, or obligation of any kind, type, or nature, whether presently

known or unknown, accrued or not accrued, which arises out of or which in any manner relate to the CDR Property, the zoning of the CDR Property, the 1984 Plan, and/or the existing Butler Avenue assessment, including, but not limited to any claims which were or which could have been asserted in either of the Lawsuits.

Notwithstanding anything to the contrary, no provision of this Agreement shall constitute a release of any claim arising out of a breach of this Agreement; all such claims being expressly reserved.

8. **Time is of the Essence.** Time is of the essence of this Agreement and each term and provision hereof.

9. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, representatives and assigns (and, in the case of CDR, its subsidiaries that hold legal title to the CDR Property).

10. **Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement except: (i) those persons identified in the release provisions of this Agreement (**Paragraph 7**, above) who are expressly designated as actual and intended third-party beneficiaries of such release provisions; and (ii) CDR's wholly owned subsidiaries that hold legal title to the CDR Property.

11. **Attorneys' Fees.** Should any litigation be commenced between the parties concerning the terms of this Agreement, or the rights and duties of CDR or the City under this Agreement, the prevailing party or parties in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to payment of all of its costs, expenses (including, but not limited to, expert fees), and reasonable attorneys' fees incurred in connection with the dispute.

12. **Entire Agreement.** This Agreement is a fully integrated document, containing the entire understanding among the parties, and supersedes and integrates any prior understandings or written or oral agreements among the parties including, without limitation, the Settlement Memorandum dated March 29, 2013 (and all earlier drafts and versions of that document).

13. **Representations, Warranties and Covenants**. Each party to this Agreement represents, warrants and covenants to the other parties as follows:

(A) This Agreement is the result of arm's length negotiations between parties experienced in business and financial affairs who have equal access to information concerning this transaction. They have obtained legal advice concerning the meaning and effect of this Agreement and

that they had sufficient time to consider the meaning and effect of this Agreement;

(B) They have taken all necessary action to authorize the execution, delivery, and performance of this Agreement and have the authority to execute, deliver and perform this Agreement and all the transactions contemplated hereby, including, without limitation, the releases provided for in **Paragraph 7**, above;

(C) The enforceability of this Agreement is not affected by the provisions of any other agreement to which such party is a party and will not conflict with any provision of any law or regulation to which such party is subject;

(D) CDR has the full power and authority to bind its subsidiaries and the CDR Property to the terms and provisions of this Agreement; and

(E) Except for the Lawsuits, there are no actions, suits or proceedings pending or threatened against either party in any court or by or before any governmental agency or instrumentality and no existing judgments, orders or other restraints, which would materially affect the ability of such party to carry out the transactions contemplated by this Agreement.

14. **Controlling Law and Choice of Forum.** This Agreement and all questions relating to its validity, interpretation, performance, and inducement shall be governed by and construed, interpreted, and enforced in accordance with the substantive laws of the State of Arizona (without reference to conflict of law principles). Any action pertaining to this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona, in and for the County of Maricopa, and all parties irrevocably consent to exclusive jurisdiction and venue in such court for such purposes.

15. **Indulgences Not Waivers.** Neither any failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver; nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of any other right, remedy, power or privilege.

16. **Construction.** This Agreement is the result of negotiations between the parties and was initially drafted by the attorneys for the City as a matter of convenience only and shall not be construed for or against any party on account thereof, but shall be construed according to its plain meaning.

17. **Additional Instruments and Acts.** Without limiting the provisions of **Paragraphs 2** through **7** of this Agreement, the parties shall promptly execute and deliver all such other instruments and take all such other action as any party may reasonably request from time to time, before or after the execution of this Agreement, in order to effectuate the transactions contemplated by this Agreement.

18. **Modifications and Amendments.** There shall be no amendments or modifications to this Agreement unless any such amendment or modification is in writing and signed by all parties to this Agreement. Any alleged or purported amendment or modification shall be void and unenforceable unless it is in writing and signed by all parties to this Agreement. This provision concerning amendments or modifications cannot be waived or otherwise made unenforceable except by a written document signed by all parties to this Agreement.

19. **Exhibits.** All Exhibits attached to this Agreement are fully incorporated herein and are made a part of this Agreement whether the Exhibits are executed by any or all of the parties.

20. **Miscellaneous.**

a. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

b. Words used in this Agreement, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, or other gender, masculine, feminine or neuter, as the context requires; the words "including," "includes" and "include" shall mean without limitation, by reason of enumeration.

The parties have executed this Agreement as of the Execution Date.

**CANYON DEL RIO INVESTORS, LLC**

By: _____
Robert M. Semple, Manager

**CITY OF FLAGSTAFF**

By: _____

Its: _____

**APPROVED AS TO FORM AND CONTENT BY COUNSEL:**

**DICKINSON WRIGHT/MARISCAL WEEKS**

By: _____
Michael S. Rubin
Attorneys for City of Flagstaff

DATED: 4/18/13

**CHESTER & SHEIN, P.C.**

By: _____
David E. Shein
Attorneys for Canyon del Rio Investors, LLC

DATED: 4/16/13

**ACKNOWLEDGED AND AGREED BY CDR SUBSIDIARIES:**

**CDR LAND INVESTORS I, LLC,**
an Arizona limited liability company

By: _____
Robert M. Semple, Manager

**CDR LAND INVESTORS II, LLC,**
an Arizona limited liability company

By: _____
Robert M. Semple, Manager

**CDR LAND INVESTORS III, LLC,**
an Arizona limited liability company

By: _____
Robert M. Semple, Manager

PHOENIX 53876-3 51331v1
4/11/2013

# EXHIBIT A

Michael S. Rubin (#005131)
Nicole Felker Bergstrom (#025475)
**DICKINSON WRIGHT / MARISCAL WEEKS**
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012-2705
Phone: (602) 285-5000
Fax: (602) 285-5100
*Attorneys for City of Flagstaff*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

~ COCONINO COUNTY ~

| | |
|---|---|
| CITY OF FLAGSTAFF, a municipal corporation,<br><br>Plaintiff,<br><br>*vs.*<br><br>CANYON DEL RIO INVESTORS, L.L.C., an Arizona limited liability company,<br><br>Defendant. | No. CV2008-0245<br><br>**STIPULATION AND REQUEST TO PLACE CASE ON INACTIVE CALENDAR**<br><br>(Assigned to the Hon. Mark R. Moran) |

The parties have entered into a Settlement Agreement, a copy of which is attached to this Stipulation as **Exhibit A**. As outlined in the Settlement Agreement, the settlement structure involves significant engineering and entitlement work, and associated municipal approvals. Accordingly, the full and final implementation of settlement may require up to 365 days.

For these reasons, the parties request this case be placed on the inactive calendar for up to 365 days, and the parties will advise the Court promptly if (i) the settlement becomes final; or (ii) the settlement fails during the implementation process. If the settlement becomes final, the case will be dismissed with prejudice. If the settlement fails, the case will be placed back on

the active calendar for litigation and the parties will promptly prepare and submit a proposed form of Scheduling Order to the Court for approval.

A proposed form of Order is attached.

DATED this ____ day of _____, 2013.

**DICKINSON WRIGHT / MARISCAL WEEKS**

By:_____

Michael S. Rubin, Esq.
Nicole Felker Bergstrom, Esq.
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012
*Attorneys for City of Flagstaff*

**BURCH & CRACCHIOLO, P.A.**

By:_____

Edwin D. Fleming, Esq.
Daryl Manhart, Esq.
Jessica Conaway, Esq.
702 East Osborn Road, Suite 200
Phoenix, Arizona 85014
*Attorneys for Canyon Del Rio Investors, LLC*

Michael S. Rubin (#005131)
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*Attorneys for City of Flagstaff*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

~ COCONINO COUNTY ~

| | |
|---|---|
| CITY OF FLAGSTAFF, a municipal corporation,<br><br>Plaintiff,<br><br>*vs.*<br><br>CANYON DEL RIO INVESTORS, L.L.C., an Arizona limited liability company,<br><br>Defendant. | No. CV2008-0245<br><br>**ORDER**<br><br>(Assigned to the Hon. Mark R. Moran) |

Upon reviewing the Stipulation and Request to Place Case on Inactive Calendar, and good cause appearing,

**IT IS HEREBY ORDERED** that this matter is continued on the inactive calendar for up to 365 days, or until _____, 201__.

DATED: _____

_____
Judge of Superior Court

Michael S. Rubin (#005131)
Nicole Felker Bergstrom (#025475)
**DICKINSON WRIGHT / MARISCAL WEEKS**
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012-2705
Phone: (602) 285-5000
Fax: (602) 285-5100
*Attorneys for City of Flagstaff*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

~ MARICOPA COUNTY ~

| | |
|---|---|
| CITY OF FLAGSTAFF, a municipal corporation,<br><br>Plaintiff,<br><br>*vs.*<br><br>CANYON DEL RIO INVESTORS, L.L.C., an Arizona limited liability company,<br><br>Defendant. | No. CV 2010-017142<br><br>**STIPULATION AND REQUEST TO PLACE CASE ON INACTIVE CALENDAR**<br><br>(Assigned to the Hon. Sally Schneider Duncan) |

The parties have entered into a Settlement Agreement, a copy of which is attached to this Stipulation as **Exhibit A**. As outlined in the Settlement Agreement, the settlement structure involves significant engineering and entitlement work, and associated municipal approvals. Accordingly, the full and final implementation of settlement may require up to 365 days.

For these reasons, the parties request this case be placed on the inactive calendar for up to 365 days, and the parties will advise the Court promptly if (i) the settlement becomes final; or (ii) the settlement fails during the implementation process. If the settlement becomes final, the case will be dismissed with prejudice. If the settlement fails, the case will be placed back on

the active calendar for litigation and the parties will promptly prepare and submit a proposed form of Scheduling Order to the Court for approval.

A proposed form of Order is attached.

DATED this ____ day of _____, 2013.

**CHESTER & SHEIN, P.C.**

By: *__/s/ David E. Shein*

David E. Shein, Esq.
Sonia M. Phanse, Esq.
8777 N. Gainey Center Drive, Suite 191
Scottsdale, Arizona 85258-2106
*Attorneys for Canyon Del Rio Investors, LLC*

**DICKINSON WRIGHT / MARISCAL WEEKS**

By: *__/s/ Michael S. Rubin, Esq.*

Michael S. Rubin, Esq.
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Fax: (602) 285-5100
*Attorneys for City of Flagstaff*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

~ MARICOPA COUNTY ~

| | |
|---|---|
| CITY OF FLAGSTAFF, a municipal corporation,<br><br>Plaintiff,<br><br>*vs.*<br><br>CANYON DEL RIO INVESTORS, L.L.C., an Arizona limited liability company,<br><br>Defendant. | No. CV 2010-017142<br><br>**ORDER**<br><br>(Assigned to the Hon. Sally Schneider Duncan) |

Upon reviewing the Stipulation and Request to Place Case on Inactive Calendar, and good cause appearing,

**IT IS HEREBY ORDERED** that this matter is continued on the inactive calendar for up to 365 days, or until _____, 201__.

DATED: _____

_____
Honorable Sally Duncan

**14. E.**

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

| | |
|---|---|
| **To:** | The Honorable Mayor and Council |
| **From:** | Paul Summerfelt, Wildland Fire Manager |
| **Date:** | 05/01/2013 |
| **Meeting Date:** | 05/07/2013 |

**TITLE:**

**City Comment on US Forest Service Proposed Action** - Flagstaff Watershed Protection Project.

**RECOMMENDED ACTION:**

Approve and submit an official public comment regarding the Proposed Action for the Flagstaff Watershed Protection Project.

**Policy Decision or Reason for Action:**

The Coconino National Forest and the City of Flagstaff announced Monday April 8th 2013 that the Flagstaff Watershed Protection Project (FWPP) Proposed Action (PA) was available for public review and comment. The official Notice of Intent (NOI) was published in the Federal Register Thursday Apr 11 th 2013, initiating the project's formal 30-day scoping period. Thus, the end of the scoping period will be May 13th 2013 (the 30 days has to end on a weekday, so it's actually 32 days long).

