AGENDA

REGULAR COUNCIL MEETING
TUESDAY
MARCH 4, 2014

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 Joint City/County Work Session of February 3, 2014; the Regular Council Meeting of February 4, 2014; the February 11, 2014, Work Session; and the Regular Council Meeting of February 18, 2014.

RECOMMENDED ACTION:

Amend/approve the minutes of the City Council Joint City/County Work Session of February 3, 2014; the Regular Council Meeting of February 4, 2014; the February 11, 2014, Work Session; and the Regular Council Meeting of February 18, 2014.

5. PUBLIC PARTICIPATION

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

6. PROCLAMATIONS AND RECOGNITIONS

None

7. APPOINTMENTS

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

None

8. LIQUOR LICENSE PUBLIC HEARINGS

A. Consideration and Action on Liquor License Application: Danny Thomas, “Dorado's", 103 N. Leroux, Series 06 (bar- all spirituous liquor), New License and Person Transfer.

RECOMMENDED ACTION:

Hold public hearing.

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

9. CONSENT ITEMS

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

A. **Consideration and Approval of Amendment to Lease Agreements:** Flagstaff Airport Rental Car Concessions, IFB 2011-09A: Amendment to leases with: Avis Budget Car Rental LLC, Alamo Rental Car/National Car Rental, The Hertz Corporation, and Enterprise Rent-A-Car companies. ***(Amendment to current leases with car rental companies for a three-year renewal in lieu of the two one-year renewals)***

RECOMMENDED ACTION:

Approve an amendment to the current lease agreement for a lease renewal for three (3) years in lieu of the two (2) one-year renewal (as the current lease agreements indicate) between the City of Flagstaff and Avis Budget Car Rental LLC, Alamo Rental Car/National Car Rental, The Hertz Corporation, and Enterprise Rent-A-Car Companies.

B. **Consideration and Approval of Construction Contract:** Pulliam Airport Concrete Ramp Joint Repair Project.

RECOMMENDED ACTION:

1) Approve the construction contract with Robert E. Porter Construction in the amount of $149,148.00 with a 45 day contract time, subject to approval from ADOT Multimodal Planning Division, Aeronautics Group;
2) Approve change order authority in the amount of $ 14,914.80 (10%) of the contract amount to cover potential costs associated with unanticipated items of work; and
3) Authorize the City Manager to execute the necessary documents.

10. **ROUTINE ITEMS**

A. **Consideration and Approval of Contract:** Intergovernmental Agreement between the City of Flagstaff and Coconino County for use of the Joe C. Montoya Community and Senior Center for Senior Nutrition Programs and renewal of Meals on Wheels program. ***(Meals on Wheels Renewal)***

RECOMMENDED ACTION:

Approve Intergovernmental Agreement

B. **Consideration and Approval of Contract:** Consideration to enter into the Cooperative Greater Flagstaff Fire Agencies All Risk Emergency Intergovernmental Agreement. ***(Enter into agreement with surrounding fire districts for mutual cooperation in responding to emergencies)***

RECOMMENDED ACTION:

Approve the Cooperative Greater Flagstaff Fire Agencies All Risk Emergency Intergovernmental Agreement and authorize the Mayor to execute on behalf of the City of Flagstaff.

C. **Consideration and Approval of Contract:**
Consideration to enter into the Arizona Mutual Aid Compact. ***(Enter into mutual aid agreement with other jurisdictions throughout the State of Arizona for responding to emergencies)***

RECOMMENDED ACTION:

Approve the Arizona Mutual Aid Compact and authorize the Mayor to execute on behalf of the City of Flagstaff.

D. **Consideration and Adoption of Resolution No. 2014-11:** A resolution of the City Council of the City of Flagstaff, Arizona approving an instrument of release and re-conveyance of public utility easements within Lots 126 and 127 as shown on the Final Subdivision Plat for Aspen Place at Sawmill as recorded in Instrument No. 3438431, and the Amended Plat recorded in Instrument No. 3583171, Records of Coconino County ("Easements") granted to the City in the original Subdivision Plat. ***(Abandoning unnecessary utility easements to allow for improved design in the Village at Aspen Place)***

RECOMMENDED ACTION:

1) Read Resolution No. 2014-11 by title only
2) City Clerk reads Resolution No. 2014-11 by title only (if approved above)
3) Adopt Resolution No. 2014-11

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. PUBLIC PARTICIPATION

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

14. PUBLIC HEARING ITEMS

None

15. REGULAR AGENDA

A. **Consideration and Approval of Construction Manager at Risk Contract:** Funding of Street Maintenance Program 2014

RECOMMENDED ACTION:

1) Approve the Construction Manager at Risk Contract with C and E Paving and Grading, LLC in an amount not to exceed $3,249,999.62.
2) Authorize Change Order Authority in the amount of $162,500.00 (5%) to cover potential costs associated with unanticipated or additional items of work.
3) Authorize the City Manager to execute the necessary documents.

B. **Consideration and Adoption of Resolution No. 2014-09:** A resolution of the Mayor and City Council of the City of Flagstaff, Arizona, requiring that the City incorporate sustainable building practices into the design, construction, and operation of all City-owned facilities and repealing Resolution No. 2008-32, which required all new City buildings to be constructed using the U.S. Green Building Council-sponsored principles of Leadership in Energy and Environmental Design (LEED) ***(For the purpose of providing more sustainable building options to the City)***

RECOMMENDED ACTION:

1) Read Resolution No. 2014-09 by title only
2) City Clerk reads Resolution No. 2014-09 by title only (if approved above)
3) Adopt Resolution No. 2014-09.

16. DISCUSSION ITEMS

A. **Review letter to NAU President Search Committee from Council**

17. POSSIBLE FUTURE AGENDA ITEMS

Verbal comments from the public on any item under this section must be given during Public Participation near the beginning of the meeting. Written comments may be submitted to the City Clerk. After discussion and upon agreement of three members of the Council, an item will be moved to a regularly-scheduled Council meeting.

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

19. 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 _____, 2014.

_____
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:	02/28/2014
Meeting Date:	03/04/2014

TITLE

Consideration and Approval of Minutes: City Council Joint City/County Work Session of February 3, 2014; the Regular Council Meeting of February 4, 2014; the February 11, 2014, Work Session; and the Regular Council Meeting of February 18, 2014.

RECOMMENDED ACTION:

Amend/approve the minutes of the City Council Joint City/County Work Session of February 3, 2014; the Regular Council Meeting of February 4, 2014; the February 11, 2014, Work Session; and the Regular Council Meeting of February 18, 2014.

INFORMATION

Attached are copies of the minutes of the City Council Joint City/County Work Session of February 3, 2014; the Regular Council Meeting of February 4, 2014; the February 11, 2014, Work Session; and the Regular Council Meeting of February 18, 2014.

Attachments: 02.03.2014.CCJWS
02.04.2014.CCRM
02.11.2014.CCWS
02.18.2014.CCRM

MINUTES

JOINT CITY/COUNTY WORK SESSION
MONDAY, FEBRUARY 3, 2014
COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
4:00 P.M.

1. CALL TO ORDER

Chairman Ryan called the Joint City/County Work Session of February 3, 2014, to order at 4:04 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

Councilmembers present:	**Councilmembers absent:**
Flagstaff City Council	
MAYOR NABOURS (arrived at 5:14 p.m.)	
VICE MAYOR EVANS	
COUNCILMEMBER BAROTZ	
COUNCILMEMBER BREWSTER	
COUNCILMEMBER ORAVITS (arrived at 4:07 p.m.)	
COUNCILMEMBER OVERTON	
COUNCILMEMBER WOODSON	
Coconino County Board of Supervisors	
CHAIRMAN RYAN	SUPERVISOR BABBOTT
SUPERVISOR ARCHULETA	
SUPERVISOR FOWLER	
SUPERVISOR METZGER	

Others present: City Manager Kevin Burke, County Manager Cynthia Seelhammer, City Attorney Michelle D'Andrea, County Attorney Bill Ring.

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

*Public Participation enables the public to address the council about items that **are not** on the prepared agenda. Public Participation appears on the agenda twice, at the beginning and at the end of the work session. You may speak at one or the other, but not both. Anyone wishing to comment at the meeting is asked to fill out a speaker card and submit it to the recording clerk. When the item comes up on the agenda, your name will be*

called. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone to have an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.

None.

4. Walnut Canyon Study Update

Sustainability Specialist McKenzie Jones introduced Jennifer Hensiek, Deputy District Ranger and Kayci Cook-Collins, Superintendent of Flagstaff Area National Monuments.

Ms. Cook-Collins provided a PowerPoint presentation that covered the following:

- WALNUT CANYON STUDY AREA
- BACKGROUND
- SURFACE LAND OWNERSHIP
- ACT DIRECTS TO ASSESS

Ms. Hensiek continued the presentation.

- SPECIAL STUDY PROCESS
- PUBLIC INVOLVEMENT AND 2011 WORKSHOP
- OPTIONS DISTILLED FROM PUBLIC MEETINGS AND COMMENT PERIODS

Ms. Cook-Collins continued the presentation.

- NATIONAL PARK SERVICE MANAGEMENT
- NATIONAL PARK SERVICE BOUNDARY EXPANSION CAN OCCUR IF:

Ms. Hensiek continued the presentation.

- CONTINUED FOREST SERVICE MANAGEMENT (OPTION 1)
    - The Regional Forester has discretion to overlay an area for special emphasis management. Those designations give added emphasis but do not address land development and land disposal.

Councilmember Barotz asked how land exchanges would be handled. Ms. Hensiek stated that they occur just as they do now at the Forester level.

- CONGRESSIONAL SPECIAL MANAGEMENT (OPTION 2)
    - The Forest Service currently does not have guidance on conservation areas. National Conservation area is a much more broad way to add special emphasis to an area and it is dictated by legislation.

Supervisor Metzger inquired how the new Forest Management Plan treats the area. Ms. Hensiek offered that there was public comment about special designation areas and they are not addressed from a congressional perspective but from the forester perspective. This area did not meet the criteria to move forward as a special designated area.

- CONGRESSIONAL RESTRICTION (OPTION 3)
- SUMMARY COMPARISON TABLE

Ms. Cook-Collins continued the presentation.

- STATE TRUST LANDS 10, 20, 22, 28, AND 30
- FINAL REPORT AVAILABLE AT

The final report has been submitted to the Secretary of the Interior, there is no recommendation one way or the other; it will be up to the Secretary of the Interior to make any determination. The Park Service and Forest Service will continue working together to make sure areas are maintained according to law.

Councilmember Brewster asked about the timeline for a decision. Ms. Cook-Collins offered that there is not a decision to be made; there is not a proposal for a management plan to go forward. A boundary adjustment for Walnut Canyon is not lost, it is just a different process and all the requirements need to be met. This was not the process to look for a boundary adjustment to Walnut Canyon.

The following individuals spoke in favor of protecting Walnut Canyon:

- Alicyn Gitlin
- Ralph Baierlein
- Tom Mackin
- Marilyn Weissman

Chairman Ryan stated that it is up to each governing body to address and deal with this as they see fit and he appreciates all the hard work that has gone into the study.

Councilmember Barotz requested that the City Council discuss this item further and asked for it to be placed on an upcoming agenda.

Supervisor Metzger asked if the Park or Forest Service had done any calculations on the cost to administer a special district. Ms. Hensiek stated that it has not been calculated. A management district takes time to develop but ultimately would cost more.

5. Presentation on Flagstaff Unified School District Economic Impact

Mr. Burke introduced Flagstaff Unified School District (FUSD) Superintendent Barbara Hickman. Ms. Hickman provided a PowerPoint presentation that covered the following:

- FUSD INFORMATION
- FUSD ECONOMIC IMPACT STUDY

FUSD School Board Member Sarah Ellis continued the presentation with information on how the board views their role in education. Ms. Ellis compared it to tightrope walking as it is a balancing act to keep students educated and staff and stakeholders happy. The support system is made up of taxes and State aid and Federal monies; it is ideal when there is a balance with the needs of students and expectations of staff.

The District is highly audited and monitored and compared to peers in the state and nation. Major changes to funding have included big cuts to soft capital and require FUSD to go to the tax-payers for more funding or make major adjustments to the system. Ms. Hickman added that the report was eye opening; to know that the District operates an economic engine helps to justify the impacts of a tax increase.

Chairman Ryan commented that the report shows a broader dynamic of the community.

Supervisor Archuleta appreciated that the study attempted to address the correlation between the human component and the human services that the County provides. She would much rather spend funding on education as opposed to paying for jails.

Councilmember Brewster and Supervisor Fowler expressed interest in the study being applied to all districts around the state. It is the first time a study like this has been conducted and the results should be applied statewide.

6. Discussion of Legislative Agendas for City and County

Government Relations Director Joanne Keene reviewed that County's State and Federal agendas.

Ms. Keene stated that there are a lot of similar things between Coconino County and the City of Flagstaff. The following items are included in Coconino County's State Legislative Agenda:

- Restoring HURF and stopping the sweeps of HURF.
- Restoration of the County Assistance Fund. Counties have been forced to take on many State functions and this has a significant impact on the County.
- Efforts to cap the secondary district revenue.
- Fireworks issue. Representative Fann will be introducing a bill that would allow the County to regulate the sale of fireworks when any portion of the County goes into a Stage One Fire Restriction.

The following are included in Coconino County's Federal Legislative Agenda:

- Counties receive payment in lieu of taxes from the Federal Government that compensates the County for Federal land in the County (PILT) to offset not being able to collect taxes on the property. It was expected that this program would be included and funded in the Omnibus Appropriation Legislation; however, that was not the case and Counties have been scrambling to get this money. Ensuring that the County gets this money is a top priority.
- Secure Rural Schools Program is a program that is set up to compensate Counties for loss of timber generating revenue. The program has expired and an alternate funding program is in the works. The way 4FRI is set up, counties do not get timber sale revenue. The County is looking for compensation for those lost revenues.
- Continue working the boundary dispute in Mountainaire.
- Transportation Funding. The National Association of Counties has been lobbying heavily to look at a long term solution for funding the Highway Trust Fund. Also ensuring that the Map 21 programs are funded and US 89 south of Page is repaired.

- Concessionaires on Federal land; looking for a way for Counties to get revenue from concessionaires on Federal land.

Deputy City Manager Jerene Watson presented the City of Flagstaff's Legislative Agenda. Ms. Watson provided a PowerPoint presentation that covered the following:

- CITY OF FLAGSTAFF LEGISLATIVE AGENDA
- GUIDING PRINCIPLES
- STATE:
- STATE SHARED REVENUES
- HURF RESTORATION
- FOREST HEALTH
- PENSION REFORM
- DARK SKIES
- ADOT ROW USE
- ECONOMIC DEVELOPMENT TOOLS
- SALES TAX SYSTEMS INTEGRATION
- ENERGY DISTRICT
- BUILDING CODE TECHNICAL AMENDMENT
- GRAFFITI
- I-11 CORRIDOR

Mr. Burke continued the presentation on the federal priorities.

- FOREST HEALTH
- TRANSPORTATION - REGIONAL TRANSPORTATION PLAN

Supervisor Archuleta asked about the issue with FEMA and the Shultz Flooding Inner Basin Pipeline. Mr. Burke stated that it is an appeal process on the reimbursement. The City had a reimbursement from FEMA for a substantial amount of the cost of rebuilding the pipeline but there is disagreement between the City and ADEM associated with the timber walls. There were places where the road became thinner than 12 feet wide and needed to be repaired in order to rebuild the pipeline; the disagreement is that the road is not eligible for reimbursement. FEMA is supportive of the City's position that the road needed repair to repair the pipeline.

Chairman Ryan asked if the Forest Health issue is focused on the region or if it is a broader discussion statewide. Ms. Watson stated that it is a statewide focus and there is opportunity to make sure that it is rounded.

Mayor Nabours asked about the APS issue. Ms. Watson stated that there is a proposal where the Governor referred to an incentive to not collect sales tax for electricity for the State. Mayor Nabours stated that there are a lot of manufacturers in Flagstaff that use a lot of energy and this could have a huge impact on sales tax revenues.

8. Library District Report

Library Director Heidi Holland provided a PowerPoint presentation on the Library District. The presentation covered the following.

- FLAGSTAFF
- BRIEF TIMELINE
- COCONINO COUNTY LIBRARY DISTRICT
- CITY COUNTY IGA
- THE LIBRARY DISTRICT COUNCIL ADVISES COUNTY BOARD OF SUPERVISORS
- THE LIBRARY DISTRICT COUNCIL
- BRANCH LIBRARIES
- LIBRARY DISTRICT AFFILIATE LIBRARIES
- LIBRARY DISTRICT USUAGE STATISTICAL HISTORY
- COMPUTER USERS & CARD HOLDERS
- ASSESSED VALUE HISTORY
- LIBRARY DISTRICT TAX RATE HISTORY

Management Services Director Barbara Goodrich continued the presentation.

- STRUCTURALLY BALANCED
- LIBRARY DISTRICT REVENUE
- LIBRARY DISTRICT RESTRICTED FUND BALANCE

Councilmember Barotz stated that last year during budget there were some difficult conversations about the library and asked if that is anticipated for this year. Mr. Burke offered that this discussion is regarding the district libraries that are not associated with a municipality. At this point the direction is for no funding decrease but a flat budget.

9. Public Participation

None.

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

Councilmember Woodson reported that he attended the RTAC legislative meeting in Phoenix and got to hear the same requests the City and County are suggesting in their legislative agendas.

Supervisor Archuleta stated that Wednesday is the Latino Caucus and she was invited to present the rural perspective. She will definitely site examples of City and County issues and collaborations.

Additionally, she will be going to Washington D.C. to work on the legislative agenda on behalf of the County and looks forward to collaboration with the City on united messages.

Supervisor Fowler attended the opening of the Northern Arizona Veterans Resources Center. It is a great addition to the community and any veterans that need assistance and direction should seek out their services; they are located on Cedar Avenue.

Supervisor Metzger reported that the Director of Veteran Services came last week and reminded everyone that in May there is a stand down for the homeless and Veterans.

Councilmember Barotz reported that she and Vice Mayor Evans attended an event where they met Chadwick Hofsten who is making a feature film in Flagstaff. They invited him to come to a City Council meeting to inform Council about his project.

Chairman Ryan indicated that he also attended the RTAC meeting and noted that while HURF is a good priority it is not a good long term solution for the transportation woes in the City and County. Help is needed in conveying that message at both the City and County levels.

11. Adjournment

The Flagstaff Joint City Council/County Board of Supervisors Work Session of February 3, 2014, adjourned at 6:10 p.m.

_____
MAYOR

ATTEST:

_____
CITY CLERK

REGULAR COUNCIL MEETING
TUESDAY, FEBRUARY 4, 2014
COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
6:00 P.M.

1. **CALL TO ORDER**

Mayor Nabours called the Regular Meeting of the Flagstaff City Council of February 4, 2014, 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

Absent:

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

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

The Council and audience recited the Pledge of Allegiance and Mayor Nabours read the 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**

ITEM MOVED TO THE 6:00 P.M. PORTION OF THE MEETING

5. **PUBLIC PARTICIPATION**

Public Participation enables the public to address the Council about an item that is not on the agenda (or is listed under Possible Future Agenda Items). 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.

None

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**

ITEMS HAVE BEEN MOVED TO THE 6:00 P.M. PORTION OF THE MEETING

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.

None

10. **ROUTINE ITEMS**

ITEM HAS BEEN MOVED TO THE 6:00 PORTION OF THE MEETING

6:00 P.M.

~~NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION~~

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

11. ~~**ROLL CALL**~~

~~*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. **PUBLIC PARTICIPATION**

Jeff Knorr, Flagstaff, said that at last week's meeting re Bushmaster Park there was talk about putting funds for revitalization, which he supported, but he hoped they would give consideration to the transient element that will be pushed out of the park, and to where it will be pushed.

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

A. **Consideration and Approval of Minutes**: City Council Combined Work Session/Special Meeting of January 14, 2014; Regular Meeting of January 21, 2014; Mini Budget Retreat of January 23, 2014, and the Special Meeting (Executive Session) of January 28, 2014.

Councilmember Overton moved to approve the minutes of the City Council Combined Work Session/Special Meeting of January 14, 2014; Regular Meeting of January 21, 2014; Mini Budget Retreat of January 23, 2014, and the Special Meeting; seconded; passed unanimously.

B. **LIQUOR LICENSE PUBLIC HEARINGS**

Mayor Nabours opened the Public Hearing for both liquor license applications, noting that both licenses had received no reason for disapproval from the Police Department, Sales Tax or Community Development. No public input was received; therefore, Mayor Nabours closed the Public Hearing.

i. **Consideration and Action on Liquor License Application:** Randy Nations, “Monsoon Asian Bistro & Sushi", 6 E. Aspen St. #100, Series 06 (bar- all spirituous liquor), Person and Location Transfer.

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

ii. **Consideration and Action on Liquor License Application:** William Ahern, "Canyon Diablo Spirits", 506 N. Grant Street, Suite C, Series 01 (in-state producer), New License.

Councilmember Overton moved to forward the application for Canyon Diablo Spirits to the State with a recommendation for approval; seconded; passed unanimously.

C. **Consideration and Approval of Grant Agreement:** between the City of Flagstaff and the Arizona Department of Transportation for the Westplex Taxi Lanes Reconstruction Project at Flagstaff Airport.

Grants Manager Stacey Brechler-Knaggs reviewed the project noting that this was for the ADOT portion of a grant already received from the FAA for an airport project. She said that the State’s matching share was $240,000 as well as the City’s, and the FAA share was $4.9 million.

Councilmember Overton moved to approve the grant agreement with the Arizona Department of Transportation (ADOT) Multimodal Planning Division Aeronautics Group and authorize the acceptance of grant funding in the amount of $240,780; seconded; passed unanimously.

14. **PUBLIC HEARING ITEMS**

Planning Development Manager Tiffany Antol and Community Design and Redevelopment Manager Karl Eberhard gave a PowerPoint presentation on Items 14-A, B and C, which addressed:

- WHAT IS THE LANDMARK OVERLAY ZONE?
- EFFECT OF ZONING MAP AMENDMENT
- LANDMARK OVERLAY CRITERIA
- YEAGER RESIDENCE
- MOTEL DUBEAU
- PICTURE CANYON
- LANDMARK DESIGNATION REQUEST
- PUBLIC INPUT

With regard to Picture Canyon, staff noted that this would not stop the City from doing their work in that area and the sustainability staff is working on a zone change with others which would not affect this as well.

Councilmembers questioned why it showed the Historic Preservation Commission moving these items forward. Staff replied that they were already working on properties to bring forward so that is why it was done in this manner. Council requested that future requests come forward directly from the applicants.

Ms. Antol noted that there was very little public input received. The majority of questions related to what an overlay is and what it does. She said that these districts are related to specific property; in a way a floating district. In terms of Picture Canyon, the question was when it would be zoned to open space.

Mayor Nabours opened the Public Hearing on all three of the following applications. There being no public input, Mayor Nabours closed the Public Hearing.

A. **Public Hearing, Consideration and Possible Adoption of Ordinance No. 2014-06:** An ordinance amending the official Zoning Map for a parcel of approximately 0.16 acres of land located at 515 North San Francisco Street, aka the Yeager House, by adding a Landmarks Overlay district designation ("LO") to the existing Single-Family Residential Neighborhood ("R1N") zoning classification. ***(For the purpose of strengthening cultural and historical features)***

Councilmember Woodson moved to read Ordinance No. 2014-06 by title only for the first time; seconded; passed unanimously.

*AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AMENDING THE FLAGSTAFF ZONING MAP DESIGNATION OF APPROXIMATELY 0.16 ACRES OF LAND LOCATED AT 515 NORTH SAN FRANCISCO STREET BY ADDING A LANDMARKS OVERLAY DISTRICT DESIGNATION (“LO”) TO THE EXISTING SINGLE-FAMILY RESIDENTIAL NEIGHBORHOOD (“R1N”) ZONING CLASSIFICATI*ON

B. **Public Hearing, Consideration and Possible Adoption of Ordinance No. 2014-04:** An ordinance amending the official Zoning Map for a parcel of approximately 0.26 acres of land located at 19 West Phoenix Avenue, aka Motel DuBeau Travelers Inn and Hostel, by adding a Landmarks Overlay district designation ("LO") to the existing Community Commercial ("CC") and T5 Main Street Transect Zone ("T5") zoning classifications. ***(To protect the historical significance of the structure)***

Councilmember Brewster moved to read Ordinance No. 2014-04 by title only for the first time; seconded; passed unanimously.

AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AMENDING THE FLAGSTAFF ZONING MAP DESIGNATION OF APPROXIMATELY 0.26 ACRES OF LAND LOCATED AT 19 WEST PHOENIX AVENUE BY ADDING A LANDMARKS OVERLAY DISTRICT DESIGNATION (“LO”) TO THE EXISTING COMMUNITY COMMERCIAL (“CC”) AND T5 MAIN STREET TRANSECT ZONE (“T5”) ZONING CLASSIFICATIONS

C. **Public Hearing, Consideration and Possible Adoption of Ordinance No. 2014-05:** An ordinance amending the official Zoning Map for a site of approximately 400.16 acres of open space land known as Picture Canyon by adding a Landmarks Overlay district designation ("LO") to the existing rural residential ("RR") zoning classification. ***(For the purpose of preserving archaeological elements and Flagstaff history)***

Councilmember Barotz moved to read Ordinance No. 2014-05 by title only for the first time; seconded; passed unanimously.

AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AMENDING THE FLAGSTAFF ZONING MAP DESIGNATION OF APPROXIMATELY 400.16 ACRES OF LAND KNOWN AS PICTURE CANYON BY ADDING A LANDMARKS OVERLAY DISTRICT DESIGNATION ("LO") TO THE EXISTING RURAL RESIDENTIAL ("RR") ZONING CLASSIFICATION

D. **Consideration of items related to formation of the "FLAGSTAFF DOWNTOWN BUSINESS IMPROVEMENT AND REVITALIZATION DISTRICT":**

Mr. Eberhard gave a brief PowerPoint presentation which addressed:

- A PROSAL FOR DOWNTOWN MANAGEMENT RES. 2014-06
- FORMATION FACTS
- FORMATION OPTIONS
- IGA FACTS

Mayor Nabours said that it was his understanding that if the District was formed this evening the next step was for the property owners in the District, and any residents, to vote on whether there is an assessment and the amount of the assessment, and that would take a majority vote. Mr. Eberhard said that was correct; in order to meet their budget the District will be asking for .39 cents per $100. He added that even if someone did not want the District formed to begin with, they can still vote in favor of the amount.

Mr. Eberhard explained that the Board appointed this evening would serve one year and during that year the District would hold an election for board members to serve a longer period of time in the future. He said that it was not clear if they can increase the number of Board members in the future.

Mr. Eberhard said that in the statutes there was no requirement for when the assessment election was held, but in order to tax in 2015, they would need to hold the election by August, although he has been told the stakeholders plan to do it within the next 60 days.

Mayor Nabours said that there are two types of parcels owned by the City. Those that the City owns and uses, such as the courthouse, and those owned by the City but are occupied by a tenant. He asked if there was a way in the IGA to distinguish between those parcels if they chose to.

Mr. Burke said that the IGA is an agreement between the City and the District and talks about a payment in lieu of tax. He said that how the City collects that money for its tenants does not need to be in the IGA.

Mayor Nabours asked if that was a legal question and something the City could include within their leases with the tenants. Ms. D'Andrea replied that it was, but it would need to be renegotiated with the tenants and would depend on their willingness.

Mayor Nabours asked if the City could give to its tenants the right to vote within the District. Ms. D'Andrea said that she would need to research further, but she was not aware of any ability for them to do that.

Councilmember Brewster said that she thought the votes were determined on the total assessed valuation, not the number of properties. Mr. Eberhard explained that the voting is the most complex seen. For future activities, the vote is based on 1/7 of an acre ownership. He said that the stakeholders do not believe the City or County could control it, but he has not personally done the math to determine that.

After some questions, Mr. Eberhard explained that the formation of the district required petitions to be filed in support, which were considered yes votes. They did not receive any "no" petitions. Whatever was not a petition was considered a no vote for voting purposes. They had 100 parcels in the district, with 56 unique property owners, but they received petitions from 63 in favor of the district formation. Since that time they have received five formal objections (copies of which were included in the Council packet—from Madge Anderson, David McCormick, F.W. Thompson, Mary Scheuring; and Peter Barnett [including his tenant Nick Lawrence]).

Councilmember Barotz said that the slide presentation indicated that the District had a sunset; she asked if it could be dissolved voluntarily. Mr. Eberhard said that it could, through a similar election process if a majority voted that way.

Discussion was held on the actions needed at the meeting this evening. Mr. Eberhard said that in order to tax in 2015, the District would need to be formed tonight; however, the IGA could be delayed.

1. **Conduct a Public Hearing** and hear testimony and evidence presented in support of, or in opposition to, the formation of the "*Flagstaff Downtown Business Improvement and Revitalization* District", including the areas to be included and/or the General Plan for the district; and

   Mayor Nabours opened the Public Hearing.

   John VanLandingham, Flagstaff, said that he has been a part of the conversation about a district since 2007 or 2008 and has been a downtown and business property owner since the early 1990's. He said

that the prior Special Improvement District and Main Street allowed some improvements to be made, but those both eventually went away.

He said that the all-volunteer Downtown Business Alliance has done great things, but for those that have been involved there have been severe limitations with money, time and resources. He said that they have recognized the issues are not new, but they are not going away. He said that they were not coming before Council, hat in hand, but rather asking for a new way to address the needed improvements in the downtown area.

Mayor Nabours said that he would imagine that some property owners might be concerned with the amount of property owned by the City and County, and he asked Mr. VanLandingham if he had those same concerns. Mr. VanLandingham said that he did not; they were excited to partner with the City, and the legal foundation is not there for that to happen.

Councilmember Barotz said that they have had several presentations on this, but one of the concerns she has heard raised was that not everyone was notified in a meaningful way, and she asked Mr. VanLandingham to talk about the notification process.

He said that they have spoken to many of the property owners either in person or by phone. For those they could not reach, they sent packets of information to the owner of record, including a brochure indicating their goals. Beyond that, the process started in 2008 with the City Manager and staff explaining the idea and concept and there were many public meetings that far exceeded the current mapped area. It has been a topic of conversation at the Downtown Business Alliance meetings for some time. He said that over a period of two years the City funded and hired a District coordinator, Steve Seville, who was working on not only the Downtown District but also the Fourth Street District. He said that there has been a tremendous amount of time devoted to getting the word out, and nothing has been happening in secret.

Councilmember Barotz said that she has heard another objection that the General Plan of the District is too vague. Mr. VanLandingham said that it is somewhat vague. So much of what they are proposing is prescribed by ARS, so they used the actual phrasing, “all things allowable by statute” so they would not be limited by the wording in the future.

Lengthy discussion was held on whether the Council should vote at all, if they should vote according to the tenants’ wishes, and, if they do vote, how it would occur. Ms. Wendel said that if the Council does decide to vote, there needs to be direction provided by Council to staff.

The following individuals spoke in support of the proposed district:

- Maury Herman

- Rick Lopez
- James Craven
- Dave Stilley

The following comments were received:

- Thanks to Mr. VanLandingham for the number of hours he has put into the project
- The retail segment is suffering
- They need to do something to improve downtown so it can better compete
- Suggested that the future of downtown lies in the arts, entertainment, food and beverages, along with offices; all of those require higher use for parking than retail
- Encouraged the Council to support the District and put fairness back into the community
- Let the District establish itself as its own entity with its own goals
- No one wants to tax themselves, but it is for a good cause; they need parking
- They need to decide on ways to make revenues to fix up downtown
- He will not be passing on to his tenants whatever the assessment is
- The other things they have tried have not worked to the level they wanted
- These types of districts have worked well in other communities
- With very few exceptions, private enterprise can almost always do something more efficiently and cost-effectively
- The District is governed by the stakeholders and can create a cohesive, continuous voice for downtown; government cannot do that for them
- This is an affordable district; he, too, will not be passing along the cost to his tenants

Councilmember Oravits said that he has property on Fourth Street and was involved in the proposed district there. One of the comments made was that the tax will get passed on to their tenants, and he asked Mr. Herman how his tenants feel about the proposed district. Mr. Herman said that he has not had anyone say it was a poor idea or they should not do it.

Mr. Herman said that one of the things that happens with businesses and property owners is they are very occupied with what they need to do in the next 24 and 48 hours to keep their businesses go. To take a long view into the future is hard to do. He has not had a large amount of reaction, but he has had no negative comments.

The following individuals spoke against the proposed district:

- Nicholas Lawrence, downtown business owner
- Rick Scheuring

The following comments were received in opposition:

•Heard of the district through his landlord (whose sentiments were the same as his)
•Has seen a lot of business turnover in the downtown area
I•s all for making the downtown cleaner, safer, more inviting but, at what expense?
•Who is paying for it? Landlord? Tenant?
•Who is truly benefiting?
•Plan does not meet a definition of a plan
•Informational packet mentioned many services already provided by the
•City including an office
•Based on staffing referenced, the actual expenses would be much higher than the $168,500 suggested

Councilmember Oravits said that his understanding of a district is that if a district can do services normally provided by the City more efficiently, they could keep the amount of funds normally paid by the district.

A break was held from 7:34 p.m. to 7:53 p.m.

The following individuals spoke in support of the proposed district:

•Mark Lamberson
•Blake Rolley, downtown business owner (tenant)
•George Averbeck
•Antoinette Beiser

The following comments were received:

•He is in favor of the district moving forward
•He is not a property owner, but is a tenant and his lease will carry the burden of the assessment
I•t is not a burdensome amount; he will be charged $1.42 a day
•Over 60% of the property owners voted in favor of the district; 5 voted no and 35 did not respond
•They cannot sit still; they need to move forward
•If the City abstained from paying their fair share or paying some and not others, that is unfair to the whole district; the City should be a fair share partner
•Enjoy having their business in the downtown area
•Cleanliness is #1 – they have a lot of tourism and the City needs to show its best face
•Parking is needed
•Just signed a lease on Mill Avenue in Tempe for their business and the assessment here is quite a bit less than there
•Believes Tempe and their business district work well together
•Have been getting a lot of graffiti downtown

Mayor Nabours asked why the map was drawn as it was, down to Phoenix Avenue on the south when the only property down there is

owned by the City. Mr. Eberhard said that they started with a much larger area and whittled it down to a contiguous area where they had support.

Mr. VanLandingham said that they also included the railroad property and the Chamber of Commerce on the south, who has been a very supportive partner. Their hope is to get enough property on the south where the proponents of the District can build support and they can come before the Council to create a larger, or adjacent, district.

Mr. VanLandingham noted that the railroad does pay an assessment, although it is via a convoluted formula controlled by the State.

Mayor Nabours closed the Public Hearing.

2. **Consideration and Possible Adoption of Resolution No. 2014-06**: *A Resolution of the City Council of the City of Flagstaff, Arizona, Forming the "Flagstaff Downtown Business Improvement And Revitalization District", a Special Taxing District; and appointing the initial Board of Directors*; and

Councilmember Brewster reiterated some things they have learned in the past, such as the downtown is the most visited thing in the City, more than 70% of the five million visitors a year in Flagstaff visit the downtown. It is not only historic, but the social corridor of the City. It is worth making this district possible so they can do more things that the City has been unable to do. It is not just good for downtown, but for everyone.

Vice Mayor Evans said that she remembers what the downtown used to look like before Main Street and what happened after it. Her understanding was that in the height of Main Street there was a 400% increase in sales tax revenue specific to the downtown area. She said that the property owners benefited a lot, but assuming 400% sales tax increase, the business owners would have had some benefit as well.

She said that she often gets complaints from business owners in the other parts of town that the downtown gets special treatment. In the past they have done things downtown that they do not do in other areas. As a City they no longer have the extra funding to offer those extra services.

Vice Mayor Evans said that the district provides some flexibility in moving faster than government and it provides direct ownership. She was happy to hear there were some property owners that were not going to pass on the assessment to their tenants. She has supported this since 2008 and was disappointed that there were not two districts being considered and that the south side did not grab on to this effort.

Councilmember Oravits said that after listening to everything he was going to be in favor of this. When the property owners and business owners have more control over their future, more times than not they benefit. If the private sector is willing to risk their own money, they should

support it, and he was confident that this commitment would push downtown forward.

Councilmember Overton said that there is positive and negative in the way the statutes are written. It is a simplistic process, coming to the Council asking for permission. The true selling point is for the property owners to pull together and the Council is allowing that. The property owners are taking that role and responsibility seriously. He does think there are going to be challenges. He believes there is some confusion on whether it is a City district or a Downtown District. They need to understand that the City has an interest, but they are not leading it.

He suggested that they take a close look at how the transition works, with the Clerk and Treasurer, and would like to separate those quickly and in a transparent manner. As far as whether or not the City votes, they can wait to discuss that further until an election is called by the District. He would prefer that the City be in a neutral position, but he completely understands they should be participating.

Councilmember Barotz said that she did not think that the status quo was an option. The folks in the downtown have tried their best to come together in an ad hoc fashion, and she thinks this is actually the most appropriate next step. She does think the City should pay their fair share and for those properties owned by the City with tenants, she would hope they do not pass along the assessment.

Mr. Eberhard noted that there were two resolutions being considered. The first was to approve formation of the district and the second was to approve the IGA between the City and the District.

Mayor Nabours said that to those that have objections about the lack of specificity within the Plan and the budget, those are arguments to be made among the property owners when they go to the vote about the assessment. He said that 51% of the property owners have to be satisfied with the assessment.

Mayor Nabours noted that there were a few options to be determined within the resolution regarding the boundaries of the district and appointment of the Board of Directors. He also noted that the map was not attached and it was agreed that it would be the same map as on file in the City Clerk's Office attached to the General Plan.

The City Clerk noted that she had not yet received the Affidavit of Publication, but she had seen the notice in the paper and knew it had been published.

Mayor Nabours moved to approve Option 1 as to the district boundary (as presented); seconded; passed unanimously.

Mayor Nabours moved to appoint John VanLandingham, David Stilley and Antoinette Beiser as the initial Board of Directors (Section 8); seconde; passed unanimously.

Mayor Nabours moved to read Resolution No. 2014-06 by title only (as amended above); seconded; passed unanimously.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, FORMING THE "FLAGSTAFF DOWNTOWN BUSINESS IMPROVEMENT AND REVITALIZATION DISTRICT", A SPECIAL TAXING DISTRICT; AND APPOINTING THE INITIAL BOARD OF DIRECTORS

Mayor Nabours moved to adopt Resolution No. 2014-06; seconded; passed unanimously.

3. **Consideration and Possible Adoption of Resolution No. 2014-07:** *A Resolution of the City Council of the City of Flagstaff, Arizona, Approving an Intergovernmental Agreement for Services with the Flagstaff Downtown Business Improvement and Revitalization District.*

Mayor Nabours said that he thought they needed to do more work on the IGA before approving it. He had no problem with the lump sum payment, but it needs to be conditioned on the assessment passing. He would also like to resolve the issue of whether they pay on the properties that the City does not occupy.

Mr. Burke noted that each lease with the City is written differently.

Mayor Nabours said that another issue is the rights-of-way within the district. He asked how they would be assessed, and how they would vote. Ms. D'Andrea noted that there is no assessed valuation on the county records with regard to the rights-of-way. She also noted that Section 4.1 already states that if there is no assessment, the City will not pay.

Mayor Nabours moved to postpone consideration of Resolution No. 2014-07 for two weeks; seconded.

After brief discussion, **motion failed with a vote of 1-6 with all but Mayor Nabours casting the dissenting votes.**

Vice Mayor Evans moved to read Resolution No. 2014-07 by title only; seconded; passed 6-1 with Mayor Nabours casting the dissenting vote.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR SERVICES WITH THE "FLAGSTAFF DOWNTOWN BUSINESS IMPROVEMENT AND REVITALIZATION DISTRICT"

Councilmember Woodson moved to adopt Resolution No. 2014-07; seconded; pass 6-1 with Mayor Nabours casting the dissenting vote.

15. **REGULAR AGENDA**

None

16. **DISCUSSION ITEMS**

A. **Update on the Museum of Northern Arizona plans - Community Engagement and Service**

City of Flagstaff Retention and Expansion Manager John Saltonstall introduced Dr. Robert Breunig with the Museum of Northern Arizona, who gave a PowerPoint presentation which provided history of the Museum and their future plans.

Dr. Breunig said that he wanted City leaders to understand that they were not sitting still, or looking back, but they are looking forward to fit in with the STEM initiative and that they were the kind of institution that everyone in the community can be proud of.

Dr. Breunig said that it has become clear that a lot of people in Flagstaff do not understand that they have a vision for the future. For the short term, they want to work on funding improvements and when they feel that have the capacity, they will announce their future vision with a major push. He said that the first phase will be to fix what they have and make it as good as possible, and then the second phase would be the Visitors Center and other galleries.

17. **POSSIBLE FUTURE AGENDA ITEMS**

Verbal comments from the public on any item under this section must be given during Public Participation near the beginning of the meeting. Written comments may be submitted to the City Clerk. After discussion and upon agreement of three members of the Council, an item will be moved to a regularly-scheduled Council meeting.

None

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

Councilmember Oravits asked that staff look into the Fourth Street Bridge, past Gore and the Aquaplex, and the two left-turning lanes where traffic backs up.

Councilmember Brewster reminded everyone of the Dew Downtown during the coming weekend.

Vice Mayor Evans requested the following Possible Future Agenda Items:

- Concept of a National Conservation Area for Walnut Canyon

- Support for the Secure Rural Schools Initiative

Mr. Burke noted that the Council could consider support of that item without formal action because of their approved legislative agenda item to cross support alliance members.

She also requested:

- Possible donation or allocation of land for a Veterans Home in Flagstaff
- Information on film subsidies so she can better understand that as well as the pending state law regarding them

19. ADJOURNMENT

The Regular Meeting of the Flagstaff City Council held February 4, 2014, adjourned at 9:18 p.m.

_____
MAYOR

ATTEST:

_____
CITY CLERK

CERTIFICATION

STATE OF ARIZONA)
SS)
County of 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 February 4, 2014. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 4th day of March, 2014.

_____
CITY CLERK

MINUTES

WORK SESSION
TUESDAY, FEBRUARY 11, 2014
COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
6:00 P.M.

1. Call to Order

Mayor Nabours called the Flagstaff Work Session of February 11, 2014, to order at 6:03 p.m.

2. Pledge of Allegiance.

The City Council and audience recited the Pledge of Allegiance.

3. Roll Call

Councilmembers present: **Councilmembers absent:**

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

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

4. **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.

The following individuals addressed Council to thank them for supporting the third annual Dew Downtown Festival:

- John VanLandingham
- Mark Lamberson

- Eric Yaberhard

Comments received included:

- There was a huge impact to the Downtown Shops. January and February are slow months and this event brought in much needed business.
- The event is planned at the right time.
- Hope to see the event continue.
- Good public/private partnership.
- Foot traffic was up in the businesses over the previous years.
- Gross revenues were up significantly.

The following individuals addressed Council with concerns about the displacement of residents of Arrowhead Village Mobile Home Park:

- Susan Covelas
- Amelia Mesa
- Elia Lione
- Ms. Vasquez

Comments received included:

- Please consider a displacement ordinance that will protect people.
- Would like a solution to the problem.
- There is no money available to move.
- Many will have to find new jobs and schools.

Klee Benally addressed the Council with concerns of religious freedom and free speech violations during the Dew Downtown Festival.

Rob Wilson addressed Council about the required fee to submit a position statement for the Regional Plan publicity pamphlet.

Meline addressed the Council with concerns of freedom of speech and oppression.

5. **Preliminary Review of Draft Agenda for the February 18, 2014, 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.*

Mayor Nabours stated that the Liquor License item involves some bankruptcy questions and asked Ms. D'Andrea to be prepared to field questions at the meeting.

Mayor Nabours also asked Ms. D'Andrea to be prepared to answer questions concerning the proposed agreement for utility services.

6. **Economic Collaborative of Northern Arizona (ECoNA) annual update.**

Economic Vitality Director Stacey Button introduced CEO of ECoNA Rich Bowen and ECoNA Board Chairman Chris Bavasi. ECoNA is comprised of 16 member agencies. ECONA was established with the City as the founder in 2010.

Mr. Bowen offered a PowerPoint presentation that addressed the following:

- PURPOSE/HISTORY
- OBJECTIVES
- ECONA MEMBERSHIP
- ECONA BOARD
- BUSINESS ATTRACTION
- INCREASING EMPLOYMENT
- BUSINESS ATTRACTION
- BUSINESS EXPANSION
- BUSINESS RETENTION AND EXPANSION
- ENTREPRENEURIAL COMMUNITY
- 2013 LEGISLATIVE WORK
- PLANNING
- 2014 POSITIVES
- 2014 CHALLENGES
- FUTURE VISION
- WORK PLAN ADDITIONS 2014

Councilmember Barotz asked if ECoNA would consider some sort of media plan to broadcast the work that is done. Many people do not know about ECoNA and it could give the community some information about what is going on. She also suggested looking into a Facebook page and other social media.

Councilmember Oravits noted that it is great to hear the statistics as it goes to show that small business is the backbone of the community. He asked if ECoNA is looking at California to draw more businesses in. Mr. Bowen offered that ECoNA has started to work with the Arizona Commerce Authority to raise visibility with them. The Commerce Authority has allowed ECoNA to join in on ads. The Commerce Authority has people that are out recruiting for Arizona and Flagstaff. There has not been a lot of success in that and ECoNA would like to look to some of their partners to do major branding with a firm. It is a challenge to find a company who is ready to make a move and Flagstaff is the best option for them. It is really about increasing the number of contacts made and advertising what is available to offer.

Councilmember Overton stated that the ECoNA model has come a long way. It is impressive to see the collaboration with all the entities large and small. Many of the City's smaller businesses do not know about the resources that ECoNA offers. Focus needs to be on how to get the word out.

Vice Mayor Evans suggested informing the public about the quality of jobs that are created. It is important for the community to know that jobs are being created that provide a livable wage in Flagstaff.

She also suggested using the biosciences sector to get assistance in attracting the Veterans home. It could bring a lot of jobs to Flagstaff and the jobs that are created would be powerful for the region.

Mr. Burke asked about the certified sites. Mr. Bowen stated that the brokers and land owners got together with the Arizona Commerce Authority to do an education piece on certified sites and it is quite extensive.

Mr. Burke also noted that with regard to sector work, there are anchor tenants in each of the industries and really working the angle of vertical and horizontal businesses related to the anchor to find the next supplier or distributer to connect is very important.

Mr. Bavasi stated that three years ago ECoNA was a grand experiment and if this is the model it will be important to develop five and ten year plans.

7. **Discuss and provide direction to staff on the development of an ordinance prohibiting aggressive solicitation.**

Flagstaff Police Chief Kevin Treadway provided a Powerpoint presentation that covered the following:

- AGGRESSIVE SOLICITATION
- WE WILL…
- LOITERING STATUTE
- CRIME IN FLAGSTAFF
- TRENDS FOR FLAGSTAFF POLICE DEPARTMENT
- COMPSTAT
- VIOLENT AND PROPERTY CRIME
- VIOLENT CRIME
- PROPERTY CRIME
- DIRECTED PATROL EFFORTS/OP 40
- OP 40
- REVIEW OF LOITERING CALLS FOR SERVICE APRIL 1, 2012 TO APRIL 30, 2013
- QUANTITATIVE ARREST DATA
- ARRESTS QUALITATIVE DATA
- OP 40 ARRESTS OVERALL
- MISSION AND CULTURE FPD
- OPTIONS

Assistant City Attorney Maryanne Sullivan continued the presentation.

- PROPOSED ORDINANCE
- DEFINITION OF AGGRESSIVE MANNER
- OTHER DEFINITIONS
- PROHIBITED ACTS
- QUESTIONS

Mayor Nabours stated that Flagstaff has not had this ordinance in the past but has always used the State statute. Recently, the State statute was deemed unconstitutional.

The City can enact its own ordinance or it can wait to see if the State is going to enact a more constitutional statute. He asked if there is any indication that the State may revise the statute. Ms. Sullivan stated that House Bill 2024 is very similar to the language being proposed tonight, however it is unknown if it will be successful. The State statute does not address some of Flagstaff's unique situations. This proposal would allow the City to continue to address the problem in a constitutional way.

Mayor Nabours noted that the language makes reference to allowing solicitation to occur at 15 feet. Ms. Sullivan stated that 15 feet is the maximum that she feels to be constitutionally allowed. It is a matter of conduct versus speech.

Mayor Nabours asked if there is a consensus of the City Council to move forward with drafting a City ordinance rather than wait for the State to modify the statute.

Councilmember Woodson asked, if an ordinance is not adopted, were there any other laws that the City can enforce or if there be a gap in enforcement. Chief Treadway stated that there would be a gap, especially with public property.

All members of the City Council were in favor of moving forward with drafting an ordinance with the 15 foot limit.

8. **Review of Draft Agenda Items for the February 18, 2014, City Council Meeting.***

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

None.

10. **Public Participation**

None

11. **Informational Items and Reports from Council and Staff, requests for Future Agenda Items**

Councilmember Overton stated that the Dew Downtown was a great event and good image of Flagstaff.

Vice Mayor Evans requested information in writing from Legal on what the Council can or cannot do in the context of denying a rezone.

Vice Mayor Evans also stated that knowing an application will be submitted for the Arrowhead Village Mobile Home Park in the near future, there will be a large population of Spanish speakers who will need a translator to translate their comments, remarks, and questions. The City should be providing that service and she requested a future agenda item to discuss options.

Councilmember Barotz is not aware of the date for the rezoning of the Arrowhead Village property and requested a CCR that lays out a timeline for the project and exactly where it is in the process.

Councilmember Brewster offered congratulations for the Dew Downtown; it was a great event and economic booster.

Councilmember Oravits requested the travel records from the Sustainability Section. He also requested more information about the fees associated with submitting a pro and con statement for the Regional Plan.

Councilmember Oravits inquired about the budget process and was under the impression that the City Council would be going through the budget by department as was done last year. Mr. Burke indicated that the Council will hear from each Division during the April retreat about their specific work plan and challenges.

Councilmember Oravits requested information about the procedures for to/from. It would be nice to be reminded about what staff time can be dedicated to requests.

Mr. Burke stated that the Dew Downtown was a good success and the estimate of attendees is somewhere between 18,000 and 21,000 for the weekend. He thanked the City Council for their support and approval for the event.

12. **Adjournment**

The Work Session of the Flagstaff City Council held February 11, 2014, adjourned at 8:04 p.m.

_____
MAYOR

ATTEST:

_____
CITY CLERK

REGULAR COUNCIL MEETING
TUESDAY, FEBRUARY 18, 2014
COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
4:00 P.M. AND 6:00 P.M.

4:00 P.M. MEETING

1. CALL TO ORDER

Mayor Nabours called the Regular Meeting of the Flagstaff City Council of February 18, 2014, to order at 4:05 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 (telephonically)

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

3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

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

MISSION STATEMENT

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

4. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

A. **Consideration and Approval of Minutes**: City Council Work Session of January 28, 2014; and the Special Meeting (Executive Session) of February 11, 2014.

Councilmember Overton moved to approve the minutes of the City Council Work Session of January 28, 2014; and the Special Meeting (Executive Session) of February 11, 2014; seconded; passed unanimously.

5. PUBLIC PARTICIPATION

Public Participation enables the public to address the Council about an item that is not on the agenda (or is listed under Possible Future Agenda Items). 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.

None

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:** Parks and Recreation Commission.

Adam Kaupisch, one of the applicants, said that he was new to the community and just wanted to introduce himself. He previously served on the Parks and Recreation Commission in Helena, Montana. He has been in Flagstaff for about six months and has a four and six year old, so he is getting roots established in the community.

Councilmember Brewster said that both applicants were well qualified**. She then moved to appoint James Baker to the Parks and Recreation Commission with a term expiring August 2015; seconded; passed unanimously.**

She told Mr. Kaupisch that more opportunities are always coming open.

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

Councilmember Barotz moved to appoint Janis Russell and Susan Shields to the Tourism Commission (Hospitality representatives), terms to expire January 2017; seconded; passed unanimously.

C. **Consideration of Appointments:** Personnel Board.

Councilmember Woodson moved to appoint Corey Ringenberg to the Personnel Board, with a term expiring October 2016; seconded; passed unanimously.

8. LIQUOR LICENSE PUBLIC HEARINGS

A. **Consideration and Action on Liquor License Application:** Lisa Dishman-McCulloch, "Nomads", 19 W. Phoenix Ave., Series 07 (beer and wine bar), Person Transfer and Location Transfer.

Mayor Nabours said that they had discussed prior concerns with the previous owner of the liquor license filing bankruptcy but the City Attorney has advised the Council that it would not preclude approval of this application.

He then opened the Public Hearing. There being no public comment Mayor Nabours closed the Public hearing.

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

9. CONSENT ITEMS

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

A. **Consideration and Approval of Utilizing the Cooperative Purchase Agreement Through the City of Goodyear Contract # CON-12-2155:** Utility Billing Services

Mayor Nabours said that he had raised the question last week on how it was the City was purchasing billing services through the City of Goodyear. Purchasing Director Rick Compau explained that back in 2008 the City conducted an Invitation to Bid competitive process for the same services and had zero responses. They found that there were not any local Flagstaff vendors that had the ability to provide all of the component pieces to provide the services needed.

At that time they piggybacked on a Tucson contract which they had set up as a cooperative agreement, which is often a strategy to increase competition. That contract has expired and the City was faced with the decision to go through a competitive process or look for another agreement. They still could not find a vendor in Flagstaff that provided all of the pieces needed. One of their plans is to meet with vendors and go over the way they would need to be set up operationally to serve the needs of the City so they could bid on this in the future. He said that they did the outreach and made phone calls.

This time they have piggybacked on a City of Goodyear cooperative agreement which has an initial term of one year with four one-year options to extend. If staff is able to provide assistance with local vendors then they could go through a sealed competitive bid process in the future. They went with Goodyear's agreement this time because it was the most updated in terms of scope of work.