Information on the project is posted on the Coconino National Forest Project website under "Flagstaff Watershed Protection Project" at http://www.fs.usda.gov/projects/coconino/landmanagement/projects. The PA is relatively short – 34 pages. A copy of the PA is also attached to this Staff Summary.

Per the National Environmental Planning Act (NEPA), only those who provide specific written comments during this formal scoping period and/or during later comment periods will have "standing" to object later in the planning and decision process. Official comments must be postmarked no later than May 13th 2013 to be considered part of the US Forest Service project record.

Although the City is not required to provide written comment during the scoping period currently underway, it is in our best interest to do so. All comments are part of the official project record, and are visible to anyone seeking information or examining the record. A comment at this point advocates for the wish of the voters and amplifies our corporate support for the project to any and all parties. Should the project be litigated by a third party following the Record of Decision to be issued by the US Forest Service next fall/winter prior to full-scale field implementation, a comment provides context for later potential City action(s).

**Financial Impact:**

An official comment letter, does not by itself, obligate the City to expend any of the voter-approved $10 million bond funds for individual actions on US Forest Service lands within the project area. While it does signal our committment to do so at a later date, those obligations will come to Council for consideration and action over time, in the form of individual Project Supplemntal Agreements (SPA).

**Connection to Council Goal:**

The Flagstaff Watershed Protection Project (FWPP) supports the following Council goals:

4. Complete Rio de Flag
5. Retain, expand, and diversify economic base
6. Complete Water Policy
11. Effective governance

**Previous Council Decision on This:**

In June 2012, Council approved Question #405 for the November 2012 special authorization bond election which was subsequently approved with a 73.6% vote. In January 2013, Council approved three agreements with the US Forest Service for forest treatments on federal lands covered by the FWPP. In March 2013, City Council and the County Board of Supervisors met in joint-session where the FWPP was discussed. In April 2013, Council approved project related agreements with the State of Arizona and Greater Flagstaff Forests Partnership.

**Options and Alternatives:**

1. Submit attached draft comment as written, thus placing an official formal written comment by the City in the US Forest Service project record;
2. Revise the attached draft comment and submit a modified version;
3. Do not submit a comment, thus not providing an official written comment by the City for the US Forest Service project record.

**Key Considerations:**

In summary, the PA - which covers both the Dry Lake Hills area (Rio de Flag) and Lake Mary Watersheds - discusses and/or contains the following features:
1) Existing conditions of the area, and expected fire behavior if left untreated;
2) Desired condition of the area (following treatment) and expected fire behavior once treated;
3) Treatment descriptions and objectives;
4) Implementation methods;
5) Placement of a permanment campfire ban in the Dry Lake Hills area;
6) Maps and tables;
7) Other issues (roads, forest plan amendments, monitoring, etc); and
7) Invite to public to provide comment.

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**Attachments:** FWPP-PA
City Comment

# Flagstaff Watershed Protection Project
# Proposed Action
April 2013

## Introduction

The Flagstaff Ranger District of the Coconino National Forest is preparing an Environmental Impact Statement (EIS) to document the potential effects of the Flagstaff Watershed Protection Project (FWPP). The analysis will evaluate and disclose the effects of using mechanical thinning and prescribed burning on the National Forest to reduce the threat of high severity wildfire and subsequent flooding in two key areas near the City of Flagstaff, Arizona: the Dry Lake Hills portion of the Rio de Flag Watershed north of Flagstaff, and the Mormon Mountain portion of the Upper Lake Mary Watershed south of Flagstaff (Figure 1). The City of Flagstaff is a Cooperating Agency for this project, and is participating in the planning and analysis process.

The FWPP project area includes approximately 10,543 acres (roughly 7,569 acres in the Dry Lake Hills portion and 2,974 on Mormon Mountain). Treatments would include thinning and prescribed fire. The EIS will analyze a variety of harvesting and fuel reduction methods, including the use of traditional ground-based equipment, hand thinning, and methods atypical for the region, including use of forwarders capable of operating on steep slopes as well as cable and helicopter yarding systems, in order to treat steep, inaccessible terrain (see the Proposed Action section and Table 4 of this document for more information). Vegetation may also be treated in place without being removed from the site by mechanically cutting and piling. Initial treatment implementation would be anticipated to last several years, with re-entry for maintenance burning as needed to maintain desired vegetation levels.

## Background

The City of Flagstaff has seen first-hand the devastating impacts of fire and post-fire flooding following the 2010 Schultz Fire on the east side of the San Francisco Peaks. The cost of fire suppression was approximately $10 million; however, the actual cost of the fire is many times greater than that figure. Many of those additional costs have been associated with severe, repeated flooding following the fire, with flows originating on the National Forest and traveling into semi-rural residential areas just outside the city limits. Almost three years after the actual wildfire, the Forest Service and Coconino County continue to work on mitigating the threat of flooding in those areas.

The Forest Service and the City of Flagstaff are working together to reduce similar threats on National Forest System lands in the Dry Lake Hills area (Rio de Flag Watershed) north of Flagstaff and on Mormon Mountain (Upper Lake Mary Watershed) south of town, which is in a critical municipal watershed (Figure 1). Projections show that there could be severe flooding in parts of Flagstaff if a high-intensity fire were to occur on the slopes of the Dry Lake Hills, and that the Lake Mary Reservoir, which provides roughly 50 percent of the City's drinking water, could become non-functional as a water supply due to sediment and carbon influx following a severe wildfire. During the November 2012 elections, residents

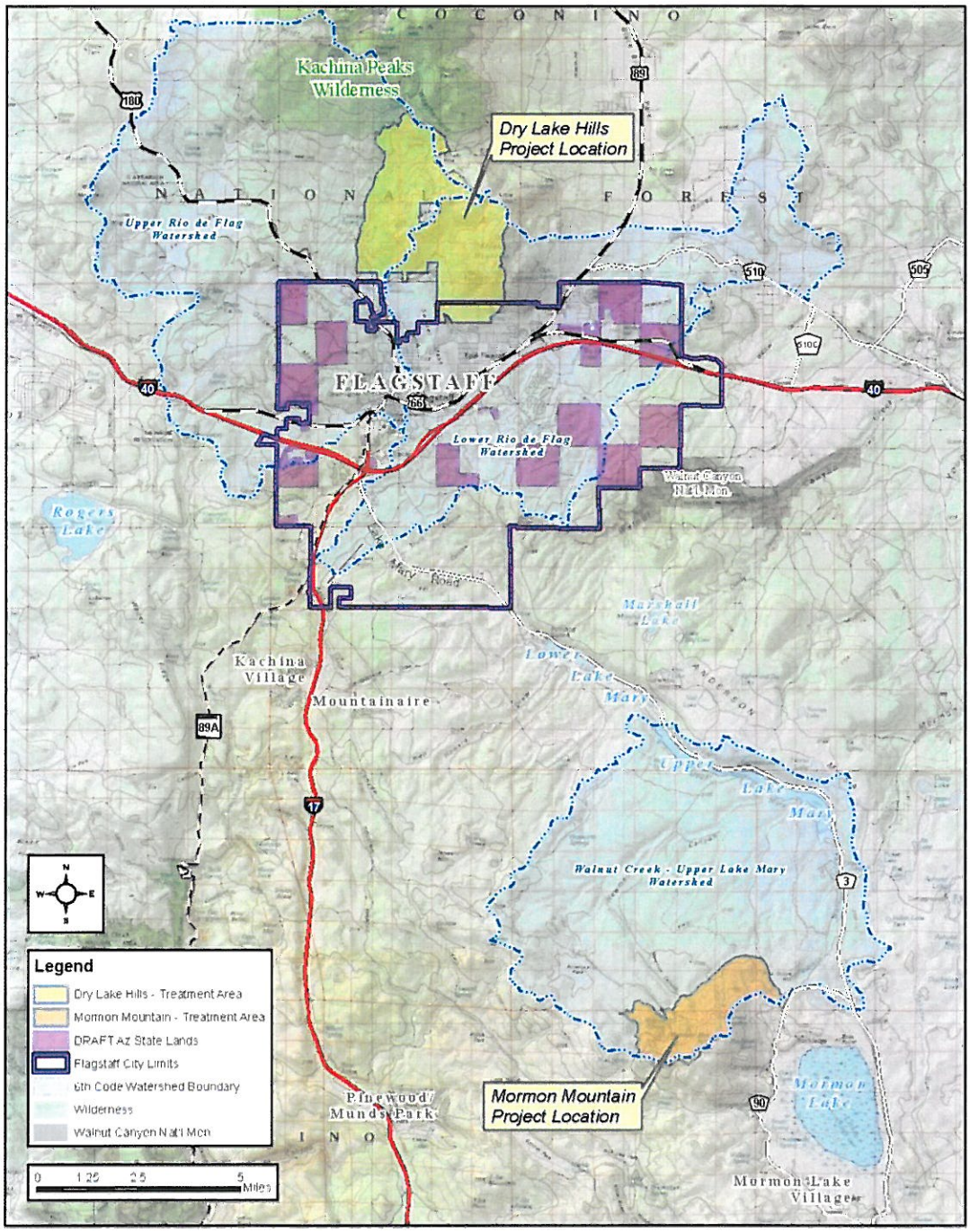
of Flagstaff passed a $10 million bond with 73 percent approval to support forest treatments within these two watersheds on the Coconino National Forest and also on State of Arizona lands. Identified on the ballot as the "Forest Health and Water Supply Protection Project," the planning effort on the National Forest segment is now known as the "Flagstaff Watershed Protection Project (FWPP)." Similar treatments may occur on approximately 3,000 acres of State of Arizona lands or on private lands as part of the overarching project funded through the City bond; however these activities are not included in this FWPP EIS planning effort as it pertains strictly to those actions proposed on the National Forest. Treatments on adjacent lands will be included in the cumulative effects analysis portion of the FWPP EIS.

The FWPP project area is of high scenic, cultural, wildlife, and recreational value. Public use of the project area is very heavy, with many heavily-used trails (for both motorized and non-motorized use), camping areas, and rock climbing areas. The area also has religious significance to several Native American tribes in the region.

Overlap between the Four Forests Restoration Initiative (4FRI) and the FWPP area is present; some areas that are already being analyzed by 4FRI are being included in this planning effort to address additional treatment options (such as treatments on steep slopes), while other 4FRI areas will not be reanalyzed. The Mount Elden/Dry Lake Hills (MEDL) Recreation Planning Project is also underway, and overlaps a majority of the project area within the Dry Lake Hills. While the purposes for the two projects differ, consistency between the proposed actions will be maintained as each moves through the analysis process to ensure there are no conflicts between proposals.

Currently about 1,872 acres within the general project boundary are already covered under previous NEPA decisions: Jack Smith/Schultz (2009) and Eastside (2007) Fuels Reduction and Forest Health Restoration Projects. The treatable areas covered under those decisions are either being currently implemented or will be implemented in the near future while the FWPP EIS planning process occurs on the rest of the project area. For example, the Orion Timber Sale (from the Jack Smith/Schultz Decision, 2009) is within the project boundary in the Dry Lake Hills and is anticipated to be treated in the Fall/Winter of 2013. Some areas within the Jack Smith/Schultz project area were either determined to be untreatable by ground-based equipment or were designated as No Treatment during that planning effort due to steep slopes and accessibility issues; those areas are being reanalyzed in the FWPP EIS.

**Figure 1: General location of the project area in relation to Flagstaff and the two key watersheds**



## Existing Conditions

Existing conditions within the project area include dense stands with numerous dog-hair thickets on steep slopes with high fire risk, with a substantial wildland urban interface (Figure 2). Cover types in the project area include ponderosa pine, aspen, dry mixed conifer, wet mixed conifer, oak woodland, and grassland.