Mayor Nabours moved to approve the contract with Infosend through the cooperative purchase agreement with the City of Goodyear contract, #CON-12-2155-Utillity Billing Services; seconded; passed unanimously.

10. **ROUTINE ITEMS**

A. **Consideration and Adoption of Ordinance No. 2014-06:** An ordinance amending the official Zoning Map for a parcel of approximately 0.16 acres of land located at 515 North San Francisco Street, aka the Yeager House, by adding a Landmarks Overlay district designation ("LO") to the existing Single-Family Residential Neighborhood ("R1N") zoning classification. ***(For the purpose of strengthening cultural and historical features)***

Councilmember Brewster moved to read Ordinance No. 2014-06 by title only for the final time; seconded; passed unanimously.

AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AMENDING THE FLAGSTAFF ZONING MAP DESIGNATION OF APPROXIMATELY 0.16 ACRES OF LAND LOCATED AT 515 NORTH SAN FRANCISCO STREET BY ADDING A LANDMARKS OVERLAY DISTRICT DESIGNATION ("LO") TO THE EXISTING SINGLE-FAMILY RESIDENTIAL NEIGHBORHOOD ("R1N") ZONING CLASSIFICATION

Councilmember Barotz moved to adopt Ordinance No. 2014-06; seconded; passed unanimously.

B. **Consideration and Adoption of Ordinance No. 2014-04:** An ordinance amending the official Zoning Map for a parcel of approximately 0.26 acres of land located at 19 West Phoenix Avenue, aka Motel DuBeau Travelers Inn and Hostel, by adding a Landmarks Overlay district designation ("LO") to the existing Community Commercial ("CC") and T5 Main Street Transect Zone ("T5") zoning classifications. ***(To protect the historical significance of the structure)***

Councilmember Brewster moved to read Ordinance No. 2014-04 by title only for the final time; seconded; passed unanimously.

John McCullough addressed the Council thanking everyone for their assistance, from Jerene Watson, to Karl Eberhard, Mark Sawyers, Roger Eastman, Elaine Averitt.

AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AMENDING THE FLAGSTAFF ZONING MAP DESIGNATION OF APPROXIMATELY 0.26 ACRES OF LAND LOCATED AT 19 WEST PHOENIX AVENUE BY ADDING A LANDMARKS OVERLAY DISTRICT DESIGNATION ("LO") TO THE EXISTING COMMUNITY COMMERCIAL ("CC") AND T5 MAIN STREET TRANSECT ZONE ("T5") ZONING CLASSIFICATIONS

Councilmember Brewster moved to adopt Ordinance No. 2014-04; seconded passed unanimously.

C. **Consideration and Adoption of Ordinance No. 2014-05:** An ordinance amending the official Zoning Map for a site of approximately 400.16 acres of open space land known as Picture Canyon by adding a Landmarks Overlay district designation ("LO") to the existing rural residential ("RR") zoning classification. ***(For the purpose of preserving archaeological elements and Flagstaff history)***

Councilmember Brewster moved to read Ordinance No. 2014-05 by title only for the final time; seconded; passed unanimously.

AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AMENDING THE FLAGSTAFF ZONING MAP DESIGNATION OF APPROXIMATELY 400.16 ACRES OF LAND KNOWN AS PICTURE CANYON BY ADDING A LANDMARKS OVERLAY DISTRICT DESIGNATION ("LO") TO THE EXISTING RURAL RESIDENTIAL ("RR") ZONING CLASSIFICATION

Councilmember Brewster moved to adopt Ordinance No. 2014-05; seconded; passed unanimously.

D. **Consideration and Adoption of Resolution No. 2014-08:** A resolution authorizing the City of Flagstaff to provide up to two-hundred forty-five thousand dollars ($245,000) to Cedar Crest/Flagstaff LP, or its successor, as a Local Government Contribution for a Low Income Housing Tax Credit Acquisition/Rehabilitation Project of the apartment complex currently known as Mountainside Village under the Arizona Department of Housing ("ADOH") 2014 or 2015 Qualified Allocation Plan. ***(Authorization to change the terms of a loan previously made for affordable housing.)***

Housing Manager Sarah Darr said that this item is nearly identical to what they saw last year. The change is in the new entity's name, and they extended the time period to include the next tax credit cycle as well so they can try again.

Jeffrey Voorhees, President of National Consulting Alliance and co-developer for Mountainside, introduced himself and said that he was also representing National Affordable Housing Foundation which is a 501(c)3 formed in 2000 whose mission

is to develop, rehabilitate, and foster affordable housing. He said that he was there to answer any questions they may have.

Councilmember Barotz said that the staff report eludes that the 2013 application was unsuccessful. Ms. Darr replied that it was very competitive because half of it was awarded in 2012 so only half of the funds were available. She said that Mr. Spritzer feels very comfortable applying this year.

Councilmember Oravits asked where the $245,000 would come from. Ms. Darr noted that the City holds a $300,000 interest only note on the property; it is not new money going into the property. She said that the loan was made back in 1997 and as far back as they can find, it came from the affordable housing allocation. Staff was asked if it could be returned to the General Fund. Ms. Darr said that when they researched that question a year ago the answer was no; she could follow up with Finance and send a memo to further address that issue.

Mayor Nabours moved to read Resolution No. 2014-08 by title only; seconded; passed 6-1 with Councilmember Oravits casting the dissenting vote.

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL AUTHORIZING THE CITY OF FLAGSTAFF TO PROVIDE UP TO TWO HUNDRED FORTY-FIVE THOUSAND ($245,000.00) TO CEDAR CREST/FLAGSTAFF LP AS LOCAL GOVERNMENT CONTRIBUTION FOR A LOW INCOME HOUSING TAX CREDIT PROJECT UNDER THE ARIZONA DEPARTMENT OF HOUSING ("ADOH") 2014 QUALIFIED ALLOCATION PLAN

Mayor Nabours moved to adopt Resolution No. 2014-08; seconded; passed 6-1 with Councilmember Oravits casting the dissenting vote.

RECESS

The 4:00 p.m. portion of the February 18, 2014, Flagstaff City Council meeting recessed at 4:42 p.m.

6:00 P.M. MEETING

RECONVENE

Mayor Nabours reconvened the meeting of the Flagstaff City Council held February 18, 2014, at 6:03 p.m.

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and

discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

11. **ROLL CALL**

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

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

12. **PUBLIC PARTICIPATION**

Jeff Knorr, Flagstaff, recommended that Council consider adding funding to the emergency housing fund so with the impending fire season if it is needed it will be available.

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

None

14. **PUBLIC HEARING ITEMS**

None

15. **REGULAR AGENDA**

A. **Consideration and Possible Adoption**: Development Fee Land Use Assumptions and Infrastructure Improvement Plan

Planning Director Dan Folke began a PowerPoint presentation on the development fee land use assumptions and infrastructure improvement plan which addressed:

- DEVELOPMENT FEES A.K.A. IMPACT FEES
- PATH FORWARD
- OVERVIEW OF ADOPTION PROCESS
- PUBLIC OUTREACH

At this time Carson Bise of Tischer Bise continued the presentation:

- FEBRUARY 7, 2014 REVISIONS

Mr. Bise said that the report in front of them tonight does have the fee calculations in there, but the assumptions are what they are discussing this evening. He noted that there have been a few changes to the previous version. Upon reflection he started to review the proportionate share factor for public safety for residential versus nonresidential.

He said that in the past they have used calls for service to determine the assumptions, but he thought it was better to use functional population estimates, getting away from calls for service. The main reason to move to the new methodology is that there were such a large number of calls for service that were traffic-related. Normally it is around 5 to 10%; it caused him concern when he saw 50%. He believed that the new methodology was more accurate and now shows the proportionate share at 70/30 for residential/nonresidential versus the prior 56/44.

- RESULTS OF REVISIONS
- FEE COMPARISON
- DEVELOPMENT FEE METHODS AND COST COMPONENTS
- SUMMARY OF FIRE COSTS AND PROJECTED REVENUES
- SUMMARY OF POLICE COSTS AND PROJECTED REVENUES
- FLAGSTAFF ADOPTION SCHEDULE

Mayor Nabours asked if the fees precluded extractions for a subdivision that may give the City a parcel of land to build a fire station, as an example. Mr. Bise said that they would have options. Any time they are asking, during part of the subdivision approval process, a credit has to be given, but it can take several forms. Depending on the value, they may waive the fee. Or, a lot of times cities will have the developer build the infrastructure and pay them back through future stream of revenue. Regardless, they can do that, but it would have to be taken out of the impact fee calculation and that should be in their ordinance.

Mr. Burke asked if in order to do something like that it would need to be identified in the Land Use Assumptions or the Infrastructure Improvement Plan. Mr. Bise said that the facilities portion of this fee is cost recovery; they would not have to give a credit. A better example would be if someone gave the City land for a police substation. Either way he would argue that if they have given land it had to be credited.

Councilmember Oravits asked what the combined amount was over the years. Mr. Bise replied that it was $2.6 million. He noted that it was a projection; the fees could be lower or higher. Whether higher or lower, the General Fund is not exposed like it would be under a plan based approach. With this methodology they have to spend what they have collected. If growth is higher they will have to revisit the assumptions, which have to be reviewed in five years anyway.

Councilmember Oravits said that the more growth, the more infrastructure needs. He said that thinking back to the Nexus Study, at the height of the housing bubble they were looking at false assumptions, in hindsight. He asked what the estimated growth rate was being used. Mr. Bise said that they were looking at around 1.2% growth rate. He said that the projections are somewhat

conservative; they are harder now to make than any time in the past. He said that the focus is on the first five years since they have to update the study every five years.

Management Services Director Barbara Goodrich noted that because they are so uncertain for the next five years, their projections are very conservative. Regardless of how many applications they may be seeing the number of units, 1121, is slightly less than what they did in the previous five years.

Mr. Bise said that the projections do not affect this; they have to paint the nexus. As a result of growth they have to improve infrastructure. He said that it is a snapshot approach of where they are today; if they are wrong it does not impact the fee calculations.

Councilmember Oravits said that he was still trying to understand, and has not been made clear, is how in the assumptions they can take a number of bedrooms and use that as a new rate versus unit to unit. He asked why it was appropriate to say if there is one bedroom more it will cost more money. Secondly, he was surprised at the fee changing so dramatically from December to today.

Mr. Bise said that they did the fee by number of bedrooms. The larger units typically have more people and more vehicles. He noted that nothing says they have to adopt a fee schedule, but it does improve proportionality.

Mr. Bise said that he felt there was a flaw in the number if they are excising out 50% of a department's activity to allocate residential/nonresidential. To him it was not as defensible and that is why he has advised they move to the other methodology.

Mayor Nabours said that if he is a new homebuyer and he pays an impact fee, he is paying for his newly generated fire station, but he is also paying sales tax, property tax, etc. part of which goes toward refurbishing the existing station. Mr. Bise said that unless they have dedicated land use sources, it is hard to make the argument. He said that most communities are funding their CIP with whatever money they have. It is hard to make the argument that a certain portion of sales tax is going to pay for a portion of the fire station. The revenue offsets are part of the next phase of the process.

Mayor Nabours reminded everyone that tonight they were dealing with the assumptions; the methodology. They are not setting a fee of any particular amount; that would come later.

The following individuals addressed the Council:

- Vance Peterson
- Moran Henn, Friends of Flagstaff's Future
- Jeff Knorr

The following comments were received:

- He has been keeping track of Council meetings and watching the recordings. It appears that they keep hiring consultants but then they do not seem to listen to them.
- As a contractor, he was in favor of the plan; he thinks the methodology is good
- With recent construction they have seen the number of bedrooms is a real
- Would urge Council to consider that some are living right on the edge of being contributing members; would like to see some consideration given to building for affordable housing
- The FFF supports the implementation of impact fees
- Supports consideration for credits for affordable housing development
- This is one more fee that will be passed on to the end user

Councilmember Barotz asked if there was anything in statute that precluded them from giving a break to a developer doing affordable housing. Mr. Bise said that is one of the reasons why some communities are going to the number of bedrooms to meet affordable housing goals. Another way is to waive the development fees for economic development; however, if they waive $100,000 in fees they have to make it up through the General Fund to make itself whole.

Councilmember Barotz asked Mr. Knorr what an alternative would be to impact fees to ensure that infrastructure is in place. Mr. Knorr said that he did not know; the General Fund had a lot of shortcomings. He did not like hearing that it was a "developer thing." The developer is not going to pay for it; it will be passed on to the end user.

With regard to need to make the fund whole, Mr. Bise explained that they cannot arbitrarily credit certain land uses. The idea is that if you are going to waive development fees it would be discriminating against the other uses, so the General Fund would have to transfer money to the development fee fund.

Vice Mayor Evans noted that it was not something the City came up with; it is state law and precedence has been set that they cannot arbitrarily waive the fees.

Councilmember Oravits asked what funded the improvements before the impact fees were enacted in 2008. Staff replied that it came from the General Fund, but they could not keep up with the needed improvements. Councilmember Overton gave a historical perspective, noting that Council came to an agreement on Public Safety, but they could not come to agreement on things like transportation, parks, open space, etc. For those they felt it was actually better to do it through the exaction process.

Mr. Burke said that in the past the basic philosophy was that growth should pay for itself, but they were accomplishing that through the extraction policy. With Public Safety, it was more difficult to have a case by case exaction and that is where this filled a gap.

Mayor Nabours said that this was a good discussion, but it will come up later. The question this evening before Council was the report, the data that justified an

impact fee. The City could not do more than the report recommends under state law, but they do not have to do this maximum. He said that the report is based on projections and assumptions. By adopting the report they are not adopting any fee.

Mayor Nabours moved to adopt the Land Use Assumptions as set forth in the Tischler Bise Report; seconded; passed 5-1 with Councilmember Oravits casting the dissenting vote.

Mayor Nabours moved to adopt the Infrastructure Improvement Plan as set forth in the Tischler Base Report; seconded; passed 5-1 with Councilmember Oravits casting the dissenting vote.

16. DISCUSSION ITEMS

None

17. POSSIBLE FUTURE AGENDA ITEMS

Verbal comments from the public on any item under this section must be given during Public Participation near the beginning of the meeting. Written comments may be submitted to the City Clerk. After discussion and upon agreement of three members of the Council, an item will be moved to a regularly-scheduled Council meeting.

None

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

Councilmember Overton announced that he got engaged over the weekend.

Councilmember Brewster asked that staff look into the stop light at the corner of Country Club and Soliere as it did not appear to be at the correct angle.

Councilmember Oravits requested that due to the dryness of the region that Council consider increasing the emergency housing funding during the budget discussions.

19. ADJOURNMENT

The Regular Meeting of the Flagstaff City Council held February 18, 2014, adjourned at 7:10 p.m.

_____
MAYOR

ATTEST:

_____
CITY CLERK

CERTIFICATION

STATE OF ARIZONA)
SS)
County of 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 February 18, 2014. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 4th day of March, 2014.

_____
CITY CLERK

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Stacy Saltzburg, Deputy City Clerk
Date:	02/26/2014
Meeting Date:	03/04/2014

TITLE:

Consideration and Action on Liquor License Application: Danny Thomas, “Dorado's", 103 N. Leroux, Series 06 (bar- all spirituous liquor), New License and Person Transfer.

RECOMMENDED ACTION:

Hold 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 transfer is from Randy Nations for San Felipe's Cantina located at 103 N. Leroux, Flagstaff, Arizona to Danny Thomas.

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 Danny Thomas for Dorado's at 103 N. Leroux. The transfer is from the Randy Nations for San Felipe's Cantina located at 103 N. Leroux, Flagstaff, Arizona to Danny Thomas.

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

A background investigation performed by Tom Boughner, Code Compliance Manager, 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 be given to only 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 March 6, 2014.

Community Benefits and Considerations:

This business will contribute to the tax base of the community. We are not aware of any other relevant considerations.

Community Involvement:

The application was properly posted on February 3, 2014. 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:

Dorados - Letter to Applicant
Hearing Procedures
Series 06 Description
Dorados - PD Memo
Dorado's - Code Memo
Dorados - Tax Memo

OFFICE OF THE CITY CLERK

February 19, 2014

Dorado's
Attn: Danny Thomas
P.O. Box 152
Flagstaff, AZ 86001

Dear Mr. Thomas:

Your application for a Series 6 person transfer liquor license for Dorado's at 103 N. Leroux, was posted on February 3, 2014. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, March 4, 2014 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 February 23, 2014 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 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.

MEMORANDUM

Memo # 14-019-01

TO: **Chief Kevin Treadway**

FROM: **Sgt. Matt Wright**

DATE: **February 11, 2014**

REF **Series 6 Liquor License Person to Person Transfer for "Dorado's"**

On January 21, 2014, 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 Danny Thomas, the listed agent on behalf of, Bryan Drew Gruver, owner of Dorado's. Danny Thomas is the listed agent for administrative purposes only and has no responsibility for the day to day operations of the business. Dorado's is located at 103 North Leroux St., in downtown Flagstaff. The bar location is currently operating as it has under the name of San Felipe's. This will change by March 1, 2014, when it will become "Dorado's". The license number being applied for is 06030008 a full bar license.

I conducted a query through local systems and public access on Danny Thomas and Bryan Gruver. No derogatory records were located for Danny Thomas or Bryan Gruver. Bryan self-reported six (6) liquor violations against liquor licenses he has part ownership of dating back to 2010. Bryan maintained he was only a financial partner and was not responsible for the day to day operations when these violations occurred. I spoke with Bryan who stated he was part owner of San Felipe's in Flagstaff from 2000 to 2012, when the bar was sold without his knowledge. Bryan said he also has partial ownership of a series 6 license at a bar in Tempe and a restaurant in Scottsdale but he does not have any operational control of either of the businesses. Bryan reported he has been responsible for two liquor violations that were received in 2000 and 2003 while running San Felipe's in Flagstaff. Bryan does not have any outstanding fines with the department of liquor.

In speaking with Bryan Gruver I confirmed Bryan had purchased the bar and the liquor license at 103 N. Leroux St., and now has 100 percent ownership. Bryan said he is running the bar with the name of San Felipe's until the liquor license is transferred. Bryan said the bar name will change to Dorado's by March 1, 2014. Bryan said he is working on hiring managers and will fill out the appropriate paperwork for the DLLC when the hiring is complete. Bryan said and proved he had attended the mandatory liquor law training courses.

I confirmed the bar is outside 300 feet from any school or church. As a result of the investigation, I can find no reason to oppose the series 6 application for person to person transfer. Recommendation to council would be for approval.

Planning and Development Services Memorandum

February 3, 2014

TO: Stacy Saltzburg, Deputy City Clerk

THROUGH: Roger E. Eastman, AICP, Comprehensive Planning and Code Administrator

FROM: Tom Boughner, Code Compliance Manager

RE: Application for Liquor License #06030008
103 North Leroux Street, Flagstaff, Arizona 86001
Assessor's Parcel Number P-100-19-001A
Bryan Drew Gruver on behalf of Dorado Brothers LLC

This application is a request for a Series #6 (Bar) a PERSON TRANSFER, INTERIM and NEW LICENSE APPLICATION from John Hindman on behalf of San Felipe's Cantina, located in the Central Business District. This district allows for bars.

There are no active Zoning Code violations associated with Bryan Gruver or San Felipe's Cantina at this time.

This liquor license is recommended for approval.

City of Flagstaff Web Map

San Felipe's

Mon Feb 3 2014 11:42:44 AM.

Memo

To: Stacy Saltzberg, Deputy City Clerk

From: Ranbir Cheema - Tax, Licensing & Revenue Manager

Date: February 14, 2014

Re: Series 6 Liquor License – Person Transfer – Dorado's

Dorado Brothers LLC located at 103N Leroux is properly licensed with the sales tax section of the city. They have not been in business long enough to begin filing tax returns as of yet. San Felipe as the seller was in compliance with the city sales tax requirements before ceasing operations in Feb 2013. Both the buyer and the seller are in good standing with the city sales tax requirements.

/liquor licenses/Dorados.doc

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Barney Helmick, Airport Director

Co-Submitter: Amy Hagin, Senior Procurement Specialist

Date: 02/26/2014

Meeting Date: 03/04/2014

TITLE:

Consideration and Approval of Amendment to Lease Agreements: Flagstaff Airport Rental Car Concessions, IFB 2011-09A: Amendment to leases with: Avis Budget Car Rental LLC, Alamo Rental Car/National Car Rental, The Hertz Corporation, and Enterprise Rent-A-Car companies. ***(Amendment to current leases with car rental companies for a three-year renewal in lieu of the two one-year renewals)***

RECOMMENDED ACTION:

Approve an amendment to the current lease agreement for a lease renewal for three (3) years in lieu of the two (2) one-year renewal (as the current lease agreements indicate) between the City of Flagstaff and Avis Budget Car Rental LLC, Alamo Rental Car/National Car Rental, The Hertz Corporation, and Enterprise Rent-A-Car Companies.

Policy Decision or Reason for Action:

To continue revenue sources for the Airport.

Financial Impact:

The Airport is guaranteed to receive revenue from the rental car concessions of at least $452,610 per year.

Connection to Council Goal:

Maintain standard of service to the community.

Previous Council Decision on This:

Yes, with the approval of the current lease agreements on January 18, 2011.

Options and Alternatives:

1.) Approve amendment to the lease extension for three (3) years.
2) Do not approve the amendment to the lease extension and approve a one (1) year lease extension per the current terms and conditions of the lease agreement(s).
3.) Do not approve any extension to the lease agreement(s). With a non-approval, a result would be a loss of revenue for the Airport and a new procurement process would need to be conducted.

Background/History:

An Invitation for Bids for Rental Car Concession was held in November 2010, with Council approval on January 18,2011. The terms of the lease agreement(s) were for an initial three (3) year term with two (2) additional one (1) year extensions subject to approval by the City Council and Lessee. The initial three (3) year term expired on January 31, 2014. Both the Airport and Lessees would prefer to perform an amendment to the current lease agreement(s) allowing for a final three (3) year extension to the lease with the current fixed rent, concession fee, annual guarantee and percentage fee of gross revenues.

Key Considerations:

Under the current financial climate it would be difficult to get a better financial agreement than the current agreement. Within the next thirty (30) months a second air carrier will be in place and increase the value of this lease. By executing an amendment to the current lease agreement(s), the City of Flagstaff is able to maintain the revenue for the Airport without jeopardizing a reduced bid rate, which is advantageous to the City. The 2010 Invitation for Bids created a substantial increase in revenues for the City, as well as a substantial operational cost to the lessees to provide the car rental service. Because of these substantial operational costs, incurred by the lessees, allowing for a final three (3) year extension to the lease will allow the lessees to offset some of these operational costs and the City to continue bringing in a significant revenue stream.

Expanded Financial Considerations:

The Airport is guaranteed to receive revenue from the rental car concessions of at least $452,610 per year.

Community Benefits and Considerations:

Rental cars at the Airport help the tourism, business and local interests.

Community Involvement:

N/A

Attachments:

Alamo Amendment
Avis Amendment
Enterprise Amendment
Hertz Amendment
Alamo/National Agreement
Avis Agreement
Enterprise Agreement
Hertz Agreement

Amendment I

RENTAL CAR CONCESSION/LEASE AGREEMENT

CITY OF FLAGSTAFF
And
ENTERPRISE LEASING COMPANY OF PHOENIX, LLC DBA ALAMO RENT A CAR AND NATIONAL CAR RENTAL

The following Amendment is incorporated into and made a part of the Concession/Lease Agreement between the City of Flagstaff ("City") and Enterprise Leasing Company of Phoenix, LLC d/b/a Alamo Rent A Car and National Car Rental ("Lessee"), dated February 1st, 2011 (the "Lease"), by mutual agreement of the Parties as set forth below, with new text underlined and deleted text stricken through.

ARTICLE III – TERM

B. RENEWAL

Upon completion of its initial term, this Lease may be renewed for one (1) additional three (3) year term ~~two additional one (1) year terms~~, subject to approval by the City Council and Lessee, provided that Lessee provides the Airport Director with at least ninety (90) days prior written notice of Lessee's desire to renew the term of this Lease.

Except as modified by this Amendment I, the Concession/Lease Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Concession/Lease Agreement as of the date set forth below.

City of Flagstaff	**Enterprise Leasing Company of Phoenix, LLC d Alamo Rent A Car and National Car Rental (Lessee)**
Kevin Burke, City Manager	By:
Attest:	
City Clerk	
Approved as to form:	Date of Execution:
City Attorney	

Amendment I

RENTAL CAR CONCESSION/LEASE AGREEMENT

CITY OF FLAGSTAFF
And
AVIS BUDGET CAR RENTAL, LLC

The following Amendment is incorporated into and made a part of the Concession/Lease Agreement between the City of Flagstaff ("City") and Avis Budget Car Rental, LLC ("Lessee"), dated February 1st, 2011 (the "Lease"), by mutual agreement of the Parties as set forth below, with new text underlined and deleted text stricken through.

ARTICLE III – TERM

B. RENEWAL

Upon completion of its initial term, this Lease may be renewed for one (1) additional three (3) year term ~~two additional one (1) year terms~~, subject to approval by the City Council and Lessee, provided that Lessee provides the Airport Director with at least ninety (90) days prior written notice of Lessee's desire to renew the term of this Lease.

Except as modified by this Amendment I, the Concession/Lease Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Concession/Lease Agreement as of the date set forth below.

City of Flagstaff	**Avis Budget Car Rental, LLC (Lessee)**
_____	_____
Kevin Burke, City Manager	By:
Attest:	
_____	
City Clerk	
Approved as to form:	
	Date of Execution:
_____	_____
City Attorney	

Amendment I

RENTAL CAR CONCESSION/LEASE AGREEMENT

CITY OF FLAGSTAFF
And
ENTERPRISE LEASING COMPANY OF PHOENIX, LLC DBA ENTERPRISE RENT-A-CAR

The following Amendment is incorporated into and made a part of the Concession/Lease Agreement between the City of Flagstaff ("City") and Enterprise Leasing Company of Phoenix, LLC d/b/a Enterprise Rent-A-Car ("Lessee"), dated February 1st, 2011 (the "Lease"), by mutual agreement of the Parties as set forth below, with new text underlined and deleted text stricken through.

ARTICLE III – TERM

B. RENEWAL

Upon completion of its initial term, this Lease may be renewed for one (1) additional three (3) year term ~~two additional one (1) year terms~~, subject to approval by the City Council and Lessee, provided that Lessee provides the Airport Director with at least ninety (90) days prior written notice of Lessee's desire to renew the term of this Lease.

Except as modified by this Amendment I, the Concession/Lease Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Concession/Lease Agreement as of the date set forth below.

City of Flagstaff	**Enterprise Leasing Company of Phoenix, LLC d Enterprise Rent-A-Car (Lessee)**
Kevin Burke, City Manager	By:
Attest:	
City Clerk	
Approved as to form:	Date of Execution:
City Attorney	

Amendment I

RENTAL CAR CONCESSION/LEASE AGREEMENT

CITY OF FLAGSTAFF
And
THE HERTZ CORPORATION

The following Amendment is incorporated into and made a part of the Concession/Lease Agreement between the City of Flagstaff ("City") and The Hertz Corporation ("Lessee"), dated February 1st, 2011 (the "Lease"), by mutual agreement of the Parties as set forth below, with new text underlined and deleted text stricken through.

ARTICLE III – TERM

B. RENEWAL

Upon completion of its initial term, this Lease may be renewed for one (1) additional three (3) year term ~~two additional one (1) year terms~~, subject to approval by the City Council and Lessee, provided that Lessee provides the Airport Director with at least ninety (90) days prior written notice of Lessee's desire to renew the term of this Lease.

Except as modified by this Amendment I, the Concession/Lease Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Concession/Lease Agreement as of the date set forth below.

City of Flagstaff	**The Hertz Corporation (Lessee)**
Kevin Burke, City Manager	By:
Attest:	
City Clerk	
Approved as to form:	Date of Execution:
City Attorney	

FLAGSTAFF PULLIAM
AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

BETWEEN

CITY OF FLAGSTAFF

and

ENTERPRISE LEASING COMPANY OF PHOENIX, LLC
d/b/a
ALAMO RENT A CAR and NATIONAL CAR RENTAL

FLAGSTAFF PULLIAM AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

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FLAGSTAFF PULLIAM AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

This Concession/Lease Agreement (the "Lease") is made as of the 1st day of February, 2011, by and between the City of Flagstaff (the "City") an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and Enterprise Leasing Company of Phoenix, LLC d/b/a Alamo Rent A Car and National Car Rental ("Lessee"), a Limited Liability Company, with offices at 1444 W. Auto Drive, Tempe, Arizona 85284.

RECITALS

A. The City is the owner and operator of Flagstaff Pulliam Airport (the "Airport") and the Airport Terminal Building (the "Terminal Building"), both located at 6200 Pulliam Drive, City of Flagstaff, Coconino County, Arizona;

B. Lessee desires to operate an automobile rental service at the Airport and to maintain a counter for operation of the automobile rental service in the Terminal Building; and

C. The City desires to have these services provided at the Airport for the convenience of the passengers and patrons of the Airport;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the City and Lessee agree as follows:

ARTICLE I - DEFINITIONS

As used in this Lease, the following terms, phrases, words and their derivations shall have the meaning given herein. Words in the singular shall include the plural, and masculine terms and pronouns shall include the feminine and neuter, and vice-versa, as the context may require.

A. "Airport" means the Flagstaff Pulliam Airport, located at 6200 Pulliam Drive, City of Flagstaff, Coconino County, Arizona, and all property and improvements contained within its boundaries.

B. "Airport Director" means the City's manager of the Airport.

C. "City" means the City of Flagstaff, Arizona, as represented by the Council of the City of Flagstaff, and where this Lease speaks of "approval by the City", approval means action by the Council of the City of Flagstaff, unless otherwise indicated.

D. "C.F.R." means the Code of Federal Regulations, as amended, and as the same may be amended from time to time.

E. “Concession Fee” means a fee which is the greater of a fee based on a percentage of Gross Revenues or Minimum Annual Guarantee (% fee or MAG), paid to the City for the privilege of doing business at the Airport for the term of this Agreement. This fee shall be free from any and all claims, deductions or setoffs against the City.

F. "CPI" means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, United States Department of Commerce, or such other index that said Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index.

F. "DBE" means a "disadvantaged business" (or disadvantaged business enterprise) as defined in 49 C.F.R. Subtitle A, Part 23.

G. "DOT" means the United States Department of Transportation, authorized and administered pursuant to the provisions of 49 U.S.C. § 102.

H. "FAA" means the Federal Aviation Administration, authorized and administered pursuant to the provisions of 49 U.S.C. §§ 40101, et seq. and 49 C.F.R. Chapter I.

I. "FAR" means the Federal Aviation Regulations, being 49 C.F.R. Chapter I.

J. "Fixed Rent" means Lessee's fixed rent obligation based on the square footage of the Rental Car Counter and Office Space, as provided by Section A of Article IV.

K. "Gross Receipts" means the aggregate amount of all revenue realized by the Lessee from its automobile rental service at or from the Airport, whether paid in cash, by credit or in-kind, determined without regard for Lessee's payment of any and all income, property, excise or other taxes levied on Lessee's activities, facilities, equipment or property, for which no deduction shall be made, except as otherwise expressly provided herein.

1. Gross Receipts shall include, but shall not be limited to: "drop charges" charged to patrons renting a vehicle at the Airport but delivering the vehicle to another automobile rental service office at the patron's destination; airport user fees or concession recovery fees recovered from the customer; all consideration received by Lessee for insurance coverage incidental to the rental of vehicles at the Airport; all revenues received by Lessee from or relating to the rental of vehicles at the Airport but delivered elsewhere, or from the rental of a vehicle exchanged for a vehicle delivered at or from the Airport, within a radius of thirty (30) miles from the Airport, when the rental agreements for such vehicles are to run consecutively; and all revenues realized by Lessee, the origin of which involved customer contact at the Airport, regardless of where such revenues are generated or paid.

2. Notwithstanding the foregoing, Gross Receipts shall not include: federal, state or local transaction privilege, sales or similar taxes that are separately stated and collected from Lessee's customers; revenue realized by the Lessee as reimbursement for fueling motor vehicles in advance (commonly known as the "fuel purchase option") or refueling motor vehicles upon return by the customer; amounts received as insurance proceeds or otherwise for damage, loss, conversion, or abandonment of or to Lessee's automobiles or other property, or received from customers under Lessee's right to recover from its customers for damages to the rental vehicles; proceeds received by the Lessee from the sale of its vehicles; and credits given by Lessee to its customers for such things as deposits and out-of-pocket purchases for gas, oil, or emergency service.

3. A vehicle shall be deemed to be rented at the Airport and consideration realized by Lessee therefore included in Gross Receipts, if: the rental contract for the vehicle is negotiated in whole or in part at the Airport, even though the vehicle may be delivered elsewhere within a radius of thirty (30) miles of the Airport; an advance registration or reservation for the vehicle has been made for any person at the Airport; or the vehicle is received within a radius of thirty (30) miles from the Airport, in exchange for a vehicle originally rented (or deemed rented hereunder) at the Airport, when the rental agreements for both vehicles run consecutively.

L. "Lessee" means Enterprise Leasing Company of Phoenix, LLC, d/b/a Alamo Rent A Car and National Car Rental ("Lessee"), a Limited Liability Company, with offices at 1444 W. Auto Drive, Tempe, Arizona 85284, entering into this Lease as the operator and tenant of the Premises, as hereinafter defined.

M. “Minimum Annual Guarantee” means a minimum amount to be paid to the City on an annual basis during each contract year as set forth in Section B(2) of Article IV.

N. "Office Space" means that space within the Terminal Building leased to Lessee, consisting of Office and Counter Space A as shown and further described in Exhibits A-1 and A-2 attached to

this Lease.

0. "Percentage Rent" means that portion of Lessee's rent obligation equal to ten percent (10%) of its Gross Receipts, as provided by Section B of Article IV.

P. "Premises" means the Office/ Counter Space and Vehicle Spaces.

Q. "Rent" means Lessee's Fixed Rent and Percentage Rent, along with any other sums or amounts designated as additional rent.

R. "Terminal Building" means that building in which the Office Space is located owned and operated by the City located at 6200 Pulliam Drive, at the Airport.

S. "U.S.C." means the United States Code, as amended, and as the same may be amended from time to time.

T. "Vehicle Spaces" means twelve (12) parking spaces in the Airport parking lot adjacent to the Terminal Building for the parking and vehicle cleanup of Lessee's ready-to-rent rental vehicles, two (2) drop-off spaces on the curb adjacent to the Terminal Building for the drop-off and short-term parking of Lessee's rental vehicles as shown, generally, in Exhibit B-1 and B-2 attached hereto.

ARTICLE II - LEASE OF PREMISES AND LICENSE TO USE FACILITIES

A. LEASE AND USE OF PREMISES

1. General

The City, for and in consideration of the rentals and fees herein reserved, and of the covenants, conditions and agreements to be done and performed by Lessee, does lease and demise to Lessee and Lessee does take to and from the City, the Premises upon the terms, covenants and conditions set forth in this Lease. Lessee warrants that it has physically inspected the Premises and accepts the Premises in their present condition, "as is." Lessee shall occupy and operate the Premises solely as set forth in this Lease, and for no other purpose other than such business purposes as may be necessary and incidental thereto, specifically: Lessee shall, on a nonexclusive basis, offer to the general public passenger vehicle rental services. The term "on a nonexclusive basis" in this context means that during the term of this Lease there will be a maximum of three (3) other rental car concessions at the Airport, unless the number of deplaning passengers exceeds 100,000 for a period of one calendar year at any time during the term of this Lease, in which event, the City reserves the right to advertise and request bids for one or more additional rental car concessions. Lessee may use the Premises as follows: the Office Space for all reservation, customer service, handling, billing and related activities as may be necessary or incident to Lessee's services at the Premises; the Vehicle Spaces for such purposes as set forth in the definition in Article I, Section U; and either or both for such other purposes as the Airport Director shall expressly, in writing, approve.

2. Exchange of Premises

The City may at any time, in its sole discretion, substitute for all or any part of the Premises such comparable space at the Airport and the Terminal Building as it shall, in its sole discretion determine, provided that, in such event, the City shall reimburse Lessee for its reasonable and necessary expenses incurred in relocating its operations to substitute space (not including, however, any lost revenues or profits occasioned by relocation), and the Fixed Rent hereunder shall be adjusted if the size of the substitute space shall vary materially from the Premises leased. No rental car concessionaire at the Airport shall be substantially disadvantaged compared with any other rental car concessionaire at the Airport as a result of the City's

substitution of all or a portion of its leased premises under this subsection.

3. Overflow Parking and Cleanup Space

Notwithstanding anything to the contrary contained in this Lease, the City may substitute for any space provided by the City to the Lessee for the purposes of overflow parking and cleanup (whether under this Lease or otherwise), any other available space which is, in the discretion of the City, reasonably comparable to that for which substitution is made, if, when and for so long as such substitution is, in Lessor's discretion, necessary to accommodate renovations or implement changed security procedures at the Airport. The City shall reimburse Lessee for Lessee's reasonable and necessary expenses incurred in relocating its operations to substitute space (not including, however, any lost revenues or profits occasioned by relocation).

B. LICENSE FOR USE OF AIRPORT FACILITIES

1. Airport Facilities

Subject to all rules and regulations governing the use of the Airport, Lessee shall have a nonexclusive right to use all vehicular roadways and parking areas of the Airport (except for areas that may have been reserved to the exclusive use of others in accordance with the directions of the Airport Director) for the operation of Lessee's operations hereunder and for the carriage of persons, property, cargo and/or mail incident thereto, including, without limitation, parking, loading and unloading persons, property, cargo and/or mail, as may be necessary or incident to Lessee's operations under this Lease. Notwithstanding the foregoing, the City reserves the right to assess a reasonable charge for public motor vehicle parking of rental cars if said vehicles are parked in areas other than designated for rental car parking (e.g. public parking lot). Lessee shall pick up and drop off patrons, and all of its vehicles shall be parked only in such areas designated for such purposes by the Airport Director.

2. Common and Joint Use Areas

Subject to all rules and regulations governing the use of the Airport, Lessee, Lessee's agents and servants, patrons and invitees and Lessee's suppliers of service and furnishers of materials shall have the right of ingress to and egress from the Premises, the Terminal Building and the Airport and a nonexclusive license to use all common areas of the Airport open to the public, provided that such ingress, egress or use does not interfere with normal operations of the Airport or of other operations in the Terminal Building.

C. CONSTRUCTION OF TENANT IMPROVEMENTS

1. General

Lessee may, at its sole cost and expense, provide and install any necessary improvements, counter area, facilities, decorations, signs, fixtures, and equipment for the Premises, provided that improvements to the Vehicle Spaces shall be limited to signs at the "rediparking" and drop-off spaces complying with those rules set forth in this Lease regarding signage. All such improvements, facilities, decorations, fixtures, and equipment shall be made or installed at the Premises only with the prior written consent of the City's Airport Director following Lessee's submission of a description of the proposed installations to the Airport Director no less than fourteen (14) days prior to installation. Those improvements, facilities, decorations, fixtures and equipment of, in or to the Office Space shall be of high quality, safe, modern in design, attractive in appearance and shall be in general keeping with the decor of the Terminal Building and the areas adjoining and surrounding the Office Space.

2. Permits and Authorizations

Lessee shall make no improvements to the Premises until it has first, at its sole cost and expense, submitted all design and construction plans, specifications and related documents for the improvements to the City's Building and Safety Division, and the Division has issued a building permit for the improvement. Lessee shall further diligently pursue and obtain all other permits, licenses and authorizations required for the construction of the improvements and operation of the Premises.

3. Insurance

Before commencing any improvement or equipment installation at the Premises, Lessee shall require that its construction contractors procure and maintain insurance for such construction and installation protecting both Lessee and City, as well as the construction contractors, with policy amounts and coverage as the City shall in each instance determine, and shall provide certificates of insurance with respect to all of the policies to the City prior to commencement of construction.

4. Construction Standards, Rules and Regulations

All improvements, additions or alterations constructed by Lessee at the Premises shall be constructed in a good and workmanlike manner and shall conform to all applicable statutes, ordinances, building codes, rules and regulations of any governmental authority as may have jurisdiction, and to the general architectural scheme of the Terminal Building. Lessee shall require in all contracts for construction that all contractors also comply with all applicable statutes, ordinances, codes, rules and regulations. Lessee's construction work shall be subject to inspection, during reasonable business hours, by the City's Building and Safety Division and its authorized personnel. Lessee shall keep the Premises free and clear of liens for labor and material and shall hold the City harmless from any liability arising therefrom. Lessee shall make no structural alterations to the roof, walls or floors of the Premises without the City's prior written consent. Nothing contained in this Section shall prevent Lessee from making a nonstructural alteration to the Office Space.

5. Cost of Improvements

The construction of any and all improvements, alterations and additions to the Premises by or for Lessee shall be performed at Lessee's sole cost and expense.

6. Additional Alterations, Additions or Replacements

Lessee shall make no alterations, additions, replacements or improvements to the Premises, install any equipment that requires any electrical connection (other than by ordinary plug into an existing receptacle) nor make any changes in those electrical connections installed on the Premises, without the prior written consent of the Airport Director. Any electrical service other than that provided at the execution of this Lease shall be installed and provided at the sole cost and expense of Lessee.

7. Signs

Except as may be provided otherwise in this Lease, Lessee shall not erect, install, operate or cause or permit to be erected, installed or operated, any signs or similar advertising devices in or upon the Premises without having first obtained the written consent of the Airport Director, which will not be unreasonably withheld, so long as the signs or similar advertising devices do not conflict with the rights of other concessionaires or lessees at the Airport and conform to the

requirements of the City's Sign Code, which provides conditions concerning factors including, but not limited to, size, type, content and method of installation of signs.

8. Security Installations

The Airport has adopted a Security Program ("Security Program") in accordance with the Aviation and Transportation Security Act, 49 U.S.C. § 40101 et seq., and 49 C.F.R. Part 1542, and Lessee agrees to abide by all rules and regulations with respect to the Security Program.

D. MAINTENANCE OF PREMISES AND IMPROVEMENTS

1. General Maintenance

Lessee shall, at its sole cost and expense, maintain the Premises and all of its improvements, additions or alterations at the Premises and elsewhere at the Airport (if any), in good working order and in such condition that shall be based on a standard of care reflecting prudent property management, reasonable wear and tear excepted.

2. Preventive Maintenance and Repair

Lessee shall perform at its sole expense, ordinary preventative maintenance and ordinary upkeep and non-structural repair of all of its facilities, personal property and equipment in or upon the Premises and elsewhere at the Airport (if any), including, but not limited to, fixtures, doors and windows, floor coverings, counters, as well as all electrical work, plumbing appliances and fixtures located within the Premises, provided, however, that the City shall provide snow removal for the Vehicle Spaces, along with its snow removal at Airport parking lots generally.

3. Off-Premises Maintenance and Repair

Lessee shall, at its sole cost and expense, immediately repair any and all damage in or to any area of the Airport or the Terminal Building occasioned by the fault or negligence of Lessee, its servants, agents, or employees, and shall immediately remove any litter, debris, petroleum products or other liquids and/or grease that may result from its operations or the activities of its employees, agents, passengers or suppliers.

4. Maintenance or Repair by the City upon Lessee's Default

(a) In the event that Lessee fails to perform any obligation required by this Subsection D(4) to be performed by Lessee at Lessee's cost for a period of fifteen (15) days after receipt of written notice from the City to do so, the City, upon the expiration of the fifteen (15) day period may, but shall not be obligated to, perform that obligation of Lessee, which may include entry onto the Premises if reasonably necessary. All maintenance or repairs executed by the City under this Subsection D(4) shall be performed in a good and workmanlike manner.

(b) Notwithstanding the foregoing, in the event that Lessee's failure to perform such of its obligations under this Subsection D(4) may endanger the health or safety of the public or of any passenger, invitee or employee at the Airport, then the City may, but shall not be obligated to, immediately perform such obligation of Lessee upon prior written notice of its intent to do so, without awaiting the expiration of the mentioned fifteen (15) day period.

(c) In the event that the City shall perform any obligation of Lessee under this Subsection D(4), then the City shall invoice Lessee for the reasonable cost and expense of performing the obligation, plus a fifteen percent (15%) administrative charge, and Lessee shall pay, as

additional rent, such amount on or before the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

(d) The City shall not be liable to Lessee for any loss, cost or expense to Lessee resulting from the City's performance of Lessee's obligations in accordance with the provisions of this Subsection D(4).

E. ENTRY AND INSPECTION OF PREMISES

1. Entry and Inspection

The City and its authorized officers, employees, agents, contractors, subcontractors, or other representatives shall have the right to enter upon the Premises:

(a) during reasonable business hours to determine whether Lessee has complied and is complying with the terms and conditions of this Lease;

(b) during reasonable business hours for inspecting the Premises and for fulfilling the City's obligations hereunder, provided, however, that such entry shall be at such times and in such manner as not to interfere unreasonably with the operations of Lessee; and

(c) at any time as may be required by an emergency at the Terminal Building or for emergency repairs or maintenance, without any liability or responsibility to Lessee for loss of business.

2. No Termination or Interference

No such entry by or on behalf of the City upon the Premises shall cause or constitute a termination of this Lease nor be deemed to constitute an interference with the possession thereof nor constitute a revocation of or interference with any of Lessee's rights in respect thereof for exclusive use of the leased Premises.

ARTICLE III – TERM

A. INITIAL TERM

This Lease shall be effective from February 1, 2011 through January 31, 2014, and shall continue in force and effect, unless sooner terminated as provided in this Lease.

B. RENEWAL

Upon completion of its initial term, this Lease may be renewed for two additional one (1) year terms, subject to approval by the City Council and Lessee, provided that Lessee provides the Airport Director with at least ninety (90) days prior written notice of Lessee's desire to renew the term of this Lease.

ARTICLE IV – RENTS

A. FIXED RENT

Lessee shall pay to the City an aggregate annual Fixed Rent for the Premises, Counter A, (408 sq. feet), in the sum of $12,505.20 (twelve thousand, five hundred five dollars and 20/100), broken into twelve equal payments of $1042.10 (One thousand forty-two dollars and 10/100), due in advance, on the first day of each month of the term of this Lease.

B. PERCENTAGE RENT

1. Concession Fee

The Lessee shall pay to the City, on a monthly basis, without notice or demand, a concession fee which is the greater of a fee based on percentage of 10% of Gross Revenues or Minimum Annual Guarantee (% fee or MAG). Lessee shall, on or before the twenty-fifth (25th) day following each and every month during the term of this Lease, submit to the City a detailed statement showing its Gross Receipts from its operations at the Premises for the preceding calendar month, in such reasonable detail and breakdown as the City may reasonably require, certified by a responsible officer or designee of Lessee, along with payment of either its Percentage Rent, for and during such preceding month, equal to ten percent (10%) of Lessee's Gross Receipts, or the Minimum Annual Guarantee.

Lessee's obligations under this Section B (and such other provisions of this Article IV that concern the calculation and payment of Lessee's Percentage Rent hereunder) shall survive any termination of this Lease, until all of Lessee's Percentage Rent obligations shall be paid in full. Furthermore, Lessee shall collect from its customers a fee no more than 11.1%, by adding it as a separate line item charge on each customer rental agreement. This line item shall be designated as an "airport user fee" or "concession recovery fee" on each customer rental agreement.

2. Minimum Annual Guarantee: During the term of this agreement, Lessee agrees to pay to the City a Minimum Annual Guarantee (MAG) of:

First Year:	$131,050.00	(One Hundred Thirty-One Thousand Fifty Dollars)
Second Year:	$131,050.00	(One Hundred Thirty-One Thousand Fifty Dollars)
Third Year:	$131,050.00	(One Hundred Thirty-One Thousand Fifty Dollars)

3. Percentage Fee: Percentage fee shall be the amount equal to ten percent (10%) of Lessee’s Gross Revenues.

C. PRO-RATED RENT

Rent for any period during the term or extended term of this Lease that is for less than one month (if any) shall be pro-rated accordingly.

D. CPI ADJUSTMENT

The Fixed Rent shall be adjusted on February 1st of every year, the commencement of the City's fiscal year, during the term of this Lease and any extension or renewal of such term by the same percentage as that represented by the increase, if any, in the Consumer Price Index for All Urban Consumers ("CPI") most recently published by the Bureau of Labor Statistics, United States Department of Commerce (or such other index that said Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index) at that time, as compared with the CPI most recently published one year prior.

E. ACCOUNTING AND AUDIT

1. Books and Records

Lessee shall, with respect to all business done by it at the Premises, keep true and accurate

account records and books which shall, at a minimum, include all of Lessee's reservation registers and records, and show all sales made and services performed for cash or credit or otherwise, without regard to whether paid for or not, and all other items included or considered in determining Lessee's Gross Receipts, all in a manner and format from which the City may reasonably and accurately determine Lessee's Gross Receipts. Lessee shall either maintain account records and books at a location within the city limits of the City as shall be available and convenient for inspection by the City as provided in Subsection 3 of this Section E, for a period of at least three (3) years from the time of entry of each item shown therein or provide the account records and books to the City upon thirty (30) days' written notice. The City reserves the right to prescribe or change the form in which Lessee shall provide any reports required under this Lease, and their method and time of submission.

2. Annual Reports

Within ninety (90) days after the end of each lease year during the term of this Lease and any extension or renewal of such term, Lessee shall furnish to the City an annual accounting statement prepared according to generally accepted accounting principles, in such form as the City may reasonably require, which is a true disclosure of the operations of Lessee at the Premises, including but not limited to Lessee's Gross Receipts and Percentage Rent for the previous year. Lessee shall simultaneously pay to the City excess Percentage Rent due, if any, for such preceding lease year over and above the Percentage Rent paid. If Lessee shall have paid to the City Percentage Rent in excess of the greater of the Percentage Rent due under Article IV(B)(1) above during the preceding contract year, the City shall credit Lessee for such excess against future payments, or in the last year of the Lease, the City shall refund such excess amount, if any, to Lessee within one hundred and twenty (120) days of the end of the Lease. Lessee's obligations under this Subsection E(2) shall survive any termination of this Lease until Lessee shall have provided to the City the annual accounting statement required for the last completed accounting period not previously reported under the provisions of this subsection.

3. Audit

The City and its employees, agents and authorized representatives shall have the right at all reasonable times and during all business hours, except as otherwise provided in Subsection 1 of this Section E, to inspect and examine such records, registers, contracts, books and other data as may be necessary to confirm Lessee's Gross Receipts for its operations at the Premises. The City may conduct any such audit in any manner consistent with generally accepted auditing standards, including, but not limited to, statistical sampling. If any such inspection or audit shall disclose any willful and intentional misstatement, the City may, in its sole discretion, cancel and terminate this Lease forthwith, without penalty or further liability.

4. Audit Deficiency and Protest

In the event that an audit by the City shall disclose any deficiency in Lessee's payments of Percentage Rent hereunder, resulting from discrepancies in its determination of Gross Receipts or otherwise, the City shall promptly notify Lessee in writing of the deficiency. Upon its receipt of such notice, Lessee shall either:

(a) within sixty (60) days submit to the City its written consent to the City's audit findings, along with payment in full of the deficiency determined thereby; or

(b) within sixty (60) days (or at such later time as the City Manager may, upon a timely filed written request therefore, provide in writing) submit to the City Manager a written protest and request for redetermination, setting forth in detail Lessee's grounds for the protest and the amount of the audit deficiency that it claims to be in error, along with supporting information and/or documentation as shall be appropriate.

The City shall not accept any protest, petition or request for redetermination that is not filed within the sixty (60) day period (or such later date allowed by the City Manager). In the absence of a submission of a timely written protest as provided above, the deficiency determined by the audit shall become immediately due and payable at the expiration of the sixty (60) day period, and Lessee shall be deemed to have waived and abandoned all right to question or protest the City's audit findings.

3. Deficiency Hearing and Redetermination

(a) As soon as may be practicable following the City Manager's receipt of a timely submitted written protest, the City Manager shall either order the audit deficiency redetermined in accordance with Lessee's protest, or notify Lessee of the time, date and place for a hearing on the matter.

(b) The City Manager, or such other hearing officer designated by the City Manager, shall hear the matter informally, without regard to formal rules of procedure or of evidence, and, within thirty (30) days of the close of the hearing, shall make such order in the matter as appears to be just and lawful and shall mail a copy of the order to Lessee.

(c) The deficiency stated in the City Manager's or hearing officer's order shall be immediately due and payable upon receipt by Lessee. Lessee's failure to pay such deficiency within thirty (30) days of its receipt of the order shall constitute a material breach of this Lease and shall give the City the option of immediately terminating the Lease in accordance with the provisions of Article VII.

F. LATE PAYMENT

All amounts due from Lessee to the City under this Lease that are not paid by Lessee when due shall be subject to a penalty of ten percent (10%) of such amount due, plus interest at the rate of one (1%) percent per month or fraction of a month from the time due and owing until paid. The penalty and interest shall be payable as additional rent hereunder, subject to all the terms and conditions of this Lease.

ARTICLE V - LESSEE'S OPERATIONS

A. GENERAL

Lessee shall not use or permit the use of the Premises, the Terminal Building, the Airport or any part thereof, for any purpose or use other than as authorized by this Lease without the prior written consent of the City.

B. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

1. General

Lessee, its employees, representatives and agents shall comply at all times with all present or future laws, rules, ordinances and regulations, and all amendments or supplements thereto, governing or relating to the use of the Airport, the Terminal Building and/or the Premises, as may from time to time be promulgated by federal, state or local governments and their authorized agencies.

2. Taxes, Licenses and Permits

Lessee shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation and lease of the Premises. Lessee may elect, however, at its own cost and expense, to contest any such tax, excise, levy or assessment, provided that such contest is in accordance with law and does not result in a violation by Lessee of any law, rule, regulation or ordinance, or result in any lien against the Premises, the Terminal Building or the Airport. Lessee shall keep current municipal, state or federal licenses or permits required for the conduct of its business. Lessee shall, upon reasonable demand, display to the Airport Director any and all permits, licenses, authorizations or other evidences of compliance with such laws, rules and regulations.