Based on stand surveys completed in 2012, the majority of the project area currently has a fire hazard rating of "extreme" (96 percent of the Dry Lake Hills and 93 percent of Mormon Mountain). Fire hazard ratings measure how intensely a fire would burn under hot, dry, and windy conditions during April through July, and include dead and down fuel loading (tons per acre), number of tree stems per acre, tree diameter, percent canopy closure, height to bottom of live crown (crown base height), tree height, slope and aspect in the calculations.

**Figure 2: Looking down from Forest Road 557 (Elden Lookout Road) within the project area**

There is also a high departure from historic vegetation conditions and fire return intervals within most of the project area. In general, fire regimes[1] in the analysis area have shifted from historically more frequent, lower-intensity surface fires (Fire Regime I and III, Condition Class I) to less frequent, higher-intensity crown fires (Condition Class III). This departure has created conditions where, if a wildfire were to occur, there would likely be more severe effects to ecosystem components (trees, soil, wildlife) than would have occurred under the natural fire regime.

A minority of the project area includes vegetation that likely naturally burned at moderate or high intensities during historic conditions. While these vegetation types are limited in the project area, these too would be treated to facilitate frequent, low-intensity wildfire to limit the potential for crown fire and subsequent flooding in and downstream of the project area.

Crown fire potential was also analyzed for both project areas using data generated from modeling performed using FlamMap 3.0. Three types of fires result from the modeling: **surface fire**, **passive crown fire**, and **active crown fire**. Surface fire describes fire that burns through the surface fuels of the forest floor. This type of fire has the least active of fire behaviors and is the most beneficial of the three types of fires in maintaining the historical, ecological role of low intensity, high frequency fire in the

[1] A fire regime generally classifies the role of fire over the landscape in the absence of modern human mechanical intervention. There are five natural fire regimes and are characterized based on average numbers of years between fires combined with fire severity of the dominant overstory vegetation. Fire Regime I (FRI) indicates a landscape with frequent fires (0-35 years) with surface to mixed burn severity. Fire Regime III (FRIII) indicates a landscape with fires every 35 to 200 years, with low to mixed burn severity.

southwestern ponderosa pine ecosystem. Passive crown fire, or torching, occurs when flame lengths are long enough to reach the lower edge of the canopy and can result in individual or small group tree torching but does not proliferate through the forest canopy through continuous crown fire spread. Active crown fire occurs when flames reach the forest canopy and spread through it with intensity and continuity.

The fuel moisture and weather characteristics used to model the effects and behavior of a potential wildfire for existing and desired conditions are 97th percentile conditions from the Flagstaff RAWS station and observed conditions on the Schultz fire on June 20th, 2010. The conditions used were as follows:

**97th Percentile Conditions**

- 1-hour fuel moisture: 2%
- 10-hour fuel moisture: 2%
- 100- hour fuel moisture: 4%
- 1000- hour fuel moisture: 7%
- 20-foot wind speed: 25 mph
- Air temperature: 85°F

**Shultz Fire Conditions**

- 1-hour fuel moisture: 2%
- 10-hour fuel moisture: 2%
- 100- hour fuel moisture: 6%
- 1000- hour fuel moisture: 11%
- 20-foot wind speed: 21 mph
- Air temperature: 75°F

The 97th percentile and the Schultz Fire weather conditions were used in modeling to give an overall worst case scenario in terms of crown fire potential, and also a comparable local reference. The 97th percentile conditions represent the top three percent (3%) worst fire weather days from 2002-2011, and the Schultz Fire was one of the biggest high intensity/stand replacing fires that has occurred recently within fifteen miles of Flagstaff, Arizona.

**Table 1: Crown Fire Potential (97th percentile) for the Project Area (with percent of project area)[2]**

| CROWN FIRE POTENTIAL | DRY LAKE HILLS | MORMON MOUNTAIN | TOTALS |
|---|---|---|---|
| Surface Fire | 1,189 acres (16%) | 256 acres (9%) | **1,445 acres (14%)** |
| Passive Crown Fire | 1,741 acres (23%) | 188 acres (6%) | **1,929 acres (18%)** |
| Active Crown Fire | 4,610 acres (61%) | 2,522 acres (85%) | **7,132 acres (68%)** |
| **TOTALS** | **7,540 modeled acres** | **2,966 modeled acres** | **10,506 acres** |

**Table 2: Crown Fire Potential (Schultz Fire Conditions) for the Project Area (with percent of project area)[3]**

| CROWN FIRE POTENTIAL | DRY LAKE HILLS | MORMON MOUNTAIN | TOTALS |
|---|---|---|---|
| Surface Fire | 3,008 acres (40%) | 789 acres (27%) | **3,797 acres (36%)** |

[2] Acreages and percentages may differ slightly between tables due to rounding. Approximately 18 acres were also classified as "no data" for use in this model.

[3] Though the scenario modeled under the Schultz Fire weather conditions shows that a large percentage of the project area would experience surface fire (36%), this is a conservative estimate based on the model itself. It is likely that a higher percentage of the project area would actually experience more active fire behavior based on what occurred during the Schultz Fire and the existing conditions described in Table 3.

| | | | |
|---|---|---|---|
| Passive Crown Fire | 3,169 acres (42%) | 754 acres (25%) | **3,923 acres (37%)** |
| Active Crown Fire | 1,362 acres (18%) | 1,421 acres (48%) | **2,783 acres (26%)** |
| **TOTALS** | **7,539 modeled acres** | **2,964 modeled acres** | **10,503 acres** |

## Desired Conditions

The desired condition is to reduce the threat of high severity wildfire and subsequent flooding to values at risk within and adjacent to the project area, including the City of Flagstaff, outlying communities, the Kachina Peaks Wilderness, and Upper Lake Mary. For the majority of the project area, the desired condition is to decrease the departure from historic conditions, and return the majority of the analysis area in FRI and FRIII to Condition Class 1.

Table 3 displays the existing and desired conditions for the FWPP project area. Desired future conditions include lowering the extreme fire hazard risk by reducing ladder fuels (crown base height), the dead vegetation on the forest floor (dead and down fuel) and the heavy fuel live fuel loading (stems per acre), opening the spacing between trees (canopy closure), and returning the project area to more historical vegetative conditions and fire regimes. Desired conditions also include reducing potential fire intensity so that more of the project area would experience surface fire with low soil burn severity instead of active or passive crown fire with high soil burn severity.

**Table 3: Existing and Desired Conditions for the Project Area**

| Measure | Existing | Desired* |
|---|---|---|
| **Crown Base Height** | 0-84 feet | 20+ feet |
| **Dead and Down Fuel** | 0.1-50 tons/acre | 3-7 tons/acre in ponderosa pine; 10-15 tons/acre in mixed conifer |
| **Canopy Closure** | 2-100% | 40-70% |
| **Cover Type** | Mostly ponderosa pine with mixed conifer, juniper, and mixed hardwood | Same but with reduction of encroachment of fire intolerant species |
| **Stems per acre** | 10-5218 | Less than 300 |
| **Flame length** | Modeled from 3 to 140 feet, depending on the fuel model[4] | Less than 4 feet in the ponderosa pine and mixed conifer; less than 10 feet in the brush and grass |

* Desired conditions in this table are averaged across the entire project area and do not reflect the variances that would occur between different vegetation types. For example, within meadows, the canopy cover would be much less than within mixed conifer vegetation types.

[4] Flame lengths produced under existing conditions were determined using the FFE (Fire and Fuels Extension) in FVS, modeled under 97th percentile conditions. Fuel model descriptions can be found in Scott and Burgan (2005)

## Project Purpose & Need

The primary purpose of the Flagstaff Watershed Protection Project (FWPP) is to reduce the risk of high severity wildfire and subsequent flooding in two key watersheds around Flagstaff, Arizona: in the Dry Lake Hills portion of the Rio de Flag Watershed, and the Mormon Mountain portion of the Upper Lake Mary Watershed (see Figure 1).

The FWPP analysis area includes portions of the Coconino National Forest that have either not been analyzed or not been treated previously due to prohibitive costs associated with very steep terrain, low value material, and other challenging issues such as potential impacts to wildlife and visual concerns.

There is a need to reduce the risk of fire and post-fire flooding that would likely damage the drinking water infrastructure south of town and which could also cause extensive damage to residential and commercial areas should a high-intensity wildfire occur in mountainous areas that make-up the Upper Lake Mary and Rio de Flag watersheds.

More specifically, there is a need to reduce the potential for crown fire and high intensity surface fire, and to reduce the likelihood of human-caused ignitions.

# PROPOSED ACTION

To meet the project's purpose and need, the Forest Service proposes a combination of thinning and prescribed burning activities, establishing a permanent campfire closure order in the Dry Lake Hills area and decommissioning about 34 miles of road in the Flagstaff Watershed Protection Project area. To facilitate timber removal, approximately 15.5 miles of temporary road are also proposed, and three non-significant Forest Plan amendments would be necessarily to implement the proposed activities.

## Treatment Summary

The FWPP project area includes approximately 10,543 acres; roughly 1,733 of those acres are either non-treatable due to rock faces and/or boulder fields, or are not slated to be re-analyzed in this project (see Table 4). Treatments would include mechanical and hand thinning as well as prescribed fire on the remaining acres (approximately 8,810 acres). See Table 4 and Figures 2 and 3 for more details.

Mechanical tree thinning would occur within Mexican spotted owl protected activity centers (MSO PACs) with a desired condition of trees greater than 16 inches dbh contributing more than 50 percent of the stand basal area and maintaining a minimum of 40 percent canopy cover in pine-oak and 60 percent in mixed conifer per the MSO Recovery Plan (2012), followed by prescribed burning. Thinning would also occur within MSO nest/roost habitat in coordination with the US Fish and Wildlife Service (FWS) to reduce the risk of high severity wildfire (See Table 4 for more information). Some treatments proposed within occupied PACs may need to occur during the breeding season (March 1-August 31) and would be coordinated with FWS.

Prescribed fire would include initial pile burning to remove slash accumulated through harvesting, followed by broadcast burning. Maintenance burning may occur every five to seven years following implementation in order to maintain lower fuel loading levels and to restore a frequent, low-intensity fire regime. Areas of mixed conifer on steep slopes may not receive prescribed burning treatments due

to the difficulty of implementation in these fuel types and terrain, and also because the vegetation type may not require regular burning due to longer historical fire intervals.

**Table 4: Proposed Treatment Descriptions and Objectives**

| Treatment Type | Treatment Description/Objective | Acres |
|---|---|---|
| Ponderosa Pine Fuels Reduction | These treatments areas are outside of MSO PACs and northern goshawk PFAs and nest cores. Mechanical treatment designed to develop uneven-aged structure and a mosaic of interspaces[5] and tree groups of varying sizes. Interspaces would occupy 30 -60 percent of the treatment area. Tree groups would vary in shape, size, density, and number: generally from 0.05 – 0.7 acres in size with residual group basal areas of 20-80 ft2 per acre and 2-40 trees per group. | 2029 – Dry Lake Hills (DLH)<br>714 – Mormon Mountain (MM) |
| Mixed Conifer Fuels Reduction | These treatments areas include dry mixed conifer areas outside of MSO PACs, replacement nest/roost habitat, and northern goshawk PFAs and nest cores, but include MSO restricted habitat. Mechanical treatment designed to develop uneven-aged structure and a mosaic of interspaces and tree groups of varying sizes. Interspaces would occupy about 30-60 percent of the treatment area. Tree groups would vary in shape, size, density, and number: generally less than one acres in size with residual group basal areas of 30-90 ft2 per acre and 2-50 trees per group | 1593 - DLH |
| MSO PAC Fuels Reduction - Wet Mixed Conifer | Mechanical treatment designed to break up the over-story canopy within MSO PACS in the wet mixed conifer vegetation type by creating small openings across 10-30 percent of the treatment area to regenerate early seral species. Reduce basal areas to 80-100 ft2. | 143 - MM |
| MSO PAC Fuels Reduction | Mechanical treatment to create a diversity of patch sizes with minimum patch size of 2.5 | 1221 – DLH<br>1682 - MM |

[5] Interspace: the space between groups and clumps of trees (VSS 1-6) that are intended to be dominated by grass/forb/shrub vegetation and may include scattered individual trees. See Appendix B for more details.

| | | |
|---|---|---|
| | acres. Provide for 10-30 percent openings across treatment areas from 0.1 – 2.5 acres in size. Maintain a minimum of 40 percent canopy cover in pine/pine-oak and 60 percent in mixed conifer. Post-treatment, trees greater than 16" dbh would contribute at least 50 percent of the stand basal area per MSO Recovery Plan guidelines (2012). | |
| MSO Nest Fuels Reduction<br>&<br>MSO Nest/Roost Recovery | Mechanical or manual treatment of MSO core areas and MSO nest/roost recovery habitat (aka target threshold) would occur in coordination with the US Fish and Wildlife Service. Residual basal area would be a minimum of 110 ft2 in ponderosa pine, and 120 ft2 in mixed conifer. Maintain a minimum of 40 percent canopy cover in pine/pine-oak and 60 percent in mixed conifer. Post-treatment, a minimum of 12 trees greater than 18" dbh per acre would be present; trees greater than 12-18" dbh would comprise over 30 percent of stands, per the MSO Recovery Plan guidelines (2012). | 396 – DLH<br>402 – MM<br>&<br>22 - MM |
| Northern Goshawk Post Fledging Areas (PFA) Fuels Reduction | Uneven-age mechanical treatment designed to develop uneven-aged structure and a mosaic of interspaces and tree groups of varying sizes. Interspaces would occupy 20 -40 percent of the treatment area. Tree groups would vary in shape, size, density, and number: generally from 0.05 – 0.7 acres in size with residual group basal areas of up to 30-90 ft2 per acre and 2-40 trees per group | 284 - DLH |
| Northern Goshawk Nest Fuels Reduction | Mechanical treatment designed to develop northern goshawk nest stand conditions consisting of a contiguous over-story of large trees. Basal area of 70 ft2 or greater would be maintained, and Forest Plan guidelines for canopy cover would be met. | 103 - DLH |
| Aspen Treatment | A variety of different treatments would be used to promote and protect aspen health and regeneration, including the removal of post settlement conifers within 100 feet of aspen clones, prescribed fire, ripping, planting, fencing | 22 – DLH |

| | | |
|---|---|---|
| | and/or cutting of aspen to stimulate root suckering. | |
| Grassland Restoration | Mechanical treatment to remove encroaching post-settlement conifers and restore the pre-settlement tree density and patterns. | 59 – DLH |
| Burn Only | Burn only treatment would remove excessive fuel loading in areas which were previously burned by the Radio Fire | 138 - DLH |
| Electronic Site – Structure Protection | These sites are occupied by telecommunication facilities, and would be treated to provide a sufficient defensible space around these structures from a wildland fire. Individual trees that are determined to contribute to wildfire risk or pose a hazard to the electronic sites would be removed. The remainder of the sites would receive a thin from below to approximately 20 – 40 ft2 basal area with the purpose of raising the crown base height and leaving the largest and most fire resistant trees. | 6 – DLH<br>12 - MM |
| No Treatment (No New Analysis) | These acres include non-treatable areas, including rock faces and boulder fields, and the Orion Timber Sale (approximately 832 acres). Though the Timber Sale is within the project boundary, the treatments for that area were analyzed and authorized under the Jack Smith Schultz Fuels Reduction and Forest Health Restoration Project Decision Notice/Finding of No Significant Impact (2008). No additional treatments within the Timber Sale area are proposed under FWPP. | 1733 - DLH |

**Figure 3: Proposed Treatments in the Dry Lake Hills Area**

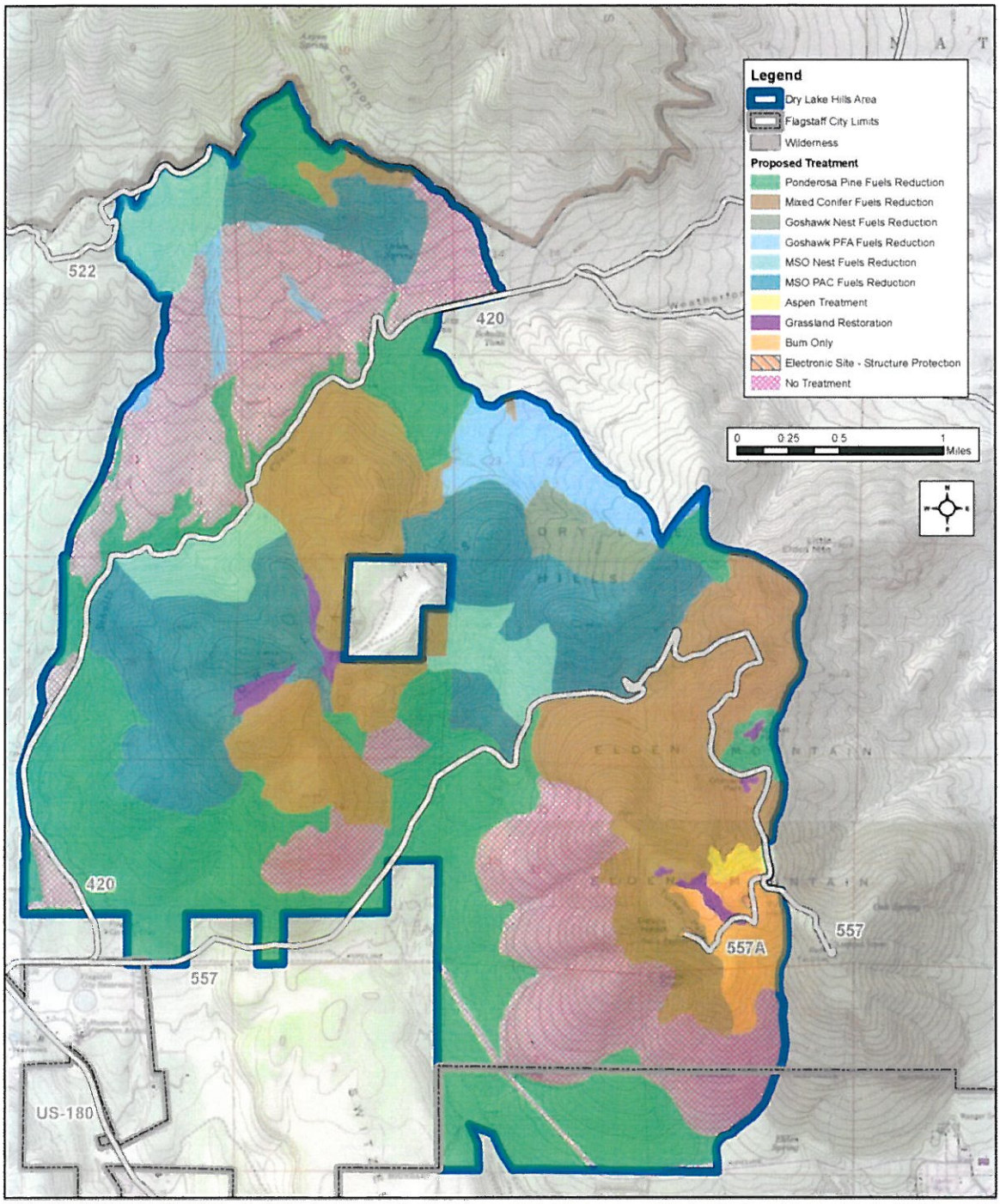
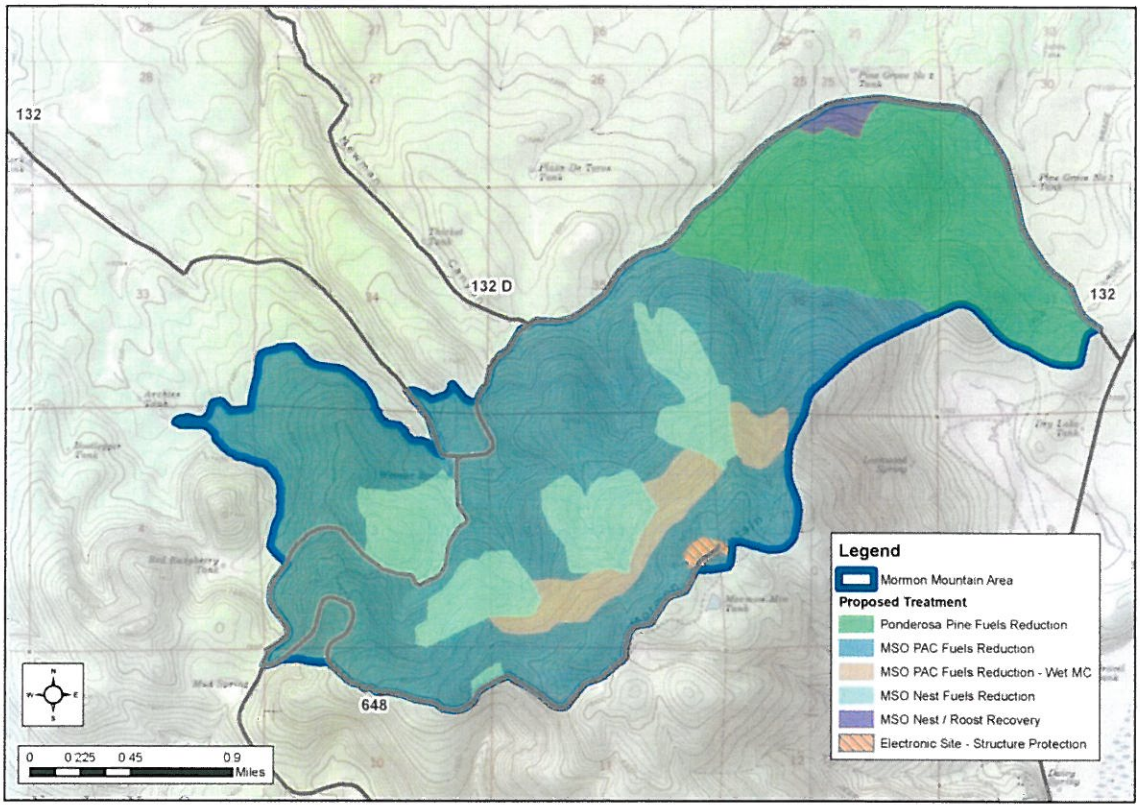


**Figure 4: Proposed Treatments in the Mormon Mountain Area**




## Implementation Methods

Harvesting methods would primarily depend on slope and terrain. Figures 5 and 6 (below) show the slope limitations within the Dry Lake Hills and Mormon Mountain areas: the areas in grey and light green correspond with conventional ground-based harvesting activities described below; the dark green and red areas correspond with the steep slope ground-based harvester and forwarder, cable or aerial harvesting activities. Biomass[6] removal could occur in areas identified for potential ground based harvesting.

*Ground Based Harvesting-* Conventional ground based harvesting up to 40 percent slope; slopes over 25 percent may require a tracked, leveling feller-buncher rather than a wheeled feller-buncher. Areas implemented under these methods would be skidded with a wheeled or tracked skidder.

*Steep Slope Harvesting* – These areas would require either cable yarding, helicopter logging, or timber removal with a steep slope harvester and forwarder. This would also include areas that are yarded with an off-road cable yarder also known as an excaliner. Some areas within the classification may also have trees cut, piled and burned in place rather than extracted.

[6] Biomass is defined as material from trees and woody plants, including limbs, tops, needles, leaves and other woody parts that are the by-products of vegetation management activities.

*Biomass Removal*– If a market for biomass exists during the time of implementation, biomass removal methods may be utilized in place of pile burning.

## Transportation Plan

Existing roads would be used to the extent possible for hauling harvested trees. Forest Roads (FR) 420, 556 and 557 would be used as the main haul routes for Dry Lake Hills; FR 132, 132A, and 648 would be used as the main haul routes for Mormon Mountain. Maintenance on these roads would be necessary prior to implementation, including reconditioning and resurfacing of FR 420, 556 and 132. In addition, there may be a need to transport harvested trees through the City of Flagstaff to access the Interstate system (I-40 and I-17).