3. Airport Rules and Regulations

Lessee covenants and agrees to observe and obey all reasonable rules and regulations adopted by the City with respect to use of and the conduct and operation of the Airport, the Terminal Building and/or any additions or improvements therein.

4. Energy Conservation

Lessee shall comply with all City rules, regulations and orders pertaining to energy conservation and management, to the extent that such rules, regulations and orders do not unduly infringe on Lessee's rights and privileges granted herein.

5. Compliance with Airport Improvement Program

Lessee covenants and agrees that this Lease may be amended by the City, without consent of Lessee, in any manner necessary to comply with any requirement of the Federal Aviation Administration or other instrumentality of the federal government or state of Arizona in order for the City to qualify or maintain its qualification under the Airport Improvement Program, as authorized and administered under the Airport and Airway Improvement Act of 1982 (Public Law 97-248, codified at 49 U.S.C. §§ 47101, et seq.), as amended and as the same may be amended from time to time.

6. Compliance with FAA Assurances

Lessee covenants and agrees to comply in all respects with those FAA Airport Assurances, dated March 2005 and attached hereto as Exhibit C, and any subsequent amendments thereto (in which the term "sponsor" shall be deemed to mean and include the City), to the extent that their terms may be applicable to Lessee and its operations hereunder.

C. SANITARY OPERATION

1. General

Lessee shall maintain and operate the Premises in a safe, clean, orderly and inviting condition at all times satisfactory to the City. Lessee shall always conduct its operations on the Premises in a manner using all available and practical devices to reduce to a reasonable minimum, considering the nature and extent of Lessee's operations, the emanation from the Premises of noise, vibration, movement of air, fumes and odors, so as not to unreasonably interfere with the use of other premises adjoining these Premises or elsewhere at the Airport. Lessee shall always conduct its operations in all parts of the Airport in accordance with the current regulations of the United States Environmental Protection Agency, and of other applicable federal, state and local authorities.

2. Refuse and Janitorial Service

Without limiting the generality of the foregoing, Lessee shall:

(a) provide and pay for janitorial service within the Office Space; and

(b) remove, not less frequently than at the close of each business day, all refuse and trash from the Premises and such other areas of the Airport as it shall regularly use and place all refuse and trash in such container or containers as the City may from time to time designate, separately disposing of recyclable, hazardous or other refuse items in the manner and at the places as the City may from time to time designate.

3. City's Right to Cure Default

In order to maintain a high level of custodial services at the Airport, the City, upon a default of Lessee in its obligations under this Section, may provide such necessary custodial services within the Premises or without, and Lessee shall, in such event, pay to the City the cost of such custodial services as additional rent hereunder, plus a fifteen percent (15%) administrative charge, on the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

D. BUSINESS OPERATIONS

1. General

Service provided by Lessee at the Premises and elsewhere at the Airport shall be prompt, clean, courteous and efficient.

2. Hours of Operation

Lessee shall keep the Premises open for business, having attendants on duty and offering its rental vehicles to the public, during all hours that the Terminal Building is open, except as the Airport Director may otherwise authorize in writing. Lessee acknowledges that the hours of operation of the Terminal Building and Airport support services are, at the inception of this Lease, 6:00 AM to 11:00 PM, and are subject to such reasonable changes as the Airport Director shall determine in his sole discretion. In the event that Lessee shall require the provision of these services or facilities beyond the normal hours of operation, then the City shall invoice Lessee for the fully burdened hourly cost of such Airport personnel as are necessary to provide these services and/or facilities (but not less than one (1) hour for each such personnel) and such other expenses incurred by the City in connection with providing these services or facilities, plus a ten percent (10%) administrative charge, and Lessee shall pay, as additional rent, this charge on or before the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

3. Control of Personnel

Lessee shall, at the leased Premises and elsewhere at the Airport, exercise reasonable control over the conduct, demeanor and appearance of its employees, agents and representatives and the conduct of its contractors and suppliers. Upon objection from the Airport Director to Lessee concerning the conduct, demeanor or appearance of any such persons, Lessee shall within a reasonable time remove or correct the cause of the objection. Lessee shall require all of its employees, agents, representatives and independent contractors hired by Lessee working in view of the public in and in the vicinity of the Terminal Building, to wear clean and neat attire and to display appropriate identification, and shall require all of its

employees to conduct themselves in a professional manner.

4. Vehicles

Lessee shall at all times maintain a number of rental vehicles reasonably adequate to meet public demand, taking into consideration the varying seasonal requirements of the traveling public. Lessee shall maintain, at its sole cost and expense, all vehicles and equipment used in the conduct of Lessee's business in good mechanical condition, free from known defects and in a clean and presentable condition. Lessee shall only store wrecked or inoperable vehicles at the Airport in areas designated by the Airport Director and for no longer than seventy-two (72) hours, unless the Airport Director expressly agrees otherwise.

5. Solicitation and Advertising

Verbal solicitation of Lessee's business may be made only from behind the counter of Lessee's Office Space, and Lessee shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous, or otherwise objectionable solicitation. Lessee may identify and advertise its vehicle rental service at its Office Space in a manner comparable to the reasonable advertising of other automobile rental companies operating in the Terminal Building. All advertising materials of whatever nature, including but not limited to brochures, rate cards, schedules, forms, etc., shall not unduly clutter the counter at Lessee's Office Space, and the counter space shall be maintained in a clean and orderly manner. All materials displayed at Lessee's Office Space shall be subject to the approval of the Airport Director.

6. Public Address System

Lessee may use the Airport public address system only with the consent of the Airport Director and in accordance with the Airport's public address system policy. Lessee shall not install or cause to be installed any other public address system at the Airport without the prior written consent of the Airport Director.

7. Security

Lessee acknowledges that all areas airside of the Terminal Building are strictly controlled, and Lessee shall not permit its employees, agents, invitees, patrons and/or vehicles to enter these areas other than as authorized by the Airport Director.

E. LIMITATIONS ON LESSEE'S USE OF THE PREMISES

In the conduct of its business operations at the Premises, or in connection with the exercise of any right or privilege under this Lease, Lessee shall not:

1. do, or permit its agents, employees, contractors, directors or officers to do anything at the Airport that may interfere with the effectiveness or accessibility of the Airport's drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the Premises or the Airport;

2. do, or permit its agents, employees, contractors, directors or officers to do any act or thing at the Airport that would invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof;

3. dispose of, or permit its agents, employees, contractors, directors or officers to dispose of any waste material taken from or products used at the Premises or elsewhere at the Airport (whether liquid or solid) into the sanitary or storm sewers at the Airport unless the waste material or products have first been properly treated by equipment installed with the approval

of the Airport Director for that purpose;

4. keep or store, during any twenty-four (24) hour period, flammable liquids within the enclosed portion of the Premises in excess of Lessee's working requirements during the twenty-four (24) hour period, except in storage facilities especially constructed for these purposes in accordance with standards established by the National Board of Fire Underwriters and approved by the Airport Director from the standpoint of safety; any such liquids having a flash point of less than one hundred degrees Fahrenheit (100° F) shall be kept and stored only in safety containers of a type approved for such purpose by the Underwriters Laboratory;

5. do or permit its agents, employees, contractors, directors or officers to do any act or thing at the Airport that would conflict with FAR Part 139 or jeopardize the Airport's operating certificate;

6. do, or permit its agents, employees, contractors, directors or officers to do any act or thing in conflict with any TSA approved security plan that may be adopted by the Airport; or

7. make use of the leased Premises or any other part or area of the Airport in any manner that might interfere with the landing and taking off of aircraft at or from the Airport, or would otherwise constitute a hazard. In the event the covenant of this Subsection 7 is breached, the City reserves the right to enter upon the Premises and/or any other property of Lessee at the Airport and cause the abatement of the interference at the expense of Lessee and without liability of any kind to the City.

F. LIENS

Lessee shall not permit or suffer to be placed on the Premises, or any fixture, addition, betterment or improvement thereto any lien of any nature, including but not limited to tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Lessee or any of its contractors or subcontractors upon the Premises or arising out of or because of the performance of any work or labor to it or them at the Premises or the furnishing of any materials to it or them for use at the Premises. Should any lien be made or filed, Lessee shall bond against or discharge the same within ten (10) days after the lien is placed and shall promptly notify the Airport Director of the steps taken to remove the lien or protect the Premises from the lien.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. INDEMNIFICATION: Vendor (as “indemnitor”) agrees to indemnify, defend and hold harmless the City (as “indemnitee”) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the acts or omissions of indemnitor, its officers, officials, agents, employees or volunteers relating to this Agreement.

2. INSURANCE: Vendor shall procure and maintain until all of its obligations under this Agreement have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property that may arise from or in connection with this Agreement.

   The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect vendor from liabilities that might arise out of the performance of the work under this Agreement by vendor, its agents, representatives, employees or sub-vendors and vendor is free to purchase such additional insurance as may be determined necessary.

I. MINIMUM SCOPE AND LIMITS OF INSURANCE: Vendor shall provide coverage at least as broad and with limits of liability not less than those stated below.

(a) Commercial General Liability - Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$1,000,000
Personal & Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Any one fire)	$ 50,000
Medical Expense (Any one person)	Optional

(b) 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

(c) Workers' Compensation and Employer's Liability

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

b. SELF-INSURED RETENTIONS/DEDUCTIBLES: Any self-insured retentions and deductibles shall be declared to and approved by the City.

c. OTHER INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages:

a. Vendor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, or employees shall be in excess to the coverage of vendor's insurance and shall not contribute to it.

b. Vendor'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.

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

d. Vendor's insurance shall contain broad form contractual liability coverage.

2. Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees and volunteers for losses arising from vendor's operations, work or products that are the subject of this Agreement.

3. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to: Ann Marie Fisher, Sr. Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001 and shall be sent by certified mail, return receipt requested.

4. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less that A-: VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect vendor from potential insurer insolvency.

5. VERIFICATION OF COVERAGE: Vendor shall furnish the City with Certificates of Insurance (ACORD form) 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. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificate of Insurance.

   All Certificates of Insurance shall be received and approved by the City before work commences. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal shall be a material breach of this Agreement.

   All Certificates of Insurance shall name the City of Flagstaff as an additional insured. All Certificates of Insurance required by this Agreement shall be sent directly to: Ann Marie Fisher, Sr. Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001. A description of the Contract is to be noted on the Certificate of Insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement at any time.

6. APPROVAL: Any modification or variation from the insurance requirements in this Agreement shall have prior approval from the City's Risk Manager, whose decision shall be final. Such action shall not require a formal contract amendment, but may be made by administrative action.

H. FIRE PROTECTION

Lessee shall at all times keep and maintain in good working order at the Premises such fire extinguishing equipment and apparatus as may be required by any of Lessee's insurance policies maintained hereunder, or otherwise adequate and appropriate to Lessee's use of the Premises, and shall, from time to time and as often as reasonably required by the City, conduct appropriate tests of such fire extinguishing equipment and apparatus.

I. NON-DISCRIMINATION

1. General

   Lessee shall furnish its goods and/or services at the Premises on a fair, equal and nondiscriminatory basis to all patrons and shall charge fair, reasonable and nondiscriminatory prices for each unit of service, provided, however, that Lessee may make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

2. Compliance with Civil Rights Act

   Without limiting the generality of the foregoing, Lessee, for itself and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration for this Lease, does hereby covenant and agree that, except as otherwise expressly provided herein:

   (a) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; in the construction of any improvements on, over, or under the Premises and the furnishing of services at the Premises, no person on the grounds of race,

color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; no person will be subject, on the grounds of race, color, or national origin, to segregation or special treatment in any manner related to the receipt of any goods or services furnished at or from the Premises;

(b) Lessee shall use and operate the Premises at all times in compliance with all requirements imposed by or pursuant to 49 C.F.R. Subtitle A, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Acts of 1964, as amended;

(c) Non-compliance with any of the above nondiscrimination covenants shall constitute a material breach of this Lease, and in the event of such non-compliance the City shall have the right to judicially enforce such covenants and/or to terminate this Lease and to reenter and repossess the Premises and hold the same as if this Lease had never been made or issued, provided, however, that all notice, appeal and related procedures of 49 C.F.R. Subtitle A, Part 21 are followed and completed prior to the termination; and

(d) Lessee shall include the provisions of this Subsection I(2) in any lease, agreement, or contract by which Lessee shall grant any right or privilege to any person, firm or corporation to render accommodations, goods and/or services to the public on the Premises.

3. Affirmative Action

Lessee covenants and agrees that it will:

(a) undertake an affirmative action program as described by 14 C.F.R. Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from employment or from receiving any goods, services or benefits of or provided by Lessee or its operations at the Premises;

(b) comply with any affirmative action plan or steps for equal employment opportunity required by 14 C.F.R. Part 152, Subpart E, as part of such affirmative action program, or by any federal, state or local agency or court, including those resulting from a conciliation agreement, consent decree, court order or similar mechanism, provided that Lessee may use such state or local affirmative action plan in lieu of that required by 14 C.F.R. Part 152, Subpart E only when such plan fully meets the requirements of 14 C.F.R. 152.409; and

(c) require from all contractors, subcontractors, grantees, subgrantees and sublessees of Lessee the same covenants as contained in this Subsection I(3), as required by 14 C.F.R. Part 152, Subpart E.

4. DBE Requirements

(a) It is the policy of the City to encourage and develop disadvantaged businesses (hereinafter "Disadvantaged Business Enterprises" or "DBE's"), as defined in 49 C.F.R. Subtitle A, Part 23, and to ensure that DBE's shall have the maximum opportunity to participate in the performance of concessions, contracts and leases at the Airport. Consequently, this Lease is subject to the provisions and requirements of 49 C.F.R. Subtitle A, Part 23 and the City's DBE Concession Plan for the Airport, as each may apply.

(b) If Lessee asserts that it qualifies as a DBE, Lessee hereby warrants, covenants and agrees that it believes in good faith that it qualifies as a DBE under 49 C.F.R. Subtitle A, Part 23 and the City's DBE Concession Plan for the Airport, and that it will use all due effort to apply for certification and be certified as a DBE, if it has not already done so. The City will employ all reasonable efforts to assist and cooperate with Lessee in making such application and obtaining such certification.

J. INDEMNITY

Lessee shall indemnify the City and hold it forever harmless from and against all liability, loss, demand, judgment or other expense (including but not limited to, defense costs, expenses and reasonable attorney fees) arising from or as a result of Lessee's use or occupancy of the Premises or any other Airport property, or from any action or omission of Lessee, its officers, employees, agents, or other representatives within the boundaries of the Airport, including movement of aircraft or vehicles, except as may arise or result solely from negligent or willful acts or omissions of the City, its employees, agents or representatives.

K. PERFORMANCE BOND

At the time of the execution of this Lease, Lessee shall furnish the City with a valid surety bond for the term of this Agreement in a principal sum no less than one-fourth (1/4) of the Average Minimum Annual Guarantee as described in Subsection B(2) of Article IV, issued by a surety company qualified to do business in the State of Arizona and acceptable to the City, or other security acceptable to the City. The security shall be maintained and kept by the Lessee in full force and effect during the entire term of this Lease, and any extensions thereof, and shall be conditioned to assure the faithful and full performance by Lessee of the terms of this Lease and to stand as security for the payment by Lessee of any valid claim by the City against the Lessee arising under this Lease.

ARTICLE VI - OBLIGATIONS OF THE CITY

A. PROVISION OF SERVICES

The City shall, at its sole cost and expense:

1. Utilities

   (a) furnish electricity, natural gas and water as may be reasonably necessary for the conduct of Lessee's business operations at the Premises and elsewhere at the Airport;

   (b) furnish necessary heating and cooling to the Premises and the Terminal Building as the City shall reasonably determine;

   (c) provide for the collection and disposal of all refuse at the Terminal Building and elsewhere at the Airport, including containers in which Lessee shall place its refuse in accordance with the provisions of Article V, Subparagraph C(2)(b) hereof;

2. Maintenance

   (a) maintain and keep in good repair and condition the Airport, the Terminal Building and all appurtenances, facilities and central mechanical distribution systems thereof;

   (b) maintain and operate the Airport in all respects in a manner at least equal to the standards that may be promulgated by the FAA for airports of similar size and character and in accordance with all FAA rules and regulations;

   (c) keep and maintain all Airport roadways and parking areas free of snow and other obstructions insofar as reasonably practicable; and

   (d) perform normal custodial duties in the Terminal Building outside the Premises, including

sweeping and dusting, removing all trash there from and taking reasonable precautions to protect the Premises and any supplies within the Premises from being tampered with, damaged, destroyed, marred, or removed, provided, however, that the City shall not thereby in any way guarantee the safety or security of the Premises and shall not be liable to Lessee or in any way responsible for injury to persons or any damage to the Premises or Lessee's supplies caused by acts of vandalism, theft or other crime.

B. LIMITATION OF LIABILITY

The City shall not, by virtue of the obligations set forth in Section A of this Article VI, be liable to Lessee for any interruption of any service or utilities beyond the control of the City, and Lessee shall, except as may be otherwise expressly set forth herein, have no cause of action against the City for constructive eviction or otherwise as a result of any such interruption. Lessee expressly agrees that the City shall not be liable to Lessee for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or acts of civil authority and not caused by the negligence or willful acts or omissions of City.

C. RESERVATION OF RIGHTS

1. Airport Development and Expansion

The City reserves the right to further develop or improve the landing area or any other area, building or other improvement within the present or future boundaries of the Airport as it sees fit in its sole judgment, regardless of the desires or view of Lessee and without interference or hindrance by Lessee. Further, the City retains the absolute right to maintain, repair, develop and expand the Terminal Building or any other Airport facility, Airport improvement or Airport property free from any and all liability to Lessee for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development or expansion.

2. Maintenance, Repair, Direction and Control

The City further shall have the right, but not the obligation, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, including but not limited to such areas as are necessary to serve the aeronautical users of the Airport, other than as may be leased to or under the control of other Airport tenants, together with the right to direct and control all activities of Lessee in this regard.

3. Airspace

There is hereby reserved to the City and its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, including but not limited to the right to cause or allow in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation at the Airport, without liability or obligation of any kind.

ARTICLE VII - DEFAULT AND TERMINATION

A. TERMINATION BY THE CITY

Lessee acknowledges and agrees that the City may, at its option, upon the occurrence of any of the following events, immediately or at any time thereafter, terminate this Lease and, without demand or notice, enter into and upon the Premises or any part thereof and repossess the same and expel Lessee and any persons claiming by, through, or under Lessee and remove its or their property and effects, if any, forcibly if necessary, from the Premises or elsewhere at the Airport, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be available for arrearage of rent or preceding breach of any provision hereof, and may further declare the entire balance of rents due hereunder immediately due and payable and commence an action to recover said sum from Lessee:

1. if Lessee shall be in arrears in the payment of any rent due hereunder for a period of ten (10) days or more after the City has notified Lessee thereof in writing of the default;

2. the failure or refusal of Lessee to conduct its operations at the Premises continuously as required in this Lease, and the failure or refusal shall continue for a period of not less than ten (10) days after the City has notified Lessee in writing of the default, and Lessee has failed to cure the default within the ten (10) day period;

3. the failure or neglect of Lessee to perform any of the covenants, terms and conditions hereof (other than payment of rent and continuous operation of Lessee's business operations), and the failure or neglect shall continue for a period of not less than thirty (30) days after the City has notified Lessee in writing of the default, and Lessee has failed to correct or actively begun curing the default within the thirty (30) days;

4. the voluntary abandonment by Lessee of the Premises or its operations at the Airport for a period of thirty (30) days or more;

5. the seizure or taking of possession, for a period of fifteen (15) days or more, of all or substantially all of the property used on the Premises belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;

6. the filing of any lien against the Premises because of any act or omission of 'Lessee which is not discharged or contested in good faith (as the City shall determine in its sole discretion) by proper legal proceedings within twenty (20) days of receipt of actual notice of such lien by Lessee;

7. Lessee's falsification of any of its business records or books with the intent of depriving the City of any rents or other rights under the terms of this Lease;

8. Lessee's attempt to make an assignment, transfer, merger or consolidation of its business operations at the Premises in violation of Section B of Article VIII; or

9. any permanent injunction of Lessee's conduct of business at the Premises by a court of final jurisdiction; provided, however, that if Lessee shall be temporarily enjoined from doing business at the Airport, any resulting cessation of business by Lessee, so long as the injunction remains in effect, shall not be considered a breach of this Lease or cause for termination by the City hereunder, unless and until such injunction becomes permanent.

B. ADDITIONAL REMEDIES

1. Statutory Remedies

In addition to any and all other remedies provided herein, the City, as lessor, shall be entitled to all of the remedies enumerated in Title 33, Chapter 3, Article 4 of the Arizona Revised Statutes, the provisions of which are incorporated by reference as a part of this Lease, as if the same were set forth herein in its entirety.

2. Remedies Cumulative

The remedies of the City set forth herein shall be cumulative and are not intended to be exclusive of any other remedies or means of redress to which the City may be lawfully entitled in the event of Lessee's breach of any provision of this Lease. In addition to any other remedies set forth herein, the City shall be entitled to the restraint by injunction of any violation, or attempted or threatened violation, of any of the terms, covenants conditions or other provisions of this Lease.

C. TERMINATION BY LESSEE

1. Termination for Cause

In addition to any other rights of cancellation it may have hereunder or by law, Lessee may, at any time that Lessee is not in default hereunder, terminate this Lease at its option by giving the City thirty (30) days' prior written notice of such termination, upon the occurrence of any of the following events:

(a) An order or action by the FAA or any other governmental authority substantially terminating Lessee's right to conduct its operations at the Airport;

(b) the issuance, by a court of competent jurisdiction, of an injunction of at least thirty (30) days' duration, prohibiting or restraining the use of the Airport as an airport or Lessee's business operations at the Airport;

(c) a national emergency in which there is a curtailment of the use of aircraft and/or motor vehicles by the general public, or a limitation of the supply of gasoline and/or aircraft fuel available for general use either by executive decree or legislative action, which results, in fact, in a substantial curtailment of Lessee's business operations at the Airport;

(d) a breach by the City of any material covenant of this Lease, which breach remains uncured for a period of thirty (30) days following written notice to the City;

(e) Lessee's inability to use the Premises or to conduct its business operations at the Airport due to the City's failure to maintain the Airport or unsafe conditions at the Airport; or

(f) the seizure or other assumption of control of the Airport by any government other than the City.

D. MEDIATION

If a dispute arises out of or relates to this Lease, other than Lessee's failure to pay rent when due, 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 will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison

Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

E. PROPERTY UPON TERMINATION

1. Condition of the Premises

Lessee covenants and agrees that upon any termination of this Lease, however caused, it will quit and surrender the Premises and shall perform such repair of the Premises so that it is in as good condition as it was at the time this Lease was entered into, reasonable wear and tear excepted.

2. Fixtures

All fixtures installed and permanently affixed to the realty of the Premises or the Airport during the term of this Lease shall become and remain the property of the City. All signs, decorations, fixtures, and equipment which Lessee may install during the term of this Lease that have not been permanently attached to the Premises or the Airport shall remain the property of Lessee.

3. Removal of Personal Property

Upon any termination of this Lease, however caused, Lessee shall remove from the Airport, within thirty (30) days of such termination, all signs, decorations, equipment, trade fixtures and personal property belonging to Lessee or its sublessees, if any, that have not been permanently attached to the Premises or any part of the Airport.

F. DAMAGE AND DESTRUCTION

In the event of damage, destruction or substantial loss of or to the Premises or any improvements constructed upon the Premises resulting from any cause beyond the control of Lessee which materially impairs Lessee's ability to conduct its business operations at the Premises, which damage, destruction or loss is not capable of being repaired within sixty (60) days, Lessee shall have the option to terminate this Lease upon written notice to City not later than ten (10) days after the occurrence of such event. In the event of termination by Lessee under this Subsection F, Lessee shall, at its sole cost and expense, conduct and perform all cleanup and/or demolition of the Premises necessary to make the Premises ready for repair, replacement, restoration or rebuilding. In the event Lessee does not exercise such option, or in the event the damage, destruction or loss is capable of being repaired within sixty (60) days, then Lessee shall promptly repair, replace, restore or rebuild the improvements.

G. CONFLICT OF INTEREST

1. Notwithstanding anything to the contrary contained herein, the parties acknowledge in accordance with Arizona Revised Statutes §38-511 that the City may terminate this Lease upon written notice at any time within three (3) years of its execution, without penalty or further obligation, in the event that any person significantly involved in initiating, securing, drafting or creating this Lease on behalf of the City shall become an employee or agent of Lessee in any capacity or shall render consulting services to Lessee with respect to the subject matter of this Lease.

H. BUSINESS OPERATIONS IN SUDAN/IRAN

In accordance with A.R.S. § 35-391.06(A) and 35-393.06(B), Lessee certifies that the Lessee and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Lessee certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Lease.

I. VERIFICATION REGARDING IMMIGRATION LAWS

Lessee hereby warrants to the City that Lessee 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 "Lessee Immigration Warranty"). A breach of the Lessee Immigration Warranty shall constitute a material breach of this Lease and shall subject the Lessee to penalties up to and including termination of this Lease at the sole discretion of the City.

ARTICLE VIII - MISCELLANEOUS

A. FORCE MAJEURE

The performance of all covenants contained herein shall be postponed and suspended during such period as such performance is prevented by acts of God, accidents, weather and conditions arising from them, strikes, boycotts, lockouts and other labor troubles, riot, fire, earthquake, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and attendant conditions, the exercise of paramount power by the federal government, either through the taking of the Premises or the imposition of regulations restricting the conduct of business thereat, acts of enemies, sabotage, interference, restriction, limitation or prevention by legislation, regulation, decree, order or request of any federal, state or local government or any instrumentality or agency, including any court of competent jurisdiction or inability to secure labor or adequate supplies of materials, products or merchandise. The party claiming the occurrence of a condition of force majeure shall promptly notify the other party in writing of the occurrence of the condition and upon its cessation.

B. ASSIGNMENT

Lessee shall not at any time, without the prior written consent of the City:

1. assign or transfer, or permit or participate in any assignment or transfer of, this Lease or any of the rights, powers or privileges thereunder;

2. merge, consolidate, or combine, either directly or indirectly, with any other person, firm or corporation operating at the Airport under any other lease or concession agreement, whether such uniting, merging, consolidating, or combining be through the sale of property or sale of stock or otherwise; or

3. permit any of its owners, directors or officers, to serve as a director or officer, of any other firm or corporation operating at the Airport under any other lease or concession agreement.

C. FEDERAL GRANT ASSURANCES

Lessee acknowledges and agrees that this Lease shall be subject to all federal requirements set forth in the document entitled Airport Assurances, which is attached to and incorporated within this Lease as Exhibit C.

D. QUIET ENJOYMENT

The City represents that it has the right to lease the Airport and the Terminal Building, together with the facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this Lease. The City agrees that, on payment of the rent and performance of the covenants and agreements of the Lease by Lessee, Lessee shall peaceably have and enjoy the Premises and all rights and privileges of the Airport, its appurtenances and facilities.

E. NOTICES

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Lease shall be in writing and shall be effective and deemed received when hand-delivered or faxed, or, if sent by mail, three (3) business days after mailing, to the address given below for the party to be notified, or to such other address of which notice is given in accordance with this Section D:

if to the City:

City of Flagstaff

Airport Director
6200 S. Pulliam Drive, Suite 204
Flagstaff, AZ 86001
fax: (928) 556-1288

if to Lessee:

Enterprise Leasing Company of Phoenix, LLC

d/b/a Alamo Rent A Car and
National Car Rental
Peter G. Dulac, Vice President
1444 W. Auto Drive
Tempe, AZ 85284
Fax: (480) 648-0958

F. NON-EXCLUSIVITY; COMPETING USES

Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right prohibited federal law. The rights and privileges granted under this Lease are non-exclusive, and the City has the right to grant to others the privilege and right of conducting any and all of the aeronautical activities listed herein. Notwithstanding the foregoing, the City covenants and agrees not to enter into any similar agreement with respect to the Airport which contains more favorable terms than are contained in this Lease or to grant to potential competitors of Lessee privileges not herein authorized, unless the same are currently extended to Lessee.

G. INTENTION OF THE PARTIES

This Lease is intended solely for the benefit of the City and Lessee and is not intended to benefit, either directly or indirectly, any third party or members of the public at large. Any work done or inspection of the Premises performed by the City is solely for the benefit of the City and Lessee.

H. INDEPENDENCE OF CONTRACT

Nothing herein is intended or shall be construed as in any way creating a relationship of co-partners between the parties hereto or as constituting Lessee the agent or representative or employee of the City for any purpose or in any manner whatsoever.

I. WAIVER

The failure of City to insist in any instance or in more than one instance upon a strict performance by Lessee of any of the provisions, terms, covenants, reservations, conditions, or stipulations contained in this Lease shall not imply, constitute or be considered as a waiver or relinquishment of the right to insist upon performance of such condition or covenant, or of any other provision

hereof, nor shall any waiver by the City of any breach of any one or more conditions or covenants of this Lease constitute a waiver of any succeeding or other breach hereunder. No waiver by City of any provision, term, covenant, reservation, condition or stipulation contained in this Lease shall be deemed to have been made in any instance unless expressed in the form of a resolution by the City Council.

J. PRIOR AGREEMENTS; INTEGRATION; MODIFICATION

The parties acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties, except as expressed in this Lease, and that this Lease, along with the exhibits attached hereto, constitutes the parties' entire agreement with respect to the matters addressed herein. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Lease. This Lease may be modified or amended only by written agreement signed by or for the party against whom enforcement of the same is sought.

K. SUCCESSORS AND ASSIGNS

All covenants and conditions of this Lease shall bind and shall inure to the benefit of the legal representatives, successors and assigns of the respective parties, provided that any representation, succession or assignment is authorized and permitted under this Lease and by law. Any and all agreements that Lessee shall make with any assignee of this Lease, and/or subleases of the Premises, or any part thereof, shall include all provisions contained in this Lease.

L. SEVERABILITY

In the event that a court of competent jurisdiction shall hold any part or provision of this Lease invalid, void or of no effect, the remaining provisions of this Lease shall remain in full force and effect, provided that continued enforcement of the remaining provisions does not materially prejudice either Lessee or the City in their respective rights and obligations contained in the valid provisions of this Lease.

M. HEADINGS

Headings or captions used in this Lease are used solely for convenience of the parties and shall not define, limit, describe, alter or affect the meaning of any provision of this Lease.

N. GOVERNING LAW

This Lease shall be governed, interpreted and enforced in accordance wits the laws of the State of Arizona. Venue for any action arising under this Lease shall be in Coconino County, Arizona.

IN WITNESS WHEREOF, the City and Lessee have executed this Concession/Lease Agreement as of the day and year first above written.

CITY OF FLAGSTAFF

By:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

ENTERPRISE LEASING COMPANY OF PHOENIX, LLC, d/b/a ALAMO RENT A CAR and NATIONAL CAR RENTAL

By:_____
Its:_____

ATTEST:

STATE OF _____)
) ss.
County of _____)

ACKNOWLEDGEMENT. On this ____ day of _____, 20___, before me, a Notary Public, personally appeared _____, known to me or satisfactorily that he/she executed the same on behalf of _____, an _____ corporation, for purposes therein contained.

_____
Notary Public

My Commission Expires:

_____

FLAGSTAFF PULLIAM
AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

BETWEEN

CITY OF FLAGSTAFF

and

AVIS BUDGET CAR RENTAL, LLC

ATTACHMENT "A"

FLAGSTAFF PULLIAM AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

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FLAGSTAFF PULLIAM AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

This Concession/Lease Agreement (the "Lease") is made as of the 1st day of February, 2011, by and between the City of Flagstaff (the "City") an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and Avis Budget Car Rental, LLC ("Lessee"), a Limited Liability Company, with offices at 6 Sylvan Way, Parsippany, New Jersey 07054.

RECITALS

A. The City is the owner and operator of Flagstaff Pulliam Airport (the "Airport") and the Airport Terminal Building (the "Terminal Building"), both located at 6200 Pulliam Drive, City of Flagstaff, Coconino County, Arizona;

B. Lessee desires to operate an automobile rental service at the Airport and to maintain a counter for operation of the automobile rental service in the Terminal Building; and

C. The City desires to have these services provided at the Airport for the convenience of the passengers and patrons of the Airport;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the City and Lessee agree as follows:

ARTICLE I - DEFINITIONS

As used in this Lease, the following terms, phrases, words and their derivations shall have the meaning given herein. Words in the singular shall include the plural, and masculine terms and pronouns shall include the feminine and neuter, and vice-versa, as the context may require.

A. "Airport" means the Flagstaff Pulliam Airport, located at 6200 Pulliam Drive, City of Flagstaff, Coconino County, Arizona, and all property and improvements contained within its boundaries.

B. "Airport Director" means the City's manager of the Airport.

C. "City" means the City of Flagstaff, Arizona, as represented by the Council of the City of Flagstaff, and where this Lease speaks of "approval by the City", approval means action by the Council of the City of Flagstaff, unless otherwise indicated.

D. "C.F.R." means the Code of Federal Regulations, as amended, and as the same may be amended from time to time.

E. “Concession Fee” means a fee which is the greater of a fee based on a percentage of Gross Revenues or Minimum Annual Guarantee (% fee or MAG), paid to the City for the privilege of doing business at the Airport for the term of this Agreement. This fee shall be free from any and all claims, deductions or setoffs against the City.

F. "CPI" means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, United States Department of Commerce, or such other index that said Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index.

F. "DBE" means a "disadvantaged business" (or disadvantaged business enterprise) as defined in 49 C.F.R. Subtitle A, Part 23.

G. "DOT" means the United States Department of Transportation, authorized and administered pursuant to the provisions of 49 U.S.C. § 102.

H. "FAA" means the Federal Aviation Administration, authorized and administered pursuant to the provisions of 49 U.S.C. §§ 40101, et seq. and 49 C.F.R. Chapter I.

I. "FAR" means the Federal Aviation Regulations, being 49 C.F.R. Chapter I.

J. "Fixed Rent" means Lessee's fixed rent obligation based on the square footage of the Rental Car Counter and Office Space, as provided by Section A of Article IV.

K. "Gross Receipts" means the aggregate amount of all revenue realized by the Lessee from its automobile rental service at or from the Airport, whether paid in cash, by credit or in-kind, determined without regard for Lessee's payment of any and all income, property, excise or other taxes levied on Lessee's activities, facilities, equipment or property, for which no deduction shall be made, except as otherwise expressly provided herein.

1. Gross Receipts shall include, but shall not be limited to: "drop charges" charged to patrons renting a vehicle at the Airport but delivering the vehicle to another automobile rental service office at the patron's destination; airport user fees or concession recovery fees recovered from the customer; all consideration received by Lessee for insurance coverage incidental to the rental of vehicles at the Airport; all revenues received by Lessee from or relating to the rental of vehicles at the Airport but delivered elsewhere, or from the rental of a vehicle exchanged for a vehicle delivered at or from the Airport, within a radius of thirty (30) miles from the Airport, when the rental agreements for such vehicles are to run consecutively; and all revenues realized by Lessee, the origin of which involved customer contact at the Airport, regardless of where such revenues are generated or paid.

2. Notwithstanding the foregoing, Gross Receipts shall not include: federal, state or local transaction privilege, sales or similar taxes that are separately stated and collected from Lessee's customers; revenue realized by the Lessee as reimbursement for fueling motor vehicles in advance (commonly known as the "fuel purchase option") or refueling motor vehicles upon return by the customer; amounts received as insurance proceeds or otherwise for damage, loss, conversion, or abandonment of or to Lessee's automobiles or other property, or received from customers under Lessee's right to recover from its customers for damages to the rental vehicles; proceeds received by the Lessee from the sale of its vehicles; and credits given by Lessee to its customers for such things as deposits and out-of-pocket purchases for gas, oil, or emergency service.

3. A vehicle shall be deemed to be rented at the Airport and consideration realized by Lessee therefore included in Gross Receipts, if: the rental contract for the vehicle is negotiated in whole or in part at the Airport, even though the vehicle may be delivered elsewhere within a radius of thirty (30) miles of the Airport; an advance registration or reservation for the vehicle has been made for any person at the Airport; or the vehicle is received within a radius of thirty (30) miles from the Airport, in exchange for a vehicle originally rented (or deemed rented hereunder) at the Airport, when the rental agreements for both vehicles run consecutively.

L. "Lessee" means Avis Budget Car Rental, LLC ("Lessee"), a Limited Liability Company (type of organization), with offices at 6 Sylvan Way, Parsippany, New Jersey 07054, entering into this Lease as the operator and tenant of the Premises, as hereinafter defined.

M. “Minimum Annual Guarantee” means a minimum amount to be paid to the City on an annual basis during each contract year as set forth in Section B(2) of Article IV.

N. "Office Space" means that space within the Terminal Building leased to Lessee, consisting of Office and Counter Space “C” as shown and further described in Exhibits A-1 and A-2 attached to this Lease.

0. "Percentage Rent" means that portion of Lessee's rent obligation equal to ten percent (10%) of its Gross Receipts, as provided by Section B of Article IV.

P. "Premises" means the Office/ Counter Space and Vehicle Spaces.

Q. "Rent" means Lessee's Fixed Rent and Percentage Rent, along with any other sums or amounts designated as additional rent.

R. "Terminal Building" means that building in which the Office Space is located owned and operated by the City located at 6200 Pulliam Drive, at the Airport.

S. "U.S.C." means the United States Code, as amended, and as the same may be amended from time to time.

T. "Vehicle Spaces" means twelve (12) parking spaces in the Airport parking lot adjacent to the Terminal Building for the parking and vehicle cleanup of Lessee's ready-to-rent rental vehicles, two (2) drop-off spaces on the curb adjacent to the Terminal Building for the drop-off and short-term parking of Lessee's rental vehicles as shown, generally, in Exhibit B-1 and B-2 attached hereto.

ARTICLE II - LEASE OF PREMISES AND LICENSE TO USE FACILITIES

A. LEASE AND USE OF PREMISES

1. General

The City, for and in consideration of the rentals and fees herein reserved, and of the covenants, conditions and agreements to be done and performed by Lessee, does lease and demise to Lessee and Lessee does take to and from the City, the Premises upon the terms, covenants and conditions set forth in this Lease. Lessee warrants that it has physically inspected the Premises and accepts the Premises in their present condition, "as is." Lessee shall occupy and operate the Premises solely as set forth in this Lease, and for no other purpose other than such business purposes as may be necessary and incidental thereto, specifically: Lessee shall, on a nonexclusive basis, offer to the general public passenger vehicle rental services. The term "on a nonexclusive basis" in this context means that during the term of this Lease there will be a maximum of three (3) other rental car concessions at the Airport, unless the number of deplaning passengers exceeds 100,000 for a period of one calendar year at any time during the term of this Lease, in which event, the City reserves the right to advertise and request bids for one or more additional rental car concessions. Lessee may use the Premises as follows: the Office Space for all reservation, customer service, handling, billing and related activities as may be necessary or incident to Lessee's services at the Premises; the Vehicle Spaces for such purposes as set forth in the definition in Article I, Section U; and either or both for such other purposes as the Airport Director shall expressly, in writing, approve.

2. Exchange of Premises

The City may at any time, in its sole discretion, substitute for all or any part of the Premises such comparable space at the Airport and the Terminal Building as it shall, in its sole discretion determine, provided that, in such event, the City shall reimburse Lessee for its reasonable and necessary expenses incurred in relocating its operations to substitute space (not including, however, any lost revenues or profits occasioned by relocation), and the Fixed Rent hereunder shall be adjusted if the size of the substitute space shall vary materially from the Premises leased. No rental car concessionaire at the Airport shall be substantially disadvantaged compared with any other rental car concessionaire at the Airport as a result of the City's substitution of all or a portion of its leased premises under this subsection.

3. Overflow Parking and Cleanup Space

Notwithstanding anything to the contrary contained in this Lease, the City may substitute for any space provided by the City to the Lessee for the purposes of overflow parking and cleanup (whether under this Lease or otherwise), any other available space which is, in the discretion of the City, reasonably comparable to that for which substitution is made, if, when and for so long as such substitution is, in Lessor's discretion, necessary to accommodate renovations or implement changed security procedures at the Airport. The City shall reimburse Lessee for Lessee's reasonable and necessary expenses incurred in relocating its operations to substitute space (not including, however, any lost revenues or profits occasioned by relocation).

B. LICENSE FOR USE OF AIRPORT FACILITIES

1. Airport Facilities

Subject to all rules and regulations governing the use of the Airport, Lessee shall have a nonexclusive right to use all vehicular roadways and parking areas of the Airport (except for areas that may have been reserved to the exclusive use of others in accordance with the directions of the Airport Director) for the operation of Lessee's operations hereunder and for the carriage of persons, property, cargo and/or mail incident thereto, including, without limitation, parking, loading and unloading persons, property, cargo and/or mail, as may be necessary or incident to Lessee's operations under this Lease. Notwithstanding the foregoing, the City reserves the right to assess a reasonable charge for public motor vehicle parking of rental cars if said vehicles are parked in areas other than designated for rental car parking (e.g. public parking lot). Lessee shall pick up and drop off patrons, and all of its vehicles shall be parked only in such areas designated for such purposes by the Airport Director.

2. Common and Joint Use Areas

Subject to all rules and regulations governing the use of the Airport, Lessee, Lessee's agents and servants, patrons and invitees and Lessee's suppliers of service and furnishers of materials shall have the right of ingress to and egress from the Premises, the Terminal Building and the Airport and a nonexclusive license to use all common areas of the Airport open to the public, provided that such ingress, egress or use does not interfere with normal operations of the Airport or of other operations in the Terminal Building.

C. CONSTRUCTION OF TENANT IMPROVEMENTS

1. General

Lessee may, at its sole cost and expense, provide and install any necessary improvements, counter area, facilities, decorations, signs, fixtures, and equipment for the Premises, provided that improvements to the Vehicle Spaces shall be limited to signs at the "rediparking" and drop-off spaces complying with those rules set forth in this Lease regarding signage. All such improvements, facilities, decorations, fixtures, and equipment shall be made or installed at the Premises only with the prior written consent of the City's Airport Director following Lessee's submission of a description of the proposed installations to the Airport Director no less than fourteen (14) days prior to installation. Those improvements, facilities, decorations, fixtures and equipment of, in or to the Office Space shall be of high quality, safe, modern in design, attractive in appearance and shall be in general keeping with the decor of the Terminal Building and the areas adjoining and surrounding the Office Space.

2. Permits and Authorizations

Lessee shall make no improvements to the Premises until it has first, at its sole cost and expense, submitted all design and construction plans, specifications and related documents for the improvements to the City's Building and Safety Division, and the Division has issued a building permit for the improvement. Lessee shall further diligently pursue and obtain all other permits, licenses and authorizations required for the construction of the improvements and operation of the Premises.

3. Insurance

Before commencing any improvement or equipment installation at the Premises, Lessee shall require that its construction contractors procure and maintain insurance for such construction and installation protecting both Lessee and City, as well as the construction contractors, with policy amounts and coverage as the City shall in each instance determine, and shall provide certificates of insurance with respect to all of the policies to the City prior to commencement of construction.

4. Construction Standards, Rules and Regulations

All improvements, additions or alterations constructed by Lessee at the Premises shall be constructed in a good and workmanlike manner and shall conform to all applicable statutes, ordinances, building codes, rules and regulations of any governmental authority as may have jurisdiction, and to the general architectural scheme of the Terminal Building. Lessee shall require in all contracts for construction that all contractors also comply with all applicable statutes, ordinances, codes, rules and regulations. Lessee's construction work shall be subject to inspection, during reasonable business hours, by the City's Building and Safety Division and its authorized personnel. Lessee shall keep the Premises free and clear of liens for labor and material and shall hold the City harmless from any liability arising therefrom. Lessee shall make no structural alterations to the roof, walls or floors of the Premises without the City's prior written consent. Nothing contained in this Section shall prevent Lessee from making a nonstructural alteration to the Office Space.

5. Cost of Improvements

The construction of any and all improvements, alterations and additions to the Premises by or for Lessee shall be performed at Lessee's sole cost and expense.

6. Additional Alterations, Additions or Replacements

Lessee shall make no alterations, additions, replacements or improvements to the Premises, install any equipment that requires any electrical connection (other than by ordinary plug into an existing receptacle) nor make any changes in those electrical connections installed on the Premises, without the prior written consent of the Airport Director. Any electrical service other than that provided at the execution of this Lease shall be installed and provided at the sole cost and expense of Lessee.

7. Signs

Except as may be provided otherwise in this Lease, Lessee shall not erect, install, operate or cause or permit to be erected, installed or operated, any signs or similar advertising devices in or upon the Premises without having first obtained the written consent of the Airport Director, which will not be unreasonably withheld, so long as the signs or similar advertising devices do not conflict with the rights of other concessionaires or lessees at the Airport and conform to the requirements of the City's Sign Code, which provides conditions concerning factors including, but not limited to, size, type, content and method of installation of signs.

8. Security Installations

The Airport has adopted a Security Program ("Security Program") in accordance with the Aviation and Transportation Security Act, 49 U.S.C. § 40101 et seq., and 49 C.F.R. Part 1542, and Lessee agrees to abide by all rules and regulations with respect to the Security Program.

D. MAINTENANCE OF PREMISES AND IMPROVEMENTS

1. General Maintenance

Lessee shall, at its sole cost and expense, maintain the Premises and all of its improvements, additions or alterations at the Premises and elsewhere at the Airport (if any), in good working order and in such condition that shall be based on a standard of care reflecting prudent property management, reasonable wear and tear excepted.

2. Preventive Maintenance and Repair

Lessee shall perform at its sole expense, ordinary preventative maintenance and ordinary upkeep and non-structural repair of all of its facilities, personal property and equipment in or upon the Premises and elsewhere at the Airport (if any), including, but not limited to, fixtures, doors and windows, floor coverings, counters, as well as all electrical work, plumbing appliances and fixtures located within the Premises, provided, however, that the City shall provide snow removal for the Vehicle Spaces, along with its snow removal at Airport parking lots generally.

3. Off-Premises Maintenance and Repair

Lessee shall, at its sole cost and expense, immediately repair any and all damage in or to any area of the Airport or the Terminal Building occasioned by the fault or negligence of Lessee, its servants, agents, or employees, and shall immediately remove any litter, debris, petroleum products or other liquids and/or grease that may result from its operations or the activities of its employees, agents, passengers or suppliers.

4. Maintenance or Repair by the City upon Lessee's Default

(a) In the event that Lessee fails to perform any obligation required by this Subsection D(4) to be performed by Lessee at Lessee's cost for a period of fifteen (15) days after receipt of written notice from the City to do so, the City, upon the expiration of the fifteen (15) day period may, but shall not be obligated to, perform that obligation of Lessee, which may include entry onto the Premises if reasonably necessary. All maintenance or repairs executed by the City under this Subsection D(4) shall be performed in a good and workmanlike manner.

(b) Notwithstanding the foregoing, in the event that Lessee's failure to perform such of its obligations under this Subsection D(4) may endanger the health or safety of the public or of any passenger, invitee or employee at the Airport, then the City may, but shall not be obligated to, immediately perform such obligation of Lessee upon prior written notice of its intent to do so, without awaiting the expiration of the mentioned fifteen (15) day period.

(c) In the event that the City shall perform any obligation of Lessee under this Subsection D(4), then the City shall invoice Lessee for the reasonable cost and expense of performing the obligation, plus a fifteen percent (15%) administrative charge, and Lessee shall pay, as additional rent, such amount on or before the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

(d) The City shall not be liable to Lessee for any loss, cost or expense to Lessee resulting from the City's performance of Lessee's obligations in accordance with the provisions of this Subsection D(4).

E. ENTRY AND INSPECTION OF PREMISES

1. Entry and Inspection

The City and its authorized officers, employees, agents, contractors, subcontractors, or other representatives shall have the right to enter upon the Premises:

(a) during reasonable business hours to determine whether Lessee has complied and is complying with the terms and conditions of this Lease;

(b) during reasonable business hours for inspecting the Premises and for fulfilling the City's obligations hereunder, provided, however, that such entry shall be at such times and in such manner as not to interfere unreasonably with the operations of Lessee; and

(c) at any time as may be required by an emergency at the Terminal Building or for emergency repairs or maintenance, without any liability or responsibility to Lessee for loss of business.

2. No Termination or Interference

No such entry by or on behalf of the City upon the Premises shall cause or constitute a termination of this Lease nor be deemed to constitute an interference with the possession thereof nor constitute a revocation of or interference with any of Lessee's rights in respect thereof for exclusive use of the leased Premises.

ARTICLE III – TERM

A. INITIAL TERM

This Lease shall be effective from February 1, 2011 through January 31, 2014, and shall continue in force and effect, unless sooner terminated as provided in this Lease.

B. RENEWAL

Upon completion of its initial term, this Lease may be renewed for two additional one (1) year terms, subject to approval by the City Council and Lessee, provided that Lessee provides the Airport Director with at least ninety (90) days prior written notice of Lessee's desire to renew the term of this Lease.

ARTICLE IV – RENTS

A. FIXED RENT

Lessee shall pay to the City an aggregate annual Fixed Rent for the Premises, Counter "**C**", (400.08 sq. feet), in the sum of $12,262.45 (twelve thousand, two hundred sixty-two dollars and 45/100), broken into twelve equal payments of $1021.87 (one thousand twenty-one dollars and 87/100), due in advance, on the first day of each month of the term of this Lease.

B. PERCENTAGE RENT

1. Concession Fee

The Lessee shall pay to the City, on a monthly basis, without notice or demand, a concession fee which is the greater of a fee based on percentage of 10% of Gross Revenues or Minimum Annual Guarantee (% fee or MAG). Lessee shall, on or before the twenty-fifth (25th) day following each and every month during the term of this Lease, submit to the City a detailed statement showing its Gross Receipts from its operations at the Premises for the preceding calendar month, in such reasonable detail and breakdown as the City may reasonably require, certified by a responsible officer or designee of Lessee, along with payment of either its Percentage Rent, for and during such preceding month, equal to ten percent (10%) of Lessee's Gross Receipts, or the Minimum Annual Guarantee.

Lessee's obligations under this Section B (and such other provisions of this Article IV that concern the calculation and payment of Lessee's Percentage Rent hereunder) shall survive any termination of this Lease, until all of Lessee's Percentage Rent obligations shall be paid in full. Furthermore, Lessee shall collect from its customers a fee no more than 11.1%, by adding it as a separate line item charge on each customer rental agreement. This line item shall be designated as an "airport user fee" or "concession recovery fee" on each customer rental agreement.

2. Minimum Annual Guarantee: During the term of this agreement, Lessee agrees to pay to the City a Minimum Annual Guarantee (MAG) of:

First Year:	$148,000.00	(one hundred forty-eight thousand dollars)
Second Year:	$148,000.00	(one hundred forty-eight thousand dollars)
Third Year:	$148,000.00	(one hundred forty-eight thousand dollars)

3. Percentage Fee: Percentage fee shall be the amount equal to ten percent (10%) of Lessee’s Gross Revenues.

C. PRO-RATED RENT

Rent for any period during the term or extended term of this Lease that is for less than one month (if any) shall be pro-rated accordingly.

D. CPI ADJUSTMENT

The Fixed Rent shall be adjusted on July 1st of every year, the commencement of the City's fiscal year, during the term of this Lease and any extension or renewal of such term by the same percentage as that represented by the increase, if any, in the Consumer Price Index for All Urban Consumers ("CPI") most recently published by the Bureau of Labor Statistics, United States Department of Commerce (or such other index that said Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index) at that time, as compared with the CPI most recently published one year prior.

E. ACCOUNTING AND AUDIT

1. Books and Records

Lessee shall, with respect to all business done by it at the Premises, keep true and accurate account records and books which shall, at a minimum, include all of Lessee's reservation registers and records, and show all sales made and services performed for cash or credit or

otherwise, without regard to whether paid for or not, and all other items included or considered in determining Lessee's Gross Receipts, all in a manner and format from which the City may reasonably and accurately determine Lessee's Gross Receipts. Lessee shall either maintain account records and books at a location within the city limits of the City as shall be available and convenient for inspection by the City as provided in Subsection 3 of this Section E, for a period of at least three (3) years from the time of entry of each item shown therein or provide the account records and books to the City upon thirty (30) days' written notice. The City reserves the right to prescribe or change the form in which Lessee shall provide any reports required under this Lease, and their method and time of submission.

2. Annual Reports

Within ninety (90) days after the end of each lease year during the term of this Lease and any extension or renewal of such term, Lessee shall furnish to the City an annual accounting statement prepared according to generally accepted accounting principles, in such form as the City may reasonably require, which is a true disclosure of the operations of Lessee at the Premises, including but not limited to Lessee's Gross Receipts and Percentage Rent for the previous year. Lessee shall simultaneously pay to the City excess Percentage Rent due, if any, for such preceding lease year over and above the Percentage Rent paid. If Lessee shall have paid to the City Percentage Rent in excess of the greater of the Percentage Rent due under Article IV(B)(1) above during the preceding contract year, the City shall credit Lessee for such excess against future payments, or in the last year of the Lease, the City shall refund such excess amount, if any, to Lessee within one hundred and twenty (120) days of the end of the Lease. Lessee's obligations under this Subsection E(2) shall survive any termination of this Lease until Lessee shall have provided to the City the annual accounting statement required for the last completed accounting period not previously reported under the provisions of this subsection.

3. Audit

The City and its employees, agents and authorized representatives shall have the right at all reasonable times and during all business hours, except as otherwise provided in Subsection 1 of this Section E, to inspect and examine such records, registers, contracts, books and other data as may be necessary to confirm Lessee's Gross Receipts for its operations at the Premises. The City may conduct any such audit in any manner consistent with generally accepted auditing standards, including, but not limited to, statistical sampling. If any such inspection or audit shall disclose any willful and intentional misstatement, the City may, in its sole discretion, cancel and terminate this Lease forthwith, without penalty or further liability.