However, it is likely that not all treatment areas would be accessible by existing roads. Based on the implementation methods listed above, approximately 15.5 miles of temporary roads may need to be constructed to assist with tree harvesting and removal. The precise location of temporary roads cannot be determined until a contract for treatment is secured and the type of equipment to be used is determined; however no temporary roads would be located within Mexican spotted owl nest cores. All temporary roads, landings, and skid trails used would be pre-approved by the Forest Service Timber Sale Administrator in accordance with resource protection measures.

All temporary roads would be rehabilitated after harvesting has been completed, which may include lopping and scattering slash, ripping or other closure and rehabilitation methods (see list below). However the Mount Elden/Dry Lake Hills Recreation Planning Project proposed action may include proposing road-to-trail conversions for some of the temporary roads if the locations meet the purpose and need for that project. Applicable Coconino National Forest Management Plan (Forest Plan) direction, Best Management Practices (BMPs), Forest Service Manual and Handbook direction, as well as standard mitigation measures would be implemented.

## Road Decommissioning and Closures

The project area contains approximately 34 miles of roads closed to motorized travel through the Travel Management Rule (TMR) decision (September 2011), all of which would be decommissioned upon project completion. Preventing unauthorized motor vehicle use on these routes would limit the potential for human-ignited wildfires in the project area, restore forest vegetation, and reduce the potential for increased erosion subsequent to a fire. Decommissioning could consist of any or all of the following, and would be determined by the District on a case-by-case basis:

- Rolling windrows back into the road bed along its entire length
- Scarifying to a depth of 4 to 5 inches in the road bed along its entirety, if necessary to prepare a seed bed. This would be accomplished 45 degrees or less to the existing fall line or slope to minimize erosion.
- Installing/maintaining adequate drainage structures (i.e. water bars, cross ripping, outsloping) with locations identified by FS.
- Scattering slash randomly along the road, heavily along the ripped portion.
- Re-contouring where applicable (cross-sloped).

- Seeding with native seed species the entire length.
- Removal of any posted road designators (road numbers, names)
- Changing the status in the FS database used to track roads
- Obliteration of the road bed to some degree

## Campfire Closure Order

The proposed action would also include establishing a permanent campfire restriction order in the Dry Lake Hills portion of the project area to limit the potential for human-caused wildfire. The current temporary campfire restriction order (Number 04-11-06-F) has been in effect since June, 2011, and prohibits building, maintaining, attending, or using a fire, campfire[7], or stove fire[8] (**36 CFR § 261.52(a)).** The Proposed Action would extend this order permanently in the project area.

## Forest Plan Amendments

Three project-specific, non-significant amendments to the Coconino National Forest Land Management Plan (Forest Plan; 1987, as amended) would be required to implement the proposed action (see Appendix B). A site (project) specific plan amendment is a one-time variance in Forest Plan direction for the project; Forest Plan direction reverts back to its original language/direction upon completion of the specified project. The language proposed does not apply to any other forest project.

The Forest Plan is currently under revision; depending on the timing of the release of the final Forest Plan document, the final FWPP analysis will be consistent with the revised Forest Plan. Additionally, a revised MSO Recovery Plan, issued by the U.S. Fish and Wildlife Service (FWS) was finalized in December of 2012 (USDI 2012). The current Forest Plan is consistent with the previous MSO Recovery Plan (USDI 1995). For this project, a Forest Plan amendment would be needed to utilize the revised recovery plan direction if it is different than what is currently included in the Forest Plan. The proposed Forest Plan amendments include:

**Amendment 1**: Adding the desired percentage of interspace within uneven-aged stands to facilitate restoration in northern goshawk habitat (excluding nest areas), add the interspace distance between tree groups, add language clarifying how canopy cover would be measured, and add a definition to the Forest Plan glossary for the terms "interspaces," "open reference condition," and "stands."

**Amendment 2**: Adding language to allow mechanical treatments in MSO PACs beyond 9 inches dbh, treatments in MSO restricted habitat above 24 inches dbh, and also to allow treatments and prescribed burning within MSO nest/cores. The monitoring requirement specified under the Forest Plan would be amended to include the monitoring plan developed by the Forest Service, U.S. Fish and Wildlife Service, and the Rocky Mountain Research Station referenced in the following section titled, "Monitoring." This amendment would also remove timing restrictions within MSO PACs for the duration of the FWPP

[7] Campfire: means a fire, not within any building, mobile home or living accommodation mounted on a motor vehicle, which is used for cooking, personal warmth, lighting, ceremonial, or aesthetic purposes. Fire includes campfire.

[8] Stove fire: means a campfire built inside an enclosed stove or grill, or a portable brazier, including wood and charcoal fires.

project. Treatments within PACs would be prioritized to be accomplished as quickly as possible to reduce the likelihood of long-term impacts, and would be coordinated with FWS.

**Amendment 3:** Removing language restricting mechanical equipment to slopes less than 40 percent and language identifying slopes above 40 percent as inoperable. This amendment would allow mechanical harvesting on slopes greater than 40 percent within the project area. Since the Forest Plan was written and amended, mechanized ground-based equipment has progressed to be able to operate on steep slopes more effectively. In order to be able to utilize such equipment to treat slopes above 40 percent in the project area and meet the purpose and need, this Forest Plan amendment is needed.

## Monitoring

The Mexican Spotted Owl Recovery Plan, First Revision (USFWS 2012) provides guidance for these treatments and emphasizes the need for monitoring and feedback loops to allow management to be adaptive. Well-designed monitoring would provide valuable information on the effects of these activities on the owls and their habitat. Therefore, the Forest Service is working with the U.S. Fish and Wildlife Service (FWS) and Rocky Mountain Research Station (RMRS) to propose a monitoring plan that would assist in determining the effects of thinning and burning on Mexican spotted owls and their habitat. The monitoring plan would include the details for sample selection, treatment specifics, measurement protocols including timing, and planned analyses. The monitoring plan will be reviewed as part of the consultation process for treatments planned to occur within PACs.

The proposed monitoring plan would pair treated and untreated (reference) PACs within the Dry Lake Hills and Mormon Mountain portions of the project and compare occupancy rates, reproduction rates, and habitat changes. Reference PACs would match the environmental conditions in PACs where treatments are proposed, as closely as possible.

## Design Features

The proposed action is designed to comply with Forest Plan standards and guidelines, as amended. Design features would be incorporated into the project to protect forest resources of soil, water, scenery values, wildlife and aquatic habitat, and rare plants. Mitigation measures and best management practices would be implemented during the project to reduce impacts to wildlife, to protect heritage resources, to prevent the introduction and spread of invasive plants, and to protect public health and safety. See Appendix A for a list of design features associated with the proposed action.

## Level of Environmental Analysis

The Proposed Action and any alternatives for the Flagstaff Watershed Protection Project will be analyzed in an Environmental Impact Statement (EIS) as described in Forest Service Handbook 1909.15, Chapter 40. The EIS will fully describe and evaluate the proposed action and alternatives for meeting the purpose and need.

## Possible Alternatives

In addition to the Proposed Action, the No Action Alternative will be analyzed. No Action will consider the effects of not completing the proposed actions within the FWPP area.

Based on significant issues identified during scoping, other alternatives may be developed. The full development and analysis of alternatives will be completed following public response to this scoping effort and will be addressed in the Draft Environmental Impact Statement (DEIS), anticipated for release in early 2014.

## Decision Framework

Because the proposed action includes timber harvest exceeding the delegated authority of the District Ranger, the Forest Supervisor is the responsible official for deciding whether or not, and in what manner, lands within the Flagstaff Watershed Protection project area would be treated to reduce wildfire and flooding hazards.

Items in this decision will include:

- number of acres treated mechanically
- number of acres treated by hand thinning
- number of acres treated with prescribed fire
- treatments within the MSO restricted habitat
- treatments within MSO PACs and protected habitat
- treatments within northern goshawk habitat
- construction of new temporary roads
- decommissioning/obliteration of closed roads
- type of implementation method to be used
- issuance of a permanent campfire restriction order in the Dry Lake Hills
- project-specific Forest Plan amendments
- design features to protect forest resources of soil, water, scenery values, wildlife and habitat, and rare plants

The decision will be based on a consideration of the environmental effects of implementing the proposed action or alternatives. The Forest Supervisor may select the proposed action, any alternative analyzed in detail, a modified proposed action or alternative, or no action.

## Your Involvement

This project is subject to the objection process pursuant to 36 CFR part 218 (March 27, 2013), and is not being authorized under the Healthy Forest Restoration Act (HFRA). As such, those who provide specific written comments during the formal scoping and/or comment periods in accordance with §218.5 will be eligible to participate in the objection process. Issues raised in objections must be based on previously

submitted timely, specific written comments regarding the proposed project unless new information arises after designated opportunities (36 CFR 218.7).

The formal scoping period will end 30 days from publication of the Notice of Intent (NOI) in the Federal Register; this publication date is the exclusive means for calculating the time to submit a comment. Individuals or organizations wishing to submit comments should not rely upon dates or timeframe information provided by any other source. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the scoping period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, but will not be eligible for objection per §218.5.

If you have information you feel the Forest Service may not be aware of, or have input regarding this proposed action, please send that information to Erin Phelps, Project Leader, on the Flagstaff Ranger District by regular mail to 5075 N. Highway 89, Flagstaff, AZ 86004; by fax at 928.527.8288; by phone at 928.527.8240; or by email to comments-southwestern-coconino-flagstaff@fs.fed.us. Comments may also be hand delivered to the Flagstaff District Office at the above address between 8:00 am and 4:30 pm, Monday through Friday, except holidays.

Multiple public meetings will be held throughout the planning process for the FWPP project, including a general information sharing and comment gathering meeting scheduled for **May 1, 2013** at the Aquaplex in Flagstaff (1702 N. 4th Street) from 6:00 to 8:00 p.m. The Greater Flagstaff Forests Partnership (GFFP) will also be hosting meetings on behalf of the City of Flagstaff. Please visit the FWPP project website at http://www.flagstaffwatershedprotection.org/ for more information and a calendar of upcoming meeting dates.