4. Audit Deficiency and Protest

In the event that an audit by the City shall disclose any deficiency in Lessee's payments of Percentage Rent hereunder, resulting from discrepancies in its determination of Gross Receipts or otherwise, the City shall promptly notify Lessee in writing of the deficiency. Upon its receipt of such notice, Lessee shall either:

(a) within sixty (60) days submit to the City its written consent to the City's audit findings, along with payment in full of the deficiency determined thereby; or

(b) within sixty (60) days (or at such later time as the City Manager may, upon a timely filed written request therefore, provide in writing) submit to the City Manager a written protest and request for redetermination, setting forth in detail Lessee's grounds for the protest and the amount of the audit deficiency that it claims to be in error, along with supporting information and/or documentation as shall be appropriate.

The City shall not accept any protest, petition or request for redetermination that is not filed within the sixty (60) day period (or such later date allowed by the City Manager). In the absence of a submission of a timely written protest as provided above, the deficiency determined by the audit shall become immediately due and payable at the expiration of the sixty (60) day period, and Lessee shall be deemed to have waived and abandoned all right to question or protest the City's audit findings.

3. Deficiency Hearing and Redetermination

(a) As soon as may be practicable following the City Manager's receipt of a timely submitted written protest, the City Manager shall either order the audit deficiency redetermined in accordance with Lessee's protest, or notify Lessee of the time, date and place for a hearing on the matter.

(b) The City Manager, or such other hearing officer designated by the City Manager, shall hear the matter informally, without regard to formal rules of procedure or of evidence, and, within thirty (30) days of the close of the hearing, shall make such order in the matter as appears to be just and lawful and shall mail a copy of the order to Lessee.

(c) The deficiency stated in the City Manager's or hearing officer's order shall be immediately due and payable upon receipt by Lessee. Lessee's failure to pay such deficiency within thirty (30) days of its receipt of the order shall constitute a material breach of this Lease and shall give the City the option of immediately terminating the Lease in accordance with the provisions of Article VII.

G. LATE PAYMENT

All amounts due from Lessee to the City under this Lease that are not paid by Lessee when due shall be subject to a penalty of ten percent (10%) of such amount due, plus interest at the rate of one (1%) percent per month or fraction of a month from the time due and owing until paid. The penalty and interest shall be payable as additional rent hereunder, subject to all the terms and conditions of this Lease.

ARTICLE V - LESSEE'S OPERATIONS

A. GENERAL

Lessee shall not use or permit the use of the Premises, the Terminal Building, the Airport or any part thereof, for any purpose or use other than as authorized by this Lease without the prior written consent of the City.

B. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

1. General

Lessee, its employees, representatives and agents shall comply at all times with all present or future laws, rules, ordinances and regulations, and all amendments or supplements thereto, governing or relating to the use of the Airport, the Terminal Building and/or the Premises, as may from time to time be promulgated by federal, state or local governments and their authorized agencies.

2. Taxes, Licenses and Permits

Lessee shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation and lease of the Premises. Lessee may elect, however, at its own cost and expense, to contest any such tax, excise, levy or assessment, provided that such contest is in accordance with law and does not result in a violation by Lessee of any law, rule, regulation or ordinance, or result in any lien against the Premises, the Terminal Building or the Airport. Lessee shall keep current municipal, state or federal licenses or permits required for the conduct of its business. Lessee shall, upon reasonable demand, display to the Airport Director any and all permits, licenses, authorizations or other evidences of compliance with such laws, rules and regulations.

3. Airport Rules and Regulations

Lessee covenants and agrees to observe and obey all reasonable rules and regulations adopted by the City with respect to use of and the conduct and operation of the Airport, the Terminal Building and/or any additions or improvements therein.

4. Energy Conservation

Lessee shall comply with all City rules, regulations and orders pertaining to energy conservation and management, to the extent that such rules, regulations and orders do not unduly infringe on Lessee's rights and privileges granted herein.

5. Compliance with Airport Improvement Program

Lessee covenants and agrees that this Lease may be amended by the City, without consent of Lessee, in any manner necessary to comply with any requirement of the Federal Aviation Administration or other instrumentality of the federal government or state of Arizona in order for the City to qualify or maintain its qualification under the Airport Improvement Program, as authorized and administered under the Airport and Airway Improvement Act of 1982 (Public Law 97-248, codified at 49 U.S.C. §§ 47101, et seq.), as amended and as the same may be amended from time to time.

6. Compliance with FAA Assurances

Lessee covenants and agrees to comply in all respects with those FAA Airport Assurances, dated March 2005 and attached hereto as Exhibit C, and any subsequent amendments thereto (in which the term "sponsor" shall be deemed to mean and include the City), to the extent that their terms may be applicable to Lessee and its operations hereunder.

C. SANITARY OPERATION

1. General

Lessee shall maintain and operate the Premises in a safe, clean, orderly and inviting condition at all times satisfactory to the City. Lessee shall always conduct its operations on the Premises in a manner using all available and practical devices to reduce to a reasonable minimum, considering the nature and extent of Lessee's operations, the emanation from the Premises of noise, vibration, movement of air, fumes and odors, so as not to unreasonably interfere with the use of other premises adjoining these Premises or elsewhere at the Airport. Lessee shall always conduct its operations in all parts of the Airport in accordance with the current regulations of the United States Environmental Protection Agency, and of other applicable federal, state and local authorities.

2. Refuse and Janitorial Service

Without limiting the generality of the foregoing, Lessee shall:

(a) provide and pay for janitorial service within the Office Space; and

(b) remove, not less frequently than at the close of each business day, all refuse and trash from the Premises and such other areas of the Airport as it shall regularly use and place all refuse and trash in such container or containers as the City may from time to time designate, separately disposing of recyclable, hazardous or other refuse items in the manner and at the places as the City may from time to time designate.

3. City's Right to Cure Default

In order to maintain a high level of custodial services at the Airport, the City, upon a default of Lessee in its obligations under this Section, may provide such necessary custodial services within the Premises or without, and Lessee shall, in such event, pay to the City the cost of such custodial services as additional rent hereunder, plus a fifteen percent (15%) administrative charge, on the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

D. BUSINESS OPERATIONS

1. General

Service provided by Lessee at the Premises and elsewhere at the Airport shall be prompt, clean, courteous and efficient.

2. Hours of Operation

Lessee shall keep the Premises open for business, having attendants on duty and offering its rental vehicles to the public, during all hours that the Terminal Building is open, except as the Airport Director may otherwise authorize in writing. Lessee acknowledges that the hours of operation of the Terminal Building and Airport support services are, at the inception of this Lease, 6:00 AM to 11:00 PM, and are subject to such reasonable changes as the Airport Director shall determine in his sole discretion. In the event that Lessee shall require the provision of these services or facilities beyond the normal hours of operation, then the City shall invoice Lessee for the fully burdened hourly cost of such Airport personnel as are necessary to provide these services and/or facilities (but not less than one (1) hour for each such personnel) and such other expenses incurred by the City in connection with providing these services or facilities, plus a ten percent (10%) administrative charge, and Lessee shall pay, as additional rent, this charge on or before the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

3. Control of Personnel

Lessee shall, at the leased Premises and elsewhere at the Airport, exercise reasonable control over the conduct, demeanor and appearance of its employees, agents and representatives and the conduct of its contractors and suppliers. Upon objection from the Airport Director to Lessee concerning the conduct, demeanor or appearance of any such persons, Lessee shall within a reasonable time remove or correct the cause of the objection. Lessee shall require all of its employees, agents, representatives and independent contractors hired by Lessee working in view of the public in and in the vicinity of the Terminal Building, to wear clean and neat attire and to display appropriate identification, and shall require all of its employees to conduct themselves in a professional manner.

4. Vehicles

Lessee shall at all times maintain a number of rental vehicles reasonably adequate to meet public demand, taking into consideration the varying seasonal requirements of the traveling public. Lessee shall maintain, at its sole cost and expense, all vehicles and equipment used in the conduct of Lessee's business in good mechanical condition, free from known defects and in a clean and presentable condition. Lessee shall only store wrecked or inoperable vehicles at the Airport in areas designated by the Airport Director and for no longer than seventy-two (72) hours, unless the Airport Director expressly agrees otherwise.

5. Solicitation and Advertising

Verbal solicitation of Lessee's business may be made only from behind the counter of Lessee's Office Space, and Lessee shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous, or otherwise objectionable solicitation. Lessee may identify and advertise its vehicle rental service at its Office Space in a manner comparable to the reasonable advertising of other automobile rental companies operating in the Terminal Building. All advertising materials of whatever nature, including but not limited to brochures, rate cards, schedules, forms, etc., shall not unduly clutter the counter at Lessee's Office Space, and the counter space shall be maintained in a clean and orderly manner. All materials displayed at Lessee's Office Space shall be subject to the approval of the Airport Director.

6. Public Address System

Lessee may use the Airport public address system only with the consent of the Airport Director and in accordance with the Airport's public address system policy. Lessee shall not install or cause to be installed any other public address system at the Airport without the prior written consent of the Airport Director.

7. Security

Lessee acknowledges that all areas airside of the Terminal Building are strictly controlled, and Lessee shall not permit its employees, agents, invitees, patrons and/or vehicles to enter these areas other than as authorized by the Airport Director.

E. LIMITATIONS ON LESSEE'S USE OF THE PREMISES

In the conduct of its business operations at the Premises, or in connection with the exercise of any right or privilege under this Lease, Lessee shall not:

1. do, or permit its agents, employees, contractors, directors or officers to do anything at the Airport that may interfere with the effectiveness or accessibility of the Airport's drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the Premises or the Airport;

2. do, or permit its agents, employees, contractors, directors or officers to do any act or thing at the Airport that would invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof;

3. dispose of, or permit its agents, employees, contractors, directors or officers to dispose of any waste material taken from or products used at the Premises or elsewhere at the Airport (whether liquid or solid) into the sanitary or storm sewers at the Airport unless the waste material or products have first been properly treated by equipment installed with the approval of the Airport Director for that purpose;

4. keep or store, during any twenty-four (24) hour period, flammable liquids within the enclosed portion of the Premises in excess of Lessee's working requirements during the twenty-four (24) hour period, except in storage facilities especially constructed for these purposes in accordance with standards established by the National Board of Fire Underwriters and approved by the Airport Director from the standpoint of safety; any such liquids having a flash point of less than one hundred degrees Fahrenheit (100° F) shall be kept and stored only in safety containers of a type approved for such purpose by the Underwriters Laboratory;

5. do or permit its agents, employees, contractors, directors or officers to do any act or thing at the Airport that would conflict with FAR Part 139 or jeopardize the Airport's operating certificate;

6. do, or permit its agents, employees, contractors, directors or officers to do any act or thing in conflict with any TSA approved security plan that may be adopted by the Airport; or

7. make use of the leased Premises or any other part or area of the Airport in any manner that might interfere with the landing and taking off of aircraft at or from the Airport, or would otherwise constitute a hazard. In the event the covenant of this Subsection 7 is breached, the City reserves the right to enter upon the Premises and/or any other property of Lessee at the Airport and cause the abatement of the interference at the expense of Lessee and without liability of any kind to the City.

F. LIENS

Lessee shall not permit or suffer to be placed on the Premises, or any fixture, addition, betterment or improvement thereto any lien of any nature, including but not limited to tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Lessee or any of its contractors or subcontractors upon the Premises or arising out of or because of the performance of any work or labor to it or them at the Premises or the furnishing of any materials to it or them for use at the Premises. Should any lien be made or filed, Lessee shall bond against or discharge the same within ten (10) days after the lien is placed and shall promptly notify the Airport Director of the steps taken to remove the lien or protect the Premises from the lien.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. INDEMNIFICATION: Vendor (as “indemnitor”) agrees to indemnify, defend and hold harmless the City (as “indemnitee”) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the acts or omissions of indemnitor, its officers, officials, agents, employees or volunteers relating to this Agreement.

2. INSURANCE: Vendor shall procure and maintain until all of its obligations under this Agreement have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property that may arise from or in connection with this Agreement.

   The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect vendor from liabilities that might arise out of the performance of the work under this Agreement by vendor, its agents, representatives, employees or sub-vendors and vendor is free to purchase such additional insurance as may be determined necessary.

I. MINIMUM SCOPE AND LIMITS OF INSURANCE: Vendor shall provide coverage at least as broad and with limits of liability not less than those stated below.

(a) Commercial General Liability - Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$1,000,000
Personal & Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Any one fire)	$ 50,000
Medical Expense (Any one person)	Optional

(b) 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

(c) Workers' Compensation and Employer's Liability

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

b. SELF-INSURED RETENTIONS/DEDUCTIBLES: Any self-insured retentions and deductibles shall be declared to and approved by the City.

c. OTHER INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages:

a. Vendor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, or employees shall be in excess to the coverage of vendor's insurance and shall not contribute to it.

b. Vendor'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.

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

d. Vendor's insurance shall contain broad form contractual liability coverage.

2. Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees and volunteers for losses arising from vendor's operations, work or products that are the subject of this Agreement.

3. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to: Ann Marie Fisher, Sr. Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001 and shall be sent by certified mail, return receipt requested.

4. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less that A-: VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect vendor from potential insurer insolvency.

5. VERIFICATION OF COVERAGE: Vendor shall furnish the City with Certificates of Insurance (ACORD form) 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. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificate of Insurance.

   All Certificates of Insurance shall be received and approved by the City before work commences. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal shall be a material breach of this Agreement.

   All Certificates of Insurance shall name the City of Flagstaff as an additional insured. All Certificates of Insurance required by this Agreement shall be sent directly to: Ann Marie Fisher, Sr. Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001. A description of the Contract is to be noted on the Certificate of Insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement at any time.

6. APPROVAL: Any modification or variation from the insurance requirements in this Agreement shall have prior approval from the City's Risk Manager, whose decision shall be final. Such action shall not require a formal contract amendment, but may be made by administrative action.

H. FIRE PROTECTION

Lessee shall at all times keep and maintain in good working order at the Premises such fire extinguishing equipment and apparatus as may be required by any of Lessee's insurance policies maintained hereunder, or otherwise adequate and appropriate to Lessee's use of the Premises, and shall, from time to time and as often as reasonably required by the City, conduct appropriate tests of such fire extinguishing equipment and apparatus.

I. NON-DISCRIMINATION

1. General

   Lessee shall furnish its goods and/or services at the Premises on a fair, equal and nondiscriminatory basis to all patrons and shall charge fair, reasonable and nondiscriminatory prices for each unit of service, provided, however, that Lessee may make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

2. Compliance with Civil Rights Act

   Without limiting the generality of the foregoing, Lessee, for itself and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration for this Lease, does hereby covenant and agree that, except as otherwise expressly provided herein:

   (a) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; in the construction of any improvements on, over, or under the Premises and the furnishing of services at the Premises, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or

otherwise be subjected to discrimination; no person will be subject, on the grounds of race, color, or national origin, to segregation or special treatment in any manner related to the receipt of any goods or services furnished at or from the Premises;

(b) Lessee shall use and operate the Premises at all times in compliance with all requirements imposed by or pursuant to 49 C.F.R. Subtitle A, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Acts of 1964, as amended;

(c) Non-compliance with any of the above nondiscrimination covenants shall constitute a material breach of this Lease, and in the event of such non-compliance the City shall have the right to judicially enforce such covenants and/or to terminate this Lease and to reenter and repossess the Premises and hold the same as if this Lease had never been made or issued, provided, however, that all notice, appeal and related procedures of 49 C.F.R. Subtitle A, Part 21 are followed and completed prior to the termination; and

(d) Lessee shall include the provisions of this Subsection I(2) in any lease, agreement, or contract by which Lessee shall grant any right or privilege to any person, firm or corporation to render accommodations, goods and/or services to the public on the Premises.

3. Affirmative Action

Lessee covenants and agrees that it will:

(a) undertake an affirmative action program as described by 14 C.F.R. Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from employment or from receiving any goods, services or benefits of or provided by Lessee or its operations at the Premises;

(b) comply with any affirmative action plan or steps for equal employment opportunity required by 14 C.F.R. Part 152, Subpart E, as part of such affirmative action program, or by any federal, state or local agency or court, including those resulting from a conciliation agreement, consent decree, court order or similar mechanism, provided that Lessee may use such state or local affirmative action plan in lieu of that required by 14 C.F.R. Part 152, Subpart E only when such plan fully meets the requirements of 14 C.F.R. 152.409; and

(c) require from all contractors, subcontractors, grantees, subgrantees and sublessees of Lessee the same covenants as contained in this Subsection I(3), as required by 14 C.F.R. Part 152, Subpart E.

4. DBE Requirements

(a) It is the policy of the City to encourage and develop disadvantaged businesses (hereinafter "Disadvantaged Business Enterprises" or "DBE's"), as defined in 49 C.F.R. Subtitle A, Part 23, and to ensure that DBE's shall have the maximum opportunity to participate in the performance of concessions, contracts and leases at the Airport. Consequently, this Lease is subject to the provisions and requirements of 49 C.F.R. Subtitle A, Part 23 and the City's DBE Concession Plan for the Airport, as each may apply.

(b) If Lessee asserts that it qualifies as a DBE, Lessee hereby warrants, covenants and agrees that it believes in good faith that it qualifies as a DBE under 49 C.F.R. Subtitle A, Part 23 and the City's DBE Concession Plan for the Airport, and that it will use all due effort to apply for certification and be certified as a DBE, if it has not already done so. The City will employ all reasonable efforts to assist and cooperate with Lessee in making such application and obtaining such certification.

J. INDEMNITY

Lessee shall indemnify the City and hold it forever harmless from and against all liability, loss, demand, judgment or other expense (including but not limited to, defense costs, expenses and reasonable attorney fees) arising from or as a result of Lessee's use or occupancy of the Premises or any other Airport property, or from any action or omission of Lessee, its officers, employees, agents, or other representatives within the boundaries of the Airport, including movement of aircraft

or vehicles, except as may arise or result solely from negligent or willful acts or omissions of the City, its employees, agents or representatives.

K. PERFORMANCE BOND

At the time of the execution of this Lease, Lessee shall furnish the City with a valid surety bond for the term of this Agreement in a principal sum no less than one-fourth (1/4) of the Average Minimum Annual Guarantee as described in Subsection B(2) of Article IV, issued by a surety company qualified to do business in the State of Arizona and acceptable to the City, or other security acceptable to the City. The security shall be maintained and kept by the Lessee in full force and effect during the entire term of this Lease, and any extensions thereof, and shall be conditioned to assure the faithful and full performance by Lessee of the terms of this Lease and to stand as security for the payment by Lessee of any valid claim by the City against the Lessee arising under this Lease.

ARTICLE VI - OBLIGATIONS OF THE CITY

A. PROVISION OF SERVICES

The City shall, at its sole cost and expense:

1. Utilities

   (a) furnish electricity, natural gas and water as may be reasonably necessary for the conduct of Lessee's business operations at the Premises and elsewhere at the Airport;

   (b) furnish necessary heating and cooling to the Premises and the Terminal Building as the City shall reasonably determine;

   (c) provide for the collection and disposal of all refuse at the Terminal Building and elsewhere at the Airport, including containers in which Lessee shall place its refuse in accordance with the provisions of Article V, Subparagraph C(2)(b) hereof;

2. Maintenance

   (a) maintain and keep in good repair and condition the Airport, the Terminal Building and all appurtenances, facilities and central mechanical distribution systems thereof;

   (b) maintain and operate the Airport in all respects in a manner at least equal to the standards that may be promulgated by the FAA for airports of similar size and character and in accordance with all FAA rules and regulations;

   (c) keep and maintain all Airport roadways and parking areas free of snow and other obstructions insofar as reasonably practicable; and

(d) perform normal custodial duties in the Terminal Building outside the Premises, including sweeping and dusting, removing all trash there from and taking reasonable precautions to protect the Premises and any supplies within the Premises from being tampered with, damaged, destroyed, marred, or removed, provided, however, that the City shall not thereby in any way guarantee the safety or security of the Premises and shall not be liable to Lessee or in any way responsible for injury to persons or any damage to the Premises or Lessee's supplies caused by acts of vandalism, theft or other crime.

B. LIMITATION OF LIABILITY

The City shall not, by virtue of the obligations set forth in Section A of this Article VI, be liable to Lessee for any interruption of any service or utilities beyond the control of the City, and Lessee shall, except as may be otherwise expressly set forth herein, have no cause of action against the City for constructive eviction or otherwise as a result of any such interruption. Lessee expressly agrees that the City shall not be liable to Lessee for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or acts of civil authority and not caused by the negligence or willful acts or omissions of City.

C. RESERVATION OF RIGHTS

1. Airport Development and Expansion

The City reserves the right to further develop or improve the landing area or any other area, building or other improvement within the present or future boundaries of the Airport as it sees fit in its sole judgment, regardless of the desires or view of Lessee and without interference or hindrance by Lessee. Further, the City retains the absolute right to maintain, repair, develop and expand the Terminal Building or any other Airport facility, Airport improvement or Airport property free from any and all liability to Lessee for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development or expansion.

2. Maintenance, Repair, Direction and Control

The City further shall have the right, but not the obligation, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, including but not limited to such areas as are necessary to serve the aeronautical users of the Airport, other than as may be leased to or under the control of other Airport tenants, together with the right to direct and control all activities of Lessee in this regard.

3. Airspace

There is hereby reserved to the City and its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, including but not limited to the right to cause or allow in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation at the Airport, without liability or obligation of any kind.

ARTICLE VII - DEFAULT AND TERMINATION

A. TERMINATION BY THE CITY

Lessee acknowledges and agrees that the City may, at its option, upon the occurrence of any of the following events, immediately or at any time thereafter, terminate this Lease and, without demand or notice, enter into and upon the Premises or any part thereof and repossess the same and expel Lessee and any persons claiming by, through, or under Lessee and remove its or their property and effects, if any, forcibly if necessary, from the Premises or elsewhere at the Airport, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be available for arrearage of rent or preceding breach of any provision hereof, and may further declare the entire balance of rents due hereunder immediately due and payable and commence an action to recover said sum from Lessee:

1. if Lessee shall be in arrears in the payment of any rent due hereunder for a period of ten (10) days or more after the City has notified Lessee thereof in writing of the default;

2. the failure or refusal of Lessee to conduct its operations at the Premises continuously as required in this Lease, and the failure or refusal shall continue for a period of not less than ten (10) days after the City has notified Lessee in writing of the default, and Lessee has failed to cure the default within the ten (10) day period;

3. the failure or neglect of Lessee to perform any of the covenants, terms and conditions hereof (other than payment of rent and continuous operation of Lessee's business operations), and the failure or neglect shall continue for a period of not less than thirty (30) days after the City has notified Lessee in writing of the default, and Lessee has failed to correct or actively begun curing the default within the thirty (30) days;

4. the voluntary abandonment by Lessee of the Premises or its operations at the Airport for a period of thirty (30) days or more;

5. the seizure or taking of possession, for a period of fifteen (15) days or more, of all or substantially all of the property used on the Premises belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;

6. the filing of any lien against the Premises because of any act or omission of 'Lessee which is not discharged or contested in good faith (as the City shall determine in its sole discretion) by proper legal proceedings within twenty (20) days of receipt of actual notice of such lien by Lessee;

7. Lessee's falsification of any of its business records or books with the intent of depriving the City of any rents or other rights under the terms of this Lease;

8. Lessee's attempt to make an assignment, transfer, merger or consolidation of its business operations at the Premises in violation of Section B of Article VIII; or

9. any permanent injunction of Lessee's conduct of business at the Premises by a court of final jurisdiction; provided, however, that if Lessee shall be temporarily enjoined from doing business at the Airport, any resulting cessation of business by Lessee, so long as the injunction remains in effect, shall not be considered a breach of this Lease or cause for termination by the City hereunder, unless and until such injunction becomes permanent.

C. ADDITIONAL REMEDIES

1. Statutory Remedies

In addition to any and all other remedies provided herein, the City, as lessor, shall be entitled to all of the remedies enumerated in Title 33, Chapter 3, Article 4 of the Arizona Revised Statutes, the provisions of which are incorporated by reference as a part of this Lease, as if the same were set forth herein in its entirety.

2. Remedies Cumulative

The remedies of the City set forth herein shall be cumulative and are not intended to be exclusive of any other remedies or means of redress to which the City may be lawfully entitled in the event of Lessee's breach of any provision of this Lease. In addition to any other remedies set forth herein, the City shall be entitled to the restraint by injunction of any violation, or attempted or threatened violation, of any of the terms, covenants conditions or other provisions of this Lease.

C. TERMINATION BY LESSEE

1. Termination for Cause

In addition to any other rights of cancellation it may have hereunder or by law, Lessee may, at any time that Lessee is not in default hereunder, terminate this Lease at its option by giving the City thirty (30) days' prior written notice of such termination, upon the occurrence of any of the following events:

(a) An order or action by the FAA or any other governmental authority substantially terminating Lessee's right to conduct its operations at the Airport;

(b) the issuance, by a court of competent jurisdiction, of an injunction of at least thirty (30) days' duration, prohibiting or restraining the use of the Airport as an airport or Lessee's business operations at the Airport;

(c) a national emergency in which there is a curtailment of the use of aircraft and/or motor vehicles by the general public, or a limitation of the supply of gasoline and/or aircraft fuel available for general use either by executive decree or legislative action, which results, in fact, in a substantial curtailment of Lessee's business operations at the Airport;

(d) a breach by the City of any material covenant of this Lease, which breach remains uncured for a period of thirty (30) days following written notice to the City;

(e) Lessee's inability to use the Premises or to conduct its business operations at the Airport due to the City's failure to maintain the Airport or unsafe conditions at the Airport; or

(f) the seizure or other assumption of control of the Airport by any government other than the City.

D. MEDIATION

If a dispute arises out of or relates to this Lease, other than Lessee's failure to pay rent when due, 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 will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, with the exception of the

mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

E. PROPERTY UPON TERMINATION

1. Condition of the Premises

Lessee covenants and agrees that upon any termination of this Lease, however caused, it will quit and surrender the Premises and shall perform such repair of the Premises so that it is in as good condition as it was at the time this Lease was entered into, reasonable wear and tear excepted.

2. Fixtures

All fixtures installed and permanently affixed to the realty of the Premises or the Airport during the term of this Lease shall become and remain the property of the City. All signs, decorations, fixtures, and equipment which Lessee may install during the term of this Lease that have not been permanently attached to the Premises or the Airport shall remain the property of Lessee.

3. Removal of Personal Property

Upon any termination of this Lease, however caused, Lessee shall remove from the Airport, within thirty (30) days of such termination, all signs, decorations, equipment, trade fixtures and personal property belonging to Lessee or its sublessees, if any, that have not been permanently attached to the Premises or any part of the Airport.

F. DAMAGE AND DESTRUCTION

In the event of damage, destruction or substantial loss of or to the Premises or any improvements constructed upon the Premises resulting from any cause beyond the control of Lessee which materially impairs Lessee's ability to conduct its business operations at the Premises, which damage, destruction or loss is not capable of being repaired within sixty (60) days, Lessee shall have the option to terminate this Lease upon written notice to City not later than ten (10) days after the occurrence of such event. In the event of termination by Lessee under this Subsection F, Lessee shall, at its sole cost and expense, conduct and perform all cleanup and/or demolition of the Premises necessary to make the Premises ready for repair, replacement, restoration or rebuilding. In the event Lessee does not exercise such option, or in the event the damage, destruction or loss is capable of being repaired within sixty (60) days, then Lessee shall promptly repair, replace, restore or rebuild the improvements.

G. CONFLICT OF INTEREST

1. Notwithstanding anything to the contrary contained herein, the parties acknowledge in accordance with Arizona Revised Statutes §38-511 that the City may terminate this Lease upon written notice at any time within three (3) years of its execution, without penalty or further obligation, in the event that any person significantly involved in initiating, securing, drafting or creating this Lease on behalf of the City shall become an employee or agent of Lessee in any capacity or shall render consulting services to Lessee with respect to the subject matter of this Lease.

H. BUSINESS OPERATIONS IN SUDAN/IRAN

In accordance with A.R.S. § 35-391.06(A) and 35-393.06(B), Lessee certifies that the Lessee and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Lessee certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Lease.

I. VERIFICATION REGARDING IMMIGRATION LAWS

Lessee hereby warrants to the City that Lessee 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 "Lessee Immigration Warranty"). A breach of the Lessee Immigration Warranty shall constitute a material breach of this Lease and shall subject the Lessee to penalties up to and including termination of this Lease at the sole discretion of the City.

ARTICLE VIII - MISCELLANEOUS

A. FORCE MAJEURE

The performance of all covenants contained herein shall be postponed and suspended during such period as such performance is prevented by acts of God, accidents, weather and conditions arising from them, strikes, boycotts, lockouts and other labor troubles, riot, fire, earthquake, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and attendant conditions, the exercise of paramount power by the federal government, either through the taking of the Premises or the imposition of regulations restricting the conduct of business thereat, acts of enemies, sabotage, interference, restriction, limitation or prevention by legislation, regulation, decree, order or request of any federal, state or local government or any instrumentality or agency, including any court of competent jurisdiction or inability to secure labor or adequate supplies of materials, products or merchandise. The party claiming the occurrence of a condition of force majeure shall promptly notify the other party in writing of the occurrence of the condition and upon its cessation.

B. ASSIGNMENT

Lessee shall not at any time, without the prior written consent of the City:

1. assign or transfer, or permit or participate in any assignment or transfer of, this Lease or any of the rights, powers or privileges thereunder;

2. merge, consolidate, or combine, either directly or indirectly, with any other person, firm or corporation operating at the Airport under any other lease or concession agreement, whether such uniting, merging, consolidating, or combining be through the sale of property or sale of stock or otherwise; or

3. permit any of its owners, directors or officers, to serve as a director or officer, of any other firm or corporation operating at the Airport under any other lease or concession agreement.

C. FEDERAL GRANT ASSURANCES

Lessee acknowledges and agrees that this Lease shall be subject to all federal requirements set forth in the document entitled Airport Assurances, which is attached to and incorporated within this Lease as Exhibit C.

D. QUIET ENJOYMENT

The City represents that it has the right to lease the Airport and the Terminal Building, together with the facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this Lease. The City agrees that, on payment of the rent and performance of the covenants and agreements of the Lease by Lessee, Lessee shall peaceably have and enjoy the Premises and all rights and privileges of the Airport, its appurtenances and facilities.

E. NOTICES

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Lease shall be in writing and shall be effective and deemed received when hand-delivered or faxed, or, if sent by mail, three (3) business days after mailing, to the address given below for the party to be notified, or to such other address of which notice is given in accordance with this Section D:

if to the City:	if to Lessee:
City of Flagstaff	Lorraine Tallarico
Airport Director	Avis Budget Car Rental, LLC
6200 S. Pulliam Drive, Suite 204	6 Sylvan Way
Flagstaff, AZ 86001	Parsippany, NJ 07054
fax: (928) 556-1288	fax: (650) 624-0179

F. NON-EXCLUSIVITY; COMPETING USES

Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right prohibited federal law. The rights and privileges granted under this Lease are non-exclusive, and the City has the right to grant to others the privilege and right of conducting any and all of the aeronautical activities listed herein. Notwithstanding the foregoing, the City covenants and agrees not to enter into any similar agreement with respect to the Airport which contains more favorable terms than are contained in this Lease or to grant to potential competitors of Lessee privileges not herein authorized, unless the same are currently extended to Lessee.

G. INTENTION OF THE PARTIES

This Lease is intended solely for the benefit of the City and Lessee and is not intended to benefit, either directly or indirectly, any third party or members of the public at large. Any work done or inspection of the Premises performed by the City is solely for the benefit of the City and Lessee.

H. INDEPENDENCE OF CONTRACT

Nothing herein is intended or shall be construed as in any way creating a relationship of co-partners between the parties hereto or as constituting Lessee the agent or representative or employee of the City for any purpose or in any manner whatsoever.

I. WAIVER

The failure of City to insist in any instance or in more than one instance upon a strict performance by Lessee of any of the provisions, terms, covenants, reservations, conditions, or stipulations contained in this Lease shall not imply, constitute or be considered as a waiver or relinquishment of the right to insist upon performance of such condition or covenant, or of any other provision

hereof, nor shall any waiver by the City of any breach of any one or more conditions or covenants of this Lease constitute a waiver of any succeeding or other breach hereunder. No waiver by City of any provision, term, covenant, reservation, condition or stipulation contained in this Lease shall be deemed to have been made in any instance unless expressed in the form of a resolution by the City Council.

J. PRIOR AGREEMENTS; INTEGRATION; MODIFICATION

The parties acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties, except as expressed in this Lease, and that this Lease, along with the exhibits attached hereto, constitutes the parties' entire agreement with respect to the matters addressed herein. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Lease. This Lease may be modified or amended only by written agreement signed by or for the party against whom enforcement of the same is sought.

K. SUCCESSORS AND ASSIGNS

All covenants and conditions of this Lease shall bind and shall inure to the benefit of the legal representatives, successors and assigns of the respective parties, provided that any representation, succession or assignment is authorized and permitted under this Lease and by law. Any and all agreements that Lessee shall make with any assignee of this Lease, and/or subleases of the Premises, or any part thereof, shall include all provisions contained in this Lease.

L. SEVERABILITY

In the event that a court of competent jurisdiction shall hold any part or provision of this Lease invalid, void or of no effect, the remaining provisions of this Lease shall remain in full force and effect, provided that continued enforcement of the remaining provisions does not materially prejudice either Lessee or the City in their respective rights and obligations contained in the valid provisions of this Lease.

M. HEADINGS

Headings or captions used in this Lease are used solely for convenience of the parties and shall not define, limit, describe, alter or affect the meaning of any provision of this Lease.

L. GOVERNING LAW

This Lease shall be governed, interpreted and enforced in accordance wits the laws of the State of Arizona. Venue for any action arising under this Lease shall be in Coconino County, Arizona.

IN WITNESS WHEREOF, the City and Lessee have executed this Concession/Lease Agreement as of the day and year first above written.

CITY OF FLAGSTAFF

By:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LESSEE

By:_____
Its:_____

ATTEST:

STATE OF _____)
) ss.
County of _____)

ACKNOWLEDGEMENT. On this ____ day of _____, 20___, before me, a Notary Public, personally appeared _____, known to me or satisfactorily that he/she executed the same on behalf of _____, an _____ corporation, for purposes therein contained.

_____
Notary Public

My Commission Expires:

_____

FLAGSTAFF PULLIAM
AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

BETWEEN

CITY OF FLAGSTAFF

and

ENTERPRISE LEASING COMPANY OF PHOENIX, LLC
d/b/a
ENTERPRISE RENT-A-CAR

FLAGSTAFF PULLIAM AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

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FLAGSTAFF PULLIAM AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

This Concession/Lease Agreement (the "Lease") is made as of the 1st day of February, 2011, by and between the City of Flagstaff (the "City") an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and Enterprise Leasing Company of Phoenix, LLC d/b/a Enterprise Rent-A-Car ("Lessee"), a Limited Liability Company, with offices at 1444 W. Auto Drive, Tempe, Arizona 85284.

RECITALS

A. The City is the owner and operator of Flagstaff Pulliam Airport (the "Airport") and the Airport Terminal Building (the "Terminal Building"), both located at 6200 Pulliam Drive, City of Flagstaff, Coconino County, Arizona;

B. Lessee desires to operate an automobile rental service at the Airport and to maintain a counter for operation of the automobile rental service in the Terminal Building; and

C. The City desires to have these services provided at the Airport for the convenience of the passengers and patrons of the Airport;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the City and Lessee agree as follows:

ARTICLE I - DEFINITIONS

As used in this Lease, the following terms, phrases, words and their derivations shall have the meaning given herein. Words in the singular shall include the plural, and masculine terms and pronouns shall include the feminine and neuter, and vice-versa, as the context may require.

A. "Airport" means the Flagstaff Pulliam Airport, located at 6200 Pulliam Drive, City of Flagstaff, Coconino County, Arizona, and all property and improvements contained within its boundaries.

B. "Airport Director" means the City's manager of the Airport.

C. "City" means the City of Flagstaff, Arizona, as represented by the Council of the City of Flagstaff, and where this Lease speaks of "approval by the City", approval means action by the Council of the City of Flagstaff, unless otherwise indicated.

D. "C.F.R." means the Code of Federal Regulations, as amended, and as the same may be amended from time to time.

E. “Concession Fee” means a fee which is the greater of a fee based on a percentage of Gross Revenues or Minimum Annual Guarantee (% fee or MAG), paid to the City for the privilege of doing business at the Airport for the term of this Agreement. This fee shall be free from any and all claims, deductions or setoffs against the City.

F. "CPI" means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, United States Department of Commerce, or such other index that said Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index.

F. "DBE" means a "disadvantaged business" (or disadvantaged business enterprise) as defined in 49 C.F.R. Subtitle A, Part 23.

G. "DOT" means the United States Department of Transportation, authorized and administered pursuant to the provisions of 49 U.S.C. § 102.

H. "FAA" means the Federal Aviation Administration, authorized and administered pursuant to the provisions of 49 U.S.C. §§ 40101, et seq. and 49 C.F.R. Chapter I.

I. "FAR" means the Federal Aviation Regulations, being 49 C.F.R. Chapter I.

J. "Fixed Rent" means Lessee's fixed rent obligation based on the square footage of the Rental Car Counter and Office Space, as provided by Section A of Article IV.

K. "Gross Receipts" means the aggregate amount of all revenue realized by the Lessee from its automobile rental service at or from the Airport, whether paid in cash, by credit or in-kind, determined without regard for Lessee's payment of any and all income, property, excise or other taxes levied on Lessee's activities, facilities, equipment or property, for which no deduction shall be made, except as otherwise expressly provided herein.

1. Gross Receipts shall include, but shall not be limited to: "drop charges" charged to patrons renting a vehicle at the Airport but delivering the vehicle to another automobile rental service office at the patron's destination; airport user fees or concession recovery fees recovered from the customer; all consideration received by Lessee for insurance coverage incidental to the rental of vehicles at the Airport; all revenues received by Lessee from or relating to the rental of vehicles at the Airport but delivered elsewhere, or from the rental of a vehicle exchanged for a vehicle delivered at or from the Airport, within a radius of thirty (30) miles from the Airport, when the rental agreements for such vehicles are to run consecutively; and all revenues realized by Lessee, the origin of which involved customer contact at the Airport, regardless of where such revenues are generated or paid.

2. Notwithstanding the foregoing, Gross Receipts shall not include: federal, state or local transaction privilege, sales or similar taxes that are separately stated and collected from Lessee's customers; revenue realized by the Lessee as reimbursement for fueling motor vehicles in advance (commonly known as the "fuel purchase option") or refueling motor vehicles upon return by the customer; amounts received as insurance proceeds or otherwise for damage, loss, conversion, or abandonment of or to Lessee's automobiles or other property, or received from customers under Lessee's right to recover from its customers for damages to the rental vehicles; proceeds received by the Lessee from the sale of its vehicles; and credits given by Lessee to its customers for such things as deposits and out-of-pocket purchases for gas, oil, or emergency service.

3. A vehicle shall be deemed to be rented at the Airport and consideration realized by Lessee therefore included in Gross Receipts, if: the rental contract for the vehicle is negotiated in whole or in part at the Airport, even though the vehicle may be delivered elsewhere within a radius of thirty (30) miles of the Airport; an advance registration or reservation for the vehicle has been made for any person at the Airport; or the vehicle is received within a radius of thirty (30) miles from the Airport, in exchange for a vehicle originally rented (or deemed rented hereunder) at the Airport, when the rental agreements for both vehicles run consecutively.

L. "Lessee" means Enterprise Leasing Company of Phoenix, LLC, d/b/a Enterprise Rent-A-Car ("Lessee"), a Limited Liability Company, with offices at 1444 W. Auto Drive, Tempe, Arizona 85284, entering into this Lease as the operator and tenant of the Premises, as hereinafter defined.

M. “Minimum Annual Guarantee” means a minimum amount to be paid to the City on an annual basis during each contract year as set forth in Section B(2) of Article IV.

N. "Office Space" means that space within the Terminal Building leased to Lessee, consisting of Office and Counter Space D as shown and further described in Exhibits A-1 and A-2 attached to this Lease.

0. "Percentage Rent" means that portion of Lessee's rent obligation equal to ten percent (10%) of its Gross Receipts, as provided by Section B of Article IV.

P. "Premises" means the Office/ Counter Space and Vehicle Spaces.

Q. "Rent" means Lessee's Fixed Rent and Percentage Rent, along with any other sums or amounts designated as additional rent.

R. "Terminal Building" means that building in which the Office Space is located owned and operated by the City located at 6200 Pulliam Drive, at the Airport.

S. "U.S.C." means the United States Code, as amended, and as the same may be amended from time to time.

T. "Vehicle Spaces" means twelve (12) parking spaces in the Airport parking lot adjacent to the Terminal Building for the parking and vehicle cleanup of Lessee's ready-to-rent rental vehicles, two (2) drop-off spaces on the curb adjacent to the Terminal Building for the drop-off and short-term parking of Lessee's rental vehicles as shown, generally, in Exhibit B-1 and B-2 attached hereto.

ARTICLE II - LEASE OF PREMISES AND LICENSE TO USE FACILITIES

A. LEASE AND USE OF PREMISES

1. General

The City, for and in consideration of the rentals and fees herein reserved, and of the covenants, conditions and agreements to be done and performed by Lessee, does lease and demise to Lessee and Lessee does take to and from the City, the Premises upon the terms, covenants and conditions set forth in this Lease. Lessee warrants that it has physically inspected the Premises and accepts the Premises in their present condition, "as is." Lessee shall occupy and operate the Premises solely as set forth in this Lease, and for no other purpose other than such business purposes as may be necessary and incidental thereto, specifically: Lessee shall, on a nonexclusive basis, offer to the general public passenger vehicle rental services. The term "on a nonexclusive basis" in this context means that during the term of this Lease there will be a maximum of three (3) other rental car concessions at the Airport, unless the number of deplaning passengers exceeds 100,000 for a period of one calendar year at any time during the term of this Lease, in which event, the City reserves the right to advertise and request bids for one or more additional rental car concessions. Lessee may use the Premises as follows: the Office Space for all reservation, customer service, handling, billing and related activities as may be necessary or incident to Lessee's services at the Premises; the Vehicle Spaces for such purposes as set forth in the definition in Article I, Section U; and either or both for such other purposes as the Airport Director shall expressly, in writing, approve.

2. Exchange of Premises

The City may at any time, in its sole discretion, substitute for all or any part of the Premises such comparable space at the Airport and the Terminal Building as it shall, in its sole discretion determine, provided that, in such event, the City shall reimburse Lessee for its reasonable and necessary expenses incurred in relocating its operations to substitute space (not including, however, any lost revenues or profits occasioned by relocation), and the Fixed Rent hereunder shall be adjusted if the size of the substitute space shall vary materially from the Premises leased. No rental car concessionaire at the Airport shall be substantially disadvantaged compared with any other rental car concessionaire at the Airport as a result of the City's substitution of all or a portion of its leased premises under this subsection.

3. Overflow Parking and Cleanup Space

Notwithstanding anything to the contrary contained in this Lease, the City may substitute for any space provided by the City to the Lessee for the purposes of overflow parking and cleanup (whether under this Lease or otherwise), any other available space which is, in the discretion of the City, reasonably comparable to that for which substitution is made, if, when and for so long as such substitution is, in Lessor's discretion, necessary to accommodate renovations or implement changed security procedures at the Airport. The City shall reimburse Lessee for Lessee's reasonable and necessary expenses incurred in relocating its operations to substitute space (not including, however, any lost revenues or profits occasioned by relocation).

B. LICENSE FOR USE OF AIRPORT FACILITIES

1. Airport Facilities

Subject to all rules and regulations governing the use of the Airport, Lessee shall have a nonexclusive right to use all vehicular roadways and parking areas of the Airport (except for areas that may have been reserved to the exclusive use of others in accordance with the directions of the Airport Director) for the operation of Lessee's operations hereunder and for the carriage of persons, property, cargo and/or mail incident thereto, including, without limitation, parking, loading and unloading persons, property, cargo and/or mail, as may be necessary or incident to Lessee's operations under this Lease. Notwithstanding the foregoing, the City reserves the right to assess a reasonable charge for public motor vehicle parking of rental cars if said vehicles are parked in areas other than designated for rental car parking (e.g. public parking lot). Lessee shall pick up and drop off patrons, and all of its vehicles shall be parked only in such areas designated for such purposes by the Airport Director.

2. Common and Joint Use Areas

Subject to all rules and regulations governing the use of the Airport, Lessee, Lessee's agents and servants, patrons and invitees and Lessee's suppliers of service and furnishers of materials shall have the right of ingress to and egress from the Premises, the Terminal Building and the Airport and a nonexclusive license to use all common areas of the Airport open to the public, provided that such ingress, egress or use does not interfere with normal operations of the Airport or of other operations in the Terminal Building.

C. CONSTRUCTION OF TENANT IMPROVEMENTS

1. General

Lessee may, at its sole cost and expense, provide and install any necessary improvements, counter area, facilities, decorations, signs, fixtures, and equipment for the Premises, provided that improvements to the Vehicle Spaces shall be limited to signs at the "rediparking" and drop-off spaces complying with those rules set forth in this Lease regarding signage. All such improvements, facilities, decorations, fixtures, and equipment shall be made or installed at the Premises only with the prior written consent of the City's Airport Director following Lessee's submission of a description of the proposed installations to the Airport Director no less than fourteen (14) days prior to installation. Those improvements, facilities, decorations, fixtures and equipment of, in or to the Office Space shall be of high quality, safe, modern in design, attractive in appearance and shall be in general keeping with the decor of the Terminal Building and the areas adjoining and surrounding the Office Space.

2. Permits and Authorizations

Lessee shall make no improvements to the Premises until it has first, at its sole cost and expense, submitted all design and construction plans, specifications and related documents for the improvements to the City's Building and Safety Division, and the Division has issued a building permit for the improvement. Lessee shall further diligently pursue and obtain all other permits, licenses and authorizations required for the construction of the improvements and operation of the Premises.

3. Insurance

Before commencing any improvement or equipment installation at the Premises, Lessee shall require that its construction contractors procure and maintain insurance for such construction and installation protecting both Lessee and City, as well as the construction contractors, with policy amounts and coverage as the City shall in each instance determine, and shall provide certificates of insurance with respect to all of the policies to the City prior to commencement of construction.

4. Construction Standards, Rules and Regulations

All improvements, additions or alterations constructed by Lessee at the Premises shall be constructed in a good and workmanlike manner and shall conform to all applicable statutes, ordinances, building codes, rules and regulations of any governmental authority as may have jurisdiction, and to the general architectural scheme of the Terminal Building. Lessee shall require in all contracts for construction that all contractors also comply with all applicable statutes, ordinances, codes, rules and regulations. Lessee's construction work shall be subject to inspection, during reasonable business hours, by the City's Building and Safety Division and its authorized personnel. Lessee shall keep the Premises free and clear of liens for labor and material and shall hold the City harmless from any liability arising therefrom. Lessee shall make no structural alterations to the roof, walls or floors of the Premises without the City's prior written consent. Nothing contained in this Section shall prevent Lessee from making a nonstructural alteration to the Office Space.

5. Cost of Improvements

The construction of any and all improvements, alterations and additions to the Premises by or for Lessee shall be performed at Lessee's sole cost and expense.

6. Additional Alterations, Additions or Replacements

Lessee shall make no alterations, additions, replacements or improvements to the Premises, install any equipment that requires any electrical connection (other than by ordinary plug into an existing receptacle) nor make any changes in those electrical connections installed on the Premises, without the prior written consent of the Airport Director. Any electrical service other than that provided at the execution of this Lease shall be installed and provided at the sole cost and expense of Lessee.

7. Signs

Except as may be provided otherwise in this Lease, Lessee shall not erect, install, operate or cause or permit to be erected, installed or operated, any signs or similar advertising devices in or upon the Premises without having first obtained the written consent of the Airport Director, which will not be unreasonably withheld, so long as the signs or similar advertising devices do not conflict with the rights of other concessionaires or lessees at the Airport and conform to the requirements of the City's Sign Code, which provides conditions concerning factors including,

but not limited to, size, type, content and method of installation of signs.

8. Security Installations

The Airport has adopted a Security Program ("Security Program") in accordance with the Aviation and Transportation Security Act, 49 U.S.C. § 40101 et seq., and 49 C.F.R. Part 1542, and Lessee agrees to abide by all rules and regulations with respect to the Security Program.

D. MAINTENANCE OF PREMISES AND IMPROVEMENTS

1. General Maintenance

Lessee shall, at its sole cost and expense, maintain the Premises and all of its improvements, additions or alterations at the Premises and elsewhere at the Airport (if any), in good working order and in such condition that shall be based on a standard of care reflecting prudent property management, reasonable wear and tear excepted.

2. Preventive Maintenance and Repair

Lessee shall perform at its sole expense, ordinary preventative maintenance and ordinary upkeep and non-structural repair of all of its facilities, personal property and equipment in or upon the Premises and elsewhere at the Airport (if any), including, but not limited to, fixtures, doors and windows, floor coverings, counters, as well as all electrical work, plumbing appliances and fixtures located within the Premises, provided, however, that the City shall provide snow removal for the Vehicle Spaces, along with its snow removal at Airport parking lots generally.

3. Off-Premises Maintenance and Repair

Lessee shall, at its sole cost and expense, immediately repair any and all damage in or to any area of the Airport or the Terminal Building occasioned by the fault or negligence of Lessee, its servants, agents, or employees, and shall immediately remove any litter, debris, petroleum products or other liquids and/or grease that may result from its operations or the activities of its employees, agents, passengers or suppliers.

4. Maintenance or Repair by the City upon Lessee's Default

(a) In the event that Lessee fails to perform any obligation required by this Subsection D(4) to be performed by Lessee at Lessee's cost for a period of fifteen (15) days after receipt of written notice from the City to do so, the City, upon the expiration of the fifteen (15) day period may, but shall not be obligated to, perform that obligation of Lessee, which may include entry onto the Premises if reasonably necessary. All maintenance or repairs executed by the City under this Subsection D(4) shall be performed in a good and workmanlike manner.

(b) Notwithstanding the foregoing, in the event that Lessee's failure to perform such of its obligations under this Subsection D(4) may endanger the health or safety of the public or of any passenger, invitee or employee at the Airport, then the City may, but shall not be obligated to, immediately perform such obligation of Lessee upon prior written notice of its intent to do so, without awaiting the expiration of the mentioned fifteen (15) day period.

(c) In the event that the City shall perform any obligation of Lessee under this Subsection D(4), then the City shall invoice Lessee for the reasonable cost and expense of performing the obligation, plus a fifteen percent (15%) administrative charge, and Lessee shall pay, as additional rent, such amount on or before the fifteenth (15th) day of the next month

following, along with its payment of Fixed Rent and other charges for the previous month.

(d) The City shall not be liable to Lessee for any loss, cost or expense to Lessee resulting from the City's performance of Lessee's obligations in accordance with the provisions of this Subsection D(4).

E. ENTRY AND INSPECTION OF PREMISES

1. Entry and Inspection

The City and its authorized officers, employees, agents, contractors, subcontractors, or other representatives shall have the right to enter upon the Premises:

(a) during reasonable business hours to determine whether Lessee has complied and is complying with the terms and conditions of this Lease;

(b) during reasonable business hours for inspecting the Premises and for fulfilling the City's obligations hereunder, provided, however, that such entry shall be at such times and in such manner as not to interfere unreasonably with the operations of Lessee; and

(c) at any time as may be required by an emergency at the Terminal Building or for emergency repairs or maintenance, without any liability or responsibility to Lessee for loss of business.

2. No Termination or Interference

No such entry by or on behalf of the City upon the Premises shall cause or constitute a termination of this Lease nor be deemed to constitute an interference with the possession thereof nor constitute a revocation of or interference with any of Lessee's rights in respect thereof for exclusive use of the leased Premises.

ARTICLE III – TERM

A. INITIAL TERM

This Lease shall be effective from February 1, 2011 through January 31, 2014, and shall continue in force and effect, unless sooner terminated as provided in this Lease.

B. RENEWAL

Upon completion of its initial term, this Lease may be renewed for two additional one (1) year terms, subject to approval by the City Council and Lessee, provided that Lessee provides the Airport Director with at least ninety (90) days prior written notice of Lessee's desire to renew the term of this Lease.

ARTICLE IV – RENTS

A. FIXED RENT

Lessee shall pay to the City an aggregate annual Fixed Rent for the Premises, Counter D, (300 sq. feet), in the sum of $9,195.00 (Nine Thousand One Hundred Ninety-Five Dollars), broken into twelve equal payments of $766.25 (Seven Hundred Sixty-Six Dollars and 25/100), due in advance, on the first day of each month of the term of this Lease.

B. PERCENTAGE RENT

1. Concession Fee

The Lessee shall pay to the City, on a monthly basis, without notice or demand, a concession fee which is the greater of a fee based on percentage of 10% of Gross Revenues or Minimum Annual Guarantee (% fee or MAG). Lessee shall, on or before the twenty-fifth (25th) day following each and every month during the term of this Lease, submit to the City a detailed statement showing its Gross Receipts from its operations at the Premises for the preceding calendar month, in such reasonable detail and breakdown as the City may reasonably require, certified by a responsible officer or designee of Lessee, along with payment of either its Percentage Rent, for and during such preceding month, equal to ten percent (10%) of Lessee's Gross Receipts, or the Minimum Annual Guarantee.

Lessee's obligations under this Section B (and such other provisions of this Article IV that concern the calculation and payment of Lessee's Percentage Rent hereunder) shall survive any termination of this Lease, until all of Lessee's Percentage Rent obligations shall be paid in full. Furthermore, Lessee shall collect from its customers a fee no more than 11.1%, by adding it as a separate line item charge on each customer rental agreement. This line item shall be designated as an "airport user fee" or "concession recovery fee" on each customer rental agreement.