**Figure 5: Harvest Option Slope Limitations in the Dry Lake Hills area**

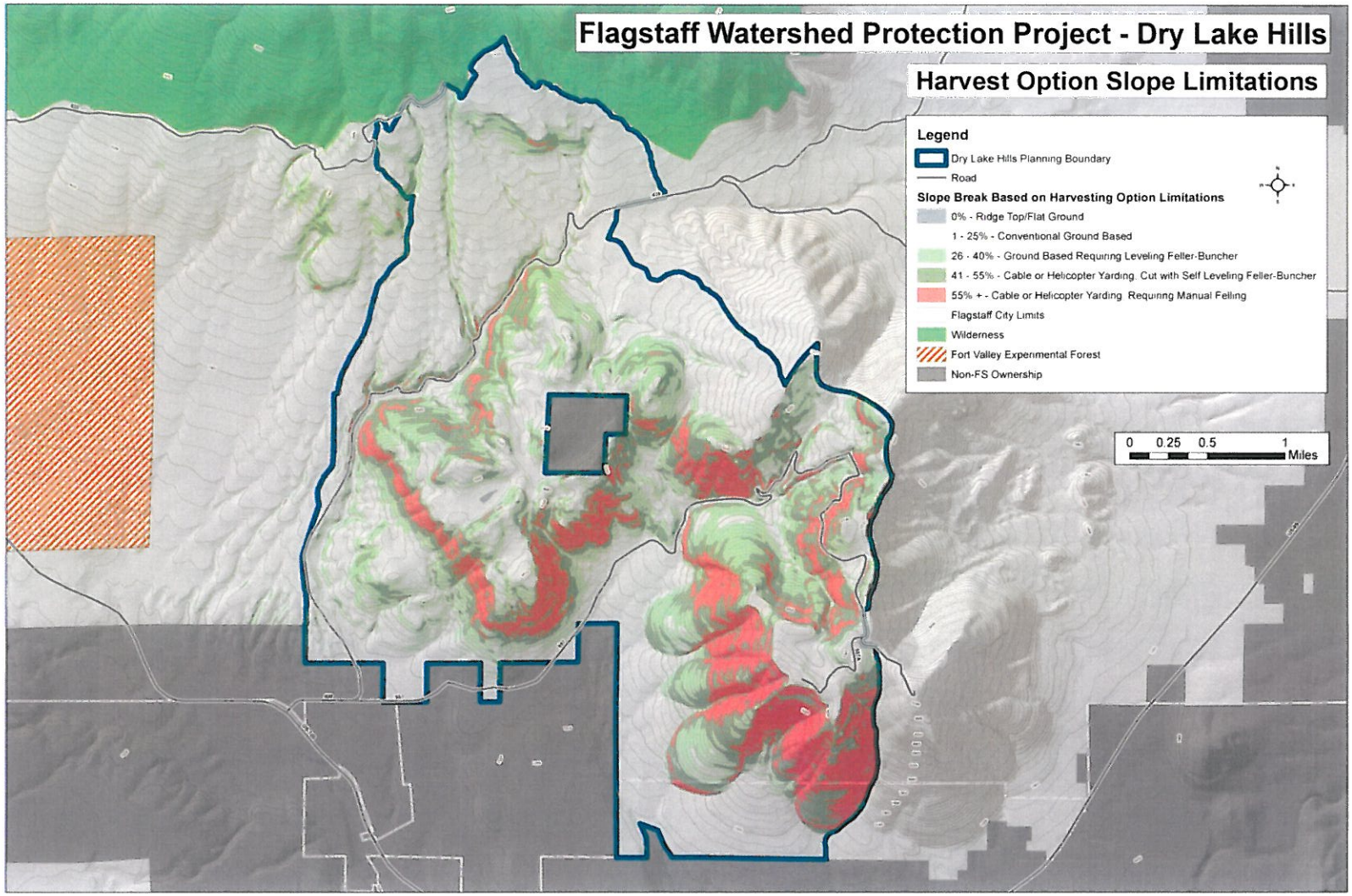
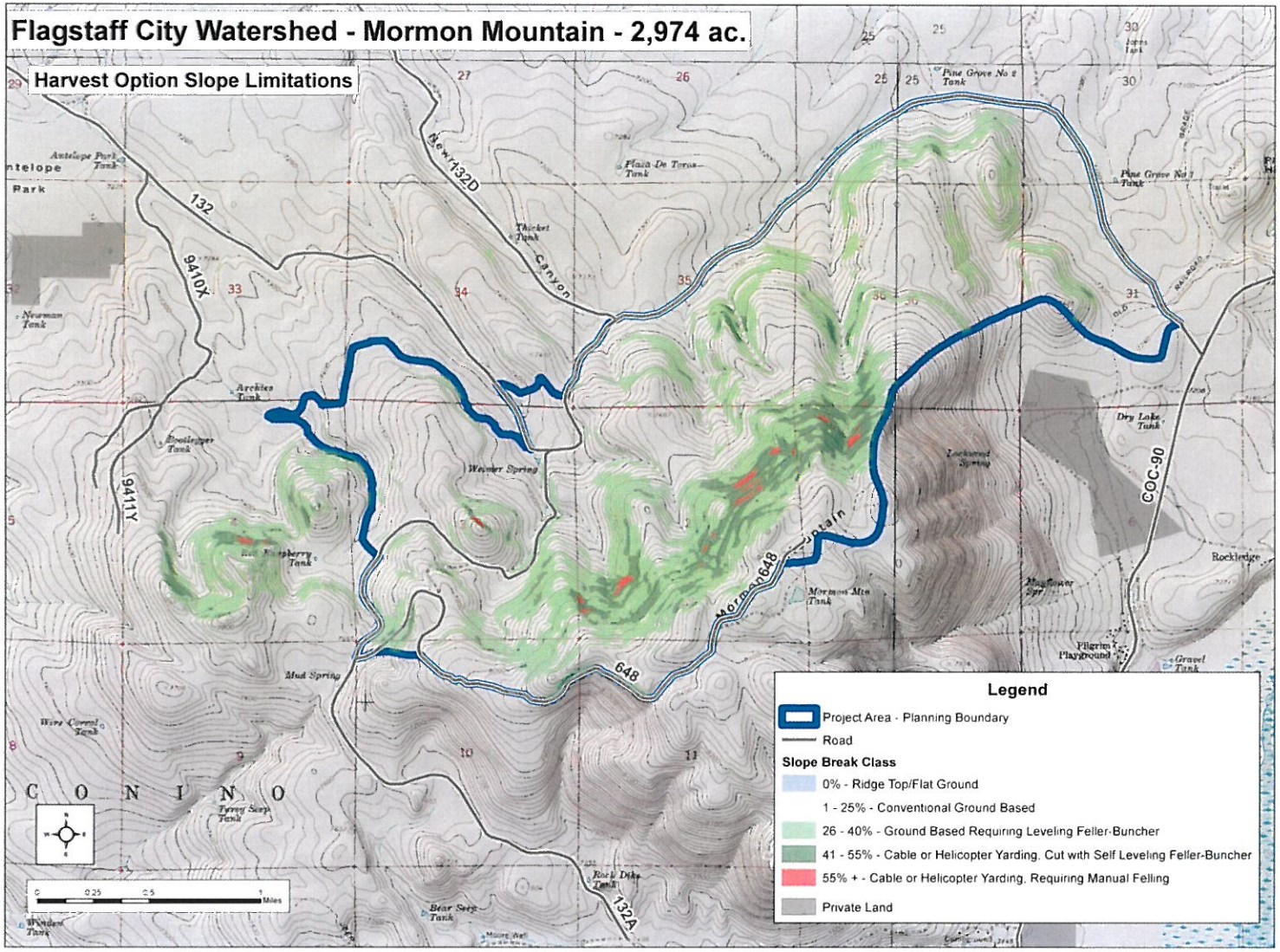


**Figure 6: Harvest Option Slope Limitations for the Mormon Mountain Area**



# Appendix A – Design Features

| Specialist Area | Related Resource | Mitigation Measure |
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| **Silviculture** | Old Trees | Emphasize retaining old, pre-settlement trees where possible, particularly within MSO recovery nest/roost habitat. Old trees, as defined by Thomson (1940), would not be targeted for cutting. However, exceptions may be necessary. An example of this would be removing an old tree to address human health and safety concerns and OSHA regulations if these trees are considered to be dangerous. Another instance would be to cut an old tree in order to accommodate the turning radius of a logging truck, rather than relocating an entire road, or if they are located within a cable yarding corridor. |
| | Mixed Conifer | Treatments within both dry and wet mixed conifer vegetation types would be site-specific in nature and vary according to the diversity of tree species compositions and locations. Treatments would be designed to enhance historic tree species composition while reducing the risk of high-severity wildfire. |
| **Heritage** | Site Protection | All fire intolerant sites would be marked for avoidance from prescribed burning and all National Register of Historic Places (NRHP) eligible or unevaluated sites would be protected from ground disturbing activities. |
| | Monitoring | Archaeological site conditions should be monitored after project implementation to address potential looting and vandalism due to increased traffic and visibility resulting from the removal of ground cover currently concealing many sites from view. |
| **Wildlife** | Mexican Spotted Owl | • MSO surveys would be coordinated with the Fish and Wildlife Service the year of implementation or one year prior to determine occupancy of owls.<br>• The FWPP project boundary lies within the project boundary for 4FRI as well as other forest thinning and burning projects. Flagstaff Ranger District staff would ensure that all proposed treatments are coordinated to ensure that there are not multiple entries into sensitive habitats (such as MSO PACs) that are split between different project boundaries. In doing so, habitat and noise disturbance to these areas would be minimized.<br>• The Forest Service would monitor effects to MSO from the proposed action and report their |

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| | | findings to the FWS. Implementation monitoring would include information such as when or if the project was implemented, whether the project was implemented as analyzed in the site specific BO (including conservation measures, and best management practices), breeding season(s) over which the project occurred, relevant MSO survey information, and any other pertinent information about the project's effects on the species. Treatment activities within PACs would be assessed through implementation of the monitoring plan designed with FWS.<br>• Minimize thinning, prescribed burning, temporary road construction, maintenance or obliteration within occupied PACs during the breeding season (March 1 to August 31).<br>• No thinning or prescribed burning would occur within occupied MSO nest/cores during the breeding season (March 1 to August 31).<br>• Coordinate burning spatially and temporally to limit smoke impacts to nesting owls (March 1 to August 31). |
| | Northern Goshawk | • Minimize harvest activities within a 1/4 mile of occupied nests (potentially adjusted by topography) during the breeding season (March 1 to September 30).<br>• Prescribed burn plans in northern goshawk PFAs would be designed and implemented to minimize smoke impacts to nesting birds and minimize loss of nest trees. |
| | Other Wildlife | • No vegetation treatments would occur within a ½ mile (2,500 ft.), unless mitigated by topography, of an occupied golden eagle nest between March 1 and August 31 (there is 1 golden eagle nest within the analysis area). Other project activities would be assessed by the district biologist and limited activities may be acceptable.<br>• Burn plans within 1/2 mile of the golden eagle nest site and peregrine falcon eyries would be coordinated with the district wildlife biologist to insure nesting eagles and falcons would not be adversely impacted from smoke.<br>• Hiding cover would be maintained near dependable waters by not targeting drainages for interspaces and openings, and through implementation of watershed BMPs.<br>• Tanks within ¼ mile of known northern leopard frog sites would be surveyed prior to implementation. If northern leopard frogs are detected, a buffer for no treatments (no thinning, no direct ignition) would be identified to protect occupied tanks.<br>• A 200-ft protection zone (100 feet either side of streamcourse) would be established around |

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| | | designated stream courses for northern leopard frogs. There would be no thinning and no direct ignition of prescribed burning within the protection zones. Designated skid trail crossings through the buffer zones are allowed. |
| | Snags | • Biologists would identify patches of snags up to 10 acres in size in advance of treatment unit layout. This would allow for the protection of patches of snags that could serve as a reserve area for areas/acres where we are unable to maintain snags during operations.<br>• Where helicopter logging is used, consider using patch cuts in order to break up fuels. This would allow for the maintenance of snags outside the patches, but would allow for greater removal of trees (live and dead) and operational safety within the patches.<br>• Use logging systems when feasible in sensitive habitats that can meet project objectives and maintain important structural components (e.g., snags, etc.).<br>• Protect snags and logs wherever possible through site prep, implementation planning, and ignition techniques to retain ≥ 2 snags per acre ≥18 inches dbh and ≥30 ft in height and ≥3 logs with ≥ 12 inches mid-point diameter and ≥ 8 ft in length in ponderosa pine and ≥ 3 snags per acre ≥18 inches dbh and ≥30 ft in height and ≥5 logs with ≥12 inches mid-point diameter and ≥ 8 ft in length in mixed conifer and spruce-fir<br>• Retain ≥ 2 trees per acre ≥18 inches dbh with dead tops, cavities, and lightning strikes wherever possible to provide for replacement snags and cavity nesting/foraging habitat<br>• Emphasize retention of snags exhibiting loose bark to provide habitat for roosting bats.<br>• Create snags in key areas (i.e. PACs, recovery nest roost habitat) where monitoring determines a deficit. |
| **Botany** | Noxious/Invasive Weeds | Best Management Practices as outlined in Appendix B of the "Final Environmental Impact Statement for Integrated Treatment of Noxious or Invasive Weeds" (USDA Forest Service 2005) would be followed to incorporate weed prevention and control into the project. The following features would be incorporated into project implementation and monitoring:<br>• Treat weed infestations within stands before implementing project activities. Avoid known populations of noxious or invasive weed during project activities.<br>• Survey temporary roads and roads to be closed or obliterated before work begins. Avoid existing noxious or invasive weeds during soil disturbing activities associated with |