2. Minimum Annual Guarantee: During the term of this agreement, Lessee agrees to pay to the City a Minimum Annual Guarantee (MAG) of:

First Year:	$51,085.00	(Fifty-One Thousand Eighty-Five Dollars)
Second Year:	$51,085.00	(Fifty-One Thousand Eighty-Five Dollars)
Third Year:	$51,085.00	(Fifty-One Thousand Eighty-Five Dollars)

3. Percentage Fee: Percentage fee shall be the amount equal to ten percent (10%) of Lessee's Gross Revenues.

C. PRO-RATED RENT

Rent for any period during the term or extended term of this Lease that is for less than one month (if any) shall be pro-rated accordingly.

D. CPI ADJUSTMENT

The Fixed Rent shall be adjusted on February 1st of every year, the commencement of the City's fiscal year, during the term of this Lease and any extension or renewal of such term by the same percentage as that represented by the increase, if any, in the Consumer Price Index for All Urban Consumers ("CPI") most recently published by the Bureau of Labor Statistics, United States Department of Commerce (or such other index that said Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index) at that time, as compared with the CPI most recently published one year prior.

E. ACCOUNTING AND AUDIT

1. Books and Records

Lessee shall, with respect to all business done by it at the Premises, keep true and accurate account records and books which shall, at a minimum, include all of Lessee's reservation

registers and records, and show all sales made and services performed for cash or credit or otherwise, without regard to whether paid for or not, and all other items included or considered in determining Lessee's Gross Receipts, all in a manner and format from which the City may reasonably and accurately determine Lessee's Gross Receipts. Lessee shall either maintain account records and books at a location within the city limits of the City as shall be available and convenient for inspection by the City as provided in Subsection 3 of this Section E, for a period of at least three (3) years from the time of entry of each item shown therein or provide the account records and books to the City upon thirty (30) days' written notice. The City reserves the right to prescribe or change the form in which Lessee shall provide any reports required under this Lease, and their method and time of submission.

2. Annual Reports

Within ninety (90) days after the end of each lease year during the term of this Lease and any extension or renewal of such term, Lessee shall furnish to the City an annual accounting statement prepared according to generally accepted accounting principles, in such form as the City may reasonably require, which is a true disclosure of the operations of Lessee at the Premises, including but not limited to Lessee's Gross Receipts and Percentage Rent for the previous year. Lessee shall simultaneously pay to the City excess Percentage Rent due, if any, for such preceding lease year over and above the Percentage Rent paid. If Lessee shall have paid to the City Percentage Rent in excess of the greater of the Percentage Rent due under Article IV(B)(1) above during the preceding contract year, the City shall credit Lessee for such excess against future payments, or in the last year of the Lease, the City shall refund such excess amount, if any, to Lessee within one hundred and twenty (120) days of the end of the Lease. Lessee's obligations under this Subsection E(2) shall survive any termination of this Lease until Lessee shall have provided to the City the annual accounting statement required for the last completed accounting period not previously reported under the provisions of this subsection.

3. Audit

The City and its employees, agents and authorized representatives shall have the right at all reasonable times and during all business hours, except as otherwise provided in Subsection 1 of this Section E, to inspect and examine such records, registers, contracts, books and other data as may be necessary to confirm Lessee's Gross Receipts for its operations at the Premises. The City may conduct any such audit in any manner consistent with generally accepted auditing standards, including, but not limited to, statistical sampling. If any such inspection or audit shall disclose any willful and intentional misstatement, the City may, in its sole discretion, cancel and terminate this Lease forthwith, without penalty or further liability.

4. Audit Deficiency and Protest

In the event that an audit by the City shall disclose any deficiency in Lessee's payments of Percentage Rent hereunder, resulting from discrepancies in its determination of Gross Receipts or otherwise, the City shall promptly notify Lessee in writing of the deficiency. Upon its receipt of such notice, Lessee shall either:

(a) within sixty (60) days submit to the City its written consent to the City's audit findings, along with payment in full of the deficiency determined thereby; or

(b) within sixty (60) days (or at such later time as the City Manager may, upon a timely filed written request therefore, provide in writing) submit to the City Manager a written protest and request for redetermination, setting forth in detail Lessee's grounds for the protest and the amount of the audit deficiency that it claims to be in error, along with supporting information and/or documentation as shall be appropriate.

The City shall not accept any protest, petition or request for redetermination that is not filed within the sixty (60) day period (or such later date allowed by the City Manager). In the absence of a submission of a timely written protest as provided above, the deficiency determined by the audit shall become immediately due and payable at the expiration of the sixty (60) day period, and Lessee shall be deemed to have waived and abandoned all right to question or protest the City's audit findings.

3. Deficiency Hearing and Redetermination

(a) As soon as may be practicable following the City Manager's receipt of a timely submitted written protest, the City Manager shall either order the audit deficiency redetermined in accordance with Lessee's protest, or notify Lessee of the time, date and place for a hearing on the matter.

(b) The City Manager, or such other hearing officer designated by the City Manager, shall hear the matter informally, without regard to formal rules of procedure or of evidence, and, within thirty (30) days of the close of the hearing, shall make such order in the matter as appears to be just and lawful and shall mail a copy of the order to Lessee.

(c) The deficiency stated in the City Manager's or hearing officer's order shall be immediately due and payable upon receipt by Lessee. Lessee's failure to pay such deficiency within thirty (30) days of its receipt of the order shall constitute a material breach of this Lease and shall give the City the option of immediately terminating the Lease in accordance with the provisions of Article VII.

G. LATE PAYMENT

All amounts due from Lessee to the City under this Lease that are not paid by Lessee when due shall be subject to a penalty of ten percent (10%) of such amount due, plus interest at the rate of one (1%) percent per month or fraction of a month from the time due and owing until paid. The penalty and interest shall be payable as additional rent hereunder, subject to all the terms and conditions of this Lease.

ARTICLE V - LESSEE'S OPERATIONS

A. GENERAL

Lessee shall not use or permit the use of the Premises, the Terminal Building, the Airport or any part thereof, for any purpose or use other than as authorized by this Lease without the prior written consent of the City.

B. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

1. General

Lessee, its employees, representatives and agents shall comply at all times with all present or future laws, rules, ordinances and regulations, and all amendments or supplements thereto, governing or relating to the use of the Airport, the Terminal Building and/or the Premises, as may from time to time be promulgated by federal, state or local governments and their authorized agencies.

2. Taxes, Licenses and Permits

Lessee shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation and lease of the Premises. Lessee may elect, however, at its own cost and expense, to contest any such tax, excise, levy or assessment, provided that such contest is in accordance with law and does not result in a violation by Lessee of any law, rule, regulation or ordinance, or result in any lien against the Premises, the Terminal Building or the Airport. Lessee shall keep current municipal, state or federal licenses or permits required for the conduct of its business. Lessee shall, upon reasonable demand, display to the Airport Director any and all permits, licenses, authorizations or other evidences of compliance with such laws, rules and regulations.

3. Airport Rules and Regulations

Lessee covenants and agrees to observe and obey all reasonable rules and regulations adopted by the City with respect to use of and the conduct and operation of the Airport, the Terminal Building and/or any additions or improvements therein.

4. Energy Conservation

Lessee shall comply with all City rules, regulations and orders pertaining to energy conservation and management, to the extent that such rules, regulations and orders do not unduly infringe on Lessee's rights and privileges granted herein.

5. Compliance with Airport Improvement Program

Lessee covenants and agrees that this Lease may be amended by the City, without consent of Lessee, in any manner necessary to comply with any requirement of the Federal Aviation Administration or other instrumentality of the federal government or state of Arizona in order for the City to qualify or maintain its qualification under the Airport Improvement Program, as authorized and administered under the Airport and Airway Improvement Act of 1982 (Public Law 97-248, codified at 49 U.S.C. §§ 47101, et seq.), as amended and as the same may be amended from time to time.

6. Compliance with FAA Assurances

Lessee covenants and agrees to comply in all respects with those FAA Airport Assurances, dated March 2005 and attached hereto as Exhibit C, and any subsequent amendments thereto (in which the term "sponsor" shall be deemed to mean and include the City), to the extent that their terms may be applicable to Lessee and its operations hereunder.

C. SANITARY OPERATION

1. General

Lessee shall maintain and operate the Premises in a safe, clean, orderly and inviting condition at all times satisfactory to the City. Lessee shall always conduct its operations on the Premises in a manner using all available and practical devices to reduce to a reasonable minimum, considering the nature and extent of Lessee's operations, the emanation from the Premises of noise, vibration, movement of air, fumes and odors, so as not to unreasonably interfere with the use of other premises adjoining these Premises or elsewhere at the Airport. Lessee shall always conduct its operations in all parts of the Airport in accordance with the current regulations of the United States Environmental Protection Agency, and of other applicable federal, state and local authorities.

2. Refuse and Janitorial Service

Without limiting the generality of the foregoing, Lessee shall:

(a) provide and pay for janitorial service within the Office Space; and

(b) remove, not less frequently than at the close of each business day, all refuse and trash from the Premises and such other areas of the Airport as it shall regularly use and place all refuse and trash in such container or containers as the City may from time to time designate, separately disposing of recyclable, hazardous or other refuse items in the manner and at the places as the City may from time to time designate.

3. City's Right to Cure Default

In order to maintain a high level of custodial services at the Airport, the City, upon a default of Lessee in its obligations under this Section, may provide such necessary custodial services within the Premises or without, and Lessee shall, in such event, pay to the City the cost of such custodial services as additional rent hereunder, plus a fifteen percent (15%) administrative charge, on the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

D. BUSINESS OPERATIONS

1. General

Service provided by Lessee at the Premises and elsewhere at the Airport shall be prompt, clean, courteous and efficient.

2. Hours of Operation

Lessee shall keep the Premises open for business, having attendants on duty and offering its rental vehicles to the public, during all hours that the Terminal Building is open, except as the Airport Director may otherwise authorize in writing. Lessee acknowledges that the hours of operation of the Terminal Building and Airport support services are, at the inception of this Lease, 6:00 AM to 11:00 PM, and are subject to such reasonable changes as the Airport Director shall determine in his sole discretion. In the event that Lessee shall require the provision of these services or facilities beyond the normal hours of operation, then the City shall invoice Lessee for the fully burdened hourly cost of such Airport personnel as are necessary to provide these services and/or facilities (but not less than one (1) hour for each such personnel) and such other expenses incurred by the City in connection with providing these services or facilities, plus a ten percent (10%) administrative charge, and Lessee shall pay, as additional rent, this charge on or before the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

3. Control of Personnel

Lessee shall, at the leased Premises and elsewhere at the Airport, exercise reasonable control over the conduct, demeanor and appearance of its employees, agents and representatives and the conduct of its contractors and suppliers. Upon objection from the Airport Director to Lessee concerning the conduct, demeanor or appearance of any such persons, Lessee shall within a reasonable time remove or correct the cause of the objection. Lessee shall require all of its employees, agents, representatives and independent contractors hired by Lessee working in view of the public in and in the vicinity of the Terminal Building, to wear clean and neat attire and to display appropriate identification, and shall require all of its employees to conduct themselves in a professional manner.

4. Vehicles

Lessee shall at all times maintain a number of rental vehicles reasonably adequate to meet public demand, taking into consideration the varying seasonal requirements of the traveling public. Lessee shall maintain, at its sole cost and expense, all vehicles and equipment used in the conduct of Lessee's business in good mechanical condition, free from known defects and in a clean and presentable condition. Lessee shall only store wrecked or inoperable vehicles at the Airport in areas designated by the Airport Director and for no longer than seventy-two (72) hours, unless the Airport Director expressly agrees otherwise.

5. Solicitation and Advertising

Verbal solicitation of Lessee's business may be made only from behind the counter of Lessee's Office Space, and Lessee shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous, or otherwise objectionable solicitation. Lessee may identify and advertise its vehicle rental service at its Office Space in a manner comparable to the reasonable advertising of other automobile rental companies operating in the Terminal Building. All advertising materials of whatever nature, including but not limited to brochures, rate cards, schedules, forms, etc., shall not unduly clutter the counter at Lessee's Office Space, and the counter space shall be maintained in a clean and orderly manner. All materials displayed at Lessee's Office Space shall be subject to the approval of the Airport Director.

6. Public Address System

Lessee may use the Airport public address system only with the consent of the Airport Director and in accordance with the Airport's public address system policy. Lessee shall not install or cause to be installed any other public address system at the Airport without the prior written consent of the Airport Director.

7. Security

Lessee acknowledges that all areas airside of the Terminal Building are strictly controlled, and Lessee shall not permit its employees, agents, invitees, patrons and/or vehicles to enter these areas other than as authorized by the Airport Director.

E. LIMITATIONS ON LESSEE'S USE OF THE PREMISES

In the conduct of its business operations at the Premises, or in connection with the exercise of any right or privilege under this Lease, Lessee shall not:

1. do, or permit its agents, employees, contractors, directors or officers to do anything at the Airport that may interfere with the effectiveness or accessibility of the Airport's drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the Premises or the Airport;

2. do, or permit its agents, employees, contractors, directors or officers to do any act or thing at the Airport that would invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof;

3. dispose of, or permit its agents, employees, contractors, directors or officers to dispose of any waste material taken from or products used at the Premises or elsewhere at the Airport (whether liquid or solid) into the sanitary or storm sewers at the Airport unless the waste material or products have first been properly treated by equipment installed with the approval of the Airport Director for that purpose;

4. keep or store, during any twenty-four (24) hour period, flammable liquids within the enclosed portion of the Premises in excess of Lessee's working requirements during the twenty-four (24) hour period, except in storage facilities especially constructed for these purposes in accordance with standards established by the National Board of Fire Underwriters and approved by the Airport Director from the standpoint of safety; any such liquids having a flash point of less than one hundred degrees Fahrenheit (100° F) shall be kept and stored only in safety containers of a type approved for such purpose by the Underwriters Laboratory;

5. do or permit its agents, employees, contractors, directors or officers to do any act or thing at the Airport that would conflict with FAR Part 139 or jeopardize the Airport's operating certificate;

6. do, or permit its agents, employees, contractors, directors or officers to do any act or thing in conflict with any TSA approved security plan that may be adopted by the Airport; or

7. make use of the leased Premises or any other part or area of the Airport in any manner that might interfere with the landing and taking off of aircraft at or from the Airport, or would otherwise constitute a hazard. In the event the covenant of this Subsection 7 is breached, the City reserves the right to enter upon the Premises and/or any other property of Lessee at the Airport and cause the abatement of the interference at the expense of Lessee and without liability of any kind to the City.

F. LIENS

Lessee shall not permit or suffer to be placed on the Premises, or any fixture, addition, betterment or improvement thereto any lien of any nature, including but not limited to tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Lessee or any of its contractors or subcontractors upon the Premises or arising out of or because of the performance of any work or labor to it or them at the Premises or the furnishing of any materials to it or them for use at the Premises. Should any lien be made or filed, Lessee shall bond against or discharge the same within ten (10) days after the lien is placed and shall promptly notify the Airport Director of the steps taken to remove the lien or protect the Premises from the lien.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. INDEMNIFICATION: Vendor (as “indemnitor”) agrees to indemnify, defend and hold harmless the City (as “indemnitee”) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the acts or omissions of indemnitor, its officers, officials, agents, employees or volunteers relating to this Agreement.

2. INSURANCE: Vendor shall procure and maintain until all of its obligations under this Agreement have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property that may arise from or in connection with this Agreement.

   The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect vendor from liabilities that might arise out of the performance of the work under this Agreement by vendor, its agents, representatives, employees or sub-vendors and vendor is free to purchase such additional insurance as may be determined necessary.

I. MINIMUM SCOPE AND LIMITS OF INSURANCE: Vendor shall provide coverage at least as broad and with limits of liability not less than those stated below.

(a) Commercial General Liability - Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$1,000,000
Personal & Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Any one fire)	$ 50,000
Medical Expense (Any one person)	Optional

(b) 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

(c) Workers' Compensation and Employer's Liability

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

b. SELF-INSURED RETENTIONS/DEDUCTIBLES: Any self-insured retentions and deductibles shall be declared to and approved by the City.

c. OTHER INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages:

a. Vendor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, or employees shall be in excess to the coverage of vendor's insurance and shall not contribute to it.

b. Vendor'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.

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

d. Vendor's insurance shall contain broad form contractual liability coverage.

2. Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees and volunteers for losses arising from vendor's operations, work or products that are the subject of this Agreement.

3. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to: Ann Marie Fisher, Sr. Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001 and shall be sent by certified mail, return receipt requested.

4. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less that A-: VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect vendor from potential insurer insolvency.

5. VERIFICATION OF COVERAGE: Vendor shall furnish the City with Certificates of Insurance (ACORD form) 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. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificate of Insurance.

   All Certificates of Insurance shall be received and approved by the City before work commences. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal shall be a material breach of this Agreement.

   All Certificates of Insurance shall name the City of Flagstaff as an additional insured. All Certificates of Insurance required by this Agreement shall be sent directly to: Ann Marie Fisher, Sr. Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001. A description of the Contract is to be noted on the Certificate of Insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement at any time.

6. APPROVAL: Any modification or variation from the insurance requirements in this Agreement shall have prior approval from the City's Risk Manager, whose decision shall be final. Such action shall not require a formal contract amendment, but may be made by administrative action.

H. FIRE PROTECTION

Lessee shall at all times keep and maintain in good working order at the Premises such fire extinguishing equipment and apparatus as may be required by any of Lessee's insurance policies maintained hereunder, or otherwise adequate and appropriate to Lessee's use of the Premises, and shall, from time to time and as often as reasonably required by the City, conduct appropriate tests of such fire extinguishing equipment and apparatus.

I. NON-DISCRIMINATION

1. General

   Lessee shall furnish its goods and/or services at the Premises on a fair, equal and nondiscriminatory basis to all patrons and shall charge fair, reasonable and nondiscriminatory prices for each unit of service, provided, however, that Lessee may make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

2. Compliance with Civil Rights Act

   Without limiting the generality of the foregoing, Lessee, for itself and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration for this Lease, does hereby covenant and agree that, except as otherwise expressly provided herein:

   (a) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; in the construction of any improvements on, over, or under the Premises and the furnishing of services at the Premises, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or

otherwise be subjected to discrimination; no person will be subject, on the grounds of race, color, or national origin, to segregation or special treatment in any manner related to the receipt of any goods or services furnished at or from the Premises;

(b) Lessee shall use and operate the Premises at all times in compliance with all requirements imposed by or pursuant to 49 C.F.R. Subtitle A, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Acts of 1964, as amended;

(c) Non-compliance with any of the above nondiscrimination covenants shall constitute a material breach of this Lease, and in the event of such non-compliance the City shall have the right to judicially enforce such covenants and/or to terminate this Lease and to reenter and repossess the Premises and hold the same as if this Lease had never been made or issued, provided, however, that all notice, appeal and related procedures of 49 C.F.R. Subtitle A, Part 21 are followed and completed prior to the termination; and

(d) Lessee shall include the provisions of this Subsection I(2) in any lease, agreement, or contract by which Lessee shall grant any right or privilege to any person, firm or corporation to render accommodations, goods and/or services to the public on the Premises.

3. Affirmative Action

Lessee covenants and agrees that it will:

(a) undertake an affirmative action program as described by 14 C.F.R. Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from employment or from receiving any goods, services or benefits of or provided by Lessee or its operations at the Premises;

(b) comply with any affirmative action plan or steps for equal employment opportunity required by 14 C.F.R. Part 152, Subpart E, as part of such affirmative action program, or by any federal, state or local agency or court, including those resulting from a conciliation agreement, consent decree, court order or similar mechanism, provided that Lessee may use such state or local affirmative action plan in lieu of that required by 14 C.F.R. Part 152, Subpart E only when such plan fully meets the requirements of 14 C.F.R. 152.409; and

(c) require from all contractors, subcontractors, grantees, subgrantees and sublessees of Lessee the same covenants as contained in this Subsection I(3), as required by 14 C.F.R. Part 152, Subpart E.

4. DBE Requirements

(a) It is the policy of the City to encourage and develop disadvantaged businesses (hereinafter "Disadvantaged Business Enterprises" or "DBE's"), as defined in 49 C.F.R. Subtitle A, Part 23, and to ensure that DBE's shall have the maximum opportunity to participate in the performance of concessions, contracts and leases at the Airport. Consequently, this Lease is subject to the provisions and requirements of 49 C.F.R. Subtitle A, Part 23 and the City's DBE Concession Plan for the Airport, as each may apply.

(b) If Lessee asserts that it qualifies as a DBE, Lessee hereby warrants, covenants and agrees that it believes in good faith that it qualifies as a DBE under 49 C.F.R. Subtitle A, Part 23 and the City's DBE Concession Plan for the Airport, and that it will use all due effort to apply for certification and be certified as a DBE, if it has not already done so. The City will employ all reasonable efforts to assist and cooperate with Lessee in making such application and obtaining such certification.

J. INDEMNITY

Lessee shall indemnify the City and hold it forever harmless from and against all liability, loss, demand, judgment or other expense (including but not limited to, defense costs, expenses and reasonable attorney fees) arising from or as a result of Lessee's use or occupancy of the Premises or any other Airport property, or from any action or omission of Lessee, its officers, employees, agents, or other representatives within the boundaries of the Airport, including movement of aircraft or vehicles, except as may arise or result solely from negligent or willful acts or omissions of the City, its employees, agents or representatives.

K. PERFORMANCE BOND

At the time of the execution of this Lease, Lessee shall furnish the City with a valid surety bond for the term of this Agreement in a principal sum no less than one-fourth (1/4) of the Average Minimum Annual Guarantee as described in Subsection B(2) of Article IV, issued by a surety company qualified to do business in the State of Arizona and acceptable to the City, or other security acceptable to the City. The security shall be maintained and kept by the Lessee in full force and effect during the entire term of this Lease, and any extensions thereof, and shall be conditioned to assure the faithful and full performance by Lessee of the terms of this Lease and to stand as security for the payment by Lessee of any valid claim by the City against the Lessee arising under this Lease.

ARTICLE VI - OBLIGATIONS OF THE CITY

A. PROVISION OF SERVICES

The City shall, at its sole cost and expense:

1. Utilities

   (a) furnish electricity, natural gas and water as may be reasonably necessary for the conduct of Lessee's business operations at the Premises and elsewhere at the Airport;

   (b) furnish necessary heating and cooling to the Premises and the Terminal Building as the City shall reasonably determine;

   (c) provide for the collection and disposal of all refuse at the Terminal Building and elsewhere at the Airport, including containers in which Lessee shall place its refuse in accordance with the provisions of Article V, Subparagraph C(2)(b) hereof;

2. Maintenance

   (a) maintain and keep in good repair and condition the Airport, the Terminal Building and all appurtenances, facilities and central mechanical distribution systems thereof;

   (b) maintain and operate the Airport in all respects in a manner at least equal to the standards that may be promulgated by the FAA for airports of similar size and character and in accordance with all FAA rules and regulations;

   (c) keep and maintain all Airport roadways and parking areas free of snow and other obstructions insofar as reasonably practicable; and

   (d) perform normal custodial duties in the Terminal Building outside the Premises, including sweeping and dusting, removing all trash there from and taking reasonable precautions to

protect the Premises and any supplies within the Premises from being tampered with, damaged, destroyed, marred, or removed, provided, however, that the City shall not thereby in any way guarantee the safety or security of the Premises and shall not be liable to Lessee or in any way responsible for injury to persons or any damage to the Premises or Lessee's supplies caused by acts of vandalism, theft or other crime.

B. LIMITATION OF LIABILITY

The City shall not, by virtue of the obligations set forth in Section A of this Article VI, be liable to Lessee for any interruption of any service or utilities beyond the control of the City, and Lessee shall, except as may be otherwise expressly set forth herein, have no cause of action against the City for constructive eviction or otherwise as a result of any such interruption. Lessee expressly agrees that the City shall not be liable to Lessee for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or acts of civil authority and not caused by the negligence or willful acts or omissions of City.

C. RESERVATION OF RIGHTS

1. Airport Development and Expansion

The City reserves the right to further develop or improve the landing area or any other area, building or other improvement within the present or future boundaries of the Airport as it sees fit in its sole judgment, regardless of the desires or view of Lessee and without interference or hindrance by Lessee. Further, the City retains the absolute right to maintain, repair, develop and expand the Terminal Building or any other Airport facility, Airport improvement or Airport property free from any and all liability to Lessee for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development or expansion.

2. Maintenance, Repair, Direction and Control

The City further shall have the right, but not the obligation, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, including but not limited to such areas as are necessary to serve the aeronautical users of the Airport, other than as may be leased to or under the control of other Airport tenants, together with the right to direct and control all activities of Lessee in this regard.

3. Airspace

There is hereby reserved to the City and its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, including but not limited to the right to cause or allow in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation at the Airport, without liability or obligation of any kind.

ARTICLE VII - DEFAULT AND TERMINATION

A. TERMINATION BY THE CITY

Lessee acknowledges and agrees that the City may, at its option, upon the occurrence of any of the following events, immediately or at any time thereafter, terminate this Lease and, without demand or notice, enter into and upon the Premises or any part thereof and repossess the same and expel Lessee and any persons claiming by, through, or under Lessee and remove its or their property and effects, if any, forcibly if necessary, from the Premises or elsewhere at the Airport, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be available for arrearage of rent or preceding breach of any provision hereof, and may further declare the entire balance of rents due hereunder immediately due and payable and commence an action to recover said sum from Lessee:

1. if Lessee shall be in arrears in the payment of any rent due hereunder for a period of ten (10) days or more after the City has notified Lessee thereof in writing of the default;

2. the failure or refusal of Lessee to conduct its operations at the Premises continuously as required in this Lease, and the failure or refusal shall continue for a period of not less than ten (10) days after the City has notified Lessee in writing of the default, and Lessee has failed to cure the default within the ten (10) day period;

3. the failure or neglect of Lessee to perform any of the covenants, terms and conditions hereof (other than payment of rent and continuous operation of Lessee's business operations), and the failure or neglect shall continue for a period of not less than thirty (30) days after the City has notified Lessee in writing of the default, and Lessee has failed to correct or actively begun curing the default within the thirty (30) days;

4. the voluntary abandonment by Lessee of the Premises or its operations at the Airport for a period of thirty (30) days or more;

5. the seizure or taking of possession, for a period of fifteen (15) days or more, of all or substantially all of the property used on the Premises belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;

6. the filing of any lien against the Premises because of any act or omission of 'Lessee which is not discharged or contested in good faith (as the City shall determine in its sole discretion) by proper legal proceedings within twenty (20) days of receipt of actual notice of such lien by Lessee;

7. Lessee's falsification of any of its business records or books with the intent of depriving the City of any rents or other rights under the terms of this Lease;

8. Lessee's attempt to make an assignment, transfer, merger or consolidation of its business operations at the Premises in violation of Section B of Article VIII; or

9. any permanent injunction of Lessee's conduct of business at the Premises by a court of final jurisdiction; provided, however, that if Lessee shall be temporarily enjoined from doing business at the Airport, any resulting cessation of business by Lessee, so long as the injunction remains in effect, shall not be considered a breach of this Lease or cause for termination by the City hereunder, unless and until such injunction becomes permanent.

B. ADDITIONAL REMEDIES

1. Statutory Remedies

In addition to any and all other remedies provided herein, the City, as lessor, shall be entitled to all of the remedies enumerated in Title 33, Chapter 3, Article 4 of the Arizona Revised Statutes, the provisions of which are incorporated by reference as a part of this Lease, as if the same were set forth herein in its entirety.

2. Remedies Cumulative

The remedies of the City set forth herein shall be cumulative and are not intended to be exclusive of any other remedies or means of redress to which the City may be lawfully entitled in the event of Lessee's breach of any provision of this Lease. In addition to any other remedies set forth herein, the City shall be entitled to the restraint by injunction of any violation, or attempted or threatened violation, of any of the terms, covenants conditions or other provisions of this Lease.

C. TERMINATION BY LESSEE

1. Termination for Cause

In addition to any other rights of cancellation it may have hereunder or by law, Lessee may, at any time that Lessee is not in default hereunder, terminate this Lease at its option by giving the City thirty (30) days' prior written notice of such termination, upon the occurrence of any of the following events:

(a) An order or action by the FAA or any other governmental authority substantially terminating Lessee's right to conduct its operations at the Airport;

(b) the issuance, by a court of competent jurisdiction, of an injunction of at least thirty (30) days' duration, prohibiting or restraining the use of the Airport as an airport or Lessee's business operations at the Airport;

(c) a national emergency in which there is a curtailment of the use of aircraft and/or motor vehicles by the general public, or a limitation of the supply of gasoline and/or aircraft fuel available for general use either by executive decree or legislative action, which results, in fact, in a substantial curtailment of Lessee's business operations at the Airport;

(d) a breach by the City of any material covenant of this Lease, which breach remains uncured for a period of thirty (30) days following written notice to the City;

(e) Lessee's inability to use the Premises or to conduct its business operations at the Airport due to the City's failure to maintain the Airport or unsafe conditions at the Airport; or

(f) the seizure or other assumption of control of the Airport by any government other than the City.

D. MEDIATION

If a dispute arises out of or relates to this Lease, other than Lessee's failure to pay rent when due, 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 will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, with the exception of the

mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

E. PROPERTY UPON TERMINATION

1. Condition of the Premises

Lessee covenants and agrees that upon any termination of this Lease, however caused, it will quit and surrender the Premises and shall perform such repair of the Premises so that it is in as good condition as it was at the time this Lease was entered into, reasonable wear and tear excepted.

2. Fixtures

All fixtures installed and permanently affixed to the realty of the Premises or the Airport during the term of this Lease shall become and remain the property of the City. All signs, decorations, fixtures, and equipment which Lessee may install during the term of this Lease that have not been permanently attached to the Premises or the Airport shall remain the property of Lessee.

3. Removal of Personal Property

Upon any termination of this Lease, however caused, Lessee shall remove from the Airport, within thirty (30) days of such termination, all signs, decorations, equipment, trade fixtures and personal property belonging to Lessee or its sublessees, if any, that have not been permanently attached to the Premises or any part of the Airport.

F. DAMAGE AND DESTRUCTION

In the event of damage, destruction or substantial loss of or to the Premises or any improvements constructed upon the Premises resulting from any cause beyond the control of Lessee which materially impairs Lessee's ability to conduct its business operations at the Premises, which damage, destruction or loss is not capable of being repaired within sixty (60) days, Lessee shall have the option to terminate this Lease upon written notice to City not later than ten (10) days after the occurrence of such event. In the event of termination by Lessee under this Subsection F, Lessee shall, at its sole cost and expense, conduct and perform all cleanup and/or demolition of the Premises necessary to make the Premises ready for repair, replacement, restoration or rebuilding. In the event Lessee does not exercise such option, or in the event the damage, destruction or loss is capable of being repaired within sixty (60) days, then Lessee shall promptly repair, replace, restore or rebuild the improvements.

G. CONFLICT OF INTEREST

1. Notwithstanding anything to the contrary contained herein, the parties acknowledge in accordance with Arizona Revised Statutes §38-511 that the City may terminate this Lease upon written notice at any time within three (3) years of its execution, without penalty or further obligation, in the event that any person significantly involved in initiating, securing, drafting or creating this Lease on behalf of the City shall become an employee or agent of Lessee in any capacity or shall render consulting services to Lessee with respect to the subject matter of this Lease.

H. BUSINESS OPERATIONS IN SUDAN/IRAN

In accordance with A.R.S. § 35-391.06(A) and 35-393.06(B), Lessee certifies that the Lessee and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Lessee certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Lease.

I. VERIFICATION REGARDING IMMIGRATION LAWS

Lessee hereby warrants to the City that Lessee 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 "Lessee Immigration Warranty"). A breach of the Lessee Immigration Warranty shall constitute a material breach of this Lease and shall subject the Lessee to penalties up to and including termination of this Lease at the sole discretion of the City.

ARTICLE VIII - MISCELLANEOUS

A. FORCE MAJEURE

The performance of all covenants contained herein shall be postponed and suspended during such period as such performance is prevented by acts of God, accidents, weather and conditions arising from them, strikes, boycotts, lockouts and other labor troubles, riot, fire, earthquake, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and attendant conditions, the exercise of paramount power by the federal government, either through the taking of the Premises or the imposition of regulations restricting the conduct of business thereat, acts of enemies, sabotage, interference, restriction, limitation or prevention by legislation, regulation, decree, order or request of any federal, state or local government or any instrumentality or agency, including any court of competent jurisdiction or inability to secure labor or adequate supplies of materials, products or merchandise. The party claiming the occurrence of a condition of force majeure shall promptly notify the other party in writing of the occurrence of the condition and upon its cessation.

B. ASSIGNMENT

Lessee shall not at any time, without the prior written consent of the City:

1. assign or transfer, or permit or participate in any assignment or transfer of, this Lease or any of the rights, powers or privileges thereunder;

2. merge, consolidate, or combine, either directly or indirectly, with any other person, firm or corporation operating at the Airport under any other lease or concession agreement, whether such uniting, merging, consolidating, or combining be through the sale of property or sale of stock or otherwise; or

3. permit any of its owners, directors or officers, to serve as a director or officer, of any other firm or corporation operating at the Airport under any other lease or concession agreement.

C. FEDERAL GRANT ASSURANCES

Lessee acknowledges and agrees that this Lease shall be subject to all federal requirements set forth in the document entitled Airport Assurances, which is attached to and incorporated within this Lease as Exhibit C.

D. QUIET ENJOYMENT

The City represents that it has the right to lease the Airport and the Terminal Building, together with the facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this Lease. The City agrees that, on payment of the rent and performance of the covenants and agreements of the Lease by Lessee, Lessee shall peaceably have and enjoy the Premises and all rights and privileges of the Airport, its appurtenances and facilities.

E. NOTICES

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Lease shall be in writing and shall be effective and deemed received when hand-delivered or faxed, or, if sent by mail, three (3) business days after mailing, to the address given below for the party to be notified, or to such other address of which notice is given in accordance with this Section D:

if to the City:	if to Lessee:
City of Flagstaff	Enterprise Leasing Company of Phoenix, LLC
Airport Director	d/b/a Enterprise Rent-A-Car
6200 S. Pulliam Drive, Suite 204	Scott C. Clemmer, Vice President
Flagstaff, AZ 86001	1444 W. Auto Drive
fax: (928) 556-1288	Tempe, AZ 85284
	fax: (480) 648-0958

F. NON-EXCLUSIVITY; COMPETING USES

Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right prohibited federal law. The rights and privileges granted under this Lease are non-exclusive, and the City has the right to grant to others the privilege and right of conducting any and all of the aeronautical activities listed herein. Notwithstanding the foregoing, the City covenants and agrees not to enter into any similar agreement with respect to the Airport which contains more favorable terms than are contained in this Lease or to grant to potential competitors of Lessee privileges not herein authorized, unless the same are currently extended to Lessee.

G. INTENTION OF THE PARTIES

This Lease is intended solely for the benefit of the City and Lessee and is not intended to benefit, either directly or indirectly, any third party or members of the public at large. Any work done or inspection of the Premises performed by the City is solely for the benefit of the City and Lessee.

H. INDEPENDENCE OF CONTRACT

Nothing herein is intended or shall be construed as in any way creating a relationship of co-partners between the parties hereto or as constituting Lessee the agent or representative or employee of the City for any purpose or in any manner whatsoever.

I. WAIVER

The failure of City to insist in any instance or in more than one instance upon a strict performance by Lessee of any of the provisions, terms, covenants, reservations, conditions, or stipulations contained in this Lease shall not imply, constitute or be considered as a waiver or relinquishment of the right to insist upon performance of such condition or covenant, or of any other provision hereof, nor shall any waiver by the City of any breach of any one or more conditions or covenants

of this Lease constitute a waiver of any succeeding or other breach hereunder. No waiver by City of any provision, term, covenant, reservation, condition or stipulation contained in this Lease shall be deemed to have been made in any instance unless expressed in the form of a resolution by the City Council.

J. PRIOR AGREEMENTS; INTEGRATION; MODIFICATION

The parties acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties, except as expressed in this Lease, and that this Lease, along with the exhibits attached hereto, constitutes the parties' entire agreement with respect to the matters addressed herein. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Lease. This Lease may be modified or amended only by written agreement signed by or for the party against whom enforcement of the same is sought.

K. SUCCESSORS AND ASSIGNS

All covenants and conditions of this Lease shall bind and shall inure to the benefit of the legal representatives, successors and assigns of the respective parties, provided that any representation, succession or assignment is authorized and permitted under this Lease and by law. Any and all agreements that Lessee shall make with any assignee of this Lease, and/or subleases of the Premises, or any part thereof, shall include all provisions contained in this Lease.

L. SEVERABILITY

In the event that a court of competent jurisdiction shall hold any part or provision of this Lease invalid, void or of no effect, the remaining provisions of this Lease shall remain in full force and effect, provided that continued enforcement of the remaining provisions does not materially prejudice either Lessee or the City in their respective rights and obligations contained in the valid provisions of this Lease.

M. HEADINGS

Headings or captions used in this Lease are used solely for convenience of the parties and shall not define, limit, describe, alter or affect the meaning of any provision of this Lease.

N. GOVERNING LAW

This Lease shall be governed, interpreted and enforced in accordance wits the laws of the State of Arizona. Venue for any action arising under this Lease shall be in Coconino County, Arizona.

IN WITNESS WHEREOF, the City and Lessee have executed this Concession/Lease Agreement as of the day and year first above written.

CITY OF FLAGSTAFF

By:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

ENTERPRISE LEASING COMPANY OF PHOENIX, LLC, d/b/a ENTERPRISE RENT-A-CAR

By:_____
Its:_____

ATTEST:

STATE OF _____)
) ss.
County of _____)

ACKNOWLEDGEMENT. On this ____ day of _____, 20___, before me, a Notary Public, personally appeared _____, known to me or satisfactorily that he/she executed the same on behalf of _____, an _____ corporation, for purposes therein contained.

_____
Notary Public

My Commission Expires:

_____

FLAGSTAFF PULLIAM
AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

BETWEEN

CITY OF FLAGSTAFF

and

THE HERTZ CORPORATION

FLAGSTAFF PULLIAM AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

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FLAGSTAFF PULLIAM AIRPORT
RENTAL CAR CONCESSION/LEASE AGREEMENT

This Concession/Lease Agreement (the "Lease") is made as of the 1st day of February, 2011, by and between the City of Flagstaff (the "City") an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and The Hertz Corporation ("Lessee"), a Corporation, with offices at 225 Brae Boulevard, Park Ridge, New Jersey 07656.

RECITALS

A. The City is the owner and operator of Flagstaff Pulliam Airport (the "Airport") and the Airport Terminal Building (the "Terminal Building"), both located at 6200 Pulliam Drive, City of Flagstaff, Coconino County, Arizona;

B. Lessee desires to operate an automobile rental service at the Airport and to maintain a counter for operation of the automobile rental service in the Terminal Building; and

C. The City desires to have these services provided at the Airport for the convenience of the passengers and patrons of the Airport;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the City and Lessee agree as follows:

ARTICLE I - DEFINITIONS

As used in this Lease, the following terms, phrases, words and their derivations shall have the meaning given herein. Words in the singular shall include the plural, and masculine terms and pronouns shall include the feminine and neuter, and vice-versa, as the context may require.

A. "Airport" means the Flagstaff Pulliam Airport, located at 6200 Pulliam Drive, City of Flagstaff, Coconino County, Arizona, and all property and improvements contained within its boundaries.

B. "Airport Director" means the City's manager of the Airport.

C. "City" means the City of Flagstaff, Arizona, as represented by the Council of the City of Flagstaff, and where this Lease speaks of "approval by the City", approval means action by the Council of the City of Flagstaff, unless otherwise indicated.

D. "C.F.R." means the Code of Federal Regulations, as amended, and as the same may be amended from time to time.

E. “Concession Fee” means a fee which is the greater of a fee based on a percentage of Gross Revenues or Minimum Annual Guarantee (% fee or MAG), paid to the City for the privilege of doing business at the Airport for the term of this Agreement. This fee shall be free from any and all claims, deductions or setoffs against the City.

F. "CPI" means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, United States Department of Commerce, or such other index that said Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index.

F. "DBE" means a "disadvantaged business" (or disadvantaged business enterprise) as defined in 49 C.F.R. Subtitle A, Part 23.

G. "DOT" means the United States Department of Transportation, authorized and administered pursuant to the provisions of 49 U.S.C. § 102.

H. "FAA" means the Federal Aviation Administration, authorized and administered pursuant to the provisions of 49 U.S.C. §§ 40101, et seq. and 49 C.F.R. Chapter I.

I. "FAR" means the Federal Aviation Regulations, being 49 C.F.R. Chapter I.

J. "Fixed Rent" means Lessee's fixed rent obligation based on the square footage of the Rental Car Counter and Office Space, as provided by Section A of Article IV.

K. "Gross Receipts" means the aggregate amount of all revenue realized by the Lessee from its automobile rental service at or from the Airport, whether paid in cash, by credit or in-kind, determined without regard for Lessee's payment of any and all income, property, excise or other taxes levied on Lessee's activities, facilities, equipment or property, for which no deduction shall be made, except as otherwise expressly provided herein.

1. Gross Receipts shall include, but shall not be limited to: "drop charges" charged to patrons renting a vehicle at the Airport but delivering the vehicle to another automobile rental service office at the patron's destination; airport user fees or concession recovery fees recovered from the customer; all consideration received by Lessee for insurance coverage incidental to the rental of vehicles at the Airport; all revenues received by Lessee from or relating to the rental of vehicles at the Airport but delivered elsewhere, or from the rental of a vehicle exchanged for a vehicle delivered at or from the Airport, within a radius of thirty (30) miles from the Airport, when the rental agreements for such vehicles are to run consecutively; and all revenues realized by Lessee, the origin of which involved customer contact at the Airport, regardless of where such revenues are generated or paid.

2. Notwithstanding the foregoing, Gross Receipts shall not include: federal, state or local transaction privilege, sales or similar taxes that are separately stated and collected from Lessee's customers; revenue realized by the Lessee as reimbursement for fueling motor vehicles in advance (commonly known as the "fuel purchase option") or refueling motor vehicles upon return by the customer; amounts received as insurance proceeds or otherwise for damage, loss, conversion, or abandonment of or to Lessee's automobiles or other property, or received from customers under Lessee's right to recover from its customers for damages to the rental vehicles; proceeds received by the Lessee from the sale of its vehicles; and credits given by Lessee to its customers for such things as deposits and out-of-pocket purchases for gas, oil, or emergency service.

3. A vehicle shall be deemed to be rented at the Airport and consideration realized by Lessee therefore included in Gross Receipts, if: the rental contract for the vehicle is negotiated in whole or in part at the Airport, even though the vehicle may be delivered elsewhere within a radius of thirty (30) miles of the Airport; an advance registration or reservation for the vehicle has been made for any person at the Airport; or the vehicle is received within a radius of thirty (30) miles from the Airport, in exchange for a vehicle originally rented (or deemed rented hereunder) at the Airport, when the rental agreements for both vehicles run consecutively.

L. "Lessee" means The Hertz Corporation ("Lessee"), a Corporation, with offices at 225 Brae Boulevard, Park Ridge, New Jersey 07656, entering into this Lease as the operator and tenant of the Premises, as hereinafter defined.

M. “Minimum Annual Guarantee” means a minimum amount to be paid to the City on an annual basis during each contract year as set forth in Section B(2) of Article IV.

N. "Office Space" means that space within the Terminal Building leased to Lessee, consisting of Office and Counter Space B as shown and further described in Exhibits A-1 and A-2 attached to this Lease.

0. "Percentage Rent" means that portion of Lessee's rent obligation equal to ten percent (10%) of its Gross Receipts, as provided by Section B of Article IV.

P. "Premises" means the Office/ Counter Space and Vehicle Spaces.

Q. "Rent" means Lessee's Fixed Rent and Percentage Rent, along with any other sums or amounts designated as additional rent.

R. "Terminal Building" means that building in which the Office Space is located owned and operated by the City located at 6200 Pulliam Drive, at the Airport.

S. "U.S.C." means the United States Code, as amended, and as the same may be amended from time to time.

T. "Vehicle Spaces" means twelve (12) parking spaces in the Airport parking lot adjacent to the Terminal Building for the parking and vehicle cleanup of Lessee's ready-to-rent rental vehicles, two (2) drop-off spaces on the curb adjacent to the Terminal Building for the drop-off and short-term parking of Lessee's rental vehicles as shown, generally, in Exhibit B-1 and B-2 attached hereto.

ARTICLE II - LEASE OF PREMISES AND LICENSE TO USE FACILITIES

A. LEASE AND USE OF PREMISES

1. General

The City, for and in consideration of the rentals and fees herein reserved, and of the covenants, conditions and agreements to be done and performed by Lessee, does lease and demise to Lessee and Lessee does take to and from the City, the Premises upon the terms, covenants and conditions set forth in this Lease. Lessee warrants that it has physically inspected the Premises and accepts the Premises in their present condition, "as is." Lessee shall occupy and operate the Premises solely as set forth in this Lease, and for no other purpose other than such business purposes as may be necessary and incidental thereto, specifically: Lessee shall, on a nonexclusive basis, offer to the general public passenger vehicle rental services. The term "on a nonexclusive basis" in this context means that during the term of this Lease there will be a maximum of three (3) other rental car concessions at the Airport, unless the number of deplaning passengers exceeds 100,000 for a period of one calendar year at any time during the term of this Lease, in which event, the City reserves the right to advertise and request bids for one or more additional rental car concessions. Lessee may use the Premises as follows: the Office Space for all reservation, customer service, handling, billing and related activities as may be necessary or incident to Lessee's services at the Premises; the Vehicle Spaces for such purposes as set forth in the definition in Article I, Section U; and either or both for such other purposes as the Airport Director shall expressly, in writing, approve.

2. Exchange of Premises

The City may at any time, in its sole discretion, substitute for all or any part of the Premises such comparable space at the Airport and the Terminal Building as it shall, in its sole discretion determine, provided that, in such event, the City shall reimburse Lessee for its reasonable and necessary expenses incurred in relocating its operations to substitute space (not including, however, any lost revenues or profits occasioned by relocation), and the Fixed Rent hereunder shall be adjusted if the size of the substitute space shall vary materially from the Premises leased. No rental car concessionaire at the Airport shall be substantially disadvantaged compared with any other rental car concessionaire at the Airport as a result of the City's substitution of all or a portion of its leased premises under this subsection.

3. Overflow Parking and Cleanup Space

Notwithstanding anything to the contrary contained in this Lease, the City may substitute for any space provided by the City to the Lessee for the purposes of overflow parking and cleanup (whether under this Lease or otherwise), any other available space which is, in the discretion of the City, reasonably comparable to that for which substitution is made, if, when and for so long as such substitution is, in Lessor's discretion, necessary to accommodate renovations or implement changed security procedures at the Airport. The City shall reimburse Lessee for Lessee's reasonable and necessary expenses incurred in relocating its operations to substitute space (not including, however, any lost revenues or profits occasioned by relocation).

B. LICENSE FOR USE OF AIRPORT FACILITIES

1. Airport Facilities

Subject to all rules and regulations governing the use of the Airport, Lessee shall have a nonexclusive right to use all vehicular roadways and parking areas of the Airport (except for areas that may have been reserved to the exclusive use of others in accordance with the directions of the Airport Director) for the operation of Lessee's operations hereunder and for the carriage of persons, property, cargo and/or mail incident thereto, including, without limitation, parking, loading and unloading persons, property, cargo and/or mail, as may be necessary or incident to Lessee's operations under this Lease. Notwithstanding the foregoing, the City reserves the right to assess a reasonable charge for public motor vehicle parking of rental cars if said vehicles are parked in areas other than designated for rental car parking (e.g. public parking lot). Lessee shall pick up and drop off patrons, and all of its vehicles shall be parked only in such areas designated for such purposes by the Airport Director.

2. Common and Joint Use Areas

Subject to all rules and regulations governing the use of the Airport, Lessee, Lessee's agents and servants, patrons and invitees and Lessee's suppliers of service and furnishers of materials shall have the right of ingress to and egress from the Premises, the Terminal Building and the Airport and a nonexclusive license to use all common areas of the Airport open to the public, provided that such ingress, egress or use does not interfere with normal operations of the Airport or of other operations in the Terminal Building.

C. CONSTRUCTION OF TENANT IMPROVEMENTS

1. General

Lessee may, at its sole cost and expense, provide and install any necessary improvements, counter area, facilities, decorations, signs, fixtures, and equipment for the Premises, provided that improvements to the Vehicle Spaces shall be limited to signs at the "rediparking" and drop-off spaces complying with those rules set forth in this Lease regarding signage. All such improvements, facilities, decorations, fixtures, and equipment shall be made or installed at the Premises only with the prior written consent of the City's Airport Director following Lessee's submission of a description of the proposed installations to the Airport Director no less than fourteen (14) days prior to installation. Those improvements, facilities, decorations, fixtures and equipment of, in or to the Office Space shall be of high quality, safe, modern in design, attractive in appearance and shall be in general keeping with the decor of the Terminal Building and the areas adjoining and surrounding the Office Space.

2. Permits and Authorizations

Lessee shall make no improvements to the Premises until it has first, at its sole cost and expense, submitted all design and construction plans, specifications and related documents for the improvements to the City's Building and Safety Division, and the Division has issued a building permit for the improvement. Lessee shall further diligently pursue and obtain all other permits, licenses and authorizations required for the construction of the improvements and operation of the Premises.

3. Insurance

Before commencing any improvement or equipment installation at the Premises, Lessee shall require that its construction contractors procure and maintain insurance for such construction and installation protecting both Lessee and City, as well as the construction contractors, with policy amounts and coverage as the City shall in each instance determine, and shall provide certificates of insurance with respect to all of the policies to the City prior to commencement of construction.

4. Construction Standards, Rules and Regulations

All improvements, additions or alterations constructed by Lessee at the Premises shall be constructed in a good and workmanlike manner and shall conform to all applicable statutes, ordinances, building codes, rules and regulations of any governmental authority as may have jurisdiction, and to the general architectural scheme of the Terminal Building. Lessee shall require in all contracts for construction that all contractors also comply with all applicable statutes, ordinances, codes, rules and regulations. Lessee's construction work shall be subject to inspection, during reasonable business hours, by the City's Building and Safety Division and its authorized personnel. Lessee shall keep the Premises free and clear of liens for labor and material and shall hold the City harmless from any liability arising therefrom. Lessee shall make no structural alterations to the roof, walls or floors of the Premises without the City's prior written consent. Nothing contained in this Section shall prevent Lessee from making a nonstructural alteration to the Office Space.

5. Cost of Improvements

The construction of any and all improvements, alterations and additions to the Premises by or for Lessee shall be performed at Lessee's sole cost and expense.

6. Additional Alterations, Additions or Replacements

Lessee shall make no alterations, additions, replacements or improvements to the Premises, install any equipment that requires any electrical connection (other than by ordinary plug into an existing receptacle) nor make any changes in those electrical connections installed on the Premises, without the prior written consent of the Airport Director. Any electrical service other than that provided at the execution of this Lease shall be installed and provided at the sole cost and expense of Lessee.

7. Signs

Except as may be provided otherwise in this Lease, Lessee shall not erect, install, operate or cause or permit to be erected, installed or operated, any signs or similar advertising devices in or upon the Premises without having first obtained the written consent of the Airport Director, which will not be unreasonably withheld, so long as the signs or similar advertising devices do not conflict with the rights of other concessionaires or lessees at the Airport and conform to the requirements of the City's Sign Code, which provides conditions concerning factors including,

but not limited to, size, type, content and method of installation of signs.

8. Security Installations

The Airport has adopted a Security Program ("Security Program") in accordance with the Aviation and Transportation Security Act, 49 U.S.C. § 40101 et seq., and 49 C.F.R. Part 1542, and Lessee agrees to abide by all rules and regulations with respect to the Security Program.

D. MAINTENANCE OF PREMISES AND IMPROVEMENTS

1. General Maintenance

Lessee shall, at its sole cost and expense, maintain the Premises and all of its improvements, additions or alterations at the Premises and elsewhere at the Airport (if any), in good working order and in such condition that shall be based on a standard of care reflecting prudent property management, reasonable wear and tear excepted.

2. Preventive Maintenance and Repair

Lessee shall perform at its sole expense, ordinary preventative maintenance and ordinary upkeep and non-structural repair of all of its facilities, personal property and equipment in or upon the Premises and elsewhere at the Airport (if any), including, but not limited to, fixtures, doors and windows, floor coverings, counters, as well as all electrical work, plumbing appliances and fixtures located within the Premises, provided, however, that the City shall provide snow removal for the Vehicle Spaces, along with its snow removal at Airport parking lots generally.

3. Off-Premises Maintenance and Repair

Lessee shall, at its sole cost and expense, immediately repair any and all damage in or to any area of the Airport or the Terminal Building occasioned by the fault or negligence of Lessee, its servants, agents, or employees, and shall immediately remove any litter, debris, petroleum products or other liquids and/or grease that may result from its operations or the activities of its employees, agents, passengers or suppliers.

4. Maintenance or Repair by the City upon Lessee's Default

(a) In the event that Lessee fails to perform any obligation required by this Subsection D(4) to be performed by Lessee at Lessee's cost for a period of fifteen (15) days after receipt of written notice from the City to do so, the City, upon the expiration of the fifteen (15) day period may, but shall not be obligated to, perform that obligation of Lessee, which may include entry onto the Premises if reasonably necessary. All maintenance or repairs executed by the City under this Subsection D(4) shall be performed in a good and workmanlike manner.

(b) Notwithstanding the foregoing, in the event that Lessee's failure to perform such of its obligations under this Subsection D(4) may endanger the health or safety of the public or of any passenger, invitee or employee at the Airport, then the City may, but shall not be obligated to, immediately perform such obligation of Lessee upon prior written notice of its intent to do so, without awaiting the expiration of the mentioned fifteen (15) day period.

(c) In the event that the City shall perform any obligation of Lessee under this Subsection D(4), then the City shall invoice Lessee for the reasonable cost and expense of performing the obligation, plus a fifteen percent (15%) administrative charge, and Lessee shall pay, as additional rent, such amount on or before the fifteenth (15th) day of the next month

following, along with its payment of Fixed Rent and other charges for the previous month.

(d) The City shall not be liable to Lessee for any loss, cost or expense to Lessee resulting from the City's performance of Lessee's obligations in accordance with the provisions of this Subsection D(4).

E. ENTRY AND INSPECTION OF PREMISES

1. Entry and Inspection

The City and its authorized officers, employees, agents, contractors, subcontractors, or other representatives shall have the right to enter upon the Premises:

(a) during reasonable business hours to determine whether Lessee has complied and is complying with the terms and conditions of this Lease;

(b) during reasonable business hours for inspecting the Premises and for fulfilling the City's obligations hereunder, provided, however, that such entry shall be at such times and in such manner as not to interfere unreasonably with the operations of Lessee; and

(c) at any time as may be required by an emergency at the Terminal Building or for emergency repairs or maintenance, without any liability or responsibility to Lessee for loss of business.

2. No Termination or Interference

No such entry by or on behalf of the City upon the Premises shall cause or constitute a termination of this Lease nor be deemed to constitute an interference with the possession thereof nor constitute a revocation of or interference with any of Lessee's rights in respect thereof for exclusive use of the leased Premises.

ARTICLE III – TERM

A. INITIAL TERM

This Lease shall be effective from February 1, 2011 through January 31, 2014, and shall continue in force and effect, unless sooner terminated as provided in this Lease.

B. RENEWAL

Upon completion of its initial term, this Lease may be renewed for two additional one (1) year terms, subject to approval by the City Council and Lessee, provided that Lessee provides the Airport Director with at least ninety (90) days prior written notice of Lessee's desire to renew the term of this Lease.

ARTICLE IV – RENTS

A. FIXED RENT

Lessee shall pay to the City an aggregate annual Fixed Rent for the Premises, Counter B, (391.92 sq. feet), in the sum of $12,012.35 (Twelve Thousand Twelve Dollars and 35/100), broken into twelve equal payments of $1001.03 (One Thousand One Dollar and 03/100), due in advance, on the first day of each month of the term of this Lease.

B. PERCENTAGE RENT

1. Concession Fee

The Lessee shall pay to the City, on a monthly basis, without notice or demand, a concession fee which is the greater of a fee based on percentage of 10% of Gross Revenues or Minimum Annual Guarantee (% fee or MAG). Lessee shall, on or before the twenty-fifth (25th) day following each and every month during the term of this Lease, submit to the City a detailed statement showing its Gross Receipts from its operations at the Premises for the preceding calendar month, in such reasonable detail and breakdown as the City may reasonably require, certified by a responsible officer or designee of Lessee, along with payment of either its Percentage Rent, for and during such preceding month, equal to ten percent (10%) of Lessee's Gross Receipts, or the Minimum Annual Guarantee.

Lessee's obligations under this Section B (and such other provisions of this Article IV that concern the calculation and payment of Lessee's Percentage Rent hereunder) shall survive any termination of this Lease, until all of Lessee's Percentage Rent obligations shall be paid in full. Furthermore, Lessee shall collect from its customers a fee no more than 11.1%, by adding it as a separate line item charge on each customer rental agreement. This line item shall be designated as an "airport user fee" or "concession recovery fee" on each customer rental agreement.

2. Minimum Annual Guarantee: During the term of this agreement, Lessee agrees to pay to the City a Minimum Annual Guarantee (MAG) of:

First Year:	$76,500.00	(Seventy-Six Thousand Five Hundred Dollars)
Second Year:	$76,500.00	(Seventy-Six Thousand Five Hundred Dollars)
Third Year:	$76,500.00	(Seventy-Six Thousand Five Hundred Dollars)

3. Percentage Fee: Percentage fee shall be the amount equal to ten percent (10%) of Lessee's Gross Revenues.

C. PRO-RATED RENT

Rent for any period during the term or extended term of this Lease that is for less than one month (if any) shall be pro-rated accordingly.

D. CPI ADJUSTMENT

The Fixed Rent shall be adjusted on February 1st of every year, the commencement of the City's fiscal year, during the term of this Lease and any extension or renewal of such term by the same percentage as that represented by the increase, if any, in the Consumer Price Index for All Urban Consumers ("CPI") most recently published by the Bureau of Labor Statistics, United States Department of Commerce (or such other index that said Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index) at that time, as compared with the CPI most recently published one year prior.

E. ACCOUNTING AND AUDIT

1. Books and Records

Lessee shall, with respect to all business done by it at the Premises, keep true and accurate account records and books which shall, at a minimum, include all of Lessee's reservation

registers and records, and show all sales made and services performed for cash or credit or otherwise, without regard to whether paid for or not, and all other items included or considered in determining Lessee's Gross Receipts, all in a manner and format from which the City may reasonably and accurately determine Lessee's Gross Receipts. Lessee shall either maintain account records and books at a location within the city limits of the City as shall be available and convenient for inspection by the City as provided in Subsection 3 of this Section E, for a period of at least three (3) years from the time of entry of each item shown therein or provide the account records and books to the City upon thirty (30) days' written notice. The City reserves the right to prescribe or change the form in which Lessee shall provide any reports required under this Lease, and their method and time of submission.

2. Annual Reports

Within ninety (90) days after the end of each lease year during the term of this Lease and any extension or renewal of such term, Lessee shall furnish to the City an annual accounting statement prepared according to generally accepted accounting principles, in such form as the City may reasonably require, which is a true disclosure of the operations of Lessee at the Premises, including but not limited to Lessee's Gross Receipts and Percentage Rent for the previous year. Lessee shall simultaneously pay to the City excess Percentage Rent due, if any, for such preceding lease year over and above the Percentage Rent paid. If Lessee shall have paid to the City Percentage Rent in excess of the greater of the Percentage Rent due under Article IV(B)(1) above during the preceding contract year, the City shall credit Lessee for such excess against future payments, or in the last year of the Lease, the City shall refund such excess amount, if any, to Lessee within one hundred and twenty (120) days of the end of the Lease. Lessee's obligations under this Subsection E(2) shall survive any termination of this Lease until Lessee shall have provided to the City the annual accounting statement required for the last completed accounting period not previously reported under the provisions of this subsection.

3. Audit

The City and its employees, agents and authorized representatives shall have the right at all reasonable times and during all business hours, except as otherwise provided in Subsection 1 of this Section E, to inspect and examine such records, registers, contracts, books and other data as may be necessary to confirm Lessee's Gross Receipts for its operations at the Premises. The City may conduct any such audit in any manner consistent with generally accepted auditing standards, including, but not limited to, statistical sampling. If any such inspection or audit shall disclose any willful and intentional misstatement, the City may, in its sole discretion, cancel and terminate this Lease forthwith, without penalty or further liability.

4. Audit Deficiency and Protest

In the event that an audit by the City shall disclose any deficiency in Lessee's payments of Percentage Rent hereunder, resulting from discrepancies in its determination of Gross Receipts or otherwise, the City shall promptly notify Lessee in writing of the deficiency. Upon its receipt of such notice, Lessee shall either:

(a) within sixty (60) days submit to the City its written consent to the City's audit findings, along with payment in full of the deficiency determined thereby; or

(b) within sixty (60) days (or at such later time as the City Manager may, upon a timely filed written request therefore, provide in writing) submit to the City Manager a written protest and request for redetermination, setting forth in detail Lessee's grounds for the protest and the amount of the audit deficiency that it claims to be in error, along with supporting information and/or documentation as shall be appropriate.

The City shall not accept any protest, petition or request for redetermination that is not filed within the sixty (60) day period (or such later date allowed by the City Manager). In the absence of a submission of a timely written protest as provided above, the deficiency determined by the audit shall become immediately due and payable at the expiration of the sixty (60) day period, and Lessee shall be deemed to have waived and abandoned all right to question or protest the City's audit findings.

3. Deficiency Hearing and Redetermination

(a) As soon as may be practicable following the City Manager's receipt of a timely submitted written protest, the City Manager shall either order the audit deficiency redetermined in accordance with Lessee's protest, or notify Lessee of the time, date and place for a hearing on the matter.

(b) The City Manager, or such other hearing officer designated by the City Manager, shall hear the matter informally, without regard to formal rules of procedure or of evidence, and, within thirty (30) days of the close of the hearing, shall make such order in the matter as appears to be just and lawful and shall mail a copy of the order to Lessee.

(c) The deficiency stated in the City Manager's or hearing officer's order shall be immediately due and payable upon receipt by Lessee. Lessee's failure to pay such deficiency within thirty (30) days of its receipt of the order shall constitute a material breach of this Lease and shall give the City the option of immediately terminating the Lease in accordance with the provisions of Article VII.

G. LATE PAYMENT

All amounts due from Lessee to the City under this Lease that are not paid by Lessee when due shall be subject to a penalty of ten percent (10%) of such amount due, plus interest at the rate of one (1%) percent per month or fraction of a month from the time due and owing until paid. The penalty and interest shall be payable as additional rent hereunder, subject to all the terms and conditions of this Lease.

ARTICLE V - LESSEE'S OPERATIONS

A. GENERAL

Lessee shall not use or permit the use of the Premises, the Terminal Building, the Airport or any part thereof, for any purpose or use other than as authorized by this Lease without the prior written consent of the City.

B. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

1. General

Lessee, its employees, representatives and agents shall comply at all times with all present or future laws, rules, ordinances and regulations, and all amendments or supplements thereto, governing or relating to the use of the Airport, the Terminal Building and/or the Premises, as may from time to time be promulgated by federal, state or local governments and their authorized agencies.

2. Taxes, Licenses and Permits

Lessee shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation and lease of the Premises. Lessee may elect, however, at its own cost and expense, to contest any such tax, excise, levy or assessment, provided that such contest is in accordance with law and does not result in a violation by Lessee of any law, rule, regulation or ordinance, or result in any lien against the Premises, the Terminal Building or the Airport. Lessee shall keep current municipal, state or federal licenses or permits required for the conduct of its business. Lessee shall, upon reasonable demand, display to the Airport Director any and all permits, licenses, authorizations or other evidences of compliance with such laws, rules and regulations.

3. Airport Rules and Regulations

Lessee covenants and agrees to observe and obey all reasonable rules and regulations adopted by the City with respect to use of and the conduct and operation of the Airport, the Terminal Building and/or any additions or improvements therein.

4. Energy Conservation

Lessee shall comply with all City rules, regulations and orders pertaining to energy conservation and management, to the extent that such rules, regulations and orders do not unduly infringe on Lessee's rights and privileges granted herein.

5. Compliance with Airport Improvement Program

Lessee covenants and agrees that this Lease may be amended by the City, without consent of Lessee, in any manner necessary to comply with any requirement of the Federal Aviation Administration or other instrumentality of the federal government or state of Arizona in order for the City to qualify or maintain its qualification under the Airport Improvement Program, as authorized and administered under the Airport and Airway Improvement Act of 1982 (Public Law 97-248, codified at 49 U.S.C. §§ 47101, et seq.), as amended and as the same may be amended from time to time.

6. Compliance with FAA Assurances

Lessee covenants and agrees to comply in all respects with those FAA Airport Assurances, dated March 2005 and attached hereto as Exhibit C, and any subsequent amendments thereto (in which the term "sponsor" shall be deemed to mean and include the City), to the extent that their terms may be applicable to Lessee and its operations hereunder.

C. SANITARY OPERATION

1. General

Lessee shall maintain and operate the Premises in a safe, clean, orderly and inviting condition at all times satisfactory to the City. Lessee shall always conduct its operations on the Premises in a manner using all available and practical devices to reduce to a reasonable minimum, considering the nature and extent of Lessee's operations, the emanation from the Premises of noise, vibration, movement of air, fumes and odors, so as not to unreasonably interfere with the use of other premises adjoining these Premises or elsewhere at the Airport. Lessee shall always conduct its operations in all parts of the Airport in accordance with the current regulations of the United States Environmental Protection Agency, and of other applicable federal, state and local authorities.

2. Refuse and Janitorial Service

Without limiting the generality of the foregoing, Lessee shall:

(a) provide and pay for janitorial service within the Office Space; and

(b) remove, not less frequently than at the close of each business day, all refuse and trash from the Premises and such other areas of the Airport as it shall regularly use and place all refuse and trash in such container or containers as the City may from time to time designate, separately disposing of recyclable, hazardous or other refuse items in the manner and at the places as the City may from time to time designate.

3. City's Right to Cure Default

In order to maintain a high level of custodial services at the Airport, the City, upon a default of Lessee in its obligations under this Section, may provide such necessary custodial services within the Premises or without, and Lessee shall, in such event, pay to the City the cost of such custodial services as additional rent hereunder, plus a fifteen percent (15%) administrative charge, on the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

D. BUSINESS OPERATIONS

1. General

Service provided by Lessee at the Premises and elsewhere at the Airport shall be prompt, clean, courteous and efficient.

2. Hours of Operation

Lessee shall keep the Premises open for business, having attendants on duty and offering its rental vehicles to the public, during all hours that the Terminal Building is open, except as the Airport Director may otherwise authorize in writing. Lessee acknowledges that the hours of operation of the Terminal Building and Airport support services are, at the inception of this Lease, 6:00 AM to 11:00 PM, and are subject to such reasonable changes as the Airport Director shall determine in his sole discretion. In the event that Lessee shall require the provision of these services or facilities beyond the normal hours of operation, then the City shall invoice Lessee for the fully burdened hourly cost of such Airport personnel as are necessary to provide these services and/or facilities (but not less than one (1) hour for each such personnel) and such other expenses incurred by the City in connection with providing these services or facilities, plus a ten percent (10%) administrative charge, and Lessee shall pay, as additional rent, this charge on or before the fifteenth (15th) day of the next month following, along with its payment of Fixed Rent and other charges for the previous month.

3. Control of Personnel

Lessee shall, at the leased Premises and elsewhere at the Airport, exercise reasonable control over the conduct, demeanor and appearance of its employees, agents and representatives and the conduct of its contractors and suppliers. Upon objection from the Airport Director to Lessee concerning the conduct, demeanor or appearance of any such persons, Lessee shall within a reasonable time remove or correct the cause of the objection. Lessee shall require all of its employees, agents, representatives and independent contractors hired by Lessee working in view of the public in and in the vicinity of the Terminal Building, to wear clean and neat attire and to display appropriate identification, and shall require all of its employees to conduct themselves in a professional manner.

4. Vehicles

Lessee shall at all times maintain a number of rental vehicles reasonably adequate to meet public demand, taking into consideration the varying seasonal requirements of the traveling public. Lessee shall maintain, at its sole cost and expense, all vehicles and equipment used in the conduct of Lessee's business in good mechanical condition, free from known defects and in a clean and presentable condition. Lessee shall only store wrecked or inoperable vehicles at the Airport in areas designated by the Airport Director and for no longer than seventy-two (72) hours, unless the Airport Director expressly agrees otherwise.

5. Solicitation and Advertising

Verbal solicitation of Lessee's business may be made only from behind the counter of Lessee's Office Space, and Lessee shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous, or otherwise objectionable solicitation. Lessee may identify and advertise its vehicle rental service at its Office Space in a manner comparable to the reasonable advertising of other automobile rental companies operating in the Terminal Building. All advertising materials of whatever nature, including but not limited to brochures, rate cards, schedules, forms, etc., shall not unduly clutter the counter at Lessee's Office Space, and the counter space shall be maintained in a clean and orderly manner. All materials displayed at Lessee's Office Space shall be subject to the approval of the Airport Director.

6. Public Address System

Lessee may use the Airport public address system only with the consent of the Airport Director and in accordance with the Airport's public address system policy. Lessee shall not install or cause to be installed any other public address system at the Airport without the prior written consent of the Airport Director.

7. Security

Lessee acknowledges that all areas airside of the Terminal Building are strictly controlled, and Lessee shall not permit its employees, agents, invitees, patrons and/or vehicles to enter these areas other than as authorized by the Airport Director.

E. LIMITATIONS ON LESSEE'S USE OF THE PREMISES

In the conduct of its business operations at the Premises, or in connection with the exercise of any right or privilege under this Lease, Lessee shall not:

1. do, or permit its agents, employees, contractors, directors or officers to do anything at the Airport that may interfere with the effectiveness or accessibility of the Airport's drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the Premises or the Airport;

2. do, or permit its agents, employees, contractors, directors or officers to do any act or thing at the Airport that would invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof;

3. dispose of, or permit its agents, employees, contractors, directors or officers to dispose of any waste material taken from or products used at the Premises or elsewhere at the Airport (whether liquid or solid) into the sanitary or storm sewers at the Airport unless the waste material or products have first been properly treated by equipment installed with the approval of the Airport Director for that purpose;

4. keep or store, during any twenty-four (24) hour period, flammable liquids within the enclosed portion of the Premises in excess of Lessee's working requirements during the twenty-four (24) hour period, except in storage facilities especially constructed for these purposes in accordance with standards established by the National Board of Fire Underwriters and approved by the Airport Director from the standpoint of safety; any such liquids having a flash point of less than one hundred degrees Fahrenheit (100° F) shall be kept and stored only in safety containers of a type approved for such purpose by the Underwriters Laboratory;

5. do or permit its agents, employees, contractors, directors or officers to do any act or thing at the Airport that would conflict with FAR Part 139 or jeopardize the Airport's operating certificate;

6. do, or permit its agents, employees, contractors, directors or officers to do any act or thing in conflict with any TSA approved security plan that may be adopted by the Airport; or

7. make use of the leased Premises or any other part or area of the Airport in any manner that might interfere with the landing and taking off of aircraft at or from the Airport, or would otherwise constitute a hazard. In the event the covenant of this Subsection 7 is breached, the City reserves the right to enter upon the Premises and/or any other property of Lessee at the Airport and cause the abatement of the interference at the expense of Lessee and without liability of any kind to the City.

F. LIENS

Lessee shall not permit or suffer to be placed on the Premises, or any fixture, addition, betterment or improvement thereto any lien of any nature, including but not limited to tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Lessee or any of its contractors or subcontractors upon the Premises or arising out of or because of the performance of any work or labor to it or them at the Premises or the furnishing of any materials to it or them for use at the Premises. Should any lien be made or filed, Lessee shall bond against or discharge the same within ten (10) days after the lien is placed and shall promptly notify the Airport Director of the steps taken to remove the lien or protect the Premises from the lien.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. INDEMNIFICATION: Vendor (as “indemnitor”) agrees to indemnify, defend and hold harmless the City (as “indemnitee”) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the acts or omissions of indemnitor, its officers, officials, agents, employees or volunteers relating to this Agreement.

2. INSURANCE: Vendor shall procure and maintain until all of its obligations under this Agreement have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property that may arise from or in connection with this Agreement.

   The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect vendor from liabilities that might arise out of the performance of the work under this Agreement by vendor, its agents, representatives, employees or sub-vendors and vendor is free to purchase such additional insurance as may be determined necessary.

I. MINIMUM SCOPE AND LIMITS OF INSURANCE: Vendor shall provide coverage at least as broad and with limits of liability not less than those stated below.

(a) Commercial General Liability - Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	$2,000,000
Products-Completed Operations Aggregate	$1,000,000
Personal & Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage (Any one fire)	$ 50,000
Medical Expense (Any one person)	Optional

(b) 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

(c) Workers' Compensation and Employer's Liability

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

b. SELF-INSURED RETENTIONS/DEDUCTIBLES: Any self-insured retentions and deductibles shall be declared to and approved by the City.

c. OTHER INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages:

a. Vendor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, or employees shall be in excess to the coverage of vendor's insurance and shall not contribute to it.

b. Vendor'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.

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

d. Vendor's insurance shall contain broad form contractual liability coverage.

2. Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees and volunteers for losses arising from vendor's operations, work or products that are the subject of this Agreement.

3. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to: Ann Marie Fisher, Sr. Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001 and shall be sent by certified mail, return receipt requested.

4. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less that A-: VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect vendor from potential insurer insolvency.

5. VERIFICATION OF COVERAGE: Vendor shall furnish the City with Certificates of Insurance (ACORD form) 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. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificate of Insurance.

   All Certificates of Insurance shall be received and approved by the City before work commences. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal shall be a material breach of this Agreement.

   All Certificates of Insurance shall name the City of Flagstaff as an additional insured. All Certificates of Insurance required by this Agreement shall be sent directly to: Ann Marie Fisher, Sr. Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001. A description of the Contract is to be noted on the Certificate of Insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement at any time.

6. APPROVAL: Any modification or variation from the insurance requirements in this Agreement shall have prior approval from the City's Risk Manager, whose decision shall be final. Such action shall not require a formal contract amendment, but may be made by administrative action.

H. FIRE PROTECTION

Lessee shall at all times keep and maintain in good working order at the Premises such fire extinguishing equipment and apparatus as may be required by any of Lessee's insurance policies maintained hereunder, or otherwise adequate and appropriate to Lessee's use of the Premises, and shall, from time to time and as often as reasonably required by the City, conduct appropriate tests of such fire extinguishing equipment and apparatus.

I. NON-DISCRIMINATION

1. General

   Lessee shall furnish its goods and/or services at the Premises on a fair, equal and nondiscriminatory basis to all patrons and shall charge fair, reasonable and nondiscriminatory prices for each unit of service, provided, however, that Lessee may make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

2. Compliance with Civil Rights Act

   Without limiting the generality of the foregoing, Lessee, for itself and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration for this Lease, does hereby covenant and agree that, except as otherwise expressly provided herein:

   (a) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; in the construction of any improvements on, over, or under the Premises and the furnishing of services at the Premises, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or

otherwise be subjected to discrimination; no person will be subject, on the grounds of race, color, or national origin, to segregation or special treatment in any manner related to the receipt of any goods or services furnished at or from the Premises;

(b) Lessee shall use and operate the Premises at all times in compliance with all requirements imposed by or pursuant to 49 C.F.R. Subtitle A, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Acts of 1964, as amended;

(c) Non-compliance with any of the above nondiscrimination covenants shall constitute a material breach of this Lease, and in the event of such non-compliance the City shall have the right to judicially enforce such covenants and/or to terminate this Lease and to reenter and repossess the Premises and hold the same as if this Lease had never been made or issued, provided, however, that all notice, appeal and related procedures of 49 C.F.R. Subtitle A, Part 21 are followed and completed prior to the termination; and

(d) Lessee shall include the provisions of this Subsection I(2) in any lease, agreement, or contract by which Lessee shall grant any right or privilege to any person, firm or corporation to render accommodations, goods and/or services to the public on the Premises.

3. Affirmative Action

Lessee covenants and agrees that it will:

(a) undertake an affirmative action program as described by 14 C.F.R. Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from employment or from receiving any goods, services or benefits of or provided by Lessee or its operations at the Premises;

(b) comply with any affirmative action plan or steps for equal employment opportunity required by 14 C.F.R. Part 152, Subpart E, as part of such affirmative action program, or by any federal, state or local agency or court, including those resulting from a conciliation agreement, consent decree, court order or similar mechanism, provided that Lessee may use such state or local affirmative action plan in lieu of that required by 14 C.F.R. Part 152, Subpart E only when such plan fully meets the requirements of 14 C.F.R. 152.409; and

(c) require from all contractors, subcontractors, grantees, subgrantees and sublessees of Lessee the same covenants as contained in this Subsection I(3), as required by 14 C.F.R. Part 152, Subpart E.

4. DBE Requirements

(a) It is the policy of the City to encourage and develop disadvantaged businesses (hereinafter "Disadvantaged Business Enterprises" or "DBE's"), as defined in 49 C.F.R. Subtitle A, Part 23, and to ensure that DBE's shall have the maximum opportunity to participate in the performance of concessions, contracts and leases at the Airport. Consequently, this Lease is subject to the provisions and requirements of 49 C.F.R. Subtitle A, Part 23 and the City's DBE Concession Plan for the Airport, as each may apply.

(b) If Lessee asserts that it qualifies as a DBE, Lessee hereby warrants, covenants and agrees that it believes in good faith that it qualifies as a DBE under 49 C.F.R. Subtitle A, Part 23 and the City's DBE Concession Plan for the Airport, and that it will use all due effort to apply for certification and be certified as a DBE, if it has not already done so. The City will employ all reasonable efforts to assist and cooperate with Lessee in making such application and obtaining such certification.

J. INDEMNITY

Lessee shall indemnify the City and hold it forever harmless from and against all liability, loss, demand, judgment or other expense (including but not limited to, defense costs, expenses and reasonable attorney fees) arising from or as a result of Lessee's use or occupancy of the Premises or any other Airport property, or from any action or omission of Lessee, its officers, employees, agents, or other representatives within the boundaries of the Airport, including movement of aircraft or vehicles, except as may arise or result solely from negligent or willful acts or omissions of the City, its employees, agents or representatives.

K. PERFORMANCE BOND

At the time of the execution of this Lease, Lessee shall furnish the City with a valid surety bond for the term of this Agreement in a principal sum no less than one-fourth (1/4) of the Average Minimum Annual Guarantee as described in Subsection B(2) of Article IV, issued by a surety company qualified to do business in the State of Arizona and acceptable to the City, or other security acceptable to the City. The security shall be maintained and kept by the Lessee in full force and effect during the entire term of this Lease, and any extensions thereof, and shall be conditioned to assure the faithful and full performance by Lessee of the terms of this Lease and to stand as security for the payment by Lessee of any valid claim by the City against the Lessee arising under this Lease.

ARTICLE VI - OBLIGATIONS OF THE CITY

A. PROVISION OF SERVICES

The City shall, at its sole cost and expense:

1. Utilities

   (a) furnish electricity, natural gas and water as may be reasonably necessary for the conduct of Lessee's business operations at the Premises and elsewhere at the Airport;

   (b) furnish necessary heating and cooling to the Premises and the Terminal Building as the City shall reasonably determine;

   (c) provide for the collection and disposal of all refuse at the Terminal Building and elsewhere at the Airport, including containers in which Lessee shall place its refuse in accordance with the provisions of Article V, Subparagraph C(2)(b) hereof;

2. Maintenance

   (a) maintain and keep in good repair and condition the Airport, the Terminal Building and all appurtenances, facilities and central mechanical distribution systems thereof;

   (b) maintain and operate the Airport in all respects in a manner at least equal to the standards that may be promulgated by the FAA for airports of similar size and character and in accordance with all FAA rules and regulations;

   (c) keep and maintain all Airport roadways and parking areas free of snow and other obstructions insofar as reasonably practicable; and

   (d) perform normal custodial duties in the Terminal Building outside the Premises, including sweeping and dusting, removing all trash there from and taking reasonable precautions to

protect the Premises and any supplies within the Premises from being tampered with, damaged, destroyed, marred, or removed, provided, however, that the City shall not thereby in any way guarantee the safety or security of the Premises and shall not be liable to Lessee or in any way responsible for injury to persons or any damage to the Premises or Lessee's supplies caused by acts of vandalism, theft or other crime.

B. LIMITATION OF LIABILITY

The City shall not, by virtue of the obligations set forth in Section A of this Article VI, be liable to Lessee for any interruption of any service or utilities beyond the control of the City, and Lessee shall, except as may be otherwise expressly set forth herein, have no cause of action against the City for constructive eviction or otherwise as a result of any such interruption. Lessee expressly agrees that the City shall not be liable to Lessee for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or acts of civil authority and not caused by the negligence or willful acts or omissions of City.

C. RESERVATION OF RIGHTS

1. Airport Development and Expansion

The City reserves the right to further develop or improve the landing area or any other area, building or other improvement within the present or future boundaries of the Airport as it sees fit in its sole judgment, regardless of the desires or view of Lessee and without interference or hindrance by Lessee. Further, the City retains the absolute right to maintain, repair, develop and expand the Terminal Building or any other Airport facility, Airport improvement or Airport property free from any and all liability to Lessee for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development or expansion.

2. Maintenance, Repair, Direction and Control

The City further shall have the right, but not the obligation, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, including but not limited to such areas as are necessary to serve the aeronautical users of the Airport, other than as may be leased to or under the control of other Airport tenants, together with the right to direct and control all activities of Lessee in this regard.

3. Airspace

There is hereby reserved to the City and its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, including but not limited to the right to cause or allow in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation at the Airport, without liability or obligation of any kind.

ARTICLE VII - DEFAULT AND TERMINATION

A. TERMINATION BY THE CITY

Lessee acknowledges and agrees that the City may, at its option, upon the occurrence of any of the following events, immediately or at any time thereafter, terminate this Lease and, without demand or notice, enter into and upon the Premises or any part thereof and repossess the same and expel Lessee and any persons claiming by, through, or under Lessee and remove its or their property and effects, if any, forcibly if necessary, from the Premises or elsewhere at the Airport, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be available for arrearage of rent or preceding breach of any provision hereof, and may further declare the entire balance of rents due hereunder immediately due and payable and commence an action to recover said sum from Lessee:

1. if Lessee shall be in arrears in the payment of any rent due hereunder for a period of ten (10) days or more after the City has notified Lessee thereof in writing of the default;

2. the failure or refusal of Lessee to conduct its operations at the Premises continuously as required in this Lease, and the failure or refusal shall continue for a period of not less than ten (10) days after the City has notified Lessee in writing of the default, and Lessee has failed to cure the default within the ten (10) day period;

3. the failure or neglect of Lessee to perform any of the covenants, terms and conditions hereof (other than payment of rent and continuous operation of Lessee's business operations), and the failure or neglect shall continue for a period of not less than thirty (30) days after the City has notified Lessee in writing of the default, and Lessee has failed to correct or actively begun curing the default within the thirty (30) days;

4. the voluntary abandonment by Lessee of the Premises or its operations at the Airport for a period of thirty (30) days or more;

5. the seizure or taking of possession, for a period of fifteen (15) days or more, of all or substantially all of the property used on the Premises belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;

6. the filing of any lien against the Premises because of any act or omission of 'Lessee which is not discharged or contested in good faith (as the City shall determine in its sole discretion) by proper legal proceedings within twenty (20) days of receipt of actual notice of such lien by Lessee;

7. Lessee's falsification of any of its business records or books with the intent of depriving the City of any rents or other rights under the terms of this Lease;

8. Lessee's attempt to make an assignment, transfer, merger or consolidation of its business operations at the Premises in violation of Section B of Article VIII; or

9. any permanent injunction of Lessee's conduct of business at the Premises by a court of final jurisdiction; provided, however, that if Lessee shall be temporarily enjoined from doing business at the Airport, any resulting cessation of business by Lessee, so long as the injunction remains in effect, shall not be considered a breach of this Lease or cause for termination by the City hereunder, unless and until such injunction becomes permanent.

B. ADDITIONAL REMEDIES

1. Statutory Remedies

In addition to any and all other remedies provided herein, the City, as lessor, shall be entitled to all of the remedies enumerated in Title 33, Chapter 3, Article 4 of the Arizona Revised Statutes, the provisions of which are incorporated by reference as a part of this Lease, as if the same were set forth herein in its entirety.

2. Remedies Cumulative

The remedies of the City set forth herein shall be cumulative and are not intended to be exclusive of any other remedies or means of redress to which the City may be lawfully entitled in the event of Lessee's breach of any provision of this Lease. In addition to any other remedies set forth herein, the City shall be entitled to the restraint by injunction of any violation, or attempted or threatened violation, of any of the terms, covenants conditions or other provisions of this Lease.

C. TERMINATION BY LESSEE

1. Termination for Cause

In addition to any other rights of cancellation it may have hereunder or by law, Lessee may, at any time that Lessee is not in default hereunder, terminate this Lease at its option by giving the City thirty (30) days' prior written notice of such termination, upon the occurrence of any of the following events:

(a) An order or action by the FAA or any other governmental authority substantially terminating Lessee's right to conduct its operations at the Airport;

(b) the issuance, by a court of competent jurisdiction, of an injunction of at least thirty (30) days' duration, prohibiting or restraining the use of the Airport as an airport or Lessee's business operations at the Airport;

(c) a national emergency in which there is a curtailment of the use of aircraft and/or motor vehicles by the general public, or a limitation of the supply of gasoline and/or aircraft fuel available for general use either by executive decree or legislative action, which results, in fact, in a substantial curtailment of Lessee's business operations at the Airport;

(d) a breach by the City of any material covenant of this Lease, which breach remains uncured for a period of thirty (30) days following written notice to the City;

(e) Lessee's inability to use the Premises or to conduct its business operations at the Airport due to the City's failure to maintain the Airport or unsafe conditions at the Airport; or

(f) the seizure or other assumption of control of the Airport by any government other than the City.

D. MEDIATION

If a dispute arises out of or relates to this Lease, other than Lessee's failure to pay rent when due, 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 will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, with the exception of the

mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

E. PROPERTY UPON TERMINATION

1. Condition of the Premises

Lessee covenants and agrees that upon any termination of this Lease, however caused, it will quit and surrender the Premises and shall perform such repair of the Premises so that it is in as good condition as it was at the time this Lease was entered into, reasonable wear and tear excepted.

2. Fixtures

All fixtures installed and permanently affixed to the realty of the Premises or the Airport during the term of this Lease shall become and remain the property of the City. All signs, decorations, fixtures, and equipment which Lessee may install during the term of this Lease that have not been permanently attached to the Premises or the Airport shall remain the property of Lessee.

3. Removal of Personal Property

Upon any termination of this Lease, however caused, Lessee shall remove from the Airport, within thirty (30) days of such termination, all signs, decorations, equipment, trade fixtures and personal property belonging to Lessee or its sublessees, if any, that have not been permanently attached to the Premises or any part of the Airport.

F. DAMAGE AND DESTRUCTION

In the event of damage, destruction or substantial loss of or to the Premises or any improvements constructed upon the Premises resulting from any cause beyond the control of Lessee which materially impairs Lessee's ability to conduct its business operations at the Premises, which damage, destruction or loss is not capable of being repaired within sixty (60) days, Lessee shall have the option to terminate this Lease upon written notice to City not later than ten (10) days after the occurrence of such event. In the event of termination by Lessee under this Subsection F, Lessee shall, at its sole cost and expense, conduct and perform all cleanup and/or demolition of the Premises necessary to make the Premises ready for repair, replacement, restoration or rebuilding. In the event Lessee does not exercise such option, or in the event the damage, destruction or loss is capable of being repaired within sixty (60) days, then Lessee shall promptly repair, replace, restore or rebuild the improvements.

G. CONFLICT OF INTEREST

1. Notwithstanding anything to the contrary contained herein, the parties acknowledge in accordance with Arizona Revised Statutes §38-511 that the City may terminate this Lease upon written notice at any time within three (3) years of its execution, without penalty or further obligation, in the event that any person significantly involved in initiating, securing, drafting or creating this Lease on behalf of the City shall become an employee or agent of Lessee in any capacity or shall render consulting services to Lessee with respect to the subject matter of this Lease.

H. BUSINESS OPERATIONS IN SUDAN/IRAN

In accordance with A.R.S. § 35-391.06(A) and 35-393.06(B), Lessee certifies that the Lessee and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Lessee certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Lease.

I. VERIFICATION REGARDING IMMIGRATION LAWS

Lessee hereby warrants to the City that Lessee 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 "Lessee Immigration Warranty"). A breach of the Lessee Immigration Warranty shall constitute a material breach of this Lease and shall subject the Lessee to penalties up to and including termination of this Lease at the sole discretion of the City.

ARTICLE VIII - MISCELLANEOUS

A. FORCE MAJEURE

The performance of all covenants contained herein shall be postponed and suspended during such period as such performance is prevented by acts of God, accidents, weather and conditions arising from them, strikes, boycotts, lockouts and other labor troubles, riot, fire, earthquake, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and attendant conditions, the exercise of paramount power by the federal government, either through the taking of the Premises or the imposition of regulations restricting the conduct of business thereat, acts of enemies, sabotage, interference, restriction, limitation or prevention by legislation, regulation, decree, order or request of any federal, state or local government or any instrumentality or agency, including any court of competent jurisdiction or inability to secure labor or adequate supplies of materials, products or merchandise. The party claiming the occurrence of a condition of force majeure shall promptly notify the other party in writing of the occurrence of the condition and upon its cessation.

B. ASSIGNMENT

Lessee shall not at any time, without the prior written consent of the City:

1. assign or transfer, or permit or participate in any assignment or transfer of, this Lease or any of the rights, powers or privileges thereunder;

2. merge, consolidate, or combine, either directly or indirectly, with any other person, firm or corporation operating at the Airport under any other lease or concession agreement, whether such uniting, merging, consolidating, or combining be through the sale of property or sale of stock or otherwise; or

3. permit any of its owners, directors or officers, to serve as a director or officer, of any other firm or corporation operating at the Airport under any other lease or concession agreement.

C. FEDERAL GRANT ASSURANCES

Lessee acknowledges and agrees that this Lease shall be subject to all federal requirements set forth in the document entitled Airport Assurances, which is attached to and incorporated within this Lease as Exhibit C.

D. QUIET ENJOYMENT

The City represents that it has the right to lease the Airport and the Terminal Building, together with the facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this Lease. The City agrees that, on payment of the rent and performance of the covenants and agreements of the Lease by Lessee, Lessee shall peaceably have and enjoy the Premises and all rights and privileges of the Airport, its appurtenances and facilities.

E. NOTICES

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Lease shall be in writing and shall be effective and deemed received when hand-delivered or faxed, or, if sent by mail, three (3) business days after mailing, to the address given below for the party to be notified, or to such other address of which notice is given in accordance with this Section D:

if to the City:	if to Lessee:
City of Flagstaff	The Hertz Corporation
Airport Director 6200 S. Pulliam Drive, Suite 204 Flagstaff, AZ 86001 fax: (928) 556-1288	Simon Ellis, Vice President Global Real Estate & Concessions 225 Brae Boulevard Park Ridge, NJ 07656 fax: (201) 307-2689

F. NON-EXCLUSIVITY; COMPETING USES

Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right prohibited federal law. The rights and privileges granted under this Lease are non-exclusive, and the City has the right to grant to others the privilege and right of conducting any and all of the aeronautical activities listed herein. Notwithstanding the foregoing, the City covenants and agrees not to enter into any similar agreement with respect to the Airport which contains more favorable terms than are contained in this Lease or to grant to potential competitors of Lessee privileges not herein authorized, unless the same are currently extended to Lessee.

G. INTENTION OF THE PARTIES

This Lease is intended solely for the benefit of the City and Lessee and is not intended to benefit, either directly or indirectly, any third party or members of the public at large. Any work done or inspection of the Premises performed by the City is solely for the benefit of the City and Lessee.

H. INDEPENDENCE OF CONTRACT

Nothing herein is intended or shall be construed as in any way creating a relationship of co-partners between the parties hereto or as constituting Lessee the agent or representative or employee of the City for any purpose or in any manner whatsoever.

I. WAIVER

The failure of City to insist in any instance or in more than one instance upon a strict performance by Lessee of any of the provisions, terms, covenants, reservations, conditions, or stipulations contained in this Lease shall not imply, constitute or be considered as a waiver or relinquishment of the right to insist upon performance of such condition or covenant, or of any other provision hereof, nor shall any waiver by the City of any breach of any one or more conditions or covenants

of this Lease constitute a waiver of any succeeding or other breach hereunder. No waiver by City of any provision, term, covenant, reservation, condition or stipulation contained in this Lease shall be deemed to have been made in any instance unless expressed in the form of a resolution by the City Council.

J. PRIOR AGREEMENTS; INTEGRATION; MODIFICATION

The parties acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties, except as expressed in this Lease, and that this Lease, along with the exhibits attached hereto, constitutes the parties' entire agreement with respect to the matters addressed herein. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Lease. This Lease may be modified or amended only by written agreement signed by or for the party against whom enforcement of the same is sought.

K. SUCCESSORS AND ASSIGNS

All covenants and conditions of this Lease shall bind and shall inure to the benefit of the legal representatives, successors and assigns of the respective parties, provided that any representation, succession or assignment is authorized and permitted under this Lease and by law. Any and all agreements that Lessee shall make with any assignee of this Lease, and/or subleases of the Premises, or any part thereof, shall include all provisions contained in this Lease.

L. SEVERABILITY

In the event that a court of competent jurisdiction shall hold any part or provision of this Lease invalid, void or of no effect, the remaining provisions of this Lease shall remain in full force and effect, provided that continued enforcement of the remaining provisions does not materially prejudice either Lessee or the City in their respective rights and obligations contained in the valid provisions of this Lease.

M. HEADINGS

Headings or captions used in this Lease are used solely for convenience of the parties and shall not define, limit, describe, alter or affect the meaning of any provision of this Lease.

N. GOVERNING LAW

This Lease shall be governed, interpreted and enforced in accordance wits the laws of the State of Arizona. Venue for any action arising under this Lease shall be in Coconino County, Arizona.

IN WITNESS WHEREOF, the City and Lessee have executed this Concession/Lease Agreement as of the day and year first above written.

CITY OF FLAGSTAFF

By:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

THE HERTZ CORPORATION

By:_____
Its:_____

ATTEST:

STATE OF _____)
) ss.
County of _____)

ACKNOWLEDGEMENT. On this ____ day of _____, 20___, before me, a Notary Public, personally appeared _____, known to me or satisfactorily that he/she executed the same on behalf of _____, an _____ corporation, for purposes therein contained.

_____
Notary Public

My Commission Expires:

_____

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Dan Holmes, PW Project Manager
Date:	02/26/2014
Meeting Date:	03/04/2014

TITLE:

Consideration and Approval of Construction Contract: Pulliam Airport Concrete Ramp Joint Repair Project.

RECOMMENDED ACTION:

1) Approve the construction contract with Robert E. Porter Construction in the amount of $149,148.00 with a 45 day contract time, subject to approval from ADOT Multimodal Planning Division, Aeronautics Group;
2) Approve change order authority in the amount of $ 14,914.80 (10%) of the contract amount to cover 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:

Provide improved safety and infrastructure maintenance.

Financial Impact:

This project is budgeted in FY 2014 in the amount of $240,000.00 in Account 221-07-222-3139. The project is funded by a grant from ADOT Multimodal Planning Division - Aeronautics Group in the amount of $279,000 (90% of the total project cost) with a City match of $31,000.

Connection to Council Goal:

Repair, Replace and Maintain Infrastructure.

Has There Been Previous Council Decision on This:

Yes. Council accepted a grant from ADOT Aeronautics on December 17, 2013 in the amount of $279,000.00 to fund the project. Council approved the design contract for this project at the regularly scheduled meeting of April 17, 2012.

Options and Alternatives:

1) Approve the construction contract as presented. This would allow for timely completion of the project;
2) Reject approval of the contract and direct staff to re-advertise for bid. This would effectively delay the project by several months.

Background/History:

City Council approved award of the design services agreement for this project on April 17, 2012. That design work is now complete. The project was first advertised for bid on July 18, 2012. When bids were opened on August 2, 2012, it was determined that funding would only provide for the first phase of the work. That work was completed in the Fall of 2012. This project, the second phase, was first advertised for bid on January 31, 2014. Bids were opened on February 13, 2014. A total of three firms submitted bids for the project. A tabulation of the 3 (three) bids received is attached and is summarized below:

Bidder	Total Amount Bid
Consultant's Estimate	$ 205,175.00
Robert E. Porter Construction	$ 149,148.00
CSW Contractors	$ 221,628.45
BEC Southwest	$ 299,642.66

Key Considerations:

Replacement of the concrete ramp joints is a routine maintenance function which seals the joints from water penetration and eliminates the potential for degradation of the subsurface soils and consequent damage to the concrete pavement.

Expanded Financial Considerations:

This project is budgeted in FY 2014 in the amount of $240,000.00 in Account 221-07-222-3139. The project is funded by a grant from ADOT Multimodal Planning Division - Aeronautics Group in the amount of $279,000 (90% of the total project cost) with a City match of $31,000. The contract provides for a change order authority of 10% of the amount bid to cover the cost of unanticipated or additional work which may be required during construction. All work is anticipated to be complete in FY 2013/2014.

Community Benefits and Considerations:

The purpose of the project is to use the available grant funds in the most efficient manner to lengthen the service life of the concrete pavements and to avoid costly pavement reconstruction in the future.

Community Involvement:

The Public Participation Goals of Inform and Involve were used In public meetings where the City Airport Commission reviews the Airport Capital Improvement Plan and is updated monthly on project progress and impacts.

Expanded Options and Alternatives:

None

Attachments: Construction Contract 2014-51
Bid Tabulation

CONSTRUCTION CONTRACT

City of Flagstaff, Arizona
And
Robert E. Porter Construction Company, Inc.

This Construction Contract ("Contract") is made and entered into this _____ day of _____ 2014, by and between the City of Flagstaff, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("Owner") and Robert E. Porter Construction Company, Inc., and Arizona corporation ("Contractor") with offices at 1720 W. Lincoln St., Phoenix, 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 services; 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 all labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for the construction of **Concrete Ramp ,Joint Repair Project** (the "Project"). Contractor shall construct the Project for the Owner in a good, workman like 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 Technical Specifications	Exhibit B
2.1.3 Grant Provisions	Exhibit C

3. Payments. In consideration of the faithful performance of the work described in this Contract, the Owner shall pay an amount not to exceed **$149,148.00** to the Contractor for work and materials provided in accordance with the bid schedule, which amount includes 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 **45 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 3 above, or such additional time as may be allowed, the proceeds of Contractor's proposal 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 execution of this Contract, and bonds and the performance of work under this Contract, and the necessity of accepting a higher or less desirable bid from such failure or refusal to execute this Contract and bond as required. If Contractor has submitted a certified check or cashier's check as a proposal guaranty, the check shall be returned after execution of this Contract. The certified check or cashier's check of other Bidders shall be returned at the expiration of thirty (30) days from the date of opening of proposals or sooner, if this Contract is executed prior to that time.

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.	Robert E. Porter Construction Company, Inc.
Senior Procurement Specialist	Earl Lucas, President

211 West Aspen Avenue	1720 W. Lincoln St.
Flagstaff, AZ 86001	Phoenix, AZ 85007

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. Contractor's Warranty. 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, Verification of Employment Eligibility. Contractor shall not employ aliens in accordance with A.R.S. § 34-301, Employment of Aliens on Public Works Prohibited. Contractor acknowledges that pursuant to A.R.S. § 41-4401, Government Procurement; E-Verify Requirement; Definitions, 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 Owner retains the legal right to inspect the papers of any employee who works on the Contract to ensure compliance with this warranty.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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

Robert E. Porter Construction Company, Inc.

_____
Signature

_____
Printed Name

CITY OF FLAGSTAFF

CONCRETE RAMP JOINT REPAIR PROJECT

PROJECT NO. 01-14002 (270-3724-783)

BID TABULATION

CONCRETE RAMP JOINT REPAIR PROJECT COF FILE #01-14002 (270-3724-783)				**Consultant's Estimate**		**obert E. Porter Constructio**		**CSW Contractors**		**BEC Southwest**	
Item No.	**Description**	**Quantity**	**Unit**	**Unit Price**	**Amount**	**Unit Price**	**Amount**	**Unit Price**	**Amount**	**Unit Price**	**Amount**
1	CONTRACTORS QUALITY CONTROL	1	LS	#########	$51,000.00	#########	$19,964.00	$3,962.15	$3,962.15	$9,915.43	$9,915.43
2	MOBILIZATION / DE-MOBILIZATION	1	LS	#########	$15,100.00	$7,450.00	$7,450.00	#########	$28,840.55	#########	$22,309.73
3	PARTIAL DEPTH PATCHING OF RIGID PAVEMENT	200	SF	$70.00	$14,000.00	$32.00	$6,400.00	$144.58	$28,916.00	$16.11	$3,222.00
4	JOINT SPALL REPAIR - EPOXY	400	LF	$50.00	$20,000.00	$46.00	$18,400.00	$45.33	$18,132.00	$16.11	$6,444.00
5	RESEALING OF JOINTS IN RIGID PAVEMENT USING SILICONE SEALANT - TYP 1	24,000	LF	$3.90	$93,600.00	$3.57	$85,680.00	$5.11	$122,640.00	$9.66	$231,840.00
6	RESEALING OF JOINTS IN RIGID PAVEMENT USING SILICONE SEALANT - TYP 2	1,750	LF	$6.50	$11,375.00	$6.38	$11,165.00	$10.02	$17,535.00	$14.41	$25,217.50
7	SEALING OF CRACKS IN RIGID PAVEMENT USING SILICONE SEALANT	25	LF	$4.00	$100.00	$3.56	$89.00	$64.11	$1,602.75	$27.76	$694.00
	TOTAL AMOUNT BID				**$205,175.00**		**$149,148.00**		**$221,628.45**		**$299,642.66**

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Matt Faull, Recreation Supervisor

Co-Submitter: Brian Grube, Recreation Services Director

Date: 02/26/2014

Meeting Date: 03/04/2014

TITLE:

Consideration and Approval of Contract: Intergovernmental Agreement between the City of Flagstaff and Coconino County for use of the Joe C. Montoya Community and Senior Center for Senior Nutrition Programs and renewal of Meals on Wheels program. ***(Meals on Wheels Renewal)***

RECOMMENDED ACTION:

Approve Intergovernmental Agreement

Policy Decision or Reason for Action:

Approval of this agreement will ensure that the Senior Nutrition Program will continue to operate and provide for the continuation of the Meals on Wheels Program and the Congregate Meal Program and Meals on Wheels Program to the seniors of the greater Flagstaff community.

Financial Impact:

No direct financial impact to the approval of this agreement.

Connection to Council Goal:

Fund existing and consider expanded recreational services

Effective governance.

Has There Been Previous Council Decision on This:

Yes. The Intergovernmental Agreement with Coconino County has been approved several times in the past, most recently in 2007. Approving this agreement provides for an integral relationship between the City of Flagstaff and Coconino County in the delivery of a valuable service to the aging population of the greater Flagstaff area.

Options and Alternatives:

1.) Approve Intergovernmental Agreement

2.) Deny approval of Intergovernmental Agreement

Background/History:

The Joe C. Montoya Community and Senior Center is a City-owned and operated property located at 245 N. Thorpe Rd. in Flagstaff. Coconino County operates its Senior Congregate and Meals on Wheels programs at the Center, using the kitchen for meal preparation Monday through Friday, the Allen room for congregate meals, and the driveway for Meals on Wheels and deliveries.

Funding for the County nutrition programs are provided by Older American Act funds through the Area Agency on Aging, Coconino County general funds, and participant and corporate donations.

Key Considerations:

The County nutrition programs offered at the Joe C. Montoya Community and Senior Center are vital to the aged population of the greater Flagstaff area. Approximately 90 Meals on Wheels lunches are prepared daily in the kitchen and brought to home-bound seniors. In addition, approximately 65 seniors participate in the congregate meal program daily, Monday through Friday. This program is about more than just a lunch; for many of the these seniors it is the socialization and the ability to stay connected with their peers that is so important.

The senior Congregate Meal Program housed at the Joe C. Montoya Community and Senior Center is only successful with the cooperation of several public entities and support of the general population. The City of Flagstaff participates by providing a facility to host the program, the County provides the staffing and nutritional expertise, N.A.I.P.T.A. provides a transportation option to and from the Center, and volunteers from the community provide dining room and kitchen help as well as serve as delivery drivers for the Meals on Wheels Program. The Seniors collaborate on the design of the monthly menu and outside groups often come to present information to the seniors to enhance their quality of life.

Community Benefits and Considerations:

There is a tremendous benefit to the entire community being delivered through this program. Providing for our aging population is one of the many things that makes our community better. It is not only the program participants that receive the benefit of a meal, it is also the families that benefit from knowing that their parent, grandparent or friend is safe and in the company of their peers on a daily basis.

Community Involvement:

.

Attachments: IGA 2014

INTERGOVERNMENTAL AGREEMENT

Coconino County
and
City of Flagstaff

This Intergovernmental Agreement ("Agreement") is made this __ day of _____ 2013, by and between COCONINO COUNTY, a political subdivision of the State of Arizona, of 219 East Cherry Avenue, Flagstaff, Arizona ("County") and the CITY OF FLAGSTAFF, an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("City") for use of the Joe C. Montoya Community and Senior Center ("Center") for senior nutrition programs.

RECITALS

A. The Joe C. Montoya Community and Senior Center is a City-owned and operated facility located at 245 North Thorpe Park Road in Flagstaff.

B. The County operates its Senior Congregate and Meals on Wheels programs at the Center, using the kitchen for meal preparation Monday through Friday, the Allen Room for congregate meals, and the driveway for Meals on Wheels and deliveries.

C. Funding for the County nutrition programs is provided by Older American Act funds through the Area Agency on Aging, Coconino County general funds, and participant and corporate donations.

D. The County's use of the Center for its senior nutrition programs began pursuant to a previous contract with the City dated July 18, 1988.

E. The County and the City desire to enter an intergovernmental agreement establishing the terms and conditions under which the County will continue to have access to the Center for the purpose of carrying out its senior nutrition programs.

NOW THEREFORE, pursuant to A.R.S. § 11-952, authorizing contracts between public agencies for services or the joint exercise of powers common to both, and the inherent powers of each party to protect the health and welfare of its constituents, for and in consideration of the mutual obligations and covenants set forth herein, the parties agree as follows:

1. DURATION; TERMINATION.

This Agreement shall be effective on the date first set forth above and shall continue in force and effect for a period of five (5) years. This Agreement may be terminated by either party upon thirty (30) days written notice of termination delivered to the other

party. Either party may terminate this Agreement if sufficient funding is no longer available to carry out that party's responsibilities under the Agreement. This Agreement may be terminated by either party without penalty or further obligation, in accordance with the provisions of Arizona Revised Statutes §38-511.F, in the event of the occurrence of any of the circumstances described in A.R.S. §38-511.A.