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| | | obliteration.<br>• Prevent the spread of potential and existing noxious or invasive weeds by vehicles used in management activities by incorporating weed prevention and control into project layout, design, and implementation.<br>• Fully incorporate the equipment cleaning provisions of the timber sale and/or stewardships contracts into the implementation contract(s) to prevent the introduction or spread of noxious or invasive weeds.<br>• Clean all equipment of seeds, soil, vegetative matter, and other debris that could contain or hold seeds before entry into a project area. Clean vehicles, machinery and tools before moving from infested areas into uninfected areas.<br>• When in areas where known noxious weeds exist, designate turnaround sites for log trucks and other large equipment that are weed free.<br>• Manage prescribed fires as an aid to control of existing weed infestations and to prevent the spread of existing weeds through coordination with the District Weeds Coordinator.<br>• Place slash piles on previously used locations such as old piling sites, old log deck sites, or other disturbed sites to avoid severe disturbance to additional locations where possible.<br>• Monitor slash pile sites after burning and if found, control noxious or invasive weeds.<br>• Avoid acquiring water for dust abatement from weed-infested areas.<br>• Minimize period from end of project activities to site preparation, revegetation, and contract closure. |
| | Sensitive Plants | • Determine potential occurrences and habitat of Region 3 sensitive plants in potential activity areas when planning for implementation. Identify potential species and survey the area to be treated before implementation.<br>• Mitigate negative effects from management actions on Region 3 sensitive plants during design and implementation.<br>• Prohibit slash pile construction within populations of Region 3 sensitive plants<br>• Construct slash piles at least 10 to 20 feet away from known populations of Region 3 sensitive plants.<br>• Prohibit temporary road construction or reconstruction within populations of Region 3 |

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| | | sensitive plants<br>• Prohibit construction, reconstruction or log landings in identified populations of Region 3 sensitive plants<br>• Deferrals and groups may include Region 3 sensitive plant groups where practical, using areas not occupied by the plants as interspaces.<br>• Review watershed BMPs for project area and incorporate mitigations for Arizona sneezeweed into BMPs<br>• Manage prescribed burns to promote native species and to hinder weed species germination.<br>• Monitor the effects of treatment on Region 3 sensitive plants after treatments are completed. |
| **Soil/Watershed** | General | In order to avoid negative impacts to soils and water resources, best management practices (BMPs) would be implemented for prescribed fire and mechanical vegetation treatment measures. These resource protection measures are derived mainly from the Soil and Watershed Conservation Practices Handbook (USDA, 1990) and the National Best Management Practices for Water Quality Management on National Forest System Lands, Volume 1: National Core BMP Technical Guide (USDA, 2012). Resource protection measures are implemented to protect soils and minimize nonpoint source pollution as outlined in the intergovernmental agreement between the Arizona Department of Environmental Quality and the Southwest Region (Region 3) of the Forest Service (ADEQ, 2008). BMPs would be incorporated in prescribed fire burn plans and timber harvesting or stewardship contracts. |
| | Prescribed Fire | Incorporate prescription elements into the prescribed fire plan including such factors as weather, slope, aspect, soils, fuel type and amount, and fuel moisture in order to minimize high soil burn severity. |
| | | Consider the spatial distribution and contiguous size of the planned burn area in a watershed during prescription development to reduce the effects of peak flow change on channels. |
| | | At a minimum, all perennial water bodies, wetlands, and areas with riparian ecosystems would be designated as Aquatic Management Zones (AMZs), also called filter strips. Those stream channels that support seasonal flow in response to snowmelt and/or seasonal fluctuations in the water table would also be evaluated for potential designation as AMZs. AMZ widths would be |

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| | | adjusted based on the steepness of upgradient hillslopes with the following general guidelines:<br>• AMZ width is the distance measured perpendicularly from the outer edges of the streamcourse (i.e., channel bank) or wetland. For stream courses or wetlands with upgradient hillslopes of 35 percent or less, the AMZ width would be 50'. For those with upgradient hilslopes greater than 35 percent, AMZ width would be 100'. As an example, the total width of an AMZ for a streamcourse with an upgradient hillslope exceeding 35 percent would be 200' plus the width of the streamcourse.<br>• Equipment/vehicle staging areas, and fuel used for ignition devices would be located outside of AMZs. Ignition of fuels would not be initiated within AMZs. Hand piling and burning of slash within AMZs would be avoided to the extent practicable. |
| | | Containment lines would be sited and constructed in a manner that minimizes erosion and prevents runoff from directly entering water bodies by consideration of placement relative to the water body(ies) and lay-of-the-land and through construction and maintenance of suitable drainage features such as water bars. To the extent possible, wetlands and riparian areas would be avoided. Where applicable, natural fire breaks such as outcrops would be used in lieu of ground-disturbing containment lines. In general, spacing of water bars would be such that water bars are located at eye level when viewed starting at the bottom of a slope and traversing upward. |
| | | Containment lines would be rehabilitated by rolling back the soil berm formed during line construction and constructing drainage features as necessary to prevent concentration of runoff. Disguise containment lines to line of sight or first 300 feet, whichever is greater, from where they intersect trails or roads using native materials such as rocks and slash. |
| | | Staging areas would be kept as small as possible while allowing for safe and efficient operation. |
| | Timber Harvesting | Prior to conducting harvesting activities, all Aquatic Management Zones (AMZs), staging areas (including areas where vehicles are serviced, equipment/chemicals are stored, and/or fuel is dispensed), primary skid trails, cable yarding corridors, temporary roads, and landings would be designated on a map and visibly marked by means of flagging or other suitable measures for |

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| | | approval by the timber sale administrator. Temporary fuel storage tanks would be permitted and installed in accordance with the Office of the State Fire Marshall requirements. |
| | | To the extent possible, skid trail design would not include long, straight downhill segments which would concentrate runoff. If it is not operational feasible to avoid a long straight downhill segment, skid trail rehabilitation measures would be applied as soon as skidding is completed on that trail. Cable yarding corridors would be located to efficiently yard materials with the least soil damage. Skidding or cable yarding up or down drainage courses would not be permissible unless, in the case of cable yarding, logs are fully suspended. |
| | | Aquatic Management Zones (AMZs) ), also known as filter strips, streamside management areas, or protected streamcourses, are designated areas around water bodies in which certain activities are prevented or limited in order to minimize disturbance. At a minimum, all perennial water bodies, wetlands, and areas with riparian ecosystems would be designated as AMZs. Those stream channels that support extended flow in response to snowmelt and/or seasonal fluctuations in the water table would also be evaluated for potential designation as AMZs. AMZ widths would be adjusted based on the steepness of upgradient hillslopes with the following general guidelines:<br>AMZ width is the distance measured perpendicularly from the outer edges of the streamcourse (i.e., channel bank) or wetland. Where upgradient hillslopes surrounding AMZs are 35 percent or less, AMZ width would be 70′ for each side of streamcourse. If greater than 35 percent, AMZ width would be 120′ for each side of streamcourse. |
| | | The following activities would not be permissible in an AMZ:<br>Staging areas, new temporary roads (except at designated stream crossings), landings, machine piling of slash, and primary skid trails (except at designated stream crossings). To the extent practicable, designated crossings of streamcourse AMZs by new temporary road or primary skid trails would be oriented perpendicular to the streamcourse. |
| | | Insofar as safety permits, trees would be felled to angle in the direction of skidding. |
| | | Drainage of roads would be controlled by a variety of methods including but not limited to insloping of the road bed toward an interior drainage ditch with periodic cross drains, outsloping |

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| | | of the road bed, crowning of the road bed, and construction of rolling dips and water lead off ditches. Drainage from landings and skid trails would be controlled to prevent concentration of runoff. |
| | | Drainage of roads would be controlled by a variety of methods including but not limited to insloping of the road bed toward an interior drainage ditch with periodic cross drains, outsloping of the road bed, crowning of the road bed, and construction of rolling dips and water lead-off ditches. Drainage from landings and skid trails would be controlled to prevent concentration of runoff. |
| | | Equipment would not be operated when ground conditions are such that excessive damage would result as visually monitored through such indicators as soil rutting. |
| | | Machine piling of logging slash would be done in such a manner as to minimize the construction of new clearings for slash piles through use of natural openings, temporary roads, and landings. |
| | | Skid trails and cable yarding corridors would be restored after use by a combination of any or all of the following practices in order to prevent the concentration of runoff in skid trails and to protect exposed soil: reshaping the surface to promote dispersed drainage (i.e., create convex vs. concave cross-section), installation of drainage features such as water bars to shed water, and spreading slash across skid trails and cable yarding corridors to protect areas where mineral soil is exposed. Where skid trails and or cable yarding corridors intersect existing roads or trails, native materials such as logs, slash, and/or boulders would be placed along skid trail or cable corridor to line-of-sight or first 300', whichever is greater. |
| | | Temporary roads and landings would be restored after use by a combination of any or all of the following practices in order restore original topography, protect soils, and prevent concentrated runoff: roll berms created during temporary road and/or landing construction back across the disturbed surface to restore original surface topography to the extent practicable, install drainage features such as water bars where needed to prevent runoff from concentrating, and spread slash on areas with exposed mineral soil. Where temporary roads intersect existing roads or trails, native materials such as logs, slash, and/or boulders would be placed along temporary road to line-of-sight or first 300', whichever is greater. |

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| | | Where visual observation indicates that the above methods of erosion protection are inadequate, a certified weed-free mix of native or naturalized grasses would be broadcast evenly over the inadequately protected surface at the rate of 5 pounds per acre after surface scarification. |
| **Recreation** | Public Awareness | • Inform forest visitors about activities within the project area and make them aware of potential impacts when visiting this part of the forest. Provide information about implementation activities on the Forest website.<br>• Issue news release(s) as appropriate when forest restoration activities are scheduled to occur and how it may affect forest visitation.<br>• If it is necessary to close forest roads during harvesting operations, notices and signs would be posted at key locations adjacent to and within the project area to inform the public of these closures, in conjunction with issuing news releases as stated above. This may include major FS roads accessing the area, kiosks at trailheads, bulletin boards, electronic sign boards, etc.<br>• Utilize dust abatement methods during haul of logs on unpaved roads near private land residences during the season when dust is likely and funding is available. |
| | Forest System Trails | • Harvesting activities would avoid forest system trails, if possible. If it is determined necessary that a trail must be used as a temporary road or skid trail, then the trail would be restored to USFS standards post-treatment.<br>• It is acceptable to make perpendicular trail crossings. Trail crossing locations would be designated and flagged with input from the District Trails Coordinator or assigned personnel. Trail crossings would be restored to pre-project condition after use.<br>• Forest restoration treatments within close proximity (i.e. 100'-200') of forest system trails would consider "feathering" the treatment so the visual impacts are more transitional than abrupt and as to not significantly change the character or experience of the trail. |
| | Special-Use Events | Coordinated efforts would be made with sponsors of recreational special-use events (i.e. running or mountain biking races) to minimize the impacts of such proceedings within the project area |

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| | | during forest restoration activities. |
| | High-Use Weekends and Holidays | Efforts would be taken to limit forest treatment activities within the project area during high-use weekends and holidays (i.e. Memorial Day, 4th of July, Labor Day, etc.); especially in locations where recreation based activities (i.e. trails, trailheads, etc.) occur. |
| | Mt. Elden Environmental Study Area | Measures would be taken to safeguard the trails and interpretive signs/markers within the Mt. Elden Environmental Study Area from forest restoration activities. |
| | Wilderness | • Improve the wilderness boundary signing where forest restoration operations are planned within close proximity (i.e. ¼ mi.) of a wilderness area.<br>• Forest restoration treatments within close proximity (i.e. ¼ - ½ mile) to a wilderness area would consider "feathering" the treatment so the visual impacts are more transitional than abrupt. |
| **Scenery** | Edges of Individual Units | Thinning forest vegetation geometric shapes would be avoided when it does not interfere with implementation feasibility or safety, and high contrast would be avoided between treatment locations. Use the following techniques:<br>• Shape and/or feather the edges of treatment areas to avoid abrupt changes between treated and untreated areas.<br>• Where the treatment unit is adjacent to denser forest (treated or untreated), the percent of thinning within the transition zone (150-250 feet) would be progressively reduced toward the denser edges of the unit.<br>• Similarly, where the treatment unit interfaces with an opening (including savannah and grassland treatments, and natural openings) the transition zone would progressively increase toward the open edges of the unit.<br>• Soften edges by thinning adjacent to the existing unit boundaries. Treat up to the edges; do not leave a screen of trees. Favor groups of trees complying with the prescribed treatment that visually connect with the unit's edge to avoid an abrupt and noticeable change.<br>• Treatment boundaries should extend up and over ridgelines to avoid the "Mohawk" look.<br>• Avoid widely spaced individual trees that are silhouetted along the skylines. |