2. **FUNDING; FINANCIAL RESPONSIBILITIES.**

The County shall be responsible and pay for all expenses associated with the operation of its senior nutrition programs, including but not limited to, the costs of food, supplies, telephones, vehicles, gasoline, liability insurance, and the maintenance and upkeep of all kitchen equipment, appliances, drains, and other items necessary for the operation of the program. The County shall be responsible for obtaining and paying for all permits and inspections necessary to operate the senior nutrition programs. The County shall pay for all costs associated with the supervision of its senior nutrition program staff. Any kitchen improvements or replacement of large equipment or appliances must be approved by the City in advance. The County shall pay for repairing or replacing any kitchen equipment damaged as a result of the County's own negligent use of such equipment, normal wear and tear excepted. Aside from the references to maintenance obligations in Section 6 below, the city shall maintain only the Center itself and pay for the upkeep and repair of the same. The County shall maintain and pay for the upkeep, repairs and/or replacement of the storage shed located outside near the kitchen entrance.

3. UTILITIES:

The City shall pay for all utility costs in the Center (other than communications related utilities including but not limited to phone, fax and internet services).

4. **SCHEDULING; USE OF BUILDING.**

The County shall have use of the kitchen for all meal program events between 5:30 a.m. and 2:30 p.m. Monday through Friday. The County shall have use of the Allen Room for meal program events between 10:30 a.m. and 2:30 p.m. Monday through Friday. No other groups or events shall be scheduled in the kitchen or Allen Room during the times listed above, without prior notification. The County may use the kitchen and Allen Room at other times subject to City approval and space availability. Programs and events have priority use of the Allen room outside of the times allocated to the County as defined in this agreement. If the need arises that the City requires the use of the Allen room and/or kitchen during the County's allotted time slot, the City may, in its sole discretion, use the kitchen and/or Allen Room. Where possible, the City shall give the County a two (2) week notice prior to such use. However, in the event that no such prior notice is possible due to an emergency situation, the City shall not be required to give the County the two (2) week notice.

5. DAILY OPERATIONAL STANDARDS.

The County shall maintain the kitchen and Allen Room in a sanitary and safe condition at all times, per County health regulations. The County agrees to set up the Allen Room beginning at 10:30 a.m. and to clear the Allen Room beginning at 1:30 each day, Monday through Friday. County employees and volunteers will conduct themselves at all times in a professional and courteous manner while utilizing the kitchen at the Center.

The County agrees to clean off all tables and chairs prior to putting them away and to sweep and mop the floors to remove all debris after each serving. City staff will monitor clean up to ensure areas are ready for the next user group. County staff shall limit their activities, as much as possible, to the kitchen and Allen Room and shall keep other areas free of equipment and materials that may block or otherwise impair the use of the Center for other purposes. County staff shall alert the City of any special events, safety concerns, or repairs that are needed at the Center.

6. FACILITIES AND EQUIPMENT USE AND MAINTENANCE; SUPPLIES.

The County shall maintain all kitchen equipment in an operational and sanitary condition, in compliance with applicable County health requirements. The County shall not allow any entity other than the County and its employees to use the kitchen equipment during the County's scheduled use periods. The City shall take reasonable steps to ensure that dining or food supplies purchased by the County are not used by any other entity without the express permission of the County. The County shall clearly identify and label its dining and food supplies. As the kitchen and equipment is utilized exclusively by the County, replacement of equipment and repairs to the existing equipment/kitchen shall be handled on a case base case basis to determine the responsible party. These determinations will ultimately be made by the City, after the matter is reviewed by ~~by~~ the Center's Supervisor, Facilities Supervisor, and the Recreation Services Director in cooperation with staff designated by the County. The County will pay for the replacement of dining room tables as needed as they are used primarily for the meal program.

7. EMPLOYMENT STATUS.

County employees and volunteers associated with the senior nutrition programs shall at all times remain employees of the County. The City shall not have supervisory authority or control over the day-to-day work of the County employees or volunteers associated with the County's senior nutrition programs.

8. INSURANCE.

The County and the City shall each maintain sufficient liability insurance to cover each party's respective activities associated with this Agreement.

9. INDEMNIFICATION.

Each party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other party (as "Indemnitee") for, from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney fees, (hereinafter collectively referred to as ("Claims") arising out of bodily injury of any person, including death, or property damage, but only to the extent that such Claims which result in vicarious or derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers. Notwithstanding any other provision of this Agreement to the contrary, any agreement by one party to hold harmless or indemnify the other party shall be limited to, and be payable only from, the indemnifying party's available insurance or self-insurance coverage for liability assumed by contract available as a part of its insurance program.

10. NOTICES.

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and sent to the address given below for the party to be notified, or to such other address, notice of which is given in accordance with this Section:

If to the County:	If to the City:
County Manager 219 East Cherry Avenue Flagstaff, AZ 86001	City Manager 211 West Aspen Avenue Flagstaff, AZ 86001

11. AUTHORITY TO CONTRACT.

Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder and has taken all required acts or actions necessary to authorize the same.

12. GOVERNING LAW.

This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Arizona.

13. DISPUTE RESOLUTION.

Either party shall have the right to litigate any disputes which arise under this Agreement. Any litigation brought by either party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. 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 will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

14. AGENTS, EMPLOYEES, AND CONTRACTORS

Agents, employees and contractors hired by a Party to provide services under this Agreement shall be and remain the agents, employees, and contractors of the hiring Party solely, and shall not be considered agents, employees, or contractors of the other Party.

15. LEGAL WORKERS.

As mandated by Arizona Revised Statutes § 41-4401, each party (a) warrants the party's compliance with all federal immigration laws and regulations that relate to the party's employees and their compliance with Arizona Revised Statutes § 23-214(A); (b) acknowledges that a breach of the warranty in subsection (a) of this section shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement; and (c) retains the legal right to inspect the papers of any contractor or subcontractor employee who works pursuant to this Agreement to ensure compliance with the warranty.

16. CONSTRUCTION.

This Agreement shall be construed as a whole and in accordance with its fair meaning. This Agreement shall not be construed for or against either Party.

17. INTEGRATION; MODIFICATION.

Both parties acknowledge and agree that they have not relied upon any statements, representations, agreements, or warranties, except as expressed in this Agreement, and that this Agreement constitutes the parties' entire agreement with respect to the matters addressed. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded by and merged in this Agreement. This Agreement may be modified or amended only by written agreement signed by or for both parties, and any such modification or amendment will become effective on the date so specified.

18. NO ASSIGNMENT; BINDING EFFECT.

This Agreement is not assignable by either party. Any attempt to do so shall render the assignment null and void and the Agreement may be terminated immediately by the non-assigning party.

19. **SEVERABILITY.**

In the event that a court of competent jurisdiction shall hold any part or provision of this Agreement void or of no effect, the remaining provisions of this Agreement shall remain in full force and effect.

20. **WAIVER.**

No failure to enforce any condition or covenant of this Agreement shall imply or constitute a waiver of the right to insist upon performance of such condition or covenant, or of any other provision hereof, nor shall any waiver by either party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach of this Agreement.

21. **HEADINGS.**

The headings used in this Agreement are for convenience only and are not intended to alter or affect the meaning of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

[SIGNATURE PAGE FOLLOWS]

City of Flagstaff

By: Gerald W. Nabours, Mayor
City of Flagstaff

Attest:

City Clerk

Approved as to form:

Michelle D'Andrea, City Attorney

Coconino County

By: Matt Ryan, Chairman
Board of Supervisors

Attest:

Clerk of the Board

Approved as to form:

David W. Rozema, County Attorney

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Mark Gaillard, Fire Chief
Date:	02/26/2014
Meeting Date:	03/04/2014

TITLE:

Consideration and Approval of Contract: Consideration to enter into the Cooperative Greater Flagstaff Fire Agencies All Risk Emergency Intergovernmental Agreement. ***(Enter into agreement with surrounding fire districts for mutual cooperation in responding to emergencies)***

RECOMMENDED ACTION:

Approve the Cooperative Greater Flagstaff Fire Agencies All Risk Emergency Intergovernmental Agreement and authorize the Mayor to execute on behalf of the City of Flagstaff.

Policy Decision or Reason for Action:

Consideration of the community fire protection risks and limited resources in the greater Flagstaff area point to the conclusion that a single incident or a complex of incidents could easily exceed the capabilities of the Flagstaff Fire Department or any of the participants in the IGA. Additionally, reduced fiscal resources have created an environment that supports increased and greater levels of cooperation for the protection of the public and its first responders. The proposed IGA establishes procedures for mutual aid while broadening the scope of the IGA to encourage regional cooperation wherever possible. The resulting cooperation increases the level of public safety in the region, provides better value in the expense of public resources and heightens the level of safety for firefighters.

Financial Impact:

None

Connection to Council Goal:

Effective governance.

Has There Been Previous Council Decision on This:

In 2008, the City Council enacted the current version of this mutual aid IGA. Prior to its adoption, the previous mutual aid agreement was a 1997 agreement that had a primary focus on wildland fire responses. Since the 2008 adoption of the existing agreement, there has been limited interaction between the leadership of the participating agencies in the IGA. In the Fall of 2013, the chiefs of the participating fire departments and fire districts met to discuss interest in collaborating on regional efforts with the goal of maximizing our limited resources to achieve improved levels of public safety, improved safety for our firefighters, and to demonstrate the greatest efficiencies to our residents.

Discussion among the participating chiefs lead to a proposal to revise the current IGA to achieve the following Objectives:

- Broaden the Scope of the IGA to allow for greater collaboration in emergency and non-emergency response. The IGA contemplates that training, fire prevention, procurement, and administration, in addition to all-risk emergency responses, would be desirable and allowable.
- Remove the reimbursement provisions of the existing IGA and related conflict dispute provisions and emphasize reciprocity as the primary intent of the IGA.

The proposed IGA is largely the same as the 2008 version with specific revisions to the recitals to express the intent to cooperate and assist. The agreement was broadened in scope to allow for non-response cooperation and the reimbursement provisions were removed. In place of monetary reimbursement, the IGA introduces intent to provide mutual aid and reciprocity taking the form of the parties providing comparable resources to assist each other. The recommended omission of the reimbursement provisions aligns the IGA with more traditional language regarding mutual aid and is more consistent with higher level mutual aid agreements such as the State of Arizona Fire Service Mutual Aid Plan (Executive Order 2003-21).

The agreement has also been amended to protect the ability of the participants to enter into specific service agreements among each other.

Options and Alternatives:

1.) The City Council may approve this agreement.
2.) The City Council may direct the Fire Chief to renegotiate the provisions of this agreement.
3.) The City Council may decline to enter into a revised agreement.

Expanded Financial Considerations:

Since the 2008 adoption of the existing IGA, the reimbursement provisions of the IGA have not been utilized in any instance.

Community Involvement:

Inform

Attachments: FD Services IGA

After recording, return to:

City Clerk
Flagstaff City Hall
211 W. Aspen Avenue
Flagstaff, AZ 86001

Cooperative Greater Flagstaff Area
Fire Agencies All Risk Emergency
Intergovernmental Agreement

This Intergovernmental Agreement ("Agreement") is entered into by and among governmental fire rescue and emergency medical service agencies, districts and municipalities (the "Party" or Parties") that have adopted and executed this Agreement.

RECITALS

A. The Parties shall consist of members of various fire rescue and emergency medical service departments which together, form a cooperative of information, training, fire prevention, procurement, administration, fire suppression response, medical services and any cooperative effort which is deemed mutually beneficial to the Parties.

B. The Parties concur that working collaboratively yields the highest levels of services in conjunction with the most effective use of local fire, rescue, and emergency medical department resources.

C. The Parties seek to provide the most efficient, safe, and effective fire-rescue-emergency medical services to their communities.

D. It is the desire of the Parties to continue and improve the nature and coordination of emergency assistance to incidents that threaten loss of life or property within the geographic boundaries of their respective jurisdictions to include regional operations, procedures, and practices governing command and control and hazard zone operations.

E. The Parties recognize the vulnerability of the people and the communities located within the greater Flagstaff area to damage, injury, and loss of life and property resulting from fire and all other natural and man-made emergencies and disasters ("Incidents"). It is also recognized that fires, natural and man-made emergencies, and disasters may present equipment and staffing requirements beyond the capacity of each individual Party.

F. The Parties who have executed this Agreement are fire districts and municipalities of the State of Arizona and are authorized pursuant to A.R.S. § 11-951 *et seq* to enter into intergovernmental agreements for the joint exercise of powers to carry out their mutual responsibilities.

1. Purpose

The purpose of this IGA is to establish the lawful cooperation of governmental fire and medical rescue departments in the mutual attainment of their life safety mission.

2. Scope

The scope of this agreement shall include the following:

2.1 To provide cooperative procedures and practices including but not limited to emergency response, emergency standby coverage, joint purchasing, communications infrastructure and protocols, training, health and safety, fire prevention, public education, fire investigations, wildland fuels mitigation and suppression programs and other activities that will enhance the ability of the Parties to fulfill their missions, and;

2.2 To provide procedures to notify Parties of the need for assistance in the event of an Incident.

3. Request for Assistance

Any Party who is a signatory to this Agreement may request assistance for fire and emergency services if the requesting Party is faced with an Incident that is occurring or potentially beyond the capacity of the requesting Party to control or mitigate; or the requesting Party is occupied with another Incident.

3.1 Authorized Designee. Upon contacting its dispatch center to request mutual assistance, each Party shall identify an authorized designee to provide contact information, including 24-hour access, and shall maintain current resource information for purposes of mutual assistance response.

4. Response to Request

A Party which receives a request for assistance shall respond unless the safety of the citizens and property within its jurisdiction would be compromised. The Fire Chief or the authorized designee of each Party which receives a request for assistance shall be the sole judge as to the amount of assistance, if any, which that Party can provide. No Party shall be liable to any other Party for failing to respond to a request for assistance, for the amount of assistance provided, or assistance withdrawn.

5. Incident Command

A Party that responds to a request for assistance shall work under the direction of the Incident Commander ("IC") as designated by the Incident Command System ("ICS"). If the assisting Party needs to return to its jurisdiction during this time period, the Party shall coordinate a release time with the Incident Commander. The IC will make all attempts to release Mutual Aid units back to their jurisdiction as soon as it is safe and appropriate to do so.

6. Responsibility for Equipment and Personnel

In rendering initial attack mutual assistance, each requesting and assisting Party shall be responsible for the provision and maintenance of the respective Party's own equipment and personnel.

7. Costs

Except as specifically agreed to by the Parties for a particular incident, neither Party shall be reimbursed by the other party for any costs incurred pursuant to this Agreement.

8. Reciprocity

The Parties agree that mutual aid provided pursuant to this Agreement is reciprocal. The Parties acknowledge that mutual aid does not ensure that a Party will receive the exact same amount of assistance that it gives. It is intended that the level of service delivered under this agreement will be comparable.

9. Operational Procedures

From time to time, the Fire Chiefs or authorized designees of each Party may promulgate mutually agreeable written operational procedures for the cooperative implementation of this Agreement. In addition, field exercises as well as command, control, and communication exercises may be implemented to examine, evaluate and improve the collective performance of all Parties.

10. Incident Reports

All Parties shall make available to other Parties all incident reports that involve mutual assistance.

11. Participating Parties

A District or Municipality not a Party to this Agreement may enter into this Agreement without amendment of this Agreement by the governing bodies of the existing members, provided that it is approved as a Party by a voice vote of a simple majority of the authorized designees of the Parties to the Agreement, and its governing body approves the terms of this Agreement and authorizes execution of the Agreement.

12. Indemnification

Each Party (as "Indemnitor") agrees to indemnify, defend and hold harmless any other Party or Parties or their officers, officials, agents employees or volunteers (as "Indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (collectively referred to as "Claims") arising out of bodily injury of any person, including death, or property damage, but only to the extent that such Claims which result in vicarious or derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers. This indemnification shall survive termination of this Agreement

or the termination of the participation of any of its Parties.

13. Worker's Compensation Claims

Each Party shall be responsible for any injuries which may occur to its own personnel during the course of rendering mutual aid under this Agreement. In accordance with A.R.S. § 23-1022, each Party shall be deemed the primary employer and shall have sole responsibility for the payment of worker's compensation benefits to its respective employees. Each Party shall comply with the notice provisions of A.R.S. § 23-1022(E).

14. Insurance

Each Party shall bear the risk of its own actions, as it does with all its operations, and shall determine for itself an appropriate level of insurance coverage and maintain such coverage. Nothing in this Agreement shall be construed as a waiver of any limitation on liability that may apply to a Party.

15. Effective Date; Term

15.1 Effective Date. This Agreement will become effective for each Party after approval by its governing body and recording with the Coconino County Recorder's Office (the "Effective Date").

15.2 Term. Except as otherwise provided in this Agreement, this Agreement will terminate on June 30, 2018, unless extended by action of the Parties.

15.3 Any Party may terminate its participation in this Agreement by providing each of the other Parties thirty (30) days written notice.

16. Cancellation for Conflict of Interest

This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511.

17. Existing Mutual Aid Agreements

This Agreement shall supersede any mutual aid agreements or other agreements between or among any of the Parties which are currently in effect. The existing Cooperative Greater Flagstaff Area Fire Agencies All Risk Emergency Mutual Aid Intergovernmental Agreement entered by the parties in 2008 is hereby terminated and replaced in its entirety by this Agreement. The Parties recognize that this Agreement is not intended to terminate, modify, amend, or otherwise alter any Cooperative Agreements entered into by and between the Arizona State Land Department / State Forester and its cooperators.

18. Right to Enter into Additional Agreements

The Parties to this Agreement are not precluded from participating in additional or supplemental IGA's or contracts as deemed appropriate by the Parties. Nothing in this Agreement shall limit the ability of a Party to provide emergency assistance to another jurisdiction which is not a participant in this Agreement.

19. Compliance with All Laws.

Each Party shall comply with all federal, state and local laws, rules and regulations.

20. Execution Procedure

This Agreement will be executed in counterparts by the governing body of each Party. Upon execution, the counterpart signature page will be recorded with the Coconino County Recorder's Office.

Cooperative Greater Flagstaff Area
Fire Agencies All Risk Emergency
Intergovernmental Agreement

Signature Page

IN WITNESS WHEREOF, the Parties each sign this Intergovernmental Agreement on a separate signature page. The signatories warrant that they have been duly authorized to bind the jurisdiction to the terms and conditions in this Agreement by formal approval of the jurisdiction's governing body.

City of Flagstaff

Authorized signatory:

_____
Name: _____
Title: _____

Attest:

_____
City Clerk

Date of formal approval by governing body:

_____

Approved as to Form:

_____
City Attorney

Cooperative Greater Flagstaff Area
Fire Agencies All Risk Emergency
Intergovernmental Agreement

Signature Page

IN WITNESS WHEREOF, the Parties each sign this Intergovernmental Agreement on a separate signature page. The signatories warrant that they have been duly authorized to bind the jurisdiction to the terms and conditions in this Agreement by formal approval of the jurisdiction's governing body.

Party:

_____

Authorized signatory:

_____
Name: _____
Title: _____

Attest:

_____
Name: _____
Title: _____

Date of formal approval by governing body:

_____

Attorney's Approval:

_____
Name: _____
Title: _____

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Mark Gaillard, Fire Chief
Date:	02/26/2014
Meeting Date:	03/04/2014

TITLE:

Consideration and Approval of Contract:

Consideration to enter into the Arizona Mutual Aid Compact. ***(Enter into mutual aid agreement with other jurisdictions throughout the State of Arizona for responding to emergencies)***

RECOMMENDED ACTION:

Approve the Arizona Mutual Aid Compact and authorize the Mayor to execute on behalf of the City of Flagstaff.

Policy Decision or Reason for Action:

Participation in the AZMAC is recommended to predetermine the availability and deployment of mutual aid resources within the County and by virtue of County to County agreements in place, the state of Arizona. The AZMAC is also the enabling mechanism by which reimbursement for response can be secured. The City of Flagstaff with its unique and formidable risks associated with Wildland Fire and Wildland Fire Interface, (Not to exclude transportation and other risk categories) is likely to find itself in the position to request mutual aid resources on a large scale. Participation in the widely accepted compact is recommended.

Financial Impact:

There is no financial impact to the City of Flagstaff for participating in the compact nor is there a commitment to incur financial impacts as a part of participation.

Connection to Council Goal:

Effective governance.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

1) Enter into the Mutual Aid Contract

2) Not enter into the Mutual Aid Contract

Background/History:

The compact establishes authorities, procedures, and intent to participate in mutual aid responses beyond the scope of a local and regional jurisdiction's capabilities. The compact supports mutual aid response coordination from the local, the state, and federal governments. It is guided by the policies of the National Incident Management System and Arizona Revised Statutes. Similar to typical local mutual aid agreements, the AZMAC establishes methods and expectations that guide mutual aid activities. The elements include: common definitions; procedures for requesting mutual aid; reimbursement procedures; workman's compensation treatment and standard protections afforded to the participants.

Community Involvement:

Inform

Attachments: AZMAC
AZMAC Signatories

ARIZONA MUTUAL AID COMPACT

This Compact is made and entered into by and among the signatory political jurisdictions within the State of Arizona and the Arizona Department of Emergency and Military Affairs.

Recitals

WHEREAS, one or more parties to this Compact may find it necessary to utilize all of their own resources to cope with emergencies and may require the assistance of another party or other parties; and,

WHEREAS, it is desirable that all resources of political subdivisions, municipal corporations, tribes and other public agencies be made available to respond to such emergencies; and,

WHEREAS, it is desirable that each of the parties hereto should assist one another when such emergency occurs by providing such resources as are available and needed including, but not limited to, fire, police, medical and health, environmental, communication, and transportation services to cope with the problems of response and,

WHEREAS, it is desirable that a compact be executed for the interchange of such mutual aid; and,

WHEREAS, it is desirable that the manner of financing of such cooperative undertakings be resolved in advance of such emergency;

NOW, THEREFORE, IT IS HEREBY AGREED by and between each and all of the signatories hereto as follows:

COMPACT

1. Purpose.

The purpose of this Compact is to define for the participating parties the emergency management terms and procedures which will be used among participating parties for dispatching mutual aid assistance to any affected area in accordance with local ordinances, resolutions, emergency plans or agreements. Contracting authority for political subdivisions of Arizona for this Compact is based upon A.R.S. § 26-308 which provides that each county and incorporated city and town of the state may appropriate and expend funds, make contracts and obtain and distribute equipment, materials and supplies for emergency management purposes. Tribal contracting authority will be in accordance with each Tribe's laws.

2. Scope.

The Scope of this Compact is to (1) provide the procedures to notify the Providing Parties of the need for emergency assistance; (2) to identify available resources; and, (3) to provide a mechanism for compensation for resources.

3. Definitions.

Automatic Mutual Aid means the automatic dispatch and response of requested resources without incident specific approvals. These agreements are usually basic contracts; some may be informal accords.

Backfill means replacement of the Requesting Party's personnel who perform the regular duties of other personnel while they are performing eligible emergency work.

Compact means this document, the Arizona Mutual Aid Compact (AZMAC).

Director is the Director of the Department of Emergency and Military Affairs (DEMA).

Emergency or **Emergencies** means any disaster, emergency, or contingency situation which requires a collaborative effort among multiple Jurisdictions.

Jurisdiction means an entity, including Political Subdivisions and tribal governments, which (1) has the authority to act, within a defined geographical area especially in times of emergency and (2) is a party to this Compact.

Local Mutual Aid are agreements between neighboring jurisdictions or organizations that involve a formal request for assistance and generally cover a larger geographic area than automatic mutual aid.

Political Subdivision means any county, incorporated city or town, or public education district, irrigation, power, electrical, agricultural improvement, drainage, and flood control districts, and other tax levying public improvement districts.

Providing Party means the Jurisdiction providing aid in the event of an emergency.

Requesting Party means the Jurisdiction requesting aid in the event of an Emergency.

Self-deployed means to respond to an emergency without being requested by the Requesting Party.`

4. Guiding Policy.

Arizona Revised Statute (A.R.S.), Title 26, Military Affairs and Emergency Management.

Arizona Administrative Code (A.A.C.), Title 8, Emergency and Military Affairs.

National Incident Management System (NIMS), 2008

5. Procedures for Requesting Assistance.

A Requesting Party, which needs assistance in excess of its own resources and existing automatic mutual aid or local mutual aid due to an emergency is authorized to request assistance from any party to this Compact. However, when making such requests, consideration shall be given to, and requests made, based on, but not limited to, the geographical proximity of other jurisdictions with that of the jurisdiction requesting assistance. All requests for assistance from the State must come from the Requesting Party's county.

Requests should specify what the emergency is, what resources are needed and the estimated period of time during which such mutual aid shall be required, if known. An example is provided in Appendix A.

6. Providing Party's Assessment of Availability of Resources and Ability to Render Assistance.

Subject to the terms of this Compact, the Providing Party shall make reasonable efforts to assist the Requesting Party. In all instances, the Providing Party shall render such mutual aid as it is able to provide consistent with its own service needs at the time, taking into consideration the Providing Party's existing commitments within its own jurisdiction. The Providing Party shall be the sole judge of what mutual aid it has available to furnish to the Requesting Party pursuant to this Compact.

7. Implementation Plan.

Each party should develop an emergency operations plan that includes a process to provide for the effective mobilization of its resources, both public and private, including acceptance of mutual aid to provide or receive assistance under this Compact.

8. Contact List.

Each Party shall develop a contact list as outlined in Appendix B, which shall be provided to the Director for distribution to all other parties to this Compact.

9. Reimbursement Procedures.

If the Providing Party desires reimbursement, the Requesting Party shall reimburse the Providing Party for all costs when any mutual assistance is requested, whether an incident has been declared an emergency or not. The Providing Party must declare to the Requesting Party its intent to seek reimbursement before responding to the Requesting Party's request for assistance. The Requesting Party, which is informed in advance of the Providing Party's intent to request reimbursement and which subsequently authorizes the Providing Party to respond, shall reimburse the providing party after receipt of an itemized voucher and documentation of all allowable costs of labor, equipment, and materials that have actually been expended in providing assistance.

The Providing Party and the Requesting party shall agree upon allowable costs for mutual assistance prior to the dispatch of any mutual assistance resources. Unless otherwise negotiated by the parties involved, the parties may reference the state allowable costs as defined in A.A.C. Title 8 (as may be amended from time to time).

10. Reimbursement Procedures from the State.

The state is not liable for any claim arising from an emergency for which the applicant receives funds from another source (A.A.C. Title 8, R8-2-312).

Self-deployed resources will not be reimbursed.

When mutual aid is extended under this Compact to the State, if the Providing Party desires reimbursement from the State, reimbursement, if any, to the Providing Parties by the State for costs will be provided to the Requesting Party pursuant to A.R.S. § 35-192, and A.A.C. Title 8 as applicable (as may be amended from time to time). A requesting jurisdiction other than a county may submit a request to the county for reimbursement. The county will then request reimbursement from the Director for reimbursement of the Requesting Party.

After the State and/or President has declared an emergency, the Requesting Party shall prepare an itemized voucher and documentation of all paid allowable costs including all the cost of the Providing parties for submittal to the State for consideration for reimbursement in accordance with A.A.C. Title 8 (as may be amended from time to time).

11. Personnel Compensation and Insurance.

The Requesting Party and the Providing Party shall be responsible for all compensation and insurance coverage of their respective employees and equipment.

12. Immunity.

The parties shall have such immunity as provided by applicable state, federal or tribal law.

13. Indemnification.

To the fullest extent permitted by law, each party agrees to defend, indemnify, and hold harmless the other party and the other party's officers, agents, and employees from all claims, losses, and causes of actions arising out of, resulting from, or in any manner connected with this Compact, but only to the extent such claim, loss, cause of action, damage or injury is caused or contributed to by the negligent acts or omissions of the indemnifying party.

14. Term.

This Compact shall be effective on the date it is recorded with the Secretary of State. Except as otherwise provided in this Compact, this Compact shall terminate ten years after the effective date. This Compact, upon mutual consent of the parties may be extended for a period of time not to exceed 10 years. Any modification or time extension of this Compact shall be by formal written amendment and executed by the parties hereto.

15. ADA.

Each party shall comply with applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 United States Code. 12101-12213) and all applicable federal regulations under the Act, including 28 Code of Federal Regulation Parts 35 and 36.

16. Non-Discrimination.

All parties to this agreement shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out Party duties pursuant to this Compact.

17. Compliance with Laws.

Each party shall comply with all federal, tribal, state and local laws, rules, regulations, standards and Executive Orders, as applicable, without limitation to those designated within this Compact. Any changes in the governing laws, rules and regulations during the terms of this Compact shall apply but do not require an amendment.

18. Worker's Compensation.

Each party shall be responsible for any injuries which may occur to its own personnel during the course of rendering mutual aid pursuant to this Compact. In accordance with A.R.S. § 23-1022, each party of a political jurisdiction of Arizona shall be deemed the primary employer and shall have sole responsibility for the payment of worker's compensation benefits to their respective employees. Each party shall comply with the notice provisions of A.R.S. § 23-1022 (E).

19. Insurance.

Each Requesting and Providing Party shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry.

20. Non-appropriation.
Notwithstanding any other provision in this Compact, a party may terminate its participation in this Compact if for any reason the party does not appropriate sufficient monies for the purpose of maintaining this Compact. In the event of such cancellation, the terminating party shall have no further obligation to the other parties other than for payment for services rendered prior to cancellation.

21. No Third Party Beneficiaries.
Nothing in the provisions of this Compact is intended to create duties or obligations to or rights in third parties not parties to this Compact or affect the legal liability of either party to the Compact by imposing any standard of care different from the standard of care imposed by law.

22. Entire Agreement.
This document constitutes the entire Compact between the parties pertaining to the subject matter hereof. This Compact shall not be modified, amended, altered or extended except through a written amendment signed by the parties and recorded with the Arizona Secretary of State or Tribal government as appropriate.

23. Jurisdiction.
Nothing in this Compact shall be construed as otherwise limiting or extending the legal jurisdiction of any party. Nothing in this Compact is intended to confer any rights or remedies to any person or entity that is not a party.

24. Conflict of Interest.
This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

25. Supervision and Control.
Management of an emergency shall remain with the jurisdiction in which the emergency occurred. Supervision and control of Providing Parties personnel and equipment shall be in accordance with National Incident Management System. The Requesting Party will be responsible for providing supplies and services, such as food, shelter, gasoline and oil, for on-site use of equipment and for the personnel providing assistance. All equipment and personnel used pursuant to this Compact shall be returned to the Providing Party upon being released by the Requesting Party or on demand of the Providing Party for such return.

26. Severability: Effect on Other Agreements.
It is expressly understood that this Compact shall not supplant existing agreements between some of the parties, which do provide for the exchange or furnishing of certain types of services on a compensated basis.

27. Severability.
If any provision of this Compact is held to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable to the full extent permitted by law.

28. Responsibility of the Department of Emergency and Military Affairs.
Nothing within this Compact limits or restricts the duties and obligations the State of Arizona may have to respond to the emergency of any party.

29. Effective Date.
This Compact shall become effective as to each party when adopted by resolution and executed by the governing body of the jurisdiction, and shall remain operative and effective as between each and every party that has heretofore or hereafter executed this Compact, until participation in this Compact is terminated by the party. The termination by one or more of the parties of its participation in this Compact shall not affect the operation of this Compact as between the other parties thereto. The Director shall issue an annual report, with updates as needed, to all parties identifying the parties to this Compact.

30. Execution Procedure.
Execution of this Compact shall be as follows:
This Compact, which will be designated as "ARIZONA MUTUAL AID COMPACT," shall be executed in counterparts by the governing body of each party. Upon execution, the counterpart will be filed with the Secretary of State and the Tribal government as applicable and be provided to the Director. This Compact will be effective between all parties who execute this Compact even if it is not executed by all eligible jurisdictions.

31. Termination.
Termination of participation in this Compact may be effected by any party as follows:

Notice of termination will be given to the Director 20 days prior to termination.

A party shall by resolution of its governing body terminate its participation in this Compact and file a certified copy of such resolution with the Secretary of State or the Tribal government, and a copy will be provided to the Director.

The parties to this Compact understand and acknowledge that this Compact is subject to cancellation by any party pursuant to A.R.S. § 38-511 or applicable Tribal law.

32. Dispute Resolution.
In the event of any controversy, which may arise out of this Compact, the parties agree that the matter shall be arbitrated as provided in A.R.S. § 12-1518(A) or applicable Tribal law. The method of arbitration and the selection of arbitrators shall be decided by the mutual agreement of the parties at such time as arbitration services are needs.

ARIZONA MUTUAL AID COMPACT
SIGNATURE PAGE

(NAME OF JURISDICTION)

IN WITNESS WHEREOF, the parties hereto each sign this Arizona Mutual Aid Compact signature page. The signor warrants that he or she has been duly authorized to commit the jurisdiction to participate in the Compact by formal approval of the jurisdiction's governing body.

_____ _____

(Signing Authority) Date

ATTEST: _____

(Attesting Authority) Date

Date of formal approval by governing body: _____

Pursuant to A.R.S. § 11-952(D) or applicable Tribal law, the attorney for the above entity has determined that the foregoing Compact is in proper form and is within the powers and authority of the entity as granted under the laws of this State and the applicable Tribal government.

_____ _____

(Attorney) Date

Appendix A

Appendix A
Emergency Management Resource Request

DATE REQUEST SUBMITTED

PRIORITY		STATUS		Tracking Number-Local	Tracking Number-State
Black – Flash	☐	Black – Critical Action	☐		
Red – High	☐	Red – Action Required	☐		
Yellow – Medium	☐	Orange – Enroute	☐		
Green – Low	☐	Yellow – On-Scene	☐	Tracking Number-FEMA	Tracking Number-EMAC
		Green – Released	☐		
		Gray – Canceled	☐		
		Blue – Closed	☐		

WHO IS MAKING THE REQUEST: Requesting Organization | Related Event/Incident/Activity

REQUESTORS CONTACT INFO:
Phone: Cell: Fax: Frequency:

WHAT IS BEING REQUESTED:
Resource Category | Quantity | Qty Unit of Measure | Date/Time needed

Resource Type/Kind

Resource must come with
☐Fuel ☐Meals ☐Operator(s) ☐Water ☐Maint ☐Lodging ☐Power

Other

Mission

SPECIAL INSTRUCTIONS (E.G. SAFETY MESSAGE, INGRESS/EGRESS ROUTES, ETC.):
Special Instructions

FORWARD REQUEST TO:
Individual | Organization/Location | Position | Agency | Vendor

Summary of actions taken

Estimated Resource Cost

Appendix B

ARIZONA MUTUAL AID COMPACT (AZMAC)

POINTS OF CONTACT

Date:

Name of Jurisdiction:

Mailing Address:

City, State, Zip Code:

Authorized Representatives to Contact for Mutual Aid Assistance

	Primary Contact	1st Alternate	2nd Alternate
Name			
Title			
24-Hr Phone No.			
Address			
Day Phone No.			
Night Phone No.			
Fax No.			
Email			

Arizona Mutual Aid Compact
(AZMAC)

Date posted: March 15, 2013

STATE OF ARIZONA	✓

COUNTIES					
Apache County	✓	Greenlee County	✓	Pima County	✓
Cochise County	✓	La Paz County	✓	Pinal County	✓
Coconino County	✓	Maricopa County	✓	Santa Cruz County	✓
Gila County	✓	Mohave County	✓	Yavapai County	✓
Graham County	✓	Navajo County	✓	Yuma County	✓

TRIBES					
Ak-Chin Indian Community	✓	Hualapai Tribe		The Hopi Tribe	
Cocopah Tribe	✓	Kaibab Paiute Tribe		Tohono O'odham Nation	✓
Colorado River Indian Tribes	✓	Navajo Nation	✓	Tonto Apache Tribe	
Fort McDowell Yavapai Nation		Pasqua Yaqui Tribe	✓	White Mountain Apache Tribe	
Fort Mojave Indian Tribe		Pueblo of Zuni Tribe		Yavapai-Apache Nation	
Fort Yuma Quechan Tribe		Salt River Pima-Maricopa Indian Community	✓	Yavapai-Prescott Indian Tribe	
Gila River Indian Community	✓	San Carlos Apache Tribe			
Havasupai Tribe		San Juan Southern Paiute			

✓ *Signatories*

Arizona Mutual Aid Compact

CITIES/TOWNS					
Apache Junction, City of	✓	Douglas, City of	✓	Holbrook, City of	✓
Avondale, City of	✓	Duncan, City of	✓	Huachuca City, Town of	
Benson, City of	✓	Eagar, Town of	✓	Jerome, Town of	
Bisbee, City of		El Mirage, City of	✓	Kearny, Town of	✓
Buckeye, Town of		Eloy, Town of	✓	Kingman, City of	✓
Bullhead City, City of	✓	Flagstaff, City of		Lake Havasu City	✓
Camp Verde, Town of		Florence, Town of	✓	Litchfield Park, City of	
Carefree, Town of	✓	Fountain Hills, Town of		Mammoth, Town of	
Casa Grande, City of	✓	Fredonia, Town of		Marana, Town of	✓
Cave Creek, Town of	✓	Gila Bend, Town of		Maricopa, City of	✓
Chandler, City of	✓	Gilbert, Town of	✓	Mesa, City of	✓
Chino Valley, Town of		Glendale, City of	✓	Miami, Town of	
Clarkdale, Town of		Globe, City of		Mohave Valley	
Clifton, Town of	✓	Goodyear, City of	✓	Nogales, City of	✓
Colorado City, Town of		Grand Canyon		Oro Valley, Town of	✓
Coolidge, City of	✓	Guadalupe, Town of	✓	Page, City of	✓
Cottonwood, City of		Hayden, Town of		Paradise Valley	✓

Arizona Mutual Aid Compact

CITIES/TOWNS					
Parker, Town of		Scottsdale, City of	✓	Thatcher, Town of	✓
Patagonia, Town of	✓	Sedona, City of		Tolleson, City of	
Payson, Town of	✓	Show Low, City of	✓	Tombstone, City of	
Peoria, City of	✓	Sierra Vista, City of	✓	Tucson, City of	✓
Phoenix, City of	✓	Snowflake, Town of	✓	Wellton, Town of	
Pima, Town of	✓	Somerton, City of		Wickenburg, Town of	✓
Pinetop-Lakeside, Town of	✓	South Tucson, City of	✓	Willcox, City of	✓
Prescott Valley, Town of		Springerville, Town of	✓	Williams, City of	
Prescott, City of	✓	St. Johns, City of	✓	Winkelman, Town of	
Quartzsite, Town of		Star Valley		Winslow, City of	✓
Queen Creek, Town of	✓	Superior, Town of		Wittman, Town of	
Safford, City of		Surprise, City of	✓	Youngtown, Town of	✓
Sahuarita, Town of	✓	Taylor, Town of	✓	Yuma, City of	
San Luis, City of		Tempe, City of	✓		

Arizona Mutual Aid Compact

OTHER JURISDICTIONS					
Apache Junction Fire District	✓	Fort Mohave Mesa Fire District	✓	Northwest Fire District	✓
Arizona City Fire District	✓	Fry Fire District	✓	Pinion Pine Fire District	✓
Avra Valley Fire District	✓	Golden Valley Fire District	✓	Queen Valley Fire District	✓
Bullhead City Fire District	✓	Golder Rance Fire District	✓	Rincon Valley Fire District	✓
Christopher Kohl's Fire District	✓	Higley Unified School District #60	✓	San Manuel Fire Department	✓
Clarkdale Fire District	✓	Linden Fire District	✓	Sedona Fire District	✓
Crown King Fire District	✓	Maricopa Integrated Health System	✓	Sun City West Fire District	✓
Daisy Mountain Fire District	✓	Mohave Valley Fire District	✓	Sun Lakes Fire District	✓
Drexel Heights Fire District	✓	Mt. Lemon Fire District	✓	Verde Valley Fire District	✓
Eloy Fire District	✓	Northern Arizona Consolidated Fire District #1	✓		

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Gary Miller, Project Manager

Co-Submitter: David McIntire, Asst. to City Manager - Real Estate

Date: 02/26/2014

Meeting Date: 03/04/2014

TITLE:

Consideration and Adoption of Resolution No. 2014-11: A resolution of the City Council of the City of Flagstaff, Arizona approving an instrument of release and re-conveyance of public utility easements within Lots 126 and 127 as shown on the Final Subdivision Plat for Aspen Place at Sawmill as recorded in Instrument No. 3438431, and the Amended Plat recorded in Instrument No. 3583171, Records of Coconino County ("Easements") granted to the City in the original Subdivision Plat. ***(Abandoning unnecessary utility easements to allow for improved design in the Village at Aspen Place)***

RECOMMENDED ACTION:

1) Read Resolution No. 2014-11 by title only
2) City Clerk reads Resolution No. 2014-11 by title only (if approved above)
3) Adopt Resolution No. 2014-11

Policy Decision or Reason for Action:

This action will allow the development of these parcels per the approved "The Village at Aspen Place" Inter-Division Staff application. The easements being abandoned are currently unused for their intended purpose, and will not be necessary in the future. City of Flagstaff Engineering Standards prohibit the construction of any part of a building over top of a public utility easement. "The Village at Aspen Place" currently approved proposal shows encroachments of the building into these easements, resulting in the need for these easement abandonments.

Financial Impact:

There are no direct financial impacts to the City. The release of property rights will have a very small reduction of the City's fixed assets inventory.

Connection to Council Goal:

5. Retain, expand, and diversify economic base

Has There Been Previous Council Decision on This:

There have been no previous City Council decisions on this topic.

Options and Alternatives:

1) Approve the resolution allowing the abandonment of the easements to allow the development of "The Village at Aspen Place" as proposed.
2) Approve the resolution with changes.
3) Not approve the resolution which will prevent the development of "The Village at Aspen Place" as proposed.

Background/History:

As a part of the proposed development changes were made to the original Sawmill subdivision and Master Plan. As a result of these changes the current proposal required site plan approval and a zoning map amendment. Community Development staff and the Planning and Zoning Commission have reviewed the site plan and zoning map amendment, and have approved the proposed development.

Key Considerations:

- Abandoning these easements will allow for the construction of "The Village at Aspen Place" as proposed.
- All Franchise Utility companies have been notified of the abandonments, and they have confirmed that no existing utilities are located within the easements. The existing private road and existing Public Utility Easement that will remain is sufficient to supply this development, and the surrounding neighborhood, with all City and franchise utilities.
- The Utilities Department has identified a water service within the easement and has addressed the abandonment of this service in the revised development agreement for this development. The development agreement states that the developer is required to abandon the existing service within the easement per the City of Flagstaff Engineering Standards.
- The developer will provide all necessary improvements (including sidewalk and on-street parking) as shown on the approved proposal.
- Staff has reviewed the request and is supportive of the abandonment of the easements to allow for the proposed development.

Community Involvement:

Consult

Attachments: Res. 2014-11
Release & Reconveyance
Legal Description
Franchise Utility Approvals

RESOLUTION NO. 2014-11

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL APPROVING AN INSTRUMENT OF RELEASE AND RECONVEYANCE OF TWO PUBLIC UTILITY EASEMENTS LYING WITHIN LOTS 126 AND 127 OF VILLAGE AT ASPEN PLACE

RECITALS:

WHEREAS, Flagstaff Aspen Place, LLC, an Arizona limited liability company ("Owner"), and the City of Flagstaff, a municipal corporation, have entered into a Development Agreement Amendment (12/3/2013 and recorded 3680583) whereby Owner makes certain agreements, representations and warranties in exchange for a for a release and reconveyance of those portions of the Public Utility Easements within Lots 126 and 127 as shown on the Final Subdivision Plat for Aspen Place at Sawmill as recorded in Instrument No. 3438431, and the Amended Plat recorded in Instrument No. 3583171, Records of Coconino County("Easements") granted and dedicated to the City in the original Subdivision Plat; and

WHEREAS, the portion of the Easements affected is described in the instrument attached to the staff summary for this Resolution and entitled Release and Reconveyance of a Public Utility Easement ("Release"); and

WHEREAS, the City has determined that a release and reconveyance of the portion of the Easements described in the Release will not adversely affect the infrastructure of the City of Flagstaff; and

WHEREAS**,** the City desires to release and reconvey the portion of the Easements described in the Release.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Release and Reconveyance of a Portion of the Public Utility Easements on Lots 126 and 127 Aspen Place at Sawmill is hereby approved, and the Mayor is hereby authorized to sign the documents necessary to effectuate the Release and Reconveyance.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 4th day of February, 2014.

_____

MAYOR

ATTEST:

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

WHEN RECORDED, RETURN TO:
City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001

CITY OF FLAGSTAFF
RELEASE AND RECONVEYANCE OF
PUBLIC UTILITY EASEMENTS

The City of Flagstaff ("Grantor"), a municipal corporation, for valuable consideration, hereby releases and reconveys to Flagstaff Aspen Place, LLC ("Grantee"), an Arizona Limited Liability Company, its successors and assigns, the following described Public Utility Easements situated in the City of Flagstaff, State of Arizona:

Public Utility Easements
as described in the Legal Descriptions attached hereto and
as Depicted on the Sketch Attached Hereto
And Made Part Thereof

Grantor became the owner of the above described Easements by that certain instrument the Final Subdivision Plat for Aspen Place at Sawmill as recorded in Instrument No. 3438431, and the Amended Plat recorded in Instrument No. 3583171, Official Records of Coconino County. Grantor hereby covenants that it is lawfully seized and possessed of this interest in the land; that it has good and lawful right to release and reconvey the land; and that it will warrant the title and quiet possession thereto against lawful claim of all persons and entities.

IN WITNESS WHEREOF, Grantor has caused this Release and Reconveyance of Public Utility Easements to be executed in its name by the undersigned this _____ day of _____, 2014.

By: _____
Mayor

STATE OF _____)
)ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014 by _____.

My commission expires:

_____
Notary Public

EXHIBIT "A"

PROPERTY DESCRIPTION

Those portions of the Public Utility Easement lying within Lots 126 and 127 as shown on the Final Subdivision Plat for Aspen Place at The Sawmill as recorded in Instrument No. 3438431, and the Amended Plat recorded in Instrument No. 3583171, Records of Coconino County, Arizona (RCC), as described in Instrument No. 3679991, described as follows:

COMMENCING for reference at the southeast corner of said Lot 126 on the west line of Cambridge Lane;

Thence North 00°00'00" East, 31.00 feet along the east line of said Lot 126 and said west line of Cambridge Lane to the POINT OF BEGINNING;

Thence North 90°00'00" West, 75.59 feet;

Thence North 00°00'00" East, 19.00 feet;

Thence North 90°00'00" East, 75.59 feet to a point on said east line of Lot 126;

Thence South 00°00'00" East, 19.00 feet along said east line of Lot 126 to the POINT OF BEGINNING.

AND COMMENCING for reference at the southeast corner of said Lot 127;

Thence North 00°00'00" East, 13.00 feet along the east line of said Lot 127 to the POINT OF BEGINNING;

Thence North 90°00'00" West, 23.50 feet;

Thence North 00°00'00" East, 71.00 feet;

Thence North 90°00'00" West, 8.00 feet;

Thence North 00°00'00" East, 12.00 feet;

Thence North 90°00'00" East, 31.50 feet to a point on the east line of said Lot 127;

Thence South 00°00'00" East, 83.00 feet to the POINT OF BEGINNING.

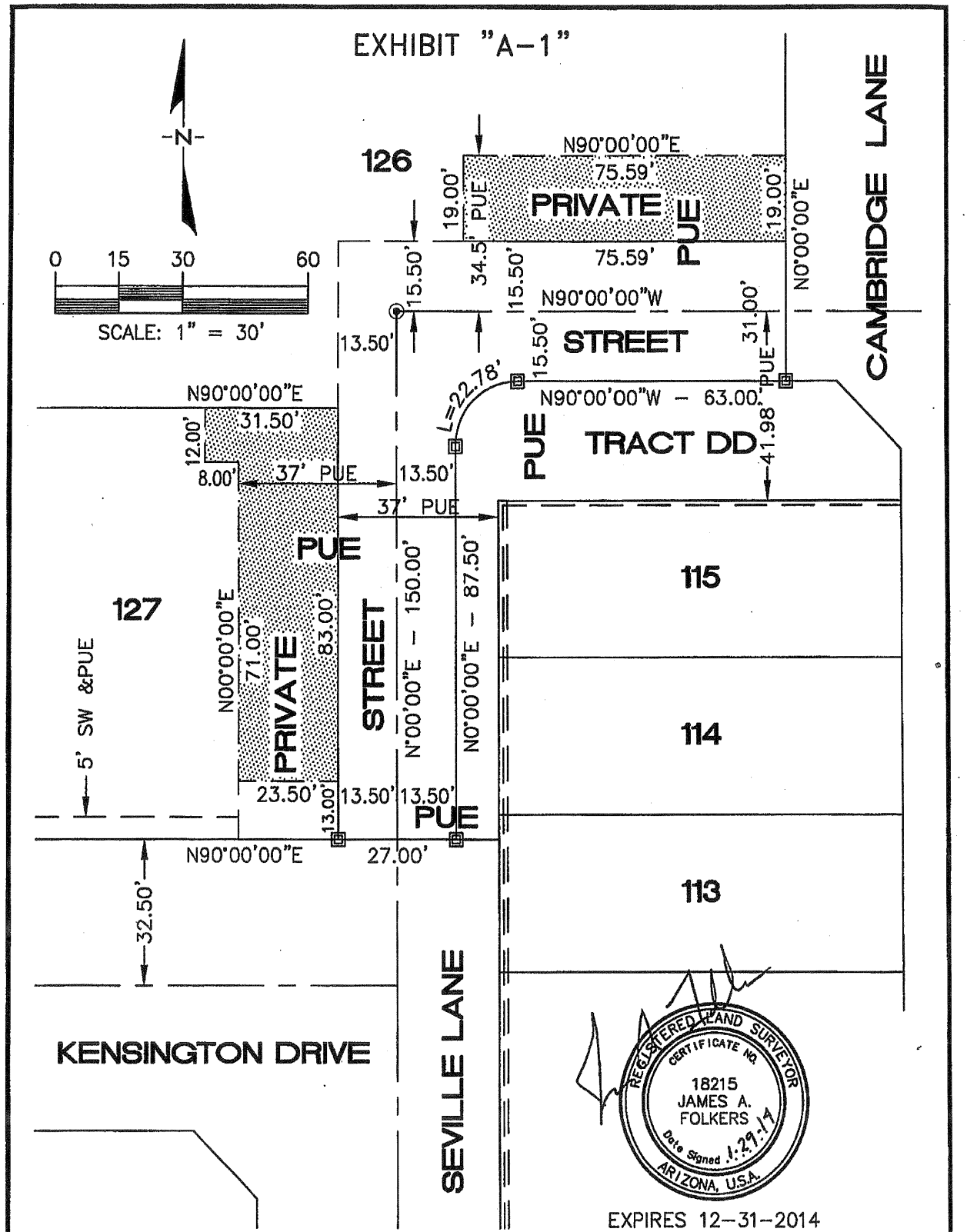
As shown on the attached Exhibit "A-1" drawing which is made a part hereof by this reference.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
18215
JAMES A.
FOLKERS
Date Signed 1-29-14
ARIZONA, U.S.A.

EXPIRES 12-31-2014

Prepared by:

James A. Folkers, RLS
Woodson Engineering & Surveying, Inc.
124 N. Elden Street
Flagstaff, AZ 86001
Project No. 112044



DRAWN BY: JAF	**WOODSON**	ASPEN PLACE AT SAWMILL
DATE: 1-29-14	ENGINEERING AND SURVEYING, INC.	
FN: PUR Aband.	124 N. ELDEN ST.	
PROJECT NO.: 112044	FLAGSTAFF, AZ 86001	
	PHONE:(928)774-4636 FAX:(928)774-4646	

WOODSON

ENGINEERING & SURVEYING, INC.

UTILITY EASEMENT ABANDONMENT

ATTN: Land Department
APS
2200 E Huntington Dr.
Flagstaff, AZ 86004

FROM: **Woodson Engineering and Surveying, Inc.**

DATE: **January 29, 2014**

PROJECT: **Village at Aspen Place - Apartments NO.: 112044**

APPROVAL TYPE: **Abandonment of Public Utility Easements**

Enclosed you will find the Exhibit A-1 that Woodson Engineering & Surveying, Inc., has prepared to indicate the easements in question. On behalf of the City of Flagstaff, we are requesting approval from stated franchise utility to abandon the indicated public utility easement (s). The utility has provided information which indicates that there are no existing utilities within the easement to be abandoned.

Please respond to the request for information below and return it to Woodson Engineering and Surveying, Inc., no later than 5:00 pm, **1/30/14.** Thank you for taking the time to complete, sign, and date this document.

- (✓) **APPROVED WITHOUT COMMENT**
- ( ) **APPROVED WITH COMMENTS BELOW**
- ( ) **NOT APPROVED WITH COMMENTS BELOW**

SIGNED: [signature] **TITLE:** SURVEY/ROW REP

PRINTED NAME: DEE MCGRATH **PHONE:** 928-773-6439

AGENCY: **APS Land Department** **DATE:** 1/30/14

124 NORTH ELDEN STREET FLAGSTAFF, ARIZONA 86001 PHONE (928) 774-4636 FAX (928) 774-4646

Communities by Design

WOODSON

ENGINEERING & SURVEYING, INC.

UTILITY EASEMENT ABANDONMENT

ATTN: Carole Wilson
Century Link
112 N Beaver St
Flagstaff, AZ 86001

FROM: **Woodson Engineering and Surveying, Inc.**

DATE: **January 14, 2014**

PROJECT: **Village at Aspen Place - Apartments NO.: 112044**

APPROVAL TYPE: **Abandonment of Public Utility Easements**

Enclosed you will find the Exhibit A-1 that Woodson Engineering & Surveying, Inc., has prepared to indicate the easements in question. On behalf of the City of Flagstaff, we are requesting approval from stated franchise utility to abandon the indicated public utility easement (s). The utility has provided information which indicates that there are no existing utilities within the easement to be abandoned.

Please respond to the request for information below and return it to Woodson Engineering and Surveying, Inc., no later than 5:00 pm, **1/16/14.** Thank you for taking the time to complete, sign, and date this document.

- (X) **APPROVED WITHOUT COMMENT**
- ( ) **APPROVED WITH COMMENTS BELOW**
- ( ) **NOT APPROVED WITH COMMENTS BELOW**

SIGNED: Carole Wilson **TITLE:** Mgr.