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| | Unit Marking | • Avoid using trails as boundaries especially for different prescribed treatments.<br>• Avoid abrupt changes between treatment units. Use the techniques suggested for edges of treatment units (above). |
| | Road, Skid Trail & Landing Construction | • Utilize existing skid roads and landings to the extent possible.<br>• Log landings, temporary roads, and skid trails should be minimized within sensitive viewsheds such as those next to developed recreation sites, private homes or communities, paved and passenger car level roads and trails.<br>• Log landings, skid trails and temporary roads would be rehabilitated including restoring proper drainage, and reseeding as needed with native species.<br>• To hasten recovery and help eliminate unauthorized motorized and non-motorized use of skid trails and temporary roads, use physical measures such as re-contouring, pulling slash and rocks across the line, placing cull logs perpendicular to the route, and disguising entrances. |
| | Cull Logs, Stump Heights & Slash Treatments | • Cull logs would not be abandoned on landings.<br>• Use cull logs for closing temporary roads and decommissioning roads.<br>• Cull logs may also be suitable to use as down woody material, but must be scattered away from the landings.<br>• Stump heights should be cut as low as possible.<br>• Unless used for erosion control or maintenance of soil productivity, slash on log landings must be treated or removed.<br>• In the seen area immediate foreground of sensitive places (within 300 feet of the centerline of paved or passenger car level roads or trails, or 300' from the boundary of a recreation site or private land/communities):<br>  ○ Where whole tree logging occurs, machine piling may occur to the middle/back of log landings. Prioritize slash burning in these locations within one year or as soon as possible after treatment.<br>• Root wads and other debris in sensitive foreground areas would be removed, buried, burned, or chipped. If materials are buried, locate in previously disturbed areas where possible, such as areas for road obliteration. Beyond sensitive immediate foreground areas, |

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| | | it is acceptable to scatter these or use them to help close temporary roads or skid trails.<br>• Place project-generated slash outside of permitted utility line and pipeline rights-of-way; do not interfere with utility corridor management. |
| | Fire Control Lines | • Wherever possible, construct fire lines to reduce the contrast so that they are not noticeable in the middle and background views.<br>• Generally restore control lines to a near undisturbed condition in the foregrounds (within 300 feet) of sensitive roads, trails, and developed recreation sites.<br>• To hasten recovery and help eliminate unauthorized motorized and non-motorized use of control lines, use measures such as re-contouring, pulling slash and rocks across the line, and disguising entrances to system roads and trails. |
| **Range** | Infrastructure | • Protect range infrastructure from prescribed fire (e.g. by lining fence stays).<br>• Upon completion of implementation, cattle guards would be cleaned to pre-implementation condition. |
| | Implementation | • Coordinate implementation activities with range specialists when implementation would impact an active grazing allotment.<br>• Vehicles passing through grazing pastures would close gates upon entering and exiting the area to ensure livestock remain in the correct pasture. |

# Appendix B – Forest Plan Amendments

Three project specific, non-significant plan amendment are proposed for the proposed action. This amendment would apply to the Flagstaff Watershed Protection Project only, and would not apply to future projects on the Coconino National Forest. A site (project) specific plan amendment is a one-time variance in Forest Plan direction for the project; Forest Plan direction reverts back to its original language/direction upon completion of the specified project. The language proposed does not apply to any other forest project.

## Amendment 1

The Coconino National Forest Plan (hereafter referred as "Forest Plan") directs projects to manage for uneven-aged stand conditions within goshawk habitat. More recent science has shown that historically more open spaces were present in the landscape and the importance of such open spaces (interspaces). Thus there is a need for a non-significant, project-level Forest Plan amendment to include: the definition of **interspaces** within northern goshawk habitat (both within and outside of PFAs); how interspaces and openings relate to **vegetative structural stage** (**VSS**) and how canopy cover would be measured in landscapes within and outside of PFAs. Forested groups consist of an interspersion of six vegetation structural stages (VSS 1 to VSS 6). For the purposes of this amendment, the following definitions apply:

- **Stand**: A stand is defined as a contiguous area of trees sufficiently uniform in forest type, composition, structure, and age class distribution, growing on a site of sufficiently uniform conditions to be a distinguishable unit. Four classification characteristics are generally used to distinguish forest stands: bio-physical site (soils, aspect, elevation, plant community association, climate, etc...), species composition, structure (density, and age (1-aged, 2-aged, uneven-aged)), and management emphasis (administrative requirements and local management emphasis that will shape structure over time). Based upon agency guidelines, the minimum stand mapping size is 10 acres.

- **Interspace:** The space between groups and clumps of trees (VSS 1-6) that are intended to be dominated by grass/forb/shrub vegetation and may include scattered individual trees.

***Amendment 1 Description***

In the "Vegetation Management - Landscapes Outside Goshawk Post-fledgling Family Areas" and "Vegetation Management -Within Post-fledgling Family Areas" section of the forest plan, a non-significant plan amendment would: (1) remove and/or replace references to using vertical crown projection to measure canopy cover with language specific to this analysis, (2) add the desired percentage of interspace within uneven-aged stands to facilitate restoration and define interspace, (3) add the interspace distance between tree groups, (4) add language clarifying where canopy cover is and is not measured, (5) provide minimum stocking guidelines to inform canopy cover at the group level as displayed in tables 1-2 and 1-3, and, (6) add language clarifying reserve trees are specific to created regeneration openings in Landscapes Outside Goshawk Post-fledgling Family Areas.

The amendment would not impose requirements on the Coconino NF's future management of goshawk habitat as the amendment is specific to this analysis. Because forest plan canopy cover requirements would be met in VSS 4 to 6 and movement towards balanced age classes would occur, the amendment is consistent with the management emphasis of achieving diverse and healthy stands.

***Need for Plan Amendment***

There is a need to define and describe interspace, clarify the relationship between interspace to the vegetation structural stage (VSS) classes, and describe how canopy cover would be measured in landscapes outside and within goshawk Post-fledgling Family Areas. This amendment does not include those acres proposed for grassland or meadow treatment which facilitate movement of some ponderosa pine acres towards an open reference condition, those acres of habitat where no treatments are proposed (goshawk nest stands), or acres where prescribed burn-only treatment is proposed. Northern goshawk standards and guidelines outlined in the CNF LMP apply to forested and woodland areas outside of MSO protected and restricted areas.

## Amendment 2

Amendment 2 is a specific, one-time variance for managing MSO habitat in the FWPP project area. Once the project is complete, current Forest Plan direction would apply to the project area. The language proposed does not apply to any other forest project.

***Amendment 2 Description***

Amendment 2 would remove the treatment diameter limit of 9 inches dbh in six MSO PACs and 24 inches dbh in MSO restricted habitat within the project area, and allow mechanical thinning within PACs and restricted habitat to reduce the risk of high-severity wildfire. It would also allow thinning and prescribed burning treatments within MSO nest cores. The amendment would remove language referencing monitoring (pre- and post-treatment, population, and habitat); replacement language would defer to a monitoring plan developed by the Forest Service, U.S. Fish and Wildlife Service (FWS), and the Rocky Mountain Research Station specifically for this project. The monitoring plan would include the details for sample selection, treatment specifics, measurement protocols including timing, and planned analyses. The proposed monitoring plan would also pair treated and untreated (reference) PACs within the Dry Lake Hills and Mormon Mountain portions of the project and compare occupancy rates, reproduction rates, and habitat changes. Reference PACs would match the environmental conditions in PACs where treatments are proposed, as closely as possible. Amendment 2 would also remove timing restrictions on treatments within MSO PACs for the duration of the FWPP project implementation. Treatments would be prioritized to be accomplished within two years, and would be coordinated with FWS.

***Need for Plan Amendment***

MSO PAC field reviews, data evaluation, and vegetation simulation modeling indicate that there is a need to mechanically thin trees greater than 9 inches dbh in the six PACs and greater than 24 inches dbh in restricted habitat within the project boundary in order to facilitate treatments to achieve the purpose and need of the FWPP project: to reduce the risk of high-intensity wildfire and subsequent flooding.

There is a need to treat within MSO nest/cores to remove fuels and reduce the risk of ecologically-damaging wildfire as leaving these areas untreated would not meet the purpose and need, and could also hinder the feasibility of prescribed burning in PACs. Lining the core areas would be expensive in terms of time, money, and other resource commitments, and would still leave these areas vulnerable to high-intensity wildfire.

There is a need to replace the monitoring language specified in the Forest Plan in order to better incorporate a monitoring plan tiered to the revised MSO Recovery Plan (USFWS 2012) and developed by the Forest Service, the Fish and Wildlife Service, and the Rocky Mountain Research Station. Monitoring assesses the effectiveness of management actions and provides the adaptive framework needed to develop successful management by assisting in determining the effects of thinning and burning on Mexican spotted owls and their habitat. The monitoring plan will be reviewed as part of the consultation process for treatments planned to occur within PACs.

## Amendment 3

### *Amendment 3 Description*

Amendment 3 would remove language restricting mechanical equipment to slopes less than 40 percent and language identifying slopes above 40 percent as inoperable. This amendment would allow mechanical harvesting on slopes greater than 40 percent within the project area.

### *Need for Plan Amendment*

It would be necessary to allow for use of specialized mechanical equipment to cut and remove trees on steep slopes to reduce the risk of high-severity wildfire in this project area due to the preponderance of areas with greater than 40 percent slope in the project area. Furthermore, since the Forest Plan was written and amended, mechanized ground-based equipment has progressed to be able to operate on steep slopes more effectively. While this specialized equipment is not commonplace in this region due to the high cost of its use, the approval of the City bond makes the use of such equipment a possibility for this project. In order to be able to utilize such equipment to treat slopes above 40 percent in the project area and meet the purpose and need, this Forest Plan amendment is needed.

# City of Flagstaff

7 May 2013

Erin Phelps
FWPP Project Leader
USFS – Flagstaff Ranger District
5075 N. Highway 89
Flagstaff AZ 86004

SUBJECT: Flagstaff Watershed Protection Project - Proposed Action

Dear Erin:

On behalf of the entire City of Flagstaff, I want to express both appreciation for the effort that has gone into the development of the Proposed Action (PA), and to clearly articulate our full-support for the Flagstaff Watershed Protection Project (FWPP).

As a community, since 1997, we have been fully-engaged in both city and partnership efforts to restore our forests, protect our community from the effects of devastating wildfire and subsequent post-fire events, and ensure our quality-of-life. We take pride in the fact that the threat is both recognized, and has been - and continues to be - acted upon in a responsible, scientifically-based, socially-accepted manner. Our results to-date have been very successful, and have proven a worthwhile investment during serious fire events: we take our role as a national-model seriously.

In November 2012, city voters stepped-forward and overwhelmingly approved a $10 million bond to plan, conduct, and monitor forest treatments on two key municipal watersheds, primarily on US Forest Service lands outside the city's corporate boundary. We've watched other communities and areas suffer serious emotional and financial impacts, and citizens here spoke for proactive action to prevent such an event in our community. While other cities and towns are engaged in similar "Payment for Watershed Services" efforts, Flagstaff is the first community, so far as we know, to do so with voter approval of a municipal bond. That alone speaks volumes about our commitment to, and support for, this project.

In closing, thank you for this opportunity to comment. We remain strong advocates for the FWPP, and we look forward to continuing our successful collaborative effort.

Yours for a better tomorrow . . . .

Jerry Nabours
Mayor

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