PRINTED NAME: Carole Wilson **PHONE:** (928) 779-9773

AGENCY: CenturyLink **DATE:** 1/13/13

124 NORTH ELDEN STREET FLAGSTAFF, ARIZONA 86001 PHONE (928) 774-4636 FAX (928) 774-4646

Communities by Design

WOODSON
& SURVEYING, INC.

UTILITY EASEMENT ABANDONMENT

ATTN: Lori Hawkins, Right of Way
Unisource Energy Services
1459 E. Butler Avenue
Flagstaff, AZ 86001
928-226-2245

FROM: **Woodson Engineering and Surveying, Inc.**

DATE: **January 14, 2014**

PROJECT: **Village at Aspen Place - Apartments NO.: 112044**

APPROVAL TYPE: Abandonment of Public Utility Easements

Enclosed you will find the Exhibit A-1 that Woodson Engineering & Surveying, Inc., has prepared to indicate the easements in question. On behalf of the City of Flagstaff, we are requesting approval from stated franchise utility to abandon the indicated public utility easement (s). The utility has provided information which indicates that there are no existing utilities within the easement to be abandoned.

Please respond to the request for information below and return it to Woodson Engineering and Surveying, Inc., no later than 5:00 pm, **1/16/14.** Thank you for taking the time to complete, sign, and date this document.

- [x] **APPROVED WITHOUT COMMENT**
- [ ] **APPROVED WITH COMMENTS BELOW**
- [ ] **NOT APPROVED WITH COMMENTS BELOW**

SIGNED: Duncan Jakes **TITLE:** Gas Engineer

PRINTED NAME: [illegible] **PHONE:** 226-2214

AGENCY: Unisource **DATE:** 1.15.14

WOODSON

ENGINEERING & SURVEYING, INC.

UTILITY EASEMENT ABANDONMENT

ATTN: Sanford Yazzie
Suddenlink
1601 S Plaza Way
Flagstaff, AZ 86001

FROM: **Woodson Engineering and Surveying, Inc.**

DATE: **February 11, 2014**

PROJECT: **Village at Aspen Place - Apartments NO.: 112044**

APPROVAL TYPE: Abandonment of Public Utility Easements

Enclosed you will find the Exhibit A-1 that Woodson Engineering & Surveying, Inc., has prepared to indicate the easements in question. On behalf of the City of Flagstaff, we are requesting approval from stated franchise utility to abandon the indicated public utility easement (s). The utility has provided information which indicates that there are no existing utilities within the easement to be abandoned.

Please respond to the request for information below and return it to Woodson Engineering and Surveying, Inc., no later than 5:00 pm, **2/13/14.** Thank you for taking the time to complete, sign, and date this document.

- [x] **APPROVED WITHOUT COMMENT**
- [ ] **APPROVED WITH COMMENTS BELOW**
- [ ] **NOT APPROVED WITH COMMENTS BELOW**

SIGNED: _____ **TITLE:** Upgrade Const. Supervisor

PRINTED NAME: Sanford Yazzie **PHONE:** 606-2464

AGENCY: Suddenlink **DATE:** 2/12/14

124 NORTH ELDEN STREET FLAGSTAFF, ARIZONA 86001 PHONE (928) 774-4636 FAX (928) 774-4646

Communities by Design

WOODSON

ENGINEERING & SURVEYING, INC.

UTILITY EASEMENT ABANDONMENT

ATTN: Jim Davis, Utility Department
City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001

FROM: **Woodson Engineering and Surveying, Inc.**

DATE: **January 14, 2014**

PROJECT: **Village at Aspen Place - Apartments NO.: 112044**

APPROVAL TYPE: **Abandonment of Public Utility Easements**

Enclosed you will find the Exhibit A-1 that Woodson Engineering & Surveying, Inc., has prepared to indicate the easements in question. On behalf of the City of Flagstaff, we are requesting approval from stated utility department to abandon the indicated public utility easement (s). The utility has provided information which indicates that there are no existing utilities within the easement to be abandoned.

Please respond to the request for information below and return it to Woodson Engineering and Surveying, Inc., no later than 5:00 pm, **1/16/14.** Thank you for taking the time to complete, sign, and date this document.

- ○ **APPROVED WITHOUT COMMENT**
- ✓ **APPROVED WITH COMMENTS BELOW**
- ○ **NOT APPROVED WITH COMMENTS BELOW**

There is an existing 4" DIP private fireline in the easement north of Seville Lane, as well as two 2" water services in the easement west of Seville Lane. Both of the water services as well as the fireline will need to be abandoned per City of Flagstaff Engineering standards (Please see the attached map and asbuilt)

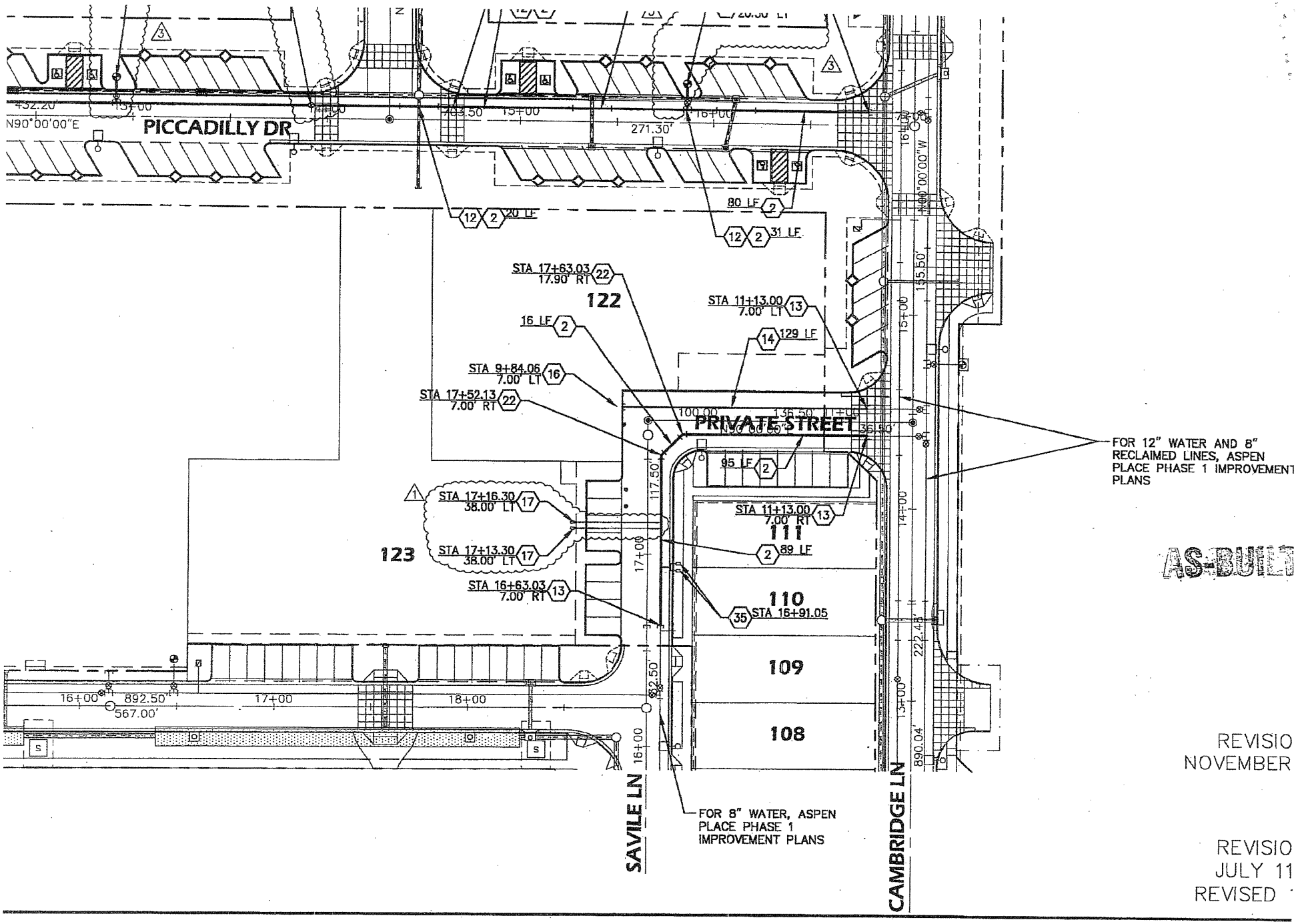
SIGNED: James W. Davis **TITLE:** Utilities Plan Reviewer

PRINTED NAME: James W. Davis **PHONE:** (928) 213-2411

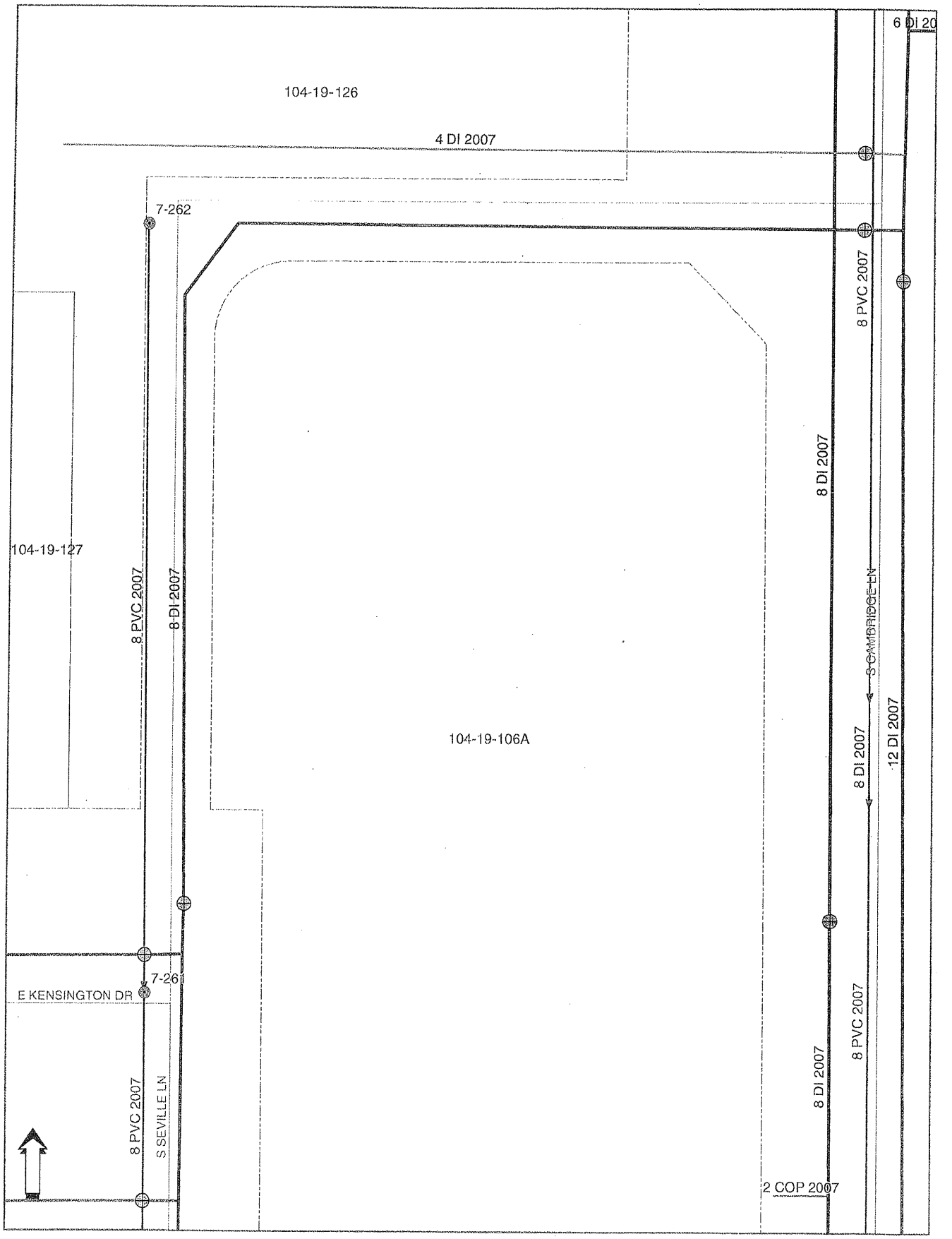
AGENCY: City of Flagstaff **DATE:** 1/14/14

124 NORTH ELDEN STREET FLAGSTAFF, ARIZONA 86001 PHONE (928) 774-4636 FAX (928) 774-4646

Communities by Design


PICCADILLY DR
N90°00'00"E
432.20'
15+00
16+00
271.30'
20 LF
80 LF
31 LF
STA 17+63.03
17.90' RT
122
16 LF
STA 9+84.06
7.00' LT
STA 17+52.13
7.00' RT
STA 11+13.00
7.00' LT
129 LF
PRIVATE STREET
100.00'
136.50'
95 LF
STA 17+16.30
38.00' LT
STA 17+13.30
38.00' LT
123
STA 16+63.03
7.00' RT
STA 11+13.00
7.00' RT
111
89 LF
110
STA 16+91.05
109
108
117.50'
17+00
16+00
892.50'
567.00'
18+00
SAVILE LN
CAMBRIDGE LN
FOR 12" WATER AND 8" RECLAIMED LINES, ASPEN PLACE PHASE 1 IMPROVEMENT PLANS
FOR 8" WATER, ASPEN PLACE PHASE 1 IMPROVEMENT PLANS
AS-BUILT
REVISIO
NOVEMBER
REVISIO
JULY 11
REVISED

----------City of Flagstaff - Utilities Department ----------



CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To:	The Honorable Mayor and Council
From:	Dan Holmes, PW Project Manager
Date:	02/26/2014
Meeting Date:	03/04/2014

TITLE:

Consideration and Approval of Construction Manager at Risk Contract: Funding of Street Maintenance Program 2014

RECOMMENDED ACTION:

1) Approve the Construction Manager at Risk Contract with C and E Paving and Grading, LLC in an amount not to exceed $3,249,999.62.
2) Authorize Change Order Authority in the amount of $162,500.00 (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:

Award of the Construction Manager at Risk contract with C & E Paving and Grading will authorize construction of the City's annual Street Maintenance Program, 2014.

Financial Impact:

The Street Maintenance Program is funded in account 040-3332-600 in FY 2013/2014 in the amount of $3,596,000.

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 three major services: non-structural upgrades by overlay, ADA compliance and chip sealing. A listing of overlay and chip seal streets is attached.

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, constructibility 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. Chip seal work provides a cost effective pavement preservation treatment to maintain newer pavements in a good condition.

Expanded Financial Considerations:

The Street Maintenance Program is to be funded by the Street Improvement Program budget in FY 2013/2014 (Acct. No. 040-3332-600). The contract includes an owner's contingency of $61,437.00 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 2013/2014.

Community Benefits and Considerations:

The Street Maintenance Program provides surface treatments as required to preserve and maintain pavement condition on the 664 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, 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:

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.

Attachments: Overlay/Chip Seal List
CM@R Contract
GMP # 5
Overlay/Chip Seal Map

CITY OF FLAGSTAFF

FLAGSTAFF STREET MAINTENANCE PROGRAM 2014

C.O.F. FILE NO. 01-14001 (333200)

LIST OF OVERLAY STREETS

MAP ID	Street Name	Start	End
1	Country Club Dr.	Cortland Blvd.	Seminole Dr.
2	U. S. Hwy. 89	Marketplace	City Limits
3	Soliere Ave.	Forth St.	East End

LIST OF CHIP SEAL STREETS

MAP ID	Street Name	Start	End
1	Forest Ave./Cedar Ave.	Beaver St.	West St.
2	Lone Tree Rd.	Sawmill Rd.	Zuni Dr.
3	Switzer Canyon Dr.	San Francisco St.	Route 66
4	Forest Ave.	Ft. Valley Rd.	Beaver St.
5	Cedar Ave.	West St.	Fourth St.

City of Flagstaff, Arizona

STREET MAINTENANCE PROGRAM 2014

CONSTRUCTION MANAGER AT RISK

CONSTRUCTION SERVICES

PROJECT NO. 01-14001

Agreement No. 2012-28

GMP Agreement Number: Five

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 2014

CONSTRUCTION MANAGER AT RISK

CONSTRUCTION SERVICES AGREEMENT

PROJECT No. 01-14001; GMP Agreement No. Five ; 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 2014 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 # Five attached as Exhibit "B" and an amount of $ 3,188,562.62 with an additional $ 61,437.00 allowed 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 2014

Project No. 01-14001; GMP Number Five; 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 Five

Three Million Two Hundred Forty Nine Thousand Nine Hundred Ninety Nine dollars and Sixty Two Cents

$ 3,249,999.62

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 #: 01-14001 **DATE:**

PROJECT NAME: Street Maintenance Program 2014

Attached

EXHIBIT C – REVISIONS OF MAG STANDARD SPECIFICATIONS

Attached

EXHIBIT D – SPECIAL PROVISIONS

Attached

GMP SUMMARY 2014

STREET MAINTENANCE PROGRAM

GMP SUMMARY

PROJECT NAME:	City of Flagstaff Street Maintenance Program 2014
PROJECT NUMBER:	01-14001
LAST UPDATED:	1/22/2014
OWNER(S):	City of Flagstaff
BILLNG ADDRESS:	211 West Aspen Avenue
JOB SITE ADDRESS:	various locations - **Streets**
OWNER PHONE:	(928) 779-7685

C and E
PAVING & GRADING L.L.C.

GMP SUMMARY					
A	COST OF THE WORK (LABOR, MATERIALS, EQUIPMENT)				$2,507,093.46
B	CM@RISK'S CONTINGENCY				$50,000.00
	INDIRECT COSTS			RATE	$2,557,093.46
C	CONSTRUCTION FEE			4.8%	$153,051.00
D	GENERAL CONDITIONS			9.8%	$312,479.14
	D1	PAYMENT AND PERFORMANCE BOND	$20,024.17	0.628%	
	D2	INSURANCE	$39,538.18	1.24%	
E	SALES TAX		(8.446)	.05204195	$165,939.02
			F. TOTAL GMP		$3,188,562.62
			G. OWNER'S CONTINGENCY		$61,437.00
			H. CONTRACT AMOUNT		$3,249,999.62

CITY OF FLAGSTAFF
GENERAL CONDITIONS ESTIMATE

PROJECT NAME:	City of Flagstaff Street Maintenance Program - 2014
PROJECT NUMBER:	01-14001
LAST UPDATED:	1/22/2014
OWNER(S):	City of Flagstaff
BILLNG ADDRESS:	211 West Aspen Avenue
JOB SITE ADDRESS:	various locations **2014 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		$41,584.00
1		PROJECT MANAGER		$56,048.50
1		SUPERINTENDENT		$45,530.20
1		OFFICE PERSONEL		$7,748.04
1		OFFICE SUPPLIES AND EQUIPMENT		$2,247.00
1		SITE MECHANIC & SERVICE TRUCK		$26,333.00
1		TEMP SANITARY FACILITIES		$1,315.00
1		ADDITIONAL PUBLIC NOTICES AND DELIVERY/ LIME / CONCRETE PLASTIC		$3,390.00
		SURVEY		$8,200.00
1		MOBILIZATION		$20,664.00
1		WARRANTY RESERVE	1.25% OF PROJECT	$39,857.05
1		GL INSURANCE	1.24% OF PROJECT	$39,538.18
1		PERFORMANCE BOND	.0062827% OF PROJECT	$20,024.17
TOTAL				$312,479.14

COST SCHEDULE OF VALUES

2014 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)	34.0	EA	$532.50	$18,105.00
3	ADJUST WATER VALVE BOX (CITY DTL. 9-03-060)	55.0	EA	$487.00	$26,785.00
5	AIRPORT CRACK FILL	5.9	T	$3,550.00	$20,945.00
6	BITUMINOUS MATERIAL (CRS-2P)	219.4	T	$614.70	$134,865.18
8	CONTRACT ALLOWANCE	1.0	EA	$0.00	$0.00
9	COVER MATERIAL (CM-11)	1880.9	T	$65.90	$123,951.31
10	CRACK SEALING	79.6	T	$3,525.00	$280,590.00
11	HOT MIX ASPHALT - (LARGE THERMAL CRACK FILLER)	160.0	T	$226.20	$36,192.00
12	LOWER MANHOLE FRAME & COVER, SEWER CLEANOUT, BLOWOFFS AND SURVEY HANDHOLDS	4.0	EA	$355.00	$1,420.00
13	MODIFIED ASPHALTIC CONCRETE	5500.0	T	$109.20	$600,600.00
14	ADOT 409 OVERLAY PMRAC PG 64-28TR	6056.0	T	$104.20	$631,035.20
15	PAVEMENT MILLING	69975.6	SY	$2.00	$139,951.20
16	REMOVE AND REPLACE CONCRETE APRON & VALLEY GUTTER	304.0	SF	$19.00	$5,776.00
17	REMOVE AND REPLACE CONCRETE DRIVEWAY (INCLUDING. 6"ABC)	505.0	SF	$19.00	$9,595.00
19	REMOVE AND REPLACE CURB AND GUTTER (VERTICAL- INCLUDING. 3"ABC)	428.4	LF	$34.50	$14,779.80
20	REMOVE AND REPLACE CURB IN APRON	127.0	LF	$35.00	$4,445.00
22	REMOVE AND REPLACE PAVEMENT (4" AC [C-3/4"]) PATCH	112.1	SY	$80.00	$8,968.00
24	REMOVE AND REPLACE SIDEWALK (INCLUDING. 3"ABC)	3454.8	SF	$10.50	$36,275.40
25	REMOVE AND REPLACE SURVEY MONUMENTS	26.0	EA	$160.00	$4,160.00
26	REMOVE RAMP & INSTALL DETACHABLE WARNING (ADA Ramp MAG 235-3) INCLUDING 3" ABC	12.0	EA	$1,905.00	$22,860.00
28	REMOVE, REPLACE & ADJUST WATER VALVE BOX AND COVER	13.0	EA	$678.00	$8,814.00
30	STREET REBUILDING & PATCHING CONTINGENCY	1500.0	SY	$68.00	$102,000.00
31	STRIPING AND MARKING	1.0	LS	$92,906.12	$92,906.12
32	SUPPLY NEW VALVE TOP BOX & COVER	2.0	EA	$175.00	$350.00
33	TACK COAT (SS-1H)	27.3	T	$1,087.50	$29,688.75
34	TRAFFIC CONTROL	1.0	LS	$110,592.00	$110,592.00
37	LOWER WATER VALVE BOX	46.0	EA	$340.00	$15,640.00
38	ADJUST SEWER CLEANOUT, BLOWOFFS AND SURVEY HANDHOLDS (CITY DTL. 9-03-062)	1.0	EA	$465.00	$465.00
41	REMOVE RAMP & RETROFIT DETACHABLE WARNING (ADA Ramp MAG 235-2) INCLUDING 3" ABC	13.0	EA	$1,450.00	$18,850.00
42	6' WIDE SHOULDER BUILD UP ON SOLIERE AVE.	6830.0	LF	$0.95	$6,488.50
				Total=	**$2,507,093.46**

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	34.0	EA	$495.00	$16,830.00	
		MATERIALS				$0.00	
		EQUIPMENT				$0.00	
		LABOR				$1,275.00	
			34.0	EA	$532.50	Total:	$18,105.00
3	Adjust Water Valve Box (City Dtl. 9-03-060)	SUBCONTRACTOR	55.0	EA	$445.00	$24,475.00	
		MATERIALS				$0.00	
		EQUIPMENT				$0.00	
		LABOR				$2,310.00	
			55.0	EA	$487.00	Total:	$26,785.00
5	Airport Crack Fill	SUBCONTRACTOR	5.9	T	$3,500.00	$20,650.00	
		MATERIALS				$0.00	
		EQUIPMENT				$100.00	
		LABOR				$195.00	
			5.9	T	$3,550.00	Total:	$20,945.00
6	Bituminous Material (CRS-2P)	SUBCONTRACTOR	219.4	T	$89.70	$19,680.18	
		MATERIALS			$525.00	$115,185.00	
		EQUIPMENT					
		LABOR					
			219.4	T	$614.70	Total:	$134,865.18
8	Contract Allowance	SUBCONTRACTOR	1.0	EA	$0.00	$0.00	
		MATERIALS				$0.00	
		EQUIPMENT				$0.00	
		LABOR				$0.00	
			1.0	EA	$0.00	Total:	$0.00

BID NO.	BID ITEM	DESCRIPTION	FORECAST QUANTITIES	UNIT	UNIT COST	UNIT COST FORECAST	TOTAL COST FORECAST
9	Cover Material (CM-11)	SUBCONTRACTOR	1880.9	T		$0.00	
		MATERIALS			$20.00	$37,618.00	
		EQUIPMENT			$34.90	$65,643.41	
		LABOR			$11.00	$20,689.90	
			1880.9	T	$65.90	Total:	$123,951.31
10	Crack Sealing	SUBCONTRACTOR	79.6	T	$3,500.00	$278,600.00	
		MATERIALS				$0.00	
		EQUIPMENT				$673.00	
		LABOR				$1,317.00	
			79.6	T	$3,525.00		$280,590.00
11	Hot Mix Asphalt - (Large Thermal Crack Filler)	SUBCONTRACTOR	160.0	T		$0.00	
		MATERIALS			$72.00	$11,520.00	
		EQUIPMENT			$84.37	$13,499.20	
		LABOR			$69.83	$11,172.80	
			160.0	T	$226.20	Total:	$36,192.00
12	Lower Manhole Frame & Cover, Sewer Cleanout, Blowoffs and Survey Handholds	SUBCONTRACTOR	4.0	EA	$325.00	$1,300.00	
		MATERIALS			$0.00	$0.00	
		EQUIPMENT			$0.00	$0.00	
		LABOR			$30.00	$120.00	
			4.0	EA	$355.00	Total:	$1,420.00
13	Modified Asphaltic Concrete	SUBCONTRACTOR					
	1/2" PMRAC PG64-28TR	MATERIALS	5500.0	T	$97.50	$536,250.00	
		EQUIPMENT				$52,542.80	
		LABOR				$11,807.20	
			5500.0	T	$109.20	Total:	$600,600.00

BID NO.	BID ITEM	DESCRIPTION	FORECAST QUANTITIES	UNIT	UNIT COST	UNIT COST FORECAST	TOTAL COST FORECAST
14	ADOT Spec 409 64-28TR Dense Grade	SUBCONTRACTOR					
		MATERIALS	6056.0	T	$92.50	$560,180.00	
		EQUIPMENT				$55,205.00	
		LABOR				$15,650.20	
			6056.0	T	$104.20	Total:	$631,035.20
15	Pavement Milling	SUBCONTRACTOR	69975.6	S.Y.	$1.85	$129,454.86	
		MATERIALS				$490.00	
		EQUIPMENT				$7,207.00	
		LABOR				$2,799.34	
			69975.6	SY	$2.00	Total:	$139,951.20
16	Remove and Replace Concrete Apron & Valley Gutter	SUBCONTRACTOR	304.0	SF	$7.50	$2,280.00	
		MATERIALS				$195.00	
		EQUIPMENT				$856.00	
		LABOR				$2,445.00	
			304.0	SF	$19.00	Total:	$5,776.00
17	Remove and Replace Concrete Driveway (Inlcuding 6" ABC)	SUBCONTRACTOR	505.0	SF	$7.50	$3,787.50	
		MATERIALS				$287.00	
		EQUIPMENT				$1,422.00	
		LABOR				$4,098.50	
			505.0	SF	$19.00	Total:	$9,595.00
19	Remove and Replace Curb and Gutter (Vertical-Including 3" ABC)	SUBCONTRACTOR	428.4	LF	$16.50	$7,068.60	
		MATERIALS				$310.00	
		EQUIPMENT				$3,195.00	
		LABOR				$4,206.20	
			428.4	LF	$34.50	Total:	$14,779.80

BID NO.	BID ITEM	DESCRIPTION	FORECAST QUANTITIES	UNIT	UNIT COST	UNIT COST FORECAST	TOTAL COST FORECAST
20	Remove and Replace Curb in Apron	SUBCONTRACTOR	127.0	LF	$17.00	$2,159.00	
		MATERIALS				$94.00	
		EQUIPMENT				$960.00	
		LABOR				$1,232.00	
			127.0	LF	$35.00	Total:	$4,445.00
22	Remove and Replace Pavement (4" AC[C-3/4"])Patch	SUBCONTRACTOR					
		MATERIALS	112.1	SY	$17.00	$1,905.70	
		EQUIPMENT				$2,747.50	
		LABOR				$4,314.80	
			112.1	SY	$80.00	Total:	$8,968.00
24	Remove and Replace Sidewalk (Including 3" ABC)	SUBCONTRACTOR	3454.8	SF	3.95	$13,646.46	
		MATERIALS				$700.00	
		EQUIPMENT				$5,067.00	
		LABOR				$16,861.94	
			3454.8	SF	$10.50	Total:	$36,275.40
25	Remove and Replace Survey Monuments	SUBCONTRACTOR	26.0	EA	150.00	$3,900.00	
		MATERIALS				$0.00	
		EQUIPMENT				$0.00	
		LABOR				$260.00	
			26.0	EA	$160.00	Total:	$4,160.00
26	Remove Ramp & Install Detachable Warning (ADA Ramp MAG 235-3) Including 3" ABC	SUBCONTRACTOR	12.0	EA	975.00	$11,700.00	
		MATERIALS				$268.00	
		EQUIPMENT				$3,992.00	
		LABOR				$6,900.00	
			12.0	EA	$1,905.00	Total:	$22,860.00

BID NO.	BID ITEM	DESCRIPTION	FORECAST QUANTITIES	UNIT	UNIT COST	UNIT COST FORECAST	TOTAL COST FORECAST
28	Remove, Replace & Adjust Water Valve Box and Cover	SUBCONTRACTOR	13.0	EA	$620.00	$8,060.00	
		MATERIALS				$0.00	
		EQUIPMENT				$118.00	
		LABOR				$636.00	
			13.0	EA	$678.00	Total	$8,814.00
30	Street Rebuilding & Patching Contingency	SUBCONTRACTOR					
		MATERIALS	1500.0	S.Y.		$36,141.00	
		EQUIPMENT				$45,406.00	
		LABOR				$20,453.00	
			1500.0	S.Y.	$68.00	Total:	$102,000.00
31	Striping and Marking	SUBCONTRACTOR	1.0	LS	$92,906.12	$92,906.12	
		MATERIALS					
		EQUIPMENT					
		LABOR					
			1.0	LS	$92,906.12	Total:	$92,906.12
32	Supply New Valve Top Box & Cover	SUBCONTRACTOR	2.0	EA	$175.00	$350.00	
		MATERIALS				$0.00	
		EQUIPMENT				$0.00	
		LABOR				$0.00	
			2.0	EA	$175.00	Total:	$350.00
33	Tack Coat (SS-1H)	SUBCONTRACTOR	27.3	T	$617.50	$16,857.75	
		MATERIALS			$470.00	$12,831.00	
		EQUIPMENT					
		LABOR					
			27.3	T	$1,087.50	Total:	$29,688.75

BID NO.	BID ITEM	DESCRIPTION	FORECAST QUANTITIES	UNIT	UNIT COST	UNIT COST FORECAST	TOTAL COST FORECAST
34	Traffic Control	SUBCONTRACTOR	1.0	L.S.		$103,930.00	
		MATERIALS				$266.00	
		EQUIPMENT				$1,575.00	
		LABOR				$4,821.00	
			1.0	L.S.	$110,592.00	Total:	$110,592.00
37	Lower Water Valve Box	SUBCONTRACTOR	46.0	EA	$325.00	$14,950.00	
		MATERIALS				$0.00	
		EQUIPMENT				$0.00	
		LABOR				$690.00	
			46.0	EA	$340.00	Total:	$15,640.00
38	Adjust Sewer Cleanout, Blowoffs and Survey Handholds (City Dtl. 9-03-062)	SUBCONTRACTOR	1.0	EA	$445.00	$445.00	
		MATERIALS					
		EQUIPMENT					
		LABOR				$20.00	
			1.0	EA	$465.00	Total:	$465.00
41	Remove Ramp & Retrofit Detachable Warning (ADA Ramp MAG 235-2) Including 3" ABC	SUBCONTRACTOR	13.0	EA	$702.00	$9,126.00	
		MATERIALS				$216.00	
		EQUIPMENT				$3,164.00	
		LABOR				$6,344.00	
			13.0	EA	$1,450.00	Total:	$18,850.00
42	6' Wide Shoulder Build Up On Soliere Ave. (City Dtl. 9-03-062)	SUBCONTRACTOR	6830.0	LF		$0.00	
		MATERIALS				$0.00	
		EQUIPMENT				$4,930.00	
		LABOR				$1,558.50	
			6830.0	LF	$0.95	Total:	$6,488.50

Total: $2,507,093.46

LIST OF PLANS AND SPECIFICATIONS

Flagstaff Street Maintenance Program - 2014
Plateau Engineering (928) 556-0311

Project No: 01-14001

Drawing No.	Drawing Title	Release Date
1 of 4	Cover Sheet	January - 2014
2 of 4	Notes and Details	January - 2014
3 of 4	Key Maps for Overlay & Chip Seal	January - 2014
4 of 4	Improvement Schedule and Quantities	January - 2014

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: 01-14001

Account No: 040-3332-600

Clarifications and Assumptions

City of Flagstaff Street Maintenance Program – 2014 – Streets

1. It is assumed that City of Flagstaff team members will assist the contractor in identifying and marking the stop and start areas for pavement milling and chip seal.
2. If cross-street approaches are to be overlaid, 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 January 2014 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; 2013 MAG and C.O.F. Specifications will govern.
6. The City of Flagstaff will furnish all necessary quality control testing for this project.
7. It is assumed that Highway 89-A will be milled at night time. These millings will be hauled to a stockpile site on Highway 66 behind the Flagstaff Mall. Millings will be dumped at this site and if necessary will be pushed into stockpile by City of Flagstaff equipment and forces. Taper milling from Soliere Avenue and Country Club Drive will be hauled to Soliere Avenue where they will be used for 6 feet wide shoulder build-up.

PROJECT

MASTER

SCHEDULE

C AND E PAVING & GRADING L.L.C.

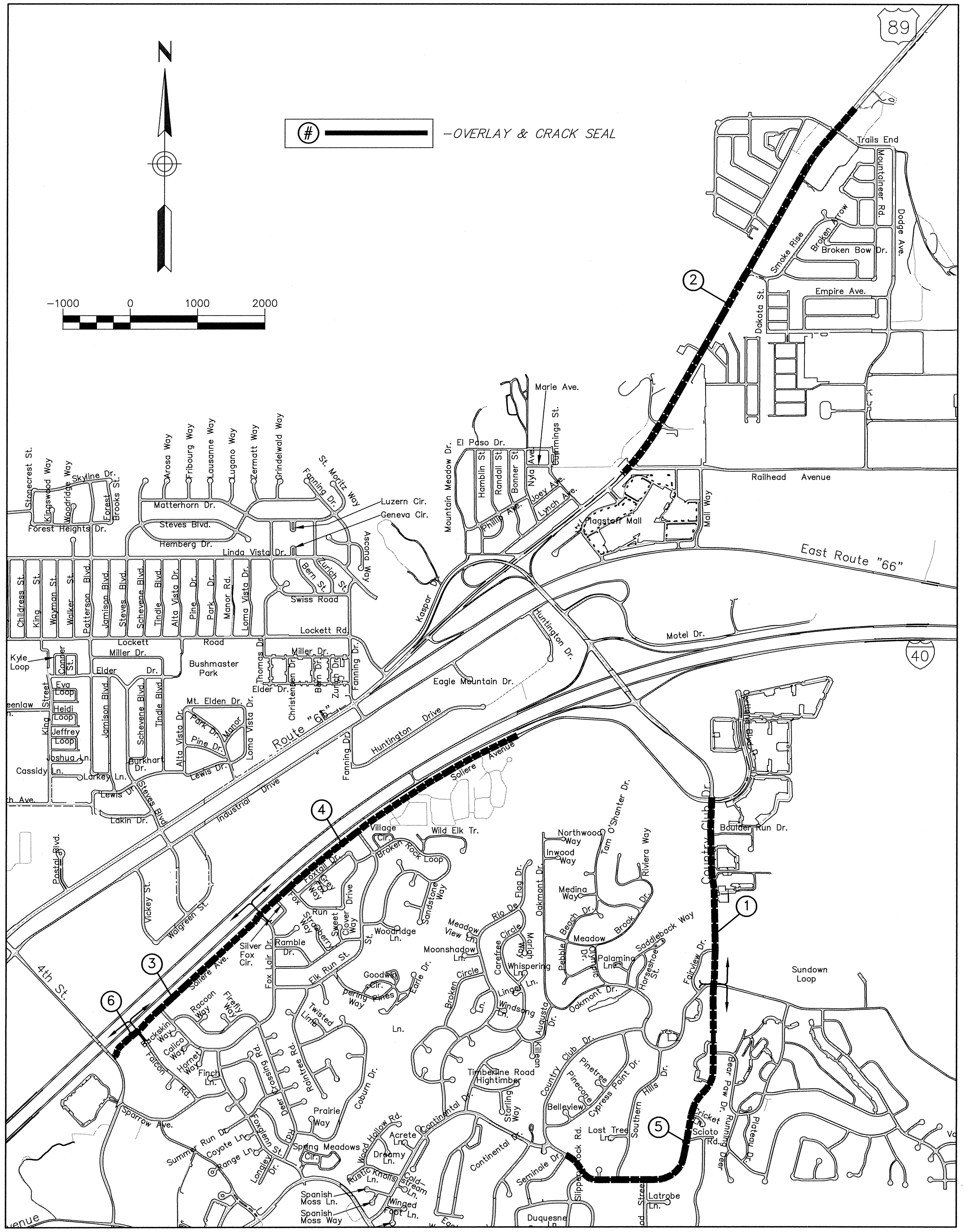
City of Flagstaff
2014 City Street Maintenance Program
Project No: 01-14001

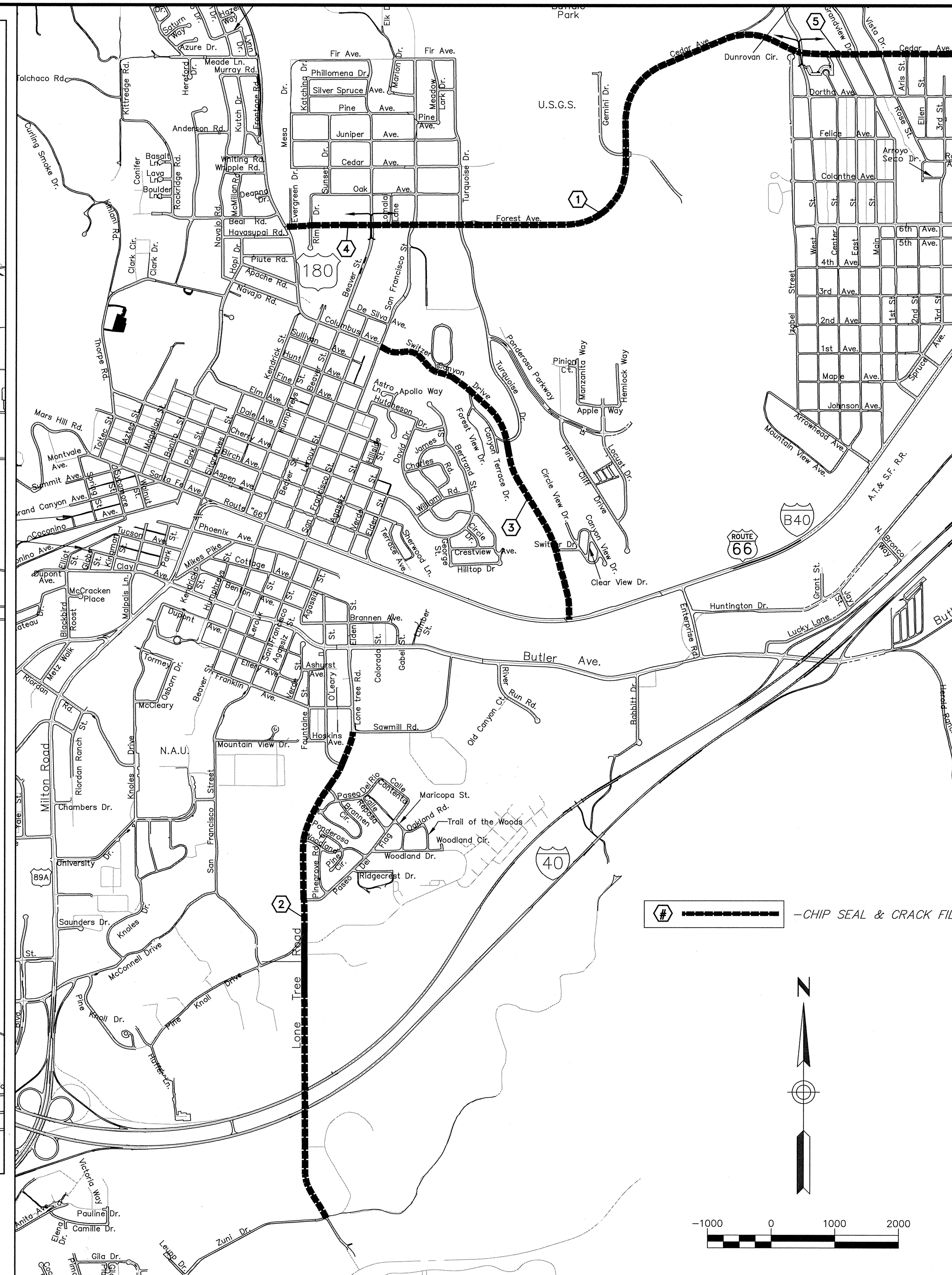
TENTATIVE SCHEDULE

March	M	T	W	TH	F	M	T	W	TH	F	M	T	W	TH	F	M
	10	11	12	13	14	17	18	19	20	21	24	25	26	27	28	31
Country Club & Soliere Widenings																
Traffic Control																
Concrete Structures																
Crackseal (85.5 Tons)																

April	T	W	TH	F	M	T	W	TH	F	M	T	W	TH	F	M	T	W	TH	F	M	T	W	TH	F	M	T	W
	1	2	3	4	7	8	9	10	11	14	15	16	17	18	21	22	23	24	25	28	29	30				
Traffic Control																										
Concrete Structures																										
Street Re-Build (1500 S.Y.) 422 Ton 19mm																										
Crackseal													A													
Large Thermal Crack (160 Ton 3/8 A.C.)																										
Lower Utilities (50 each)																										
Mill (69,975.6 S.Y.)																										
Shoulder Soliere (6,830 L.F.)																										
Crack Seal Hwy.-89																										
Modified Asphalt (11,556 Ton Total)																										
5500 tn 1/2" PMRAC / 6056 tn ADOT 409 dense grade																										

May	TH	F	M	T	W	TH	F	M	T	W	TH	F	M	T	W	TH	F	M	T	W	TH	F
	1	2	5	6	7	8	9	12	13	14	15	16	19	20	21	22	23	26	27	28	29	30
Traffic Control																		H				F
Modified Asphalt																		O				I
Striping-Overlay																		L				N
Utility Adjustments (90 each)																		I				A
Chip Seal (220 tn CRS-2P / 1,880 tn chips)																		D				L
Striping - Chipseal																		A Y				





CALL TWO WORKING DAYS BEFORE YOU DIG
263-1100
1-800-STAKE-IT
(OUTSIDE MARICOPA COUNTY)

Folder No.__________ Project No. 040-3332-600

REGISTERED PROFESSIONAL ENGINEER CERTIFICATE ARIZONA, U.S.A.
PRELIMINARY NOT FOR CONSTRUCTION FOR REVIEW & COMMENT ONLY
Expires: 06/30/2015

REVISIONS

NO.	DATE	DESCRIPTION	BY
△			
△			
△			
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△			

PLATEAU ENGINEERING
CIVIL ENGINEERS AND LAND SURVEYORS
(928) 556-0311 FAX (928) 213-9614

DESIGN: SR		01/2014
DRAWN: SR		01/2014
CHECKED: NDR		01/2014
HORZ:	VERT:	
SHEET NO. 3 OF 4		JAN/14

PROJECT TITLE: COF ASPHALT MAINTENANCE 2014

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Nicole Woodman, Sustainability Manager

Date: 02/26/2014

Meeting Date: 03/04/2014

TITLE:

Consideration and Adoption of Resolution No. 2014-09: A resolution of the Mayor and City Council of the City of Flagstaff, Arizona, requiring that the City incorporate sustainable building practices into the design, construction, and operation of all City-owned facilities and repealing Resolution No. 2008-32, which required all new City buildings to be constructed using the U.S. Green Building Council-sponsored principles of Leadership in Energy and Environmental Design (LEED) ***(For the purpose of providing more sustainable building options to the City)***

RECOMMENDED ACTION:

1) Read Resolution No. 2014-09 by title only
2) City Clerk reads Resolution No. 2014-09 by title only (if approved above)
3) Adopt Resolution No. 2014-09.

Policy Decision or Reason for Action:

In 2008 the City Council adopted Resolution 2008-32, a Resolution requiring that all new occupied City buildings be constructed using the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") Silver certification requirements. At the time Resolution 2008-32 was adopted there were few nationally recognized sustainable building certification programs. Resolution 2014-09 provides more options to the City in consideration of its diverse building needs (i.e. administrative, recreational, maintenance, emergency response, and legal).

Financial Impact:

The financial impact of Resolution 2014-09 will be project specific. More information is included on the next page under **Expanded Financial Impact.**

Connection to Council Goal:

Effective governance

Has There Been Previous Council Decision on This:

Yes, in 2008 the City Council adopted Resolution 2008-32, a Resolution requiring that all new occupied City buildings be constructed using the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") Silver certification requirements.

Options and Alternatives:

Option A – Adopt Resolution No. 2014-09 as submitted;
Option B – Amend Resolution No. 2014-09;
Option C - Not adopt Resolution No. 2014-09.

Background/History:

In 2008 there were few nationally recognized sustainable building certification programs. As a result the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") program has dominated the United States' certification industry for more than a decade. Since its launch more than 54,000 projects have been certified through LEED.

In recent years additional building certification programs have been recognized. Green Globes is one such program that has gained traction in the industry. Green Globes shares many similarities to LEED but differs in that it does not have minimum requirements or penalization for inapplicable credits and is considered more streamlined by some industry reports. In 2012 the U.S. General Services Administration ("GSA") reexamined its LEED Gold certification requirement for Federal projects. As a result, GSA incorporated Green Globes in addition to LEED as acceptable certification programs for their mandatory requirements. The Living Building Challenge is another such program that requires advanced design and performance measures. In contrast the ASHRAE Standard 189.1 is not a rating system and is a compliance option to the International Green Construction Code published by the International Code Council and cooperating sponsors, including the American Institute of Architects and American Society for Testing and Materials ("ASTM") International.

Program	**LEED**	**Green Globes**	**Living Building Challenge**	**ASHRAE**
Release/Current version	2000/4.0	2005/2013	2006	2011/189.1
Categories	Site Water Energy/Atmosphere Innovation Materials/Resources Indoor EQ Location/Transit Regional Priority	Management Site Energy Water Materials Emissions Indoor Environment	Site Water Energy Health Materials Equity Beauty	Site Energy Water Materials Emissions Indoor Environment
Rating scale	Certified Silver Gold Platinum	1 Globe 2 Globes 3 Globes 4 Globes	Full certification Petal recognition Net zero energy	No scale, must meet all code standards

Key Considerations:

Resolution No. 2014-09 provides more options to the City to achieve high performing buildings in new construction.

Expanded Financial Considerations:

Projects meeting the requirements of sustainable building certification programs are designed to have lower operating costs by efficiently managing energy, water, and waste. In addition projects will have an increased asset value. Depending on the building type, a project will likely incur additional soft (design and modeling) and hard (construction) costs for measures that perform beyond the City's current building codes. Research demonstrates that certification project costs range from as little as $0.10 per square foot (sf) to $1.00/sf. Though most projects begin with a focus on cost savings, many building owners report equal value in payback measures and in operating and maintaining their facilities to a higher level of performance.

Recommended certification programs include the most recent versions of LEED (Silver), Green Globes (3 Globes), or Living Building Challenge (Petal recognition). Section 2 of the Resolution proposes if City staff determines compliance with certification standards cost prohibitive (defined as a payback period of more than eight years) staff will recommend American Society of Heating, Refrigeration, and Air Conditioning Engineers ("ASHRAE") High-Performance Building Standards ("H.P.B.") for the project. Research demonstrates an estimated 1 – 2.8% increase to overall project costs for the ASHRAE standards.

Based on industry research, the following is an example of estimated certification and soft costs (design and

modeling) for a 25,000 square foot facility:

Organization	U.S. Green Building Council	Green Building Institute	International Living Future Institute	ASHRAE
Program	LEED	Green Globes	Living Building Challenge	H. P. B. Standards
Estimated cost for 25,000 sf building	Top of Form Certification fee and soft costs = $20,950 - $33,450 Bottom of Form	Certification fee and soft costs = $14,500 - $20,500	Top of Form Certification fee = $8,400 Bottom of Form	No certification fee

Community Benefits and Considerations:

Incorporating sustainable building practices can yield savings for the City by efficiently managing energy, water, waste and stormwater, while improving the employee and visitor experience.

Community Involvement:

Inform and consult. On February 12, 2014 the Sustainability Commission reviewed proposed Resolution 2014-09 and voted unanimously in support of it.

Expanded Options and Alternatives:

Option A – Adopt Resolution No. 2014-09 as submitted;
Option B – Amend Resolution No. 2014-09;
Option C – Not Adopt Resolution No. 2014-09.

Attachments: Res. 2014-09
LEED Resolution 2008-32

RESOLUTION NO. 2014-09

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, REQUIRING THAT THE CITY INCORPORATE SUSTAINABLE BUILDING PRACTICES INTO THE DESIGN, CONSTRUCTION, AND OPERATION OF ALL CITY-OWNED FACILITIES AND REPEALING RESOLUTION NO. 2008-32, WHICH REQUIRED ALL NEW CITY BUILDINGS TO BE CONSTRUCTED USING THE U.S. GREEN BUILDING COUNCIL-SPONSORED PRINCIPLES OF LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN

RECITALS:

WHEREAS**,** the City of Flagstaff ("City") is committed to excellence and leadership in the community; and

WHEREAS**,** the City desires to lead by example through implementing building practices that protect natural resources; prevent waste, reduce consumption, and promote human health and well-being; and

WHEREAS**,** incorporating sustainable building practices can yield savings by efficiently managing energy, water, waste and stormwater, while improving the employee and visitor experience; and

WHEREAS**,** the Mayor and City Council of the City of Flagstaff wish to declare that all occupied City-owned new construction and major renovations, including building additions over 10,000 square feet, shall achieve certification in the Leadership in Energy and Environmental Design ("LEED") Program, Green Globes Program, or Living Building Challenge Program, or at a minimum achieve American Society of Heating, Refrigeration, and Air Conditioning Engineers ("ASHRAE") Design for High-Performance building standards; and

WHEREAS**,** the Mayor and City Council of the City of Flagstaff wish to declare that all occupied City-owned facilities shall be operated to achieve maximum efficiency; and

WHEREAS, the Mayor and City Council of the City of Flagstaff desire to repeal Resolution No. 2008-32.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Mayor and City Council hereby require that all occupied City-owned new construction and major renovation of existing facilities, including building additions over 10,000 square feet, achieve certification in the most recent version of LEED (Silver), Green Globes (3 Globes), or Living Building Challenge (petal recognition).

SECTION 2. That if City staff charged with the design, construction, or renovation of a City-owned facility determine that compliance with certification standards is uniquely cost prohibitive,

staff will recommend that the most recent ASHRAE High-Performance building standards be achieved on the project. Cost prohibitive is defined as a payback period of more than eight (8) years for the additional costs associated with LEED, Green Globes, or Living Building Challenge certification measures.

SECTION 3. That the Mayor and City Council require that when entering into leases for occupancy, including the renegotiation or extension of existing leases, the City shall include a preference for occupied space that is certified under LEED, Green Globes, Living Building Challenge, ASHRAE, and/or an equivalent standard.

SECTION 4. That the Mayor and City Council require staff whose responsibilities include the design, construction, remodeling, repair, maintenance, operation or deconstruction of City-owned facilities to be responsible for ensuring compliance with the Sustainable Building policies required by this Resolution.

SECTION 5. That Resolution No. 2008-32 is hereby repealed.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 4th day of March, 2014.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

RESOLUTION NO. 2008-32

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, REQUIRING THAT ALL NEW CITY BUILDINGS SHALL BE CONSTRUCTED USING THE US GREEN BUILDING COUNCIL SPONSORED PRINCIPLES OF LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN.

WHEREAS, the Mayor and City Council of the City of Flagstaff ("City") wish to declare that all new occupied City facilities of any size will be designed, contracted and built to achieve certification in the Leadership in Energy and Environmental Design (LEED) Program; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Mayor and City Council hereby adopt LEED principals for design and construction of new City facilities, reflecting the City's commitment to improving building performance, resource efficiency and livability.

SECTION 2. That the Mayor and City Council declare that all new, occupied (as defined by the City's Building Code Regulations) City buildings of any size will be designed, contracted and built to achieve the minimum of LEED Silver certification in anticipate that the payback for the additional costs of achieving LEED Silver certification shall be eight years or less; and that the Mayor and City Council declare that the City shall strive for the highest level of certification (currently Platinum) whenever project resources and conditions permit.

SECTION 3. That the Mayor and City Council, to maintain control over the cost of City building projects, qualify the above Section 2 of this Resolution to require a payback period of no more than eight (8) years for the additional costs for LEED Silver certification and that, where the payback is anticipated to be more than eight (8) years, City staff is directed to recommend to the City Council which level of LEED certification is appropriate for that particular project.

SECTION 4. The Mayor and City Council may grant exceptions to this policy when deemed appropriate.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2008.

_____
MAYOR

ATTEST:

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY