

FINAL AGENDA

REGULAR COUNCIL MEETING
TUESDAY
JANUARY 20, 2015

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 BAROTZ

COUNCILMEMBER BREWSTER

COUNCILMEMBER EVANS

COUNCILMEMBER ORAVITS

COUNCILMEMBER OVERTON

COUNCILMEMBER PUTZOVA

3. PLEDGE OF ALLEGIANCE AND MISSION STATEMENT

MISSION STATEMENT

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

4. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

- A. Consideration and Approval of Minutes:** City Council Regular Meeting of November 18, 2014; Special Meeting (Executive Session) of December 3, 2014; Special Meeting (Executive Session) of December 15, 2014; Special Meeting (Executive Session) of December 16, 2014; Special Meeting (Executive Session) of December 18, 2014; Special Meeting (Executive Session) of December 23, 2014; Special Meeting (Executive Session) of January 6, 2015; and Special Meeting (Executive Session) of January 13, 2015.

RECOMMENDED ACTION:

Amend/approve the minutes of the City Council Regular Meeting of November 18, 2014; Special Meeting (Executive Session) of December 3, 2014; Special Meeting (Executive Session) of December 15, 2014; Special Meeting (Executive Session) of December 16, 2014; Special Meeting (Executive Session) of December 18, 2014; Special Meeting (Executive Session) of December 23, 2014; Special Meeting (Executive Session) of January 6, 2015; and Special Meeting (Executive Session) of January 13, 2015.

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).

A. Consideration of Appointments: Planning and Zoning Commission.**RECOMMENDED ACTION:**

Make two appointments to terms expiring December 2017.

8. LIQUOR LICENSE PUBLIC HEARINGS**A. Consideration and Action on Liquor License Application: Larami Sandlin, Dark Sky Brewing Company, 117 N. Beaver St., Suite A, Series 03, New License.****RECOMMENDED ACTION:**

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.

None

10. ROUTINE ITEMS

- A. Consideration and Approval of Contract:** Services Agreement; Utility Payment, Bill Presentment and Notification Services. (**Approve Agreement for Payment Processing Services**).

RECOMMENDED ACTION:

- 1) Accept the Proposal and approve the agreement with Paymentus Corporation, for the annual services of Utility Payment, Bill Presentment and Notification Services.
- 2) Authorize the City Manager to execute the necessary documents.

- B. Consideration and Approval of Sole Source Purchase:** Consideration and approval to purchase an upgrade to the Police Department's Public Safety Computer Automated Records System, to a WEB based Records Management System and Services through Intergraph Corporation, in the amount of \$500,000 plus applicable taxes. Funding of this request will come through the FY2016/17 budget process. (**THIS REQUEST IS TIME SENSITIVE DUE TO A JANUARY 31, 2015 DEADLINE BY THE VENDOR, SAVING THE CITY SUBSTANTIAL MONEY**)

RECOMMENDED ACTION:

- 1) Approve the agreement from Intergraph Corporation entitled "I/LEADS Upgrade to Web RMS, CAGIS, and BI Direct". This purchase shall be contingent upon budget approval through the FY2016/2017 budget process. If and when this purchase becomes a budgeted item, the Purchasing Director shall administratively award the contract.
- 2) Authorize the City Manager to sign the agreement documents.

RECESS**6:00 P.M. MEETING****RECONVENE****NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

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11. ROLL CALL

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

MAYOR NABOURS

VICE MAYOR BAROTZ

COUNCILMEMBER BREWSTER

COUNCILMEMBER EVANS

COUNCILMEMBER ORAVITS

COUNCILMEMBER OVERTON

COUNCILMEMBER PUTZOVA

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 an Amendment to Settlement and Release Agreement: Canyon Del Rio.****RECOMMENDED ACTION:**

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

B. Consideration and Adoption of Resolution No. 2015-03: A resolution of the Flagstaff City Council Regarding Walnut Canyon. (*Adopt resolution supporting Congressional designation of a special management area for protection of lands surrounding Walnut Canyon National Monument*).**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2015-03 by title only
- 2) Clerk reads Resolution No. 2015-03 by title only (if approved above)
- 3) Adopt Resolution No. 2015-03

C. Consideration and Approval of Agreement(s): Amending the Service Provider Agreement and Business Incubator Master Lease, and approving the Business Accelerator Master Lease**RECOMMENDED ACTION:**

Authorize the City to enter into the Service Provider Agreement and both of the Master Lease Agreements for the use and operation of City-owned facilities on McMillian Mesa.

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**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 _____, 2015.

Elizabeth A. Burke, MMC, City Clerk

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Elizabeth A. Burke, City Clerk
Date: 01/16/2015
Meeting Date: 01/20/2015



TITLE

Consideration and Approval of Minutes: City Council Regular Meeting of November 18, 2014; Special Meeting (Executive Session) of December 3, 2014; Special Meeting (Executive Session) of December 15, 2014; Special Meeting (Executive Session) of December 16, 2014; Special Meeting (Executive Session) of December 18, 2014; Special Meeting (Executive Session) of December 23, 2014; Special Meeting (Executive Session) of January 6, 2015; and Special Meeting (Executive Session) of January 13, 2015.

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INFORMATION

Attached are copies of the minutes of the City Council Regular Meeting of November 18, 2014; Special Meeting (Executive Session) of December 3, 2014; Special Meeting (Executive Session) of December 15, 2014; Special Meeting (Executive Session) of December 16, 2014; Special Meeting (Executive Session) of December 18, 2014; Special Meeting (Executive Session) of December 23, 2014; Special Meeting (Executive Session) of January 6, 2015; and Special Meeting (Executive Session) of January 13, 2015.

Attachments: [11.18.2014.CCRM.Minutes](#)
 [12.03.2014.CCSMES.Minutes](#)
 [12.15.2014.CCSMES.Minutes](#)
 [12.16.2014.CCSMES.Minutes](#)
 [12.18.2014.CCSMES.Minutes](#)
 [12.23.2014.CCSMES.Minutes](#)
 [01.06.2015.CCSMES.Minutes](#)
 [01.13.2015.CCSMES.Minutes](#)

4:00 P.M. MEETING

1. CALL TO ORDER

Mayor Nabours called the meeting of November 18, 2014, to order at 4:01 p.m.

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

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2. ROLL CALL

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PRESENT

ABSENT

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

NONE

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

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

None

5. PUBLIC PARTICIPATION

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None

6. PROCLAMATIONS AND RECOGNITIONS

Moved to the 6:00 p.m. portion of the meeting

7. APPOINTMENTS

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

None

8. LIQUOR LICENSE PUBLIC HEARINGS

None

9. CONSENT ITEMS

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

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Mark Woodson to approve Consent Items 9-A and 9-B.

Vote: 7 - 0 Passed - Unanimously

A. Consideration and Approval of Cooperative Contract: Purchase of one (1) Solid Waste Truck on a City of Mesa cooperative agreement (Approve purchase of Solid Waste collection truck**).**

Approve the purchase of one (1) Solid Waste collection truck from Rush Truck Center, Phoenix, Az. through a cooperative purchase agreement with the City of Mesa, Az. for the amount of \$258,137.48 (tax included).

B. Consideration and Approval of Contract: Construction Manager at Risk Design Phase Contract: Street Maintenance Program 2015, 2016 and 2017 (Approve contract with C and E Paving and Grading, LLC in the amount of \$112,821.00**)**

- 1) Award the Construction Manager at Risk Contract with C and E Paving & Grading LLC in an amount not to exceed \$ 112,821.00.
- 2) Authorize Change Order Authority of \$ 11,282 (10%) to cover potential costs associated with unanticipated or additional items of work.
- 3) Authorize the City Manager to execute the necessary documents.

C. Consideration and Approval of Purchase: Four (4) Police Interceptor Utility Vehicles

Mayor Nabours asked if Flagstaff would be paying sales tax to Peoria for the purchase and if they had been purchased from a Flagstaff dealer if they would be paying sales tax to themselves. Candace Schroeder of the Purchasing Department said that they would be paying sales tax to Flagstaff as well. She emphasized that when they go with an Invitation for Bid, they have to go with the lowest responsible, responsive bidder.

Purchasing Director Rick Compau explained that they were currently doing in-depth legal research on other considerations possible through the bidding process, such as carbon footprints, etc.

Councilmember Barotz asked if it was state law or local rules that did not allow them to take those items into consideration. Mr. Compau replied that it was part of the state procurement rules; it carries to all public sector agencies throughout the state. He said that there are a few cities that have adopted a local bid preference, one of which is being challenged right now. Staff was asked to provide Council with information on whatever legislation says they have to abide by that law; perhaps lobbying to change it.

Moved by Mayor Jerry Nabours, seconded by Councilmember Mark Woodson to approve the purchase contract to the lowest responsive and responsible bid from Peoria Ford of Phoenix, for the purchase of four (4) Police Interceptor Utility model vehicles for the amount of \$111,372.68, plus applicable fees

Vote: 7 - 0 Passed - Unanimously

10. ROUTINE ITEMS

A. Consideration and Adoption of Resolution No. 2014-40: A resolution of the Mayor and Council of the City of Flagstaff, Coconino County, Arizona, declaring official and adopting the results of the General Election held on November 4, 2014

City Clerk Elizabeth Burke reviewed the results of the November 4, 2014, election as outlined in the resolution:

The total number of ballots cast at said General Election for the City of Flagstaff, as shown by the Election Summary Report provided by the Coconino County Elections Department was 16,910 out of 31,140 registered voters, for a 54% voter turnout.

The following results of the November 4, 2014, General Election are hereby declared official:

CANDIDATES FOR MAYOR

HASAPIS, James (Jamey)	6,730	(43.52%)
NABOURS, Jerry	8,687	(56.18%)
WRITE-INS	46	(.30%)

CANDIDATES FOR COUNCIL

BAROTZ, Celia	8,619	(20.62%)
MCCARTHY, Jim	6,343	(15.18%)
ODEGAARD, Charlie	6,748	(16.15%)
OVERTON, Scott	6,971	(16.68%)
PUTZOVA, Eva	7,426	(17.77%)
WOODSON, Mark	5,565	(13.31%)
WRITE-INS	123	(.29%)

QUESTION NO. 406 – ROAD REPAIR AND STREET SAFETY INITIATIVE

YES	10,310	(63.07%)
NO	6,037	(36.93%)

Of the 21,281 Early Ballots submitted issued, the following results apply:

Early Ballots Accepted	12,698
Early Ballots Returned as Undeliverable	906
REJECTED EARLY BALLOTS:	
Received too late	49
Signature different	48
Signature missing	14
Voted twice	1
TOTAL REJECTED	112

Based on the above-referenced results, the following individuals have been elected to their respective position and will assume said office on December 2, 2014:

MAYOR	Jerry Nabours
COUNCILMEMBER	Celia Barotz
COUNCILMEMBER	Scott Overton
COUNCILMEMBER	Eva Putzova

Based on the above-referenced results, Question No. 406, the Road Repair and Street Safety Initiative has passed.

Moved by Councilmember Celia Barotz, **seconded by** Councilmember Jeff Oravits to read Resolution No. 2014-40 by title only.

Vote: 7 - 0 Passed - Unanimously

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, DECLARING OFFICIAL AND ADOPTING THE RESULTS OF THE GENERAL ELECTION HELD ON NOVEMBER 4, 2014

Moved by Councilmember Karla Brewster, **seconded by** Councilmember Celia Barotz to adopt Resolution No. 2014-40.

Vote: 7 - 0 Passed - Unanimously

- B. Consideration and Approval of Contract:** Involving Coconino Coalition for Children & Youth Program, Flagstaff Unified School District and the City of Flagstaff for the FACTS after school program funding for Fiscal Year 2015

Moved by Councilmember Jeff Oravits, **seconded by** Councilmember Scott Overton to approve the Agreement with Flagstaff Unified School District and the Coconino Coalition for Children and Youth in the amount of \$247,319.00 for the FACTS Program and \$19,669.00 for the Coconino Coalition for Children & Youth Program.

Vote: 7 - 0 Passed - Unanimously

- C. Consideration of Agreement:** Amended Intergovernmental Agreement (IGA) with Coconino County for use of the Hazardous Products Center (HPC) (**Approve amended IGA with County for use of the HPC**).

Environmental Program Manager Noah Eismann said that approval of this IGA allows Coconino County residents and small businesses to continue utilizing the HPC to properly dispose of hazardous waste. He noted that Council approved this IGA in July of this year prior to the County proposing two changes to the language, neither of which affect either party in terms of cost or service.

Moved by Councilmember Celia Barotz, **seconded by** Councilmember Karla Brewster to approve the IGA with Coconino County for use of the Hazardous Products Center (HPC).

Vote: 7 - 0 Passed - Unanimously

- D. Consideration and Adoption of Ordinance No. 2014-28:** An ordinance of the Mayor and Council amending Title II, Boards and Commissions, of the Flagstaff City Code by amending various boards and commissions of the City to provide for consistency in the number of members and their terms.

Moved by Councilmember Scott Overton, **seconded by** Councilmember Jeff Oravits to read Ordinance No. 2014-28 by title only for the final time.

Vote: 7 - 0 Passed - Unanimously

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, AMENDING TITLE II, BOARDS AND COMMISSIONS, BY AMENDING CHAPTER 2-01, PLANNING AND ZONING COMMISSION; CHAPTER 2-02, BUILDING AND FIRE CODE BOARD OF APPEALS; CHAPTER 2-03, PARKS AND RECREATION COMMISSION; CHAPTER 2-04, WATER COMMISSION; CHAPTER 2-08, COMMISSION ON DIVERSITY AWARENESS; CHAPTER 2-10, BOARD OF ADJUSTMENT; CHAPTER 2-11, FLAGSTAFF AIRPORT COMMISSION; CHAPTER 2-12, TRANSPORTATION COMMISSION; CHAPTER 2-13, TOURISM COMMISSION; CHAPTER 2-14, BEAUTIFICATION AND PUBLIC ART COMMISSION; CHAPTER 2-17, SUSTAINABILITY COMMISSION; CHAPTER 2-18, COMMISSION ON DISABILITY AWARENESS; CHAPTER 2-19, HERITAGE PRESERVATION COMMISSION; CHAPTER 2-20, OPEN SPACES COMMISSION; CHAPTER 2-22, FLAGSTAFF COMMUNITY LAND TRUST COMMISSION; AND CHAPTER 2-23, FLAGSTAFF AREA REGIONAL PLAN CITIZENS' ADVISORY COMMITTEE, THEREOF

Moved by Councilmember Jeff Oravits, **seconded by** Councilmember Mark Woodson to adopt Ordinance No. 2014-28.

Vote: 7 - 0 Passed - Unanimously

- E. Consideration and Adoption of Ordinance 2014-33:** An ordinance of the Flagstaff City Council ratifying the sale of approximately 33.6 acres of real property consisting of three parcels located at the southeast and southwest corners of the intersection of Fourth Street and Route 66, and the northwest corner of Fourth Street and Huntington Drive adjacent to the Fourth Street Overpass (***ordinance ratifying the sale of the TRAX properties***)

Moved by Councilmember Karla Brewster, **seconded by** Councilmember Celia Barotz to read Ordinance No. 2014-33 by title only for the first and final time.

Vote: 7 - 0 Passed - Unanimously

AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL RATIFYING THE SALE OF APPROXIMATELY 33.6 ACRES OF REAL PROPERTY CONSISTING OF THREE PARCELS LOCATED AT THE SOUTHEAST AND SOUTHWEST CORNERS OF THE INTERSECTION OF FOURTH STREET AND ROUTE 66, AND THE NORTHWEST CORNER OF FOURTH STREET AND HUNTINGTON DRIVE ADJACENT TO THE FOURTH STREET OVERPASS

Moved by Councilmember Jeff Oravits, **seconded by** Councilmember Karla Brewster to adopt Ordinance No. 2014-33.

Vote: 7 - 0 Passed - Unanimously

- F. Consideration and Approval of Grant Application and Intergovernmental Agreement:** Arizona Internet Crimes Against Children Taskforce Affiliate Sub-Grant Funds.

Lt. Frank Higgins stated that entering into the Intergovernmental Agreement with the City of Phoenix allows the Police Department to apply for grant funding managed by the AZ ICAC Taskforce. This funding is used for training and equipment needed to operate the computer forensics lab at the Flagstaff Police Department. For the 2014 - 2015 grant cycle, the Police Department is requesting \$9,859.00 to pay for Basic Computer Forensic Examiner training which is conducted once a year in the United States by the International Association of Computer Investigative Specialists (IACIS). This training will enable the Police Department to train and certify a new forensic examiner. He said the remaining funds will be used for

continuing education training for the remaining Certified Forensic Computer Examiner (CFCE) at the Police Department. This training is necessary so the examiner can maintain the necessary continuing education requirements needed to retain the certification as well as keep current with contemporary software and examination procedures.

Moved by Councilmember Scott Overton, **seconded by** Councilmember Mark Woodson to approve the Grant Application and IGA with the City of Phoenix with the Arizona Internet Crimes Against Children (ICAC) Taskforce for grant funds in the amount of \$9,859.

Vote: 7 - 0 Passed - Unanimously

G. Consideration and Approval of Contract: 4th Street Gateway Project. (Construction contract for 4th Street Gateway Public Art Project**).**

Mark DiLucido, Community Design & Redevelopment Project Administrator, presented a PowerPoint presentation on the proposed project which addressed:

PURPOSE
PUBLIC PROCESSED
DESIGN FEATURES
FIRST DESIGN & BID PROCESS
REBID PROCESS
REQUESTED ACTION

Mayor Nabours said that he was glad to see this coming before the Council. He said that he had some concern with the malapai stone and possible graffiti. Mr. DiLucido said that there is a coating available that helps to make it easier to clean if it should get tagged. They did not include that in this bid. Their plan is to build it and hope it does not happen. If it does, then they will put the coating on.

Councilmember Oravits said that they have had problems with people loitering at intersections in town. Mr. Lucido said that this was public property owned by the City. They would have to treat it like everything else; if it became a problem they would have police address it. Mr. Burke said that the biggest mitigation is that the traffic is not stopping right in front of this which would make it more challenging for them.

Mr. DiLucido said that the construction of the gateway would start this spring and finish in the summer. Prior to that they hope to issue a call to artists. He said that it will be a Beautification and Public Arts Commission decision and the business owners and residents were aligned on the idea of rotating pieces periodically.

Moved by Vice Mayor Coral Evans, **seconded by** Councilmember Jeff Oravits to approve a construction contract with Woodruff BWC Construction, in the amount of \$233,969.

Vote: 6 - 1 Passed

NAY: Councilmember Scott Overton

Moved by Councilmember Jeff Oravits, **seconded by** Councilmember Karla Brewster to approve Change Order Authority to the City Manager in the amount of \$23,396.90 (10% of contract amount) and authorize the City Manager to execute the necessary documents.

Vote: 6 - 1 Passed

NAY: Councilmember Scott Overton

RECESS

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

6:00 P.M. MEETING**RECONVENE**

Mayor Nabours reconvened the Regular Meeting of November 18, 2014, at 6:02 p.m.

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

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11. ROLL CALL

PRESENT

ABSENT

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

NONE

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

12. PUBLIC PARTICIPATION

Joe Farnsworth, Flagstaff, questioned what would prohibit the Indians from putting up a fence to keep the City out of using the Red Gap Ranch property and associated water rights, and he would like the Council to address that issue at some point.

He also said that he voted against the road taxes because the state should be paying the City to fix those roads.

Laura Vineyard, Flagstaff, voiced concern about two recent teen suicides within the last six months and asked that the Council think about it and possibly form a committee.

Joe Ray, Flagstaff, congratulated the Council present tonight who were successful in the recent election. He said that it has been protocol for longer than the Mayor has been in Flagstaff that the highest vote getter be made Vice Mayor. The Council does not have the right to change something that has been in place for so long.

Joanne Estes, Flagstaff, voiced concern with the icy intersection when exiting the interstate at McConnell.

Emily Davalos, Flagstaff, said that the Public Participation has not been limited since she spoke out against it. Additionally, she agreed that the Vice Mayor position going to the members with the most votes is the best way to show that they value public input.

John Viktora, Flagstaff, agreed that the system they have now for selecting the Vice Mayor should not be changed, and suggested that perhaps they should put the process in writing.

Gabor Kovacs, Flagstaff, said that he supported the Mayor's opinion that the Vice Mayor should besomeone who has not yet served in that capacity.

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

A. PROCLAMATIONS AND RECOGNITIONS

i. Reading of essays by NAU students winning the "This I Believe" Essay Contest

Rebecca Campbell, Director of the Program *NAU Reads*, said that she and her cohort Monica from the Public Library with *Flagstaff Reads*, worked on a project together this year where they all read the same book entitled "This I Believe." Monica then explained that they held a competition inviting students to submit their essays, and from the 14 submitted, the following were selected. She thanked Councilmember Barotz for attending the evening where they were read and enjoyed them so much she invited them to a Council meeting. She then introduced each of the students who read their respective essays:

Cameron – *I Believe in the Power of Words*

Emily Cain – *I Believe in Miracles*

Rebecca Thomas – *I Believe Life is Better with Dogs*

Danielle Brown – *I Believe Kindness is Key*

ii. Recognition of Plaza Vieja Neighborhood on their Safe Sidewalks designation

Mayor Nabours read a Recognition of Plaza Vieja Neighborhood on their Safe Sidewalks designation and presented it to Irene and Jesse Dominguez, representing the neighborhood. He said that on October 18, the neighborhood worked hard to clear their sidewalks, making it the first safe sidewalk neighborhood, and had a barbecue with a great turnout.

14. PUBLIC HEARING ITEMS

- A. Public Hearing, Consideration and Adoption of Ordinance No. 2014-30:** An ordinance of the City Council of the City of Flagstaff, Arizona, extending and increasing the corporate limits of the City of Flagstaff, Coconino County, State of Arizona, pursuant to the provisions of Title 9, Chapter 4, Arizona Revised Statues, by annexing certain land totaling approximately 3.14 acres located at 2701 S. Woody Mountain Road, which land is contiguous to the existing corporate limits of the City of Flagstaff and establishing city zoning for said land as RR, Rural Residential. ***(Annexation of property for Aspen Heights located on Woody Mountain Road)***

Mayor Nabours said that they would be discussing Items 14-A and 14-B together. He said that they concluded the public comment portion of the public input over a four week period and two weeks ago they continued the Council discussion portion of the Public Hearing to this meeting, asking for the applicant to provide responses/rebuttals to issues raised at the last meetings.

Charlie Votterott said that they appreciated the time that had been dedicated to their project. They were happy to answer questions they may have, but felt they had done a thorough job of demonstrating what they were committed to do with the community, and with their efforts with NAIPTA. He said that they have been structuring a development agreement to make sure the City can count on Aspen Heights living up to their commitments.

Mayor Nabours read a list of tentative conditions in addition to the Planning and Zoning Commission, and asked if there had been any further development with NAIPTA. Ms. Kjellgren said that this afternoon she sent back the development agreement with her comments on just a few provisions they wanted amendments to. She believed they were close to having an agreement ready to go to the Board. She said that the amounts and times had not changed. She also noted that they did submit a more recent lighting plan that included lumens to just over 6,000 plus motion detectors.

Kent Link with Arizona Department of Transportation addressed the Council in response to questions from Councilmember Overton who said that the wording of the Traffic Impact Analysis (TIA) was gray and asked if he could provide clarification. Additionally, Councilmember Overton said that there has been a lot of public testimony re concerns with bike transportation, but the TIA was mute on that issue.

Mr. Link said that the language of the TIA was his. The traffic engineer hired by the developer completed a signal warrant study. Under federal and state laws the warrants must be met, but if they are met it does not mean they have to be installed. There are many intersections that have met warrants, but they did not put in a signal and this is one of those. With the traffic that Aspen Heights is projected to create, this intersection does not yet need a traffic signal. He said that not all traffic signals are good. When they are installed prior to the need it is common for crashes to increase.

Councilmember Overton said that it is his understanding that this is why the City is requiring the developer to pay into a fund for a future signal and asking for right-of-way and property acquisition for a signal to be installed in the future. Mr. Link noted that signalized intersections are not the only option. They may realize that there is an eventual interchange planned for Woody Mountain Road that would have roundabouts. There are conceptual plans to have one at Woody Mountain and Route 66 and at Thompson, but those are years in the future. They are not currently planned or programmed.

With regard to bicycles, Mr. Link said that ADOT currently has no planned improvements on Route 66 that would increase capacity to allow for construction of a wide shoulder like B40 in the west end.

Councilmember Overton asked if that was programmed. Mr. Link said that the eventual completion of West Route 66 has been in and out of the queue for a number of years; it is not currently planned. The cost is estimated at \$15 million from Riordan to Woody Mountain Road, based off of a 2007 Route Transit Study. He said that ADOT is currently in a preservation mode as HURF funds have declined and they are trying to maintain the capacity they have.

Councilmember Oravits asked if he was understanding correctly that the signal is not warranted at this time, but the agreement requires the developer to set aside their

proportionate costs associated with such a signal for its future installation. Ms. Antol said that was correct.

Councilmember Oravits asked staff to review the bicycle connectivity. Ms. Antol reviewed the two maps which indicated the current FUTS and adjacent roads, as well as future planned segments that would develop as surrounding property was developed.

Vice Mayor Evans said that she was understanding that ADOT controls Route 66 and at this time all improvements talked about are not currently in any plan or any funding. Mr. Link said that was correct; they are not in the five-year program. He said that they do have studies and there is a high level of planning with designs.

Vice Mayor Evans asked what ADOT's current budget was in Flagstaff. Mr. Link said that the current project on SR 180 is about \$4.5 million; with the roundabouts in connection with J. W. Powell at about \$14.5 to \$25 million.

Mr. Meilbeck said that at their October 29, 2014, meeting the NAIPTA Board directed him to continue negotiations with Aspen Heights with the following terms: Service from 7 a.m. to 7 p.m. every 15 minutes during the week; every 30 minutes on weekends during the school year, for a cost of \$137,802, for a term of ten years with no service when school is out

Councilmember Barotz asked Aspen Heights how they manage the conflict of no transit service when school is out with 12 month leases. Mr. Votterott said that they are 12-month leases which includes a two-week period (typically in July) when there are few residents on site, although the property manager will still be there. He said that their experience is that not many of the students stay during the summer—maybe 20-25% remaining.

Councilmember Woodson asked now the land was designated in the Regional Plan. Ms. Antol said that it is designated as mixed use; the current Regional Plan 2030 has it located within an urban activity center which calls for commercial development at the core. It could be an intersection within a ½ mile radius of 200+ acres.

Councilmember Woodson then asked with this just being done in the Regional Plan what the expectation was in the lighting zone and how that would respond to this type of development. Ms. Antol said that the Naval Observatory did present issues regarding the activity center; those concerns were brought to the Council when the Regional Plan was reviewed for approval. The urban activity center remained in the plan and was voted with Lighting Zone One.

Councilmember Woodson said that there has been some talk of having this development built on NAU property. If they did that, he asked what role the City would have in dictating the lighting, etc. Ms. Antol said that the City has no zoning oversight with development at NAU, unless NAU cooperates with them. She said that sometimes they let the City review the impact on roads, but they do not have the ability to directly make any requirement. He said that if they think that solves the problem, it could impact those neighborhoods worse without any City input.

Councilmember Oravits asked what the footprint of their lighting was as proposed versus what the maximum allowable was now. Ms. Antol said that the map shows both lighting zones for the County and the City, with the more restrictive Lighting Zone One of the City's applying. She said that the commercial portion allows 25,000 lumens per acre while the single-family portion is 10,000 per parcel (one unit per acre). The property falls within the RR zone except for the area to be annexed. She said that there are other uses that could be permitted, some requiring conditional use permits. Altogether, the current zoning is entitled to 360,000 for the single-family parcel and under their proposal it is at 305,000 lumens.

Councilmember Woodson said that one of the considerations, as he understood it, was it was not just the lumens but the amount of time the lights are on. In a residential area they may have street lights on, but with an apartment or commercial use, they may have all-night lighting. Ms. Antol said that was correct, although they do have a curfew affiliated with uses in Zone One. She said that this issue is not as easy. A lot of it is the light source, the reflectivity, shielding, but different components of the Naval Observatory are affected by different components.

Capt. Doster said that they just received the formal plan from Ms. Antol and just got a lighting expert on contract. They have not gotten to where they can make an assessment. At a rough look, while there is a reduction there is still significant impact and they remain opposed. He said that they have had the opportunity to work with City staff and have had productive meetings, but the last two weeks has just not been enough time.

Ms. Antol reviewed the three findings and said that all three have to work.

Councilmember Barotz asked the developer to speak to the price points per bedroom. Mr. Votterott said that they were looking at around \$500 per bedroom.

Councilmember Oravits said that as part of the development it included the Crime Free Multi Housing clause and requires onsite manager and security. Police Chief Kevin Treadway said that they are currently challenged with a large property in town that has not come on board after many attempts of persuasion. The department sees the program as being productive. With many of the properties with which they have had problems in the past they have been significantly reduced after participation in the program.

Mayor Nabours asked where they were at with coordination with NAU. Chief Treadway said that they have had some ongoing conversations with the idea of NAU holding students accountable, and he believes it is a conversation that will continue. He said that NAU is looking at some type of sanctions. It is a conversation that needs to continue and Dr. Randall has agreed to continue it.

Further discussion was held on the security of the development. Mr. Votterott said that if they look at a management company that houses over 12,000 students they will have times where they may have issues. They handle them. Because of their high occupancies, it is very easy for them to terminate a lease; they have the right for violation in their behavior. They can move that tenant out and they do.

Mayor Nabours closed the public hearing at this time.

Comment cards were received from the following individuals opposed to the development:

Branden Cote
Sallie Kladnik
Margaret Erhart
Nick Kowall
Koseh E. Jaraczewski, Jr.
Vaughn Peterson
Tammy S. Peterson
Criselle Hogerman
Jane O'Donnell
Eva Rowe
Sarah Johnson
Frankie Beesley

Laura C. Myers
Roseana Cruz Kirgis
John L. Fisher
Mary McLellan
Emily Outhwaite
James Baker
Bart Bartell
Jose J. Dominguez
Madison Ledgerwood
Willis Cross
Sam Holley
Adam SAhimoni
Jessica Anderson
Clay Patton
Lucas Klein

The following individuals spoke in favor of Aspen Heights:

Travis R. Estes
Cynthia Dorfsmith

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Mark Woodson to read Ordinance No. 2014-30 by title only for the first time.

Vote: 5 - 2 Passed

NAY: Councilmember Celia Barotz
Vice Mayor Coral Evans

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, STATE OF ARIZONA, PURSUANT TO THE PROVISIONS OF TITLE 9, CHAPTER 4, ARIZONA REVISED STATUTES, BY ANNEXING CERTAIN LAND TOTALING APPROXIMATELY 3.14 ACRES LOCATED AT 2701 S. WOODY MOUNTAIN ROAD, WHICH LAND IS CONTIGUOUS TO THE EXISTING CORPORATE LIMITS OF THE CITY OF FLAGSTAFF AND ESTABLISHING CITY ZONING FOR SAID LAND AS RR, RURAL RESIDENTIAL

- B. Public Hearing, Consideration and Adoption of Ordinance No. 2014-31:** An Ordinance amending the Flagstaff Zoning Map designation of approximately 36.94 acres of real property generally located at the intersection of Route 66 and Woody Mountain Road, from Rural Residential ("RR") to Highway Commercial ("HC") for 3.6 acres, and to Medium Density Residential ("MR") for 33.33 acres. ***(Rezoning of property for Aspen Heights located on Woody Mountain Road)***

Councilmember Barotz said that she believed the public comment on this development has been made clear through all the e-mails of 303 against and 4 or 5 in support.

Councilmember Overton asked what impact the petition submitted this evening would have, if any, on the way they vote. Ms. D'Andrea said that she has not seen any petition. She said that they would look at it before the second read of the ordinance to ensure that it does not require a super majority vote, which would only apply to second read and adoption of the ordinance. She said that she was not sure that the petition submitted this evening was in proper form and signed by the appropriate individuals that would require a supermajority

vote. She suggested that they talk with the City Clerk and then they can go forward on that aspect.

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Scott Overton to read Ordinance No. 2014-31 by title only for the first time to include the conditions of the Planning and Zoning Commission as well as the following:

1. The property owner and manager shall fully participate in the City of Flagstaff Crime Free Multi-Housing Program including but not limited to adopting the Crime Free lease provisions, as may be amended by the Flagstaff Police Department from time to time.
2. There shall be a property manager residing on-site, available 24 hours a day on-site, accessible to all residents and with private security available on Thursday, Friday and Saturday nights.
3. The outdoor lighting shall be in accordance with the lighting plan submitted by the applicant generally stating 6,281 lumens per acre with motion sensors for the residential developed area.
4. As long as the property operates under a Conditional Use Permit as a Rooming and Boarding Facility, that the property owner have an agreement with NAIPTA to have bus service Monday thru Friday from 7 am to 7 pm running every 15 minutes and on weekends every 30 minutes, in the amount of \$137,802 per year adjusted for inflation for a term of 10 years or if unable to reach an agreement with NAIPTA then to provide a similar shuttle service between the property and Northern Arizona University.

Vote: 5 - 2 Passed

NAY: Councilmember Celia Barotz
Vice Mayor Coral Evans

AN ORDINANCE AMENDING THE FLAGSTAFF ZONING MAP DESIGNATION OF APPROXIMATELY 36.94 ACRES OF REAL PROPERTY GENERALLY LOCATED AT THE INTERSECTION OF ROUTE 66 AND WOODY MOUNTAIN ROAD, FROM RURAL RESIDENTIAL ("RR") TO HIGHWAY COPMMERCIAL ("HC") FOR 3.6 ACRES, AND TO MEDIUM DENSITY RESIDENTIAL ("MR") FOR 33.33 ACRES

Mayor Nabours said that they need student housing in Flagstaff. They had representatives from Ft. Collins visit and express that this applicant had a development in Ft. Collins and they had no problems there. Regarding the issue of bike paths, it is provided for in both regional plans and tonight it was indicated that they are safest riding through Presidio in the Pines and Boulder Point. They have heard from ADOT that the project is not a problem. He believed that with what they have heard from management, they will not have drunken students running through the neighborhoods and the forest. He believed it would be quite different from the Groves and there are other student housing facilities in Flagstaff that operate within the law.

Councilmember Barotz read into the record the findings they as a Council need to find in order to approve such a request:

1. The proposed amendment is consistent with and conforms to the goals of the General Plan and any applicable specific plans; and
2. The proposed amendment will not be detrimental to the public interests, health, safety, convenience or welfare of the City and will add to the public good as described in the General Plan; and
3. The affected site is physically suitable in terms of design, location, shape, size, operating characteristics and the provision of public and emergency vehicles' access,

public services, utilities, to ensure that the requested zone designation and proposed or anticipated uses and/or development will not endanger, jeopardize or otherwise constitute a hazard to the property or the improvements in the vicinity in which the property is located.

She said that she cannot make all of these findings, and, in particular, there are some contrary to goals in the General Plan that do not support this. She also thinks that this particular project is not the right scale. She said that she was not saying that she does not support student housing. She will support the right kind of student housing, but having 714 students living in one place, even with some of the processes and programs proposed to be part of the project, still creates a concern for her which is why she cannot find the necessary findings.

Councilmember Barotz said that she takes a different view from the Mayor as to whether they are being fair to the students. She asked if they were being fair to the neighbors who live in this area. She said that she would also argue that while they have heard that there is a need for student housing, she has received information that questions the capacity of the market as it currently exists.

Vice Mayor Evans thanked everyone that came out this evening, as well as two weeks ago, including the developer and those assisting them. She agreed with the Mayor that they were there doing serious business—business of the community. One of the things she has heard and needs to be addressed is the concept of the students and their behavior. She said that they have been talking about them in general terms, and she wanted to acknowledge that there were students present that are not part of that problem and want to finding an answer to the issue.

She said that the City should be encouraging good student housing development, but she believed that this development was too far from NAU and not suitable for the neighborhood. She said that she has heard that this will provide affordable housing for student housing, but between the room rate and additional utilities, she does not think that is necessarily the case.

Vice Mayor Evans said that she also believes that rezoning is a community right. The community has a right to look at a project and agree or not agree with it, and in this case the community has been clear that this is not the appropriate project for this location. She also does not believe that it satisfies the safety, well being, quality of life requirements of the findings.

Councilmember Overton said that he did not want to upset anyone and he was frustrated because they have failed to recognize there is a property owner's right to go through a process that the City has set up the rules for, with all of the necessary information, and they received a unanimous vote of approval from the Planning and Zoning Commission. They cleared the rules that have been put in place based on the community's values. He said that they have made every valiant effort to address the concerns of the community, using the legal tools and mechanisms they can use.

He said that if the tools they have put in place are not going to work, then he would ask that the City be more clear with the property owners as to what they want them to do. The signals the City sends are so mixed. He would support this. They have used the rules, done what has been asked of them and agreed to the conditions. He believed it was disingenuous to not say what it is that the community wants to see.

Councilmember Overton said that they need to continue the community dialog on what they want to see, and discuss the ramifications they have for saying yes or no.

Vice Mayor Evans said that she was the only person in the room that lives next to a student housing development and if they want to better understand what the community thinks or needs, they are welcome to come to her house.

Councilmember Brewster said that there is also the issue of private property rights and the City is constrained by the laws and regulations set in place. They cannot decide arbitrarily; there has to be a reason behind what they do. She said that she was hearing from the community that it does not matter what they do, they will be against it.

A break was held from 8:13 p.m. to 8:25 p.m.

15. REGULAR AGENDA

- A. Consideration and Adoption of Resolution No. 2014-35 and Ordinance No. 2014-27:** Proposed amendments to Flagstaff Zoning Code Chapter 10-50 (Supplemental to Zones), specifically Division 10-50.100 (Sign Standards), and related amendments to Chapter 10-20 (Administration, Procedures and Enforcement), Chapter 10-80 (Definitions), and Chapter 10-90 (Maps); consideration of Resolution No. 2014-35 declaring the proposed amendments as a public record; and adoption of Ordinance No. 2014-27, adopting amendments to Flagstaff Zoning Code Chapter 10-20 (Administration, Procedures and Enforcement), Chapter 10-50 (Supplemental to Zones), specifically Division 10-50.100 (Sign Standards), Chapter 10-80 (Definitions), and Chapter 10-90 (Maps), by reference.

Planning Director Dan Folke said that he was filling in for Zoning Administrator Roger Eastman. He then reviewed the Summary of Changes that had previously been discussed, as well as a few changes recommended by Mr. Eastman as he was preparing the final packet for consideration. He said that Mr. Eastman made a change to Table G on page 56, which proposes a secondary sign, for those with a multi-tenant shopping center. It would be multi-tenant centers where the building is set back from the road and there is parking between the road and the building. These signs would be permitted without a time line or a permit required since it was not visible. They were also recommending that it be moved from that table into Table F, page 55, (placement of secondary sign). They also believe that the placement to advertise promotional or seasonal sales be eliminated, because the a-frame signs are time limited.

Councilmember Barotz asked Mr. Folke to explain what the current rules are and proposed rules for temporary signs. Mr. Folke said that there were five types of temporary signs. They have to be removed or replaced after sixty days. He said that they allow one per business, even if a multi-tenant building.

He said that they spend a significant time on temporary signs. Out of 736 cases opened, 151 of them (21%) related to temporary signs.

Councilmember Barotz asked for clarification on the complaints received. Mr. Folke said that some are generated by citizens, some are staff, such as whenever they have observed a violation of the rules; no permit acquired, not proper location; time has lapsed. He believed that some of these changes may help staff with dealing with some of these issues.

Mr. Folke said that the changes proposed deal mostly with time frames, changing it from 60 days a year to six days, ten times a year. All of the other time periods for other purposes are staying the same. They are hoping that this will assist with the proliferation of temporary signs. In multiple occupancy buildings for every 150 feet they get one temporary sign. The other change is the allowance of secondary a-frame signs.

Mr. Burke asked about the secondary sign, and it was clarified that it was interior to the site, with a parking lot between the road and building.

Councilmember Barotz said that she did not object to 99% of the changes, but the one piece she cannot understand is in attempting to deal with the a-frame signs, they are going to give the owners of a shopping center a second monument sign. She questioned the rationale in chart that says in commercial and industrial zones, they are going to increase the height of the area. She did not understand the relationship between the change offered and how it relates to the problem they are trying to solve. She is concerned that they are now saying the big box stores gets an even bigger sign and the small guy in a multi-tenant center gets a little pad on a monument sign.

Councilmember Barotz asked why Wal-Mart would need a bigger sign. Mr. Folke talks about those changes between Type A and Type B signs. She wants to help those in the multi-tenant building without a need to increase the big box signs.

Mayor Nabours said that he believed their intent was to help the small business. Vice Mayor Evans asked if they could limit this to only multi-tenant buildings. Ms. D'Andrea replied that they could.

Council agreed that was the intent and staff was directed to make that change to the table for the free-standing signs that it applied only for multi-tenant signs.

Councilmember Barotz said that the idea is they are not going to increase the standards for permanent signs for use by institution, commercial and industrial, they will stay the standards they are today, other than the 400 feet; all agreed.

Councilmember Barotz said that Nat White provided the Council with some visuals that were powerful in showing what could have happened. She also thanked him for his assistance in reviewing these proposals.

Mr. Folke said that the table they will revise is on page 23, Standards for Permanent Signs, Type A and Type A for multi-tenant and Type B and Type B for multitenant. Also they agreed on the 400' for Type B only for multi-tenants (Table H), with everyone else remaining at the 500'.

The following individuals spoke in regard to the amendments:

- Nat White
- Gabor Kovacs
- Stuart McDaniel

The following comments were received:

- Appreciated the time put in on reviewing these amendments
- There are other things that bother him with the Sign Code amendments, but the change they just discussed was his main concern
- Personally, he did not see a problem with signs; supported large and small businesses
- Would like to see costs involved with signs be reduced or eliminated
- Is an issue regarding vehicle wraps; have been made more restrictive

Brief discussion was held on the use of wrapped vehicles. Mr. Folke said that if they are using those vehicles for their business they need to be parked in an authorized manager, and that is the proposed language. When the principle use is that of a sign, it falls under the restrictions.

Councilmember Oravits said that he believed he was in the minority. His concern was with enforcement, and he asked how they would enforce compliance. Mr. McDaniel said that one business that is a member of the Chamber is Cheba Hut, who uses their vehicle during the day but has been visited by Code Compliance and told they cannot park there. Mr. Folke said that he would look into that specific one.

Moran Henn addressed the Council and thanked them and staff for the immense amount of time put into the discussion and background. She said that they provided two verbal and one written comment with the issues they see and did not see the correlation between size and a-frames. She would also like to understand where nonprofits fit into these regulations.

Vice Mayor Evans said that she was not happy about that section of the Sign Code; she thinks that nonprofits have a hard time figuring out how to hang their signs, but the majority of Council moved forward and there are now five locations around the City where they are working on frames where nonprofits can hang their banners in a more constructive location. Vice Mayor Evans said that it would be helpful, as they move forward, to provide information to the nonprofits as to where those locations will be.

Comment cards were also received from the following individuals in support of the Sign Code amendments:

- Cynthia Dorfsmith
- Joanna Estes

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Jeff Oravits to adopt Resolution No. 2014-35, as amended.

Vote: 7 - 0 Passed - Unanimously

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Jeff Oravits to read Ordinance No. 2014-27 by title only for the final time.

Vote: 7 - 0 Passed - Unanimously

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, ADOPTING THAT CERTAIN DOCUMENT ENTITLED "2014 AMENDMENTS TO CHAPTER 10-50, SUPPLEMENTAL TO ZONES, SPECIFICALLY, DIVISION 10-50.100, SIGN STANDARDS," BY REFERENCE

Moved by Mayor Jerry Nabours, **seconded by** Councilmember Jeff Oravits to adopt Ordinance No. 2014-27.

Vote: 7 - 0 Passed - Unanimously

16. **DISCUSSION ITEMS**

None

MINUTES OF THE SPECIAL MEETING (EXECUTIVE SESSION) OF THE FLAGSTAFF CITY COUNCIL HELD ON WEDNESDAY, DECEMBER 3, 2014, IN THE COUNCIL OFFICE, SECOND FLOOR OF THE FLAGSTAFF CITY HALL, 211 WEST ASPEN, FLAGSTAFF, ARIZONA

1. Call to Order

Mayor Nabours called the meeting to order at 1:35 p.m.

2. Roll Call

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

Present:

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

Absent:

None

Others present: Human Resources Director Shannon Anderson; Gordon Lewis, Legal Counsel.

3. Recess into Executive Session.

Mayor Nabours moved to recess into Executive Session; seconded by Councilmember Brewster; passed unanimously.

The Flagstaff City Council recessed into Executive Session at 1:35 p.m.

4. Executive Session:

A. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting...., pursuant to A.R.S. §38-431.03(A)(1).

- i. ~~Consideration of Interim City Manager and Selection Process for Interim and City Manager.~~ **Identify candidates to invite to apply for Acting City Manager position*
- ii. **Consideration of selection process for City Manager*

5. Adjournment

The Special Meeting (Executive Session) of December 3, 2014, adjourned at 2:24 p.m.

Mayor

ATTEST:

City Clerk

MINUTES OF THE SPECIAL MEETING (EXECUTIVE SESSION) OF THE FLAGSTAFF CITY COUNCIL HELD ON MONDAY, DECEMBER 15, 2014, IN THE COUNCIL OFFICE, SECOND FLOOR OF THE FLAGSTAFF CITY HALL, 211 WEST ASPEN, FLAGSTAFF, ARIZONA

1. Call to Order

Mayor Nabours called the meeting to order at 11:01 a.m.

2. Roll Call

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

Present:

Absent:

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

None

Others present: Human Resources Director Shannon Anderson; Legal Counsel Gordon Lewis.

3. Recess into Executive Session.

Mayor Nabours moved to recess into Executive Session; seconded by Councilmember Brewster; passed unanimously.

The Flagstaff City Council recessed into Executive Session at 11:01 a.m.

4. Executive Session:

A. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting...., pursuant to A.R.S. §38-431.03(A)(1).

- i. Discuss potential applicants for Interim City Manager, finalize interview questions and finalize interview schedule

5. Adjournment

The Executive Session of December 15, 2014, adjourned at 11:47 a.m.

Mayor

ATTEST:

City Clerk

MINUTES OF THE SPECIAL MEETING (EXECUTIVE SESSION) OF THE FLAGSTAFF CITY COUNCIL HELD ON TUESDAY, DECEMBER 16, 2014, IN THE STAFF CONFERENCE ROOM, SECOND FLOOR OF THE FLAGSTAFF CITY HALL, 211 WEST ASPEN, FLAGSTAFF, ARIZONA

1. Call to Order

Mayor Nabours called the meeting to order at 4:30 p.m.

2. Roll Call

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

Present:

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

Absent:

NONE

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

3. Recess into Executive Session.

Mayor Nabours moved to recess into Executive Session; seconded by Councilmember Brewster; passed unanimously.

The Flagstaff City Council recessed into Executive Session at 4:30 p.m.

4. Executive Session:

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

i. Discussion of Relocation Policy

B. Discussion or consultation for legal advice with the attorney or attorneys of the public body; and discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, pursuant to ARS 38-431.03(A)(3) and (4), respectively.

- i. Amendment to Settlement Agreement with Canyon Del Rio
- ii. Hopi v. City of Flagstaff; City of Flagstaff v. AZ Snowbowl

5. Adjournment

The Special Meeting (Executive Session) of December 16, 2014, adjourned at 6:09 p.m.

Mayor

ATTEST:

City Clerk

MINUTES OF THE SPECIAL MEETING (EXECUTIVE SESSION) OF THE FLAGSTAFF CITY COUNCIL HELD ON THURSDAY, DECEMBER 18, 2014, IN THE COUNCIL OFFICE, SECOND FLOOR OF THE FLAGSTAFF CITY HALL, 211 WEST ASPEN, FLAGSTAFF, ARIZONA

1. Call to Order

Mayor Nabours called the meeting to order at 8:34 a.m.

2. Roll Call

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

Present:

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

Absent:

NONE

Others present: Human Resources Director Shannon Anderson; for Item 4-B, City Manager Kevin Burke; City Attorney Michelle D'Andrea; Deputy City Attorney Sterling Solomon.

3. Recess into Executive Session.

Mayor Nabours moved to recess into Executive Session; seconded by Councilmember Overton; passed unanimously.

The Flagstaff City Council recessed into Executive Session at 8:34 a.m.

4. Executive Session:

A. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting...., pursuant to A.R.S. §38-431.03(A)(1).

i. Interview of Interim City Manager Applicants:

Josh Copley
Jim Wine
Jeff Meilbeck

B. Discussion or consultation for legal advice with the attorney or attorneys of the public body; and discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, pursuant to ARS 38-431.03(A)(3) and (4), respectively.*

i. Hopi v. City of Flagstaff; City of Flagstaff v. AZ Snowbowl

5. Adjournment

The Executive Session of December 18, 2014, adjourned at 12:00 p.m.

Mayor

ATTEST:

City Clerk

MINUTES OF THE SPECIAL MEETING (EXECUTIVE SESSION) OF THE FLAGSTAFF CITY COUNCIL HELD ON TUESDAY, DECEMBER 23, 2014, IN THE COUNCIL OFFICE, SECOND FLOOR OF THE FLAGSTAFF CITY HALL, 211 WEST ASPEN, FLAGSTAFF, ARIZONA

1. Call to Order

Mayor Nabours called the meeting to order at 1:01 p.m.

2. Roll Call

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

Present:

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

Absent:

None

Others present: Human Resources Director Shannon Anderson.

3. Recess into Executive Session.

Mayor Nabours moved to recess into Executive Session; seconded by Councilmember Overton; passed unanimously.

The Flagstaff City Council recessed into Executive Session at 1:01 p.m.

4. Executive Session:

A. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting...., pursuant to A.R.S. §38-431.03(A)(1).

i. Discuss Interim City Manager Position and Selection

5. Adjournment

The Executive Session of December 23, 2014, adjourned at 1:47 p.m.

Mayor

ATTEST:

City Clerk

MINUTES OF THE SPECIAL MEETING (EXECUTIVE SESSION) OF THE FLAGSTAFF CITY COUNCIL HELD ON TUESDAY, JANUARY 6, 2015, IN THE STAFF CONFERENCE ROOM, SECOND FLOOR OF THE FLAGSTAFF CITY HALL, 211 WEST ASPEN, FLAGSTAFF, ARIZONA

1. Call to Order

Mayor Nabours called the meeting to order at 5:08 p.m.

2. Roll Call

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

Present:

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

Absent:

None

Others present: Court Administrator Don Jacobson.

3. Recess into Executive Session.

Mayor Nabours moved to recess into Executive Session; seconded by Councilmember Brewster; passed unanimously.

The Flagstaff City Council recessed into Executive Session at 5:08 p.m.

4. Executive Session:

A. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting....., pursuant to A.R.S. §38-431.03(A)(1).

i. Interview of Magistrate Pro Tems

- Daniel Tom
- Christine Brown
- John Lamb

5. Adjournment

The Executive Session of January 6, 2015, adjourned at 6:02 p.m.

Mayor

ATTEST:

City Clerk

MINUTES OF THE SPECIAL MEETING (EXECUTIVE SESSION) OF THE FLAGSTAFF CITY COUNCIL HELD ON TUESDAY, JANUARY 23, 2015, IN THE STAFF CONFERENCE ROOM, SECOND FLOOR OF THE FLAGSTAFF CITY HALL, 211 WEST ASPEN, FLAGSTAFF, ARIZONA

1. Call to Order

Mayor Nabours called the meeting to order at 4:03 p.m.

2. Roll Call

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

Present:

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

Absent:

None

Others present: Court Administrator Don Jacobson.

3. Recess into Executive Session.

Mayor Nabours moved to recess into Executive Session; seconded by Councilmember Oravits; passed 6-1 with Councilmember Putzova casting the dissenting vote.

The Flagstaff City Council recessed into Executive Session at 4:03 p.m.

4. Executive Session:

A. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting....., pursuant to A.R.S. §38-431.03(A)(1).

i. Interview of Magistrate Pro Tems

Jennifer Nagle
Gerald McCafferty
Susan Slasor
Paul Christian

5. Adjournment

The Special Meeting (Executive Session) of January 13, 2015, adjourned at 5:08 p.m.

Mayor

ATTEST:

City Clerk

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacy Saltzburg, Deputy City Clerk
Date: 01/14/2015
Meeting Date: 01/20/2015



TITLE:

Consideration of Appointments: Planning and Zoning Commission.

RECOMMENDED ACTION:

Make two appointments to terms expiring December 2017.

Policy Decision or Reason for Action:

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

- Bruce Aiken (new applicant)
- Bart Bartel (new applicant)
- Ed Dunn (new applicant)
- Robert Kelty (new applicant)
- Jeff Knorr (new applicant)
- Jim McCarthy (new applicant)
- Justin Ramsey (current commissioner)
- John Stigmon (new applicant)
- Steve Thibault (new applicant)
- Margo Wheeler (new applicant)
- David Zimmerman (new applicant)

It is important to note that two of the applicants are currently seated commissioners on other commissions; Jeff Knorr is a member of the Beautification and Public Arts Commission and David Zimmerman is a member of the Heritage Preservation Commission. While the handbook states that a commissioner cannot serve more than one commission at a time, it does not address applying for another commission while seated. If the Council appoints either of these two applicants they will be required to resign from their current commission seats.

This request was before the City Council on January 6, 2015; the Council decided to postpone the appointments two weeks to allow for additional time for applications to be received. Any additional applications will be forwarded to the Council prior to the meeting.

Financial Impact:

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

Connection to Council Goal:

Effective governance.

Has There Been Previous Council Decision on This:

This request was before the City Council on January 6, 2015. At that time the Council decided to postpone the appointments two weeks to allow for additional time for applications to be received.

Options and Alternatives:

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

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

Background/History:

The Planning and Zoning Commission consists of seven citizens serving three-year terms. There are currently two seats available.

This commission serves as an advisory board to the Council on matters relating to the growth and physical development of the City. The commission also conducts hearings on amendments to the Zoning Map, tentative subdivision plats, and Development Review Board appeals.

Key Considerations:

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

Community Benefits and Considerations:

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

Community Involvement:

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

Expanded Options and Alternatives:

COUNCIL INTERVIEW TEAM: Mayor Nabours and Councilmember Brewster

Attachments: [P&Z - Roster](#)
 [P&Z - Authority](#)
 [P&Z - Applicant Roster](#)
 [P&Z - Applications](#)



City of Flagstaff, AZ

PLANNING AND ZONING COMMISSION MEMBERS

<u>NAME</u>	<u>APPOINTED</u>	<u>TERM EXPIRES</u>	<u>TRAINING COMPLETED</u>
<u>Carpenter, David</u> Owner/Hope Construction 1715 E. Tradewinds Ct. Flagstaff, AZ 86005 Cell Phone: 928-380-5808 Term: (1st 2/10-12/12; 2nd 12/12-12/15)	01/15/2013	12/15	03/18/2010
<u>Dorsett, Stephen, Chairman</u> President/Architect/Shapes & Forms Architects 1823 W. Heavenly Court Flagstaff, AZ 86001 Work Phone: 928-213-9626 Term: (1st 6/09-12/10; 2nd 12/10-12/13; 3rd 12/13-12/16)	12/03/2013	12/16	10/20/2011
<u>Jackson, Steve</u> Owner/Broker/Coldwell Banker NARICO 4417 E. Burning Tree Loop Flagstaff, AZ 86004 Work Phone: 928-226-3188 Term: (1st 1/13-12/15)	01/15/2013	12/15	No
<u>Moore, Paul</u> Architect/Self 1665 N. Turquoise Dr. Flagstaff, AZ 86001 Work Phone: 773-1624 Term: (1st 9/10-12/11; 2nd 12/11-12/14)	09/21/2010	12/14	08/24/2008
<u>Pfeiffer, Tina</u> Mortgage Loan Officer/Prime Lending 4391 E. Savannah Cir. Flagstaff, AZ 86004 Cell Phone: 928-600-3143 Term: (1st 9/11-12/12; 2nd 12/12-12/15)	01/15/2013	12/15	02/16/2012



City of Flagstaff, AZ

<u>Ramsey, Justin, Vice Chairman</u>	02/07/2012	12/14	11/04/2013
Senior Project Manager/Westland Resources, Inc. 950 N. Sinagua Hts. Drive Flagstaff, AZ 86001 Home Phone: 928-606-3598 Term: (1st 2/12-12/14)			
<u>Turner, Paul W.</u>	12/03/2013	12/16	No
Principal/President/Turner Engineering, Inc. 4825 E. Hightimber Lane Flagstaff, AZ 86004 Work Phone: 928-779-1814 Term: (1st 12/13-12/16)			

Staff Representative: Mark Sawyers

As Of: December 23, 2014

CHAPTER 2-01 PLANNING AND ZONING COMMISSION

SECTIONS:

- 2-01-001-0001 CREATION OF COMMISSION
- 2-01-001-0002 INTENT AND PURPOSE
- 2-01-001-0003 MEMBERSHIP
- 2-01-001-0004 MEETINGS
- 2-01-001-0005 DUTIES AND FUNCTIONS

Prior legislation: Ords. 339, 859, 1427, 1826 and 2007-09.

2-01-001-0001 CREATION OF COMMISSION

There is hereby established a Planning and Zoning Commission for the City of Flagstaff under the provisions of A.R.S. § 9-461.02. (Ord. 339, 10-8-45; Ord. 2010-35, Amended, 11/16/2010)

2-01-001-0002 INTENT AND PURPOSE

The purpose of the Planning and Zoning Commission is to direct the growth and physical development of the City in a sound and orderly fashion for the prosperity, health, safety, convenience, and general welfare of the citizens of Flagstaff. (Ord. 2010-35, 11/16/2010)

2-01-001-0003 MEMBERSHIP

The Planning and Zoning Commission shall consist of seven (7) members appointed by the Mayor and Council.

The term of each citizen member shall be three (3) years or until his successor takes office. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term.

A. A Chairperson and Vice-Chairperson shall be elected from and by the voting membership of the Commission to serve one (1) year terms. A Chairperson may serve no more than two (2) consecutive terms as Chairperson (exclusive of a term as Vice-Chairperson). Upon the conclusion of a second, consecutive term as Chairperson, such Commission member shall be ineligible to serve as either Chairperson or Vice-Chairperson until a calendar year has expired.

B. In addition to the causes for removal set out in the Board and Commission Members' Rules and Operations Manual, a member accumulating eight (8) absences from regularly scheduled meetings in any given calendar year will be automatically removed from the Commission and a replacement appointed by the City Council. An

unexcused absence is defined as the failure of the member to notify the Planning and Development Services Section of his or her inability to attend a regularly scheduled meeting. (Ord. 2010-35, 11/16/2010; Ord. 2014-28, Amended, 11/18/2014)

2-01-001-0004 MEETINGS

Unless there are no matters to be considered, the Commission shall hold at least one meeting each month and may schedule additional special meetings as needed. A special meeting may serve as the minimum one meeting per month. (Ord. 2010-35, 11/16/2010)

2-01-001-0005 DUTIES AND FUNCTIONS

The Planning and Zoning Commission created in this chapter shall be and act as the Zoning Commission of the City, and all duties and powers granted to zoning commissions under State law shall be exercised by the Planning and Zoning Commission. In addition to any authority granted to the Planning and Zoning Commission by State law or other ordinances of the City, the Planning and Zoning Commission shall have the following duties and functions under the provisions of these regulations:

- A. To review and recommend to the City Council adoption of a comprehensive general plan adopted in compliance with the authority provided in A.R.S. Section 9-461.05 for the orderly growth and development of the City and for any land outside the City which, in the opinion of the Planning and Zoning Commission, bears a relation to the planning of the City.
- B. To hear, review, and make recommendations to the City Council regarding applications for amendments to the General Plan or any other plan in accordance with the provisions of Chapter 11-10 (General Plans).
- C. To serve as an advisory body to the City Council and furnish the Council through the Planning Director the facts concerning the adoption of any report or recommendation.
- D. To make its special knowledge and expertise available upon reasonable written request and authorization of the City Council to any official, department, board, commission or agency of the State or Federal governments.
- E. To hear and review amendments to the Zoning Map and to the text of the Zoning Code in accordance with the provisions of Title 10, Zoning Code, Division 10-20.50 (Amendments to the Zoning Code Text and the Zoning Map).

- F. To confer with and advise other similar City or County commissions.
- G. To make investigations, maps, reports, and recommendations to the City Council in regard to the physical development of the City.
- H. To hear, review and make recommendations to the City Council regarding preliminary subdivision plats after recommendation from the Planning Director and City Engineer in accordance with Chapter 11-20, Subdivision and Land Split Regulations.
- I. To take such other action as authorized in Title 10 (Zoning Code) and Title 11 (General Plan and Subdivisions) as necessary to implement the provisions of those titles and the General Plan.
- J. To consider, review and approve Conditional Use Permits, pursuant to the provisions of Section 10-20.40.050 (Conditional Use Permits).
- K. The Commission shall carry out other such duties as determined by the City Council and present other recommendations the City Council deems pertinent. (Ord. 859, 10-24-72; Ord. 2010-35, Amended, 11/16/2010; Ord. 2014-28, Amended, 11/18/2014)



City of Flagstaff, AZ

PLANNING AND ZONING COMMISSION APPLICANTS

<u>NAME</u>	<u>APPOINTED</u>	<u>TERM EXPIRES</u>	<u>TRAINING COMPLETED</u>
<u>Aiken, Bruce</u> Artist/Self-Employed 1401 N. 4th Street, #159 Flagstaff, AZ 86004 Cell Phone: 928-226-2882			02/16/2012
<u>Bartel, Bart</u> Member/BPJRanch LLC 2650 W. Kiltie Flagstaff, AZ 86005 Cell Phone: 928-606-5926			No
<u>Dunn, Ed</u> Owner/Solar Design & Construction and ED Studio 21 W. Pine Ave. Flagstaff, AZ 86001 Cell Phone: 928-607-2479			No
<u>Kelty, Robert</u> Senior Managing Director/Teach for America 4100 N. Country Club Dr. Flagstaff, AZ 86004 Home Phone: 928-814-9310			No
<u>Knorr, Jeff</u> President/JKC Inc General Contractor 6744 Anazazi Flagstaff, AZ 86004 Home Phone: 928-600-3762			11/04/2013



City of Flagstaff, AZ

McCarthy, Jim

04/24/2008

Sr. Project Engineer/Retired from Honeywell
2087 Fresh Aire Street
Flagstaff, AZ 86001-2898
Home Phone: 928-779-3748

Ramsey, Justin, Vice Chairman

02/07/2012

12/14

11/04/2013

Senior Project Manager/Westland Resources,
Inc.
950 N. Sinagua Hts. Drive
Flagstaff, AZ 86001
Home Phone: 928-606-3598
Term: (1st 2/12-12/14)

Stigmon, John

No

Vice President/ECONA
2819 W. Darleen Dr.
Flagstaff, AZ 86001
Cell Phone: 928-380-3026

Thibault, Steve

No

Realtor, Agent/Century 21 Flagstaff
315 S. O'Leary St.
Flagstaff, AZ 86001
Cell Phone: 928-863-2946

Wheeler, M. Margo

No

Lecturer/NAU
3528 S. Amanda St.
Flagstaff, AZ 86005
Cell Phone: 760-898-2826

Zimmerman, David

No

Historic Preservation Specialist/Arizona
Department of Transportation
3001 N. Schevene Blvd.
Flagstaff, AZ 86004
Cell Phone: 928-380-3057

Staff Representative: Mark Sawyers**As Of: January 16, 2015**

Stacy Saltzburg

From: noreply@civicplus.com
Sent: Friday, June 06, 2014 12:53 PM
To: Elizabeth Burke; Stacy Saltzburg
Subject: Online Form Submittal: Board/Commission Application

Categories: Green Category

If you are having problems viewing this HTML email, click to view a [Text version](#).

Board/Commission Application

Important Notice:

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

Application to Serve on a Board/Commission			
Please note that this information is public information.			
Date:*	6/6/14		
Board/Commission you wish to serve on:*	Planning and Zoning		
If applicable, type of seat for which you are qualified:			
Your Information			
Name:*	Bruce Aiken	Home Phone:*	none
Home Address:*	1401 n.4th st. #159	Zip:*	86004
Mailing Address (If different from above):			
Employer:*	self and NAU	Job Title:*	artist
Business Phone:	226 2882	Cell:	
E-mail:*	sandstone98@yahoo.com		
Indicate preferred telephone:*	<input type="checkbox"/> Home	<input type="checkbox"/> Cell	
	<input checked="" type="checkbox"/> Work		
Please indicate age group:*	<input type="checkbox"/> 18-34	<input checked="" type="checkbox"/> 55+	
	<input type="checkbox"/> 35-54		
Please indicate education:*	<input type="checkbox"/> High School	<input checked="" type="checkbox"/> Post Graduate	
	<input type="checkbox"/> College		
Number of years living in the Flagstaff area:*	8		
Background Information			
Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.			
Having lived in Coconino County since 1972, I have seen much change, some for the good some for the worse. From 1972 until 2006 I maintained a dual career, 33 years as an artist and a National Park Service employee. During that time I was responsible for the NPS water delivery system at Grand Canyon National Park. I am now retired from the NPS. Since moving to Flagstaff in 2006 I have served on the BPAC for 7 years, 5 as chairman. Now I am keenly interested in taking what I learned there and applying long term vision to P&Z. I am currently sitting on the board of directors of the Friends of the Flagstaff Monuments and have also served on the board of the Flagstaff Cultural Partners. My experience in working successfully with the Mayor, members of city council and the city staff is solid. Why do you want to serve on the board or commission you listed? The city of Flagstaff is a beautiful, growing and dynamic place to live. My hope is to lend some experience and vision to help that to endure in a real, meaningful and economically viable way.			
By submitting this electronic form, I acknowledge that any information provided above is public information, and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.			

* indicates required fields.

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

Date:: 6/6/14

Board/Commission you wish to serve on:: Planning and Zoning

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

Name:: Bruce Aiken

Home Phone:: none

Home Address:: 1401 n.4th st. #159

Zip:: 86004

Mailing Address (If different from above)::

Employer:: self and NAU

Job Title:: artist

Business Phone:: 226 2882

Cell::

E-mail:: sandstone98@yahoo.com

Indicate preferred telephone:: Work

Please indicate age group:: 55+

Please indicate education:: Post Graduate

Number of years living in the Flagstaff area:: 8

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: Having lived in Coconino County since 1972, I have seen much change, some for the good some for the worse. From 1972 until 2006 I maintained a dual career, 33 years as an artist and a National Park Service employee. During that time I was responsible for the NPS water delivery system at Grand Canyon National Park. I am now retired from the NPS. Since moving to Flagstaff in 2006 I have served on the BPAC for 7 years, 5 as chairman. Now I am keenly interested in taking what I learned there and applying long term vision to P&Z. I am currently sitting on the board of directors of the Friends of the Flagstaff Monuments and have also served on the board of the Flagstaff Cultural Partners. My experience in working successfully with the Mayor, members of city council and the city staff is solid.

Why do you want to serve on the board or commission you listed?: The city of Flagstaff is a beautiful, growing and dynamic place to live. My hope is to lend some experience and vision to help that to endure in a real, meaningful and economically viable way.

Stacy Saltzburg

From: noreply@civicplus.com
Sent: Thursday, November 20, 2014 9:22 PM
To: Elizabeth Burke; Stacy Saltzburg
Subject: Online Form Submittal: Board/Commission Application

Categories: Green Category

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Board/Commission Application

Important Notice:

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Application to Serve on a Board/Commission

Please note that this information is public information.

Date:* 11/20/14
Board/Commission you wish to serve on:* Planning and Zoning Commission
If applicable, type of seat for which you are qualified:

Your Information

Name:* Bart Bartel Home Phone:* None
Home Address:* 2650 W. Kiltie Zip:* 86005
Mailing Address (If different from above):
Employer:* BPJRanch LLC Job Title:* Member
Business Phone: Cell: 928-606-5926
E-mail:* bpjranch@aol.com
Indicate preferred telephone:*
 Home Cell
 Work
Please indicate age group:*
 18-34 55+
 35-54
Please indicate education:*
 High School Post Graduate
 College
Number of years living in the Flagstaff area:* 22

Background Information

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

My wife and I own and operate a retail business in Coconino County, and reside in west Flagstaff. I enjoy business planning, and see a good fit to this commission. I am very familiar with Flagstaff and surrounding areas to review impacts of decisions made by this commission.

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

I am interested in seeing Flagstaff continue to support regional master plans, existing and new businesses, and current/future residents. I want Flagstaff to continue with smart growth. I also want to better understand what local priorities are for businesses and residents, and support projects that meet these requirements.

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

* indicates required fields.

View any uploaded files by [signing in](#) and then proceeding to the link below:
<http://az-flagstaff3.civicplus.com/Admin/FormHistory.aspx?SID=13716>

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

Date:: 11/20/14

Board/Commission you wish to serve on:: Planning and Zoning Commission

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

Name:: Bart Bartel

Home Phone:: None

Home Address:: 2650 W. Kiltie

Zip:: 86005

Mailing Address (If different from above)::

Employer:: BPJRanch LLC

Job Title:: Member

Business Phone::

Cell:: 928-606-5926

E-mail:: bpjranch@aol.com

Indicate preferred telephone:: Cell

Please indicate age group:: 55+

Please indicate education:: Post Graduate

Number of years living in the Flagstaff area:: 22

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: My wife and I own and operate a retail business in Coconino County, and reside in west Flagstaff. I enjoy business planning, and see a good fit to this commission. I am very familiar with Flagstaff and surrounding areas to review impacts of decisions made by this commission.

Why do you want to serve on the board or commission you listed?: I am interested in seeing Flagstaff continue to support regional master plans, existing and new businesses, and current/future residents. I want Flagstaff to continue with smart growth. I also want to better understand what local priorities are for businesses and residents, and support projects that meet these requirements.

Additional Information:

Form submitted on: 11/20/2014 9:21:53 PM

Submitted from IP Address: 24.121.108.236

Stacy Saltzburg

From: noreply@civicplus.com
Sent: Wednesday, January 07, 2015 7:31 PM
To: Elizabeth Burke; Stacy Saltzburg
Subject: Online Form Submittal: Board/Commission Application

Categories: Red Category

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Board/Commission Application

Important Notice:

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Application to Serve on a Board/Commission

Please note that this information is public information.

Date:* 1/7/2015
Board/Commission you wish to serve on:* P&Z
If applicable, type of seat for which you are qualified:

Your Information

Name:*	Ed Dunn	Home Phone:*	9286072479
Home Address:*	21 W Pine Ave	Zip:*	86001
Mailing Address (If different from above):		Job Title:*	Owner
Employer:*	Solar Design & Construction and ED Studio	Cell:	same
Business Phone:	same		
E-mail:*	solar.ed@gmail.com		
Indicate preferred telephone:*	<input checked="" type="checkbox"/> Home <input type="checkbox"/> Work	<input type="checkbox"/> Cell	
Please indicate age group:*	<input type="checkbox"/> 18-34 <input type="checkbox"/> 35-54	<input checked="" type="checkbox"/> 55+	
Please indicate education:*	<input type="checkbox"/> High School <input type="checkbox"/> College	<input checked="" type="checkbox"/> Post Graduate	
Number of years living in the Flagstaff area:*	27		

Background Information

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

I have been involved in the community through Friends of Flagstaff's Future and the Coconino County Sustainable Building Program. My undergrad was a BS in Geography with an Urban Planning Emphasis

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

I want to ensure that Flagstaff is a great place to live for all of its citizens. The P&Z Commission is very important in maintaining a high quality of life in our mountain town.

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

* indicates required fields.

View any uploaded files by [signing in](#) and then proceeding to the link below:
<http://az-flagstaff3.civicplus.com/Admin/FormHistory.aspx?SID=14310>

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

Date:: 1/7/2015

Board/Commission you wish to serve on:: P&Z

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

Name:: Ed Dunn

Home Phone:: 9286072479

Home Address:: 21 W Pine Ave

Zip:: 86001

Mailing Address (If different from above)::

Employer:: Solar Design & Construction and ED Studio

Job Title:: Owner

Business Phone:: same

Cell:: same

E-mail:: solar.ed@gmail.com

Indicate preferred telephone:: Home

Please indicate age group:: 55+

Please indicate education:: Post Graduate

Number of years living in the Flagstaff area:: 27

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: I have been involved in the community through Friends of Flagstaff's Future and the Coconino County Sustainable Building Program. My undergrad was a BS in Geography with an Urban Planning Emphasis

Why do you want to serve on the board or commission you listed?: I want to ensure that Flagstaff is a great place to live for all of its citizens. The P&Z Commission is very important in maintaining a high quality of life in our mountain town.

Additional Information:

Form submitted on: 1/7/2015 7:30:54 PM

Submitted from IP Address: 174.17.150.131

Stacy Saltzburg

From: noreply@civicplus.com
Sent: Monday, January 12, 2015 11:54 AM
To: Elizabeth Burke; Stacy Saltzburg
Subject: Online Form Submittal: Board/Commission Application

Categories: Red Category

If you are having problems viewing this HTML email, click to view a [Text version](#).

Board/Commission Application

Important Notice:

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

Application to Serve on a Board/Commission			
Please note that this information is public information:			
Date:*	01/12/2015		
Board/Commission you wish to serve on:*	Planning & Zoning Commission		
If applicable, type of seat for which you are qualified:	Commission Member		
Your Information			
Name:*	Robert Kelty	Home Phone:*	928 814 9310
Home Address:*	4100 N. Country Club Dr.; Flagstaff, AZ	Zip:*	86004
Mailing Address (If different from above):			
Employer:*	Teach For America	Job Title:*	Senior Managing Director
Business Phone:		Cell:	646 483 9429
E-mail:*	Robert.Kelty@teachforamerica.org		
Indicate preferred telephone:*	<input checked="" type="radio"/> Home <input type="radio"/> Work	<input type="radio"/> Cell	
Please indicate age group:*	<input type="radio"/> 18-34 <input checked="" type="radio"/> 35-54	<input type="radio"/> 55+	
Please indicate education:*	<input type="radio"/> High School <input type="radio"/> College	<input checked="" type="radio"/> Post Graduate	
Number of years living in the Flagstaff-area:*	11 Years		

Background Information

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

I have had the honor in serving in various capacities throughout Flagstaff and Coconino County, as a former educator in FUSD, Coconino County School Superintendent, and Governing Board Member on various local non-profits. I currently have the honor of serving on the First Things First Coconino Regional Council as well as co-leading the Flagstaff Commission on Excellence in Education to further Flagstaff's brand as a city known for educational excellence and opportunity from preschool to college. However, how our city grows, both physically and economically, is vital to all of the above efforts, and I believe I would bring value and a high ethical standard to the Commission on establishing smart recommendations for the Mayor and City Council to consider for how Flagstaff should grow into the future.

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

Flagstaff is my home and where I choose to raise my family. Flagstaff is also a city that I appreciate on a deep level, as my work takes me to countless cities across our great country. Some of the cities in which I work are developed with profound intentionality; others carry great burdens to rethink transportation and economic development when growth occurred less thoughtfully. Currently, Flagstaff faces crucial decisions that will mark the city's character for countless generations. I would be honored to work with my fellow citizens to propose the best possible planning & zoning recommendations for the Flagstaff Mayor and City Council to consider in a mutual effort to ensure Flagstaff meets its potential as an international landmark for the sciences, education, and smart development. Thank you for

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

* indicates required fields.

View any uploaded files by signing in and then proceeding to the link below:
<http://az-flagstaff3.civicplus.com/Admin/FormHistory.aspx?SID=14376>

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

Date:: 01/12/2015

Board/Commission you wish to serve on:: Planning & Zoning Commission

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

Name:: Robert Kelty

Home Phone:: 928 814 9310

Home Address:: 4100 N. Country Club Dr., Flagstaff, AZ

Zip:: 86004

Mailing Address (If different from above)::

Employer:: Teach For America

Job Title:: Senior Managing Director

Business Phone::

Cell:: 646 483 9429

E-mail:: Robert.Kelty@teachforamerica.org

Indicate preferred telephone:: Home

Please indicate age group:: 35-54

Please indicate education:: Post Graduate

Number of years living in the Flagstaff area:: 11 Years

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: I have had the honor in serving in various capacities throughout Flagstaff and Coconino County, as a former educator in FUSD, Coconino County School Superintendent, and Governing Board Member on various local non-profits. I currently have the honor of serving on the First Things First Coconino Regional Council as well as co-leading the Flagstaff Commission on Excellence in Education to further

Flagstaff's brand as a city known for educational excellence and opportunity from preschool to college. However, how our city grows, both physically and economically, is vital to all of the above efforts, and I believe I would bring value and a high ethical standard to the Commission on establishing smart recommendations for the Mayor and City Council to consider for how Flagstaff should grow into the future.

Why do you want to serve on the board or commission you listed?: Flagstaff is my home and where I choose to raise my family. Flagstaff is also a city that I appreciate on a deep level, as my work takes me to countless cities across our great country. Some of the cities in which I work are developed with profound intentionality; others carry great burdens to rethink transportation and economic development when growth occurred less thoughtfully. Currently, Flagstaff faces crucial decisions that will mark the city's character for countless generations. I would be honored to work with my fellow citizens to propose the best possible planning & zoning recommendations for the Flagstaff Mayor and City Council to consider in a mutual effort to ensure Flagstaff meets its potential as an international landmark for the sciences, education, and smart development. Thank you for considering this application and thank you your service to our local municipality.

Additional Information:

Form submitted on: 1/12/2015 11:53:59 AM

Submitted from IP Address: 24.156.35.97

Referrer Page: <http://www.flagstaff.az.gov/index.aspx?NID=1883>

Form Address: <http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166>

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

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

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

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

DATE: 1-6-15

BOARD/COMMISSION YOU WISH TO SERVE ON: Planning and Zoning

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

YOUR NAME: Jeff Knorr HOME PHONE: 928-600-3762

HOME ADDRESS: 6744 E Anazazi ZIP: 86001

MAILING ADDRESS (If Different from Above): _____

EMPLOYER: JKC inc JOB TITLE: President

BUS. PHONE: 928-606-4378 CELL: _____ E-MAIL: JeffK@JKC-inc.com

PLEASE INDICATE PREFERRED TELEPHONE: HOME WORK CELL

PLEASE INDICATE AGE GROUP: 18-34 35-54 55+

PLEASE INDICATE EDUCATION: High School College Post Graduate

NUMBER OF YEARS LIVING IN THE FLAGSTAFF AREA: 32

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

As a long time local with a building background I see first hand how the negative & positive results of development and how it is processed. I believe I would be an asset to the community and the board.

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

To serve the citizens of Flagstaff by bringing my skills and experience to the commission

I UNDERSTAND THAT ANY INFORMATION PROVIDED ABOVE IS PUBLIC INFORMATION AND I CERTIFY THAT I MEET THE CITY CHARTER REQUIREMENT OF LIVING WITHIN THE FLAGSTAFF CITY LIMITS AND HAVE READ AND UNDERSTAND THE RIGHT TO HAVE MY APPLICATION CONSIDERED IN A PUBLIC MEETING.


Applicant Signature

Stacy Saltzburg

From: noreply@civicplus.com
Sent: Wednesday, November 27, 2013 8:14 AM
To: Elizabeth Burke; Stacy Saltzburg
Subject: Online Form Submittal: Board/Commission Application

If you are having problems viewing this HTML email, click to view a [Text version](#).

Board/Commission Application

Important Notice:

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

Application to Serve on a Board/Commission

Please note that this information is public information.

Date:* 11/27/2013
Board/Commission you wish to serve on:* Planning and Zoning
If applicable, type of seat for which you are qualified:

Your Information

Name:* Jim McCarthy Home Phone:* 928-779-3748
Home Address:* 2087 W. Fresh Aire St. Zip:* 86001-2898
Mailing Address (If different from above): same
Employer:* Retired from Honeywell Job Title:* Engineering Manager
Business Phone: n.a. Cell:
E-mail:* jm436mc@gmail.com
Indicate preferred telephone:* Home Cell
 Work

Background Information

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

I served one full- and one-partial term on P&Z. I have a Master of Environmental Planning from ASU, which is similar to a city planning degree but with study on both the built and unbuilt environments. I have studied land use planning here and similar study in Europe. My BS is in mechanical engineering – the profession where I gained technical and business experience. I own four properties, three in Flagstaff, which gives me another type of experience.

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

For our form of government to function fairly and efficiently, citizens must be involved. My goal is to protect our Flagstaff character while never compromising private property rights. I have been a productive P&Z member and bring balance to the commission. A few weeks ago, I applied for a position on the Water Commission. I thought that I could not reapply for P&Z because I had served two terms. I now understand that since my first term was a partial term, I may apply for a second full term. I would be pleased to serve on either commission.

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

* indicates required fields.

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

Date:: 11/27/2013

Board/Commission you wish to serve on:: Planning and Zoning

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

Name:: Jim McCarthy

Home Phone:: 928-779-3748

Home Address:: 2087 W. Fresh Aire St.

Zip:: 86001-2898

Mailing Address (If different from above):: same

Employer:: Retired from Honeywell

Job Title:: Engineering Manager

Business Phone:: n.a.

Cell::

E-mail:: jm436mc@gmail.com

Indicate preferred telephone:: Home

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: I served one full- and one-partial term on P&Z. I have a Master of Environmental Planning from ASU, which is similar to a city planning degree but with study on both the built and unbuilt environments. I have studied land use planning here and similar study in Europe. My BS is in mechanical engineering – the profession where I gained technical and business experience. I own four properties, three in Flagstaff, which gives me another type of experience.

Why do you want to serve on the board or commission you listed?: For our form of government to function fairly and efficiently, citizens must be involved. My goal is to protect our Flagstaff character while never compromising private property rights. I have been a productive P&Z member and bring balance to the commission.

A few weeks ago, I applied for a position on the Water Commission. I thought that I could not reapply for P&Z because I had served two terms. I now understand that since my first term was a partial term, I may apply for a second full term. I would be pleased to serve on either commission.

Additional Information:

Form submitted on: 11/27/2013 8:13:50 AM

Submitted from IP Address: 184.98.129.90

Referrer Page: <http://www.flagstaff.az.gov/index.aspx?NID=1886>

Form Address: <http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166>

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

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

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

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

DATE: 1/5/2015

BOARD/COMMISSION YOU WISH TO SERVE ON: Planning and Zoning

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

YOUR NAME: Justin Ramsey HOME PHONE: 928 606-3598

HOME ADDRESS: 950 N. Sinagua Hts Drive ZIP: 86004

MAILING ADDRESS (if Different from Above): _____

EMPLOYER: WestLand Resources Inc JOB TITLE: Engineer

BUS. PHONE: 928 225-2218 CELL: 928 606-3598 E-MAIL: jramsey@westlandresources.com

PLEASE INDICATE PREFERRED TELEPHONE: HOME WORK CELL

PLEASE INDICATE AGE GROUP: 18-34 35-54 55+

PLEASE INDICATE EDUCATION: High School College Post Graduate

NUMBER OF YEARS LIVING IN THE FLAGSTAFF AREA: 24

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

I moved to Flagstaff in 1991 to pursue an engineering degree from NAU. Upon graduation in 1995 I have been working as a civil engineer here in Flagstaff for my entire professional career. As a civil engineer I am very versed in a variety of development issues including traffic, flood control, utilities and environmental programs including SWPPP and 404. My engineering background allows me to analyze proposed developments within the requirement of the city's current Zoning Code, Regional Plan and sound engineering judgement.

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

As a current member sitting on the board I have found the commission's tasks to be both challenging and rewarding. I have enjoyed playing a role in my communities growth and development and look forward to providing continued input on proposed land use and direction of Flagstaff's development.

I UNDERSTAND THAT ANY INFORMATION PROVIDED ABOVE IS PUBLIC INFORMATION AND I CERTIFY THAT I MEET THE CITY CHARTER REQUIREMENT OF LIVING WITHIN THE FLAGSTAFF CITY LIMITS AND HAVE READ AND UNDERSTAND THE RIGHT TO HAVE MY APPLICATION CONSIDERED IN A PUBLIC MEETING.

Justin O. Ramsey
Digitally signed by Justin O. Ramsey
DN: cn=Justin O. Ramsey, o=WestLand, ou,
email=jramsey@westlandresources.com, c=US
Date: 2015.01.06 07:31:27 -0700
Applicant Signature

Stacy Saltzburg

From: noreply@civicplus.com
Sent: Friday, January 09, 2015 9:47 AM
To: Elizabeth Burke; Stacy Saltzburg
Subject: Online Form Submittal: Board/Commission Application

Categories: Red Category

If you are having problems viewing this HTML email, click to view a [Text version](#).

Board/Commission Application

Important Notice:

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Application to Serve on a Board/Commission

Please note that this information is public information.

Date:* 1/9/15
Board/Commission you wish to serve on:* Planning & Zoning
If applicable, type of seat for which you are qualified:

Your Information

Name:* John Stigmon Home Phone:* 928-214-6204
Home Address:* 2819 W Darleen Dr Zip:* 86001
Mailing Address (If different from above):
Employer:* ECoNA Job Title:* Vice President
Business Phone: 928-707-7528 Cell:* 928-380-3026
E-mail:* john@stigmon.com
Indicate preferred telephone:*
 Home Cell
 Work

Please indicate age group:*
 18-34 55+

Please indicate education:*
 High School Post Graduate
 College

Number of years living in the Flagstaff area:* 14

Background Information

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

I have been active in the Flagstaff community since moving here in 2001. My experience in the community includes former president of the board for my church, active board member with Quality Connections, whose mission is to provide support to individuals with disabilities. Former vice chair of the Hopi Tribe Economic Development Corp which is a Hopi corporation that manages the Hopi commercial enterprises. Through my 30 years of corporate experience I have been involved in real estate development projects in almost every state and in 14 foreign counties.

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

As a practitioner of economic development I have a strong interest in protecting the character of our community with balanced growth. Being a member of the Planning & Zoning Commission would allow me to serve our community by providing knowledgeable experience in the community development process.

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

* indicates required fields.

View any uploaded files by [signing in](#) and then proceeding to the link below:
<http://az-flagstaff3.civicplus.com/Admin/FormHistory.aspx?SID=14332>

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

Date:: 1/9/15

Board/Commission you wish to serve on:: Planning & Zoning

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

Name:: John Stigmon

Home Phone:: 928-214-6204

Home Address:: 2819 W Darleen Dr

Zip:: 86001

Mailing Address (If different from above)::

Employer:: ECoNA

Job Title:: Vice President

Business Phone:: 928-707-7528

Cell:: 928-380-3026

E-mail:: john@stigmon.com

Indicate preferred telephone:: Cell

Please indicate age group:: 55+

Please indicate education:: College

Number of years living in the Flagstaff area:: 14

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: I have been active in the Flagstaff community since moving here in 2001. My experience in the community includes former president of the board for my church, active board member with Quality Connections, whose mission is to provide support to individuals with disabilities. Former vice chair of the Hopi Tribe Economic Development Corp which is a Hopi corporation that manages the Hopi commercial enterprises. Through my 30 years of corporate experience I have been involved in real estate development projects in almost every state and in 14 foreign counties.

Why do you want to serve on the board or commission you listed?: As a practitioner of economic development I have a strong interest in protecting the character of our community with balanced growth. Being a member of the Planning & Zoning Commission would allow me to serve our community by providing knowledgeable experience in the community development process.

Stacy Saltzburg

From: noreply@civicplus.com
Sent: Tuesday, October 29, 2013 1:24 PM
To: Elizabeth Burke; Stacy Saltzburg
Subject: Online Form Submittal: Board/Commission Application

If you are having problems viewing this HTML email, click to view a [Text version](#).

Board/Commission Application

Important Notice:

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Application to Serve on a Board/Commission

Please note that this information is public information.

Date:* 10/29/2013
Board/Commission you wish to serve on:* Planning and Zoning
If applicable, type of seat for which you are qualified:

Your Information

Name:* Steve Thibault **Home Phone:*** 928-863-2946
Home Address:* 315 S O Leary St **Zip:*** 86001
Mailing Address (If different from above):
Employer:* Century 21 Flagstaff **Job Title:*** Realtor, Agent
Business Phone: 928-527-3300 **Cell:** 928-863-2946
E-mail:* steven.thibault@century21.com
Indicate preferred telephone:* Home Cell
 Work

Background Information

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.
Being in the housing field and living in Flagstaff for the past 20 years I feel my experience will allow me to help guide this board into the future.
Why do you want to serve on the board or commission you listed?
I have lived in Flagstaff since 1994 and have never served on a board or commission and feel the need to serve my community.
By submitting this electronic form, I acknowledge that any information provided above is public information, and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.

* indicates required fields.

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

Date:: 10/29/2013

Board/Commission you wish to serve on:: Planning and Zoning

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

Name:: Steve Thibault

Home Phone:: 928-863-2946

Home Address:: 315 S O Leary St

Zip:: 86001

Mailing Address (If different from above)::

Employer:: Century 21 Flagstaff

Job Title:: Realtor, Agent

Business Phone:: 928-527-3300

Cell:: 928-863-2946

E-mail:: steven.thibault@century21.com

Indicate preferred telephone:: Cell

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: Being in the housing field and living in Flagstaff for the past 20 years I feel my experience will allow me to help guide this board into the future.

Why do you want to serve on the board or commission you listed?: I have lived in Flagstaff since 1994 and have never served on a board or commission and feel the need to serve my community.

Additional Information:

Form submitted on: 10/29/2013 1:23:33 PM

Submitted from IP Address: 71.37.208.87

Referrer Page: <http://www.flagstaff.az.gov/index.aspx?NID=1886>

Form Address: <http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166>

Stacy Saltzburg

From: noreply@civicplus.com
Sent: Monday, July 14, 2014 6:32 AM
To: Elizabeth Burke; Stacy Saltzburg
Subject: Online Form Submittal: Board/Commission Application

Categories: Green Category

If you are having problems viewing this HTML email, click to view a [Text version](#).

Board/Commission Application

Important Notice:

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Application to Serve on a Board/Commission			
Please note that this information is public information.			
Date:*	7/14/2014		
Board/Commission you wish to serve on:*	Planning Commission		
If applicable, type of seat for which you are qualified:			
Your Information			
Name:*	M. Margo Wheeler	Home Phone:*	928-266-1319
Home Address:*	3528 S. Amanda St.	Zip:*	86005
Mailing Address (If different from above):			
Employer:*	NAU	Job Title:*	Lecturer
Business Phone:		Cell:	760-898-2826
E-mail:*	mmw626@yahoo.com		
Indicate preferred telephone:*	<input type="checkbox"/> Home		<input checked="" type="checkbox"/> Cell
	<input type="checkbox"/> Work		
Please indicate age group:*	<input type="checkbox"/> 18-34		<input checked="" type="checkbox"/> 55+
	<input type="checkbox"/> 35-54		
Please indicate education:*	<input type="checkbox"/> High School		<input checked="" type="checkbox"/> Post Graduate
	<input type="checkbox"/> College		
Number of years living in the Flagstaff area:*	new arrival		
Background Information			
Please explain how your community activities and other relevant experience/interests are applicable to this board or commission:			
I have recently joined the faculty of NAU to teach Planning. I have been Planning Director of 7 different cities in CA and was the Planning Director in Las Vegas, NV, from 2001- 11. My Masters degree is in Planning from USC. I have recently been inducted into the college of Fellows of the American Planning Association. I have been a member of Soroptimist International service club for nearly 30 years. In addition, I have served on animal rescue organization, boards and been a member of other community groups. I am a member of the St. Francis parish. I was a Planning Commission member in the city of Burbank, CA, 1993-4. I currently teach Introduction to Planning on line for Cal State Univ., San Bernardino graduate school of Public Administration. I have been visiting Flagstaff for many years and am thrilled to have purchased my home here in the University Heights neighborhood.			
Why do you want to serve on the board or commission you listed?			
I love city planning in all its aspects. Every vacation that I take is an exercise in planning, learning how cities improve and reinvent themselves. I am extremely excited to begin a new phase of my career in Planning by teaching full time here at NAU. Flagstaff is a wonderful city. I have explored its neighborhoods and parks and commercial areas. I love its trees and dark sky. There are areas of great potential that could become as well-developed as its core. As with all cities, there are both successes and challenges evident. I would dearly love to be granted the opportunity to become a part of Flagstaff's future			
By submitting this electronic form, I acknowledge that any information provided above is public information, and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand the right to have my application considered in a public meeting.			

* indicates required fields.

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

Date:: 7/14/2014

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

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

Name:: M. Margo Wheeler

Home Phone:: 928-266-1319

Home Address:: 3528 S. Amanda St.

Zip:: 86005

Mailing Address (If different from above)::

Employer:: NAU

Job Title:: Lecturer

Business Phone::

Cell:: 760-898-2826

E-mail:: mmw626@yahoo.com

Indicate preferred telephone:: Cell

Please indicate age group:: 55+

Please indicate education:: Post Graduate

Number of years living in the Flagstaff area:: new arrival

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: I have recently joined the faculty of NAU to teach Planning. I have been Planning Director of 7 different cities in CA and was the Planning Director in Las Vegas, NV, from 2001- 11. My Masters degree is in Planning from USC. I have recently been inducted into the college of Fellows of the American Planning Association.

I have been a member of Soroptimist International service club for nearly 30 years. In addition I have served on animal rescue organization boards and been a member of other community groups. I am a member of the St. Francis parish.

I was a Planning Commission member in the city of Burbank, CA, 1993-4. I currently teach Introduction to Planning on line for Cal State Univ., San Bernardino graduate school of Public Administration.

I have been visiting Flagstaff for many years and am thrilled to have purchased my home here in the University

Heights neighborhood.

Why do you want to serve on the board or commission you listed?: I love city planning in all its aspects. Every vacation that I take is an exercise in planning, learning how cities improve and reinvent themselves. I am extremely excited to begin a new phase of my career in Planning by teaching full time here at NAU. Flagstaff is a wonderful city. I have explored its neighborhoods and parks and commercial areas. I love its trees and dark sky. There are areas of great potential that could become as well-developed as its core. As with all cities, there are both successes and challenges evident. I would dearly love to be granted the opportunity to become a part of Flagstaff's future

Additional Information:

Form submitted on: 7/14/2014 6:32:27 AM

Submitted from IP Address: 67.49.90.62

Referrer Page: <http://www.flagstaff.az.gov/index.aspx?nid=994>

Form Address: <http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166>

Stacy Saltzburg

From: noreply@civicplus.com
Sent: Thursday, January 08, 2015 1:36 PM
To: Elizabeth Burke; Stacy Saltzburg
Subject: Online Form Submittal: Board/Commission Application

Categories: Red Category

If you are having problems viewing this HTML email, click to view a [Text version](#).

Board/Commission Application

Important Notice:

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

Application to Serve on a Board/Commission

Please note that this information is public information.

Date:* 01/08/2015
Board/Commission you wish to serve on:* Planning and Zoning
If applicable, type of seat for which you are qualified:

- Your Information

Name:* David Zimmerman **Home Phone:*** 928-380-3057
Home Address:* 3001 N. Schevene Blvd **Zip:*** 86004
Mailing Address (If different from above):
Employer:* AZ Dept of Transportation **Job Title:*** Historic Preservation Specialist
Business Phone: 928-779-7577 **Cell:** 928-380-3057
E-mail:* zimmerd@gmail.com
Indicate preferred telephone:* Home Cell
 Work

Please indicate age group:* 18-34 55+
 35-54
Please indicate education:* High School Post Graduate
 College
Number of years living in the Flagstaff area:* 19

Background Information

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

I have served as a member, vice-chair, and chair of the Heritage Preservation Commission through several appointments over the past 10 years. I am currently on the advisory board of Literacy Volunteers of Coconino County, and the board of directors for the Arizona Preservation Foundation. During the recent rewrite of the city code, I worked closely with Karl Eberhard to develop the heritage preservation language adopted in the current code. As a professional planner and historic preservationist, I have had an active role in public development projects in Flagstaff and other communities across Arizona.

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

I am interested in expanding my contribution to City service by joining a commission whose role is central to the well-being and future development of the City. Since the time I first came to Flagstaff in 1989, I have seen many changes in the character of the city, and most of these have been positive. I want to apply and expand my leadership and experience through service on a critical commission and have a hand in shaping the continued positive development of Flagstaff. I understand that service on the P&Z Commission requires hard work, dedication, and professionalism, and I feel I have these qualities to offer. Flagstaff has been challenged recently with a number of complex growth and development issues and I feel my experience as a professional planner, historic preservationist, and member of non-profit boards gives me a perspective that will allow me to make a positive contribution on P&Z.

By submitting this electronic form, I acknowledge that any information provided above is public information, and I certify that I meet the City Charter requirement of living within the Flagstaff City limits and have read and understand

the right to have my application considered in a public meeting.

* indicates required fields.

View any uploaded files by signing in and then proceeding to the link below:
<http://az-flagstaff3.civicplus.com/Admin/FormHistory.aspx?SID=14319>

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

Date:: 01/08/2015

Board/Commission you wish to serve on:: Planning and Zoning

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

Name:: David Zimmerman

Home Phone:: 928-380-3057

Home Address:: 3001 N. Schevene Blvd

Zip:: 86004

Mailing Address (If different from above)::

Employer:: AZ Dept of Transportation

Job Title:: Historic Preservation Specialist

Business Phone:: 928-779-7577

Cell:: 928-380-3057

E-mail:: zimmerdg@gmail.com

Indicate preferred telephone:: Cell

Please indicate age group:: 35-54

Please indicate education:: Post Graduate

Number of years living in the Flagstaff area:: 19

Please explain how your community activities and other relevant experience/interests are applicable to this board or commission.: I have served as a member, vice-chair, and chair of the Heritage Preservation Commission through several appointments over the past 10 years. I am currently on the advisory board of Literacy Volunteers of Coconino County, and the board of directors for the Arizona Preservation Foundation. During the recent rewrite of the city code, I worked closely with Karl Eberhard to develop the heritage preservation language adopted in the current code. As a professional planner and historic preservationist, I have had an active role in public development projects in Flagstaff and other communities across Arizona.

Why do you want to serve on the board or commission you listed?: I am interested in expanding my contribution to City service by joining a commission whose role is central to the well-being and future development of the City. Since the time I first came to Flagstaff in 1989, I have seen many changes in the character of the city, and most of these have been positive. I want to apply and expand my leadership and experience through service on a critical commission and have a hand in shaping the continued positive development of Flagstaff. I understand that service on the P&Z Commission requires hard work, dedication, and professionalism, and I feel I have these qualities to offer. Flagstaff has been challenged recently with a number of complex growth and development issues and I feel my experience as a professional planner, historic preservationist, and member of non-profit boards gives me a perspective that will allow me to make a positive contribution on P&Z.

Additional Information:

Form submitted on: 1/8/2015 1:35:30 PM

Submitted from IP Address: 162.59.200.193

Referrer Page: No Referrer - Direct Link

Form Address: <http://az-flagstaff3.civicplus.com/Forms.aspx?FID=166>

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacy Saltzburg, Deputy City Clerk
Date: 01/14/2015
Meeting Date: 01/20/2015



TITLE:

Consideration and Action on Liquor License Application: Larami Sandlin, Dark Sky Brewing Company, 117 N. Beaver St., Suite A, Series 03, New License.

RECOMMENDED ACTION:

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:

Larami Sandlin is opening Dark Sky Brewing Company which requires a new Series 03 (microbrewery) license.

Financial Impact:

There is no budgetary impact to the City of Flagstaff.

Connection to Council Goal:

This is a regulatory action.

Has There Been Previous Council Decision on This:

None.

Options and Alternatives:

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

Background/History:

An application for a new Series 03 liquor license was received from Larami Sandlin on behalf of Dark Sky Brewing Company, 117 N. Beaver St., Suite A.

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

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

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

Key Considerations:

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

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

The deadline for issuing a recommendation on this application is February 7, 2015.

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

Expanded Financial Considerations:

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

Community Benefits and Considerations:

The application was properly posted on December 26, 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: [Dark Sky - Letter to Applicant](#)
 [Hearing Procedures](#)
 [Series 03 Description](#)
 [Dark Sky - Section 13](#)
 [Dark Sky - PD Memo](#)
 [Dark Sky - Code Memo](#)

Dark Sky - Tax Memo

OFFICE OF THE CITY CLERK

January 7, 2015

Dark Sky Brewing Company
Attn: Larami Sandlin
1186 W. University Ave., Suite E
Flagstaff, AZ 86001

Dear Ms. Sandlin:

Your application for a new Series 03 liquor license for Dark Sky Brewing Company at 117 N. Beaver Street, Suite A was posted on December 26, 2014. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, January 20, 2015 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 is set to expire on January 15, 2015 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.



Domestic Microbrewery Application Kit (Series 03)

Application

Application Requirements

Questionnaire

Alien Status Form

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

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

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

Alien Status Form Attachments A & B

Alien Status Form FAQ

Fingerprint Card

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

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

6

other on-sale retail licenses. The purchase of spirituous liquor for sale at the other on-sale retail premises shall be from wholesalers who are licensed in this state. Applicants, licensees, and managers must take a Title 4 training course (liquor handling, laws and regulations) prior to approval. A pregnancy warning sign for pregnant women consuming spirituous liquor must be posted within twenty (20) feet of the cash register or behind the bar. An Employee Log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

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

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

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

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

- 1. Current Business: Name _____
(Exactly as it appears on license) Address _____
- 2. New Business: Name _____
(Physical Street Location) Address _____
- 3. License Type: _____ License Number: _____
- 4. If more than one license to be transferred: License Type: _____ License Number: _____
- 5. What date do you plan to move? _____ What date do you plan to open? _____

14 NOV 2014, Dept AM12:20

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

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

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

- 1. Distance to nearest school: 2210 ft. Name of school SAN FRANCISCO DE ASIS CATHOLIC SCHOOL
Address 320 N. HUMPHREYS ST. FLAGSTAFF, AZ 86001
City, State, Zip
- 2. Distance to nearest church: 1584 ft. Name of church Nativity of Blessed Virgin
Address 10 W. CHERRY AVE FLAGSTAFF, AZ 86001
City, State, Zip
- 3. I am the: Lessee Sublessee Owner Purchaser (of premises)
- 4. If the premises is leased give lessors: Name Able Building, LLC.
Address 111 N. BEAVER ST. FLAGSTAFF, AZ 86001
City, State, Zip
- 4a. Monthly rental/lease rate \$ 2,994 What is the remaining length of the lease 5 yrs. 1 mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ 2,110.00 or other _____
(give details - attach additional sheet if necessary)
- 5. What is the total **business** indebtedness for this license/location excluding the lease? \$ 0
Please list lenders you owe money to.

Last	First	Middle	Amount Owed	Mailing Address	City State	Zip
None						

(ATTACH ADDITIONAL SHEET IF NECESSARY)

- 6. What type of business will this license be used for (be specific)? Microbrewery

SECTION 13 - continued

14 DEC 1 11:47 AM 10:38

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

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

SECTION 14 Restaurant or hotel/motel license applicants:

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

_____ and license #: _____
Last First Middle

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

applicant's signature

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

applicants initials

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

- 1. Check ALL boxes that apply to your business:
 Entrances/Exits Liquor storage areas Patio: Contiguous
 Service windows Drive-in windows Non Contiguous
- 2. Is your licensed premises currently closed due to construction, renovation, or redesign? YES NO
 If yes, what is your estimated opening date? February 1, 2015
month/day/year
- 3. Restaurants and hotel/motel applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Diagram paper is provided on page 7.
- 4. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spirituous liquor is to be sold, served, consumed, dispensed, possessed, or stored on the premises unless it is a restaurant (see #3 above).
- 5. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises, such as parking lots, living quarters, etc.

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

JP
applicants initials

14 NOV 20 11:47 AM 11:20

MEMORANDUM

Memo #14-136-01

TO: Chief Kevin Treadway

FROM: Sgt. Matt Wright

DATE: December 31, 2014

RE: Liquor application for Dark Sky Brewing Company –series 3 license micro brewery license-

On December 31, 2014, I initiated an investigation into an application for a new license regarding a series 3 (domestic microbrewery license). The application filed by Larami Sandlin, Ryan Sandlin and Nicholas Irvine. Larami, Ryan and Nicholas all plan to assist with the day to day operations of the brewery and are listed as controlling persons on the application. The microbrewery is located at 117 N. Beaver in downtown Flagstaff. The license number being applied for is 03033011.

I conducted a query through our local systems and public access on Larami Sandlin, Ryan Sandlin and Nicholas Irvine. No derogatory records were found on Larami or Ryan. Nicholas was found to have been cited and released for driving on a suspended license in 2011. I could not locate any liquor law violations for any of the applicants as this is their first liquor license. I spoke with Larami who stated this is their first liquor license and they plan to brew beer mainly to support the on-site tap room. Larami said she and her partners had no intention on operating a bar, therefore would have operating hours of 4:00 pm till 10:00 pm and 11 am to 10 pm on weekends. Larami said they are currently completing renovations and plan to open in March or April of 2015.

Only Nicholas Irvine provided proof he had completed the Arizona Department of Liquor Law Training course as required Larami and Ryan indicated they had plans to complete the course prior to the issuance of the license by the AZDLLC.

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



Planning and Development Services Memorandum

January 7, 2015

TO: Stacy Saltzburg, Deputy City Clerk

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

FROM: Tom Boughner, Code Compliance Mgr.  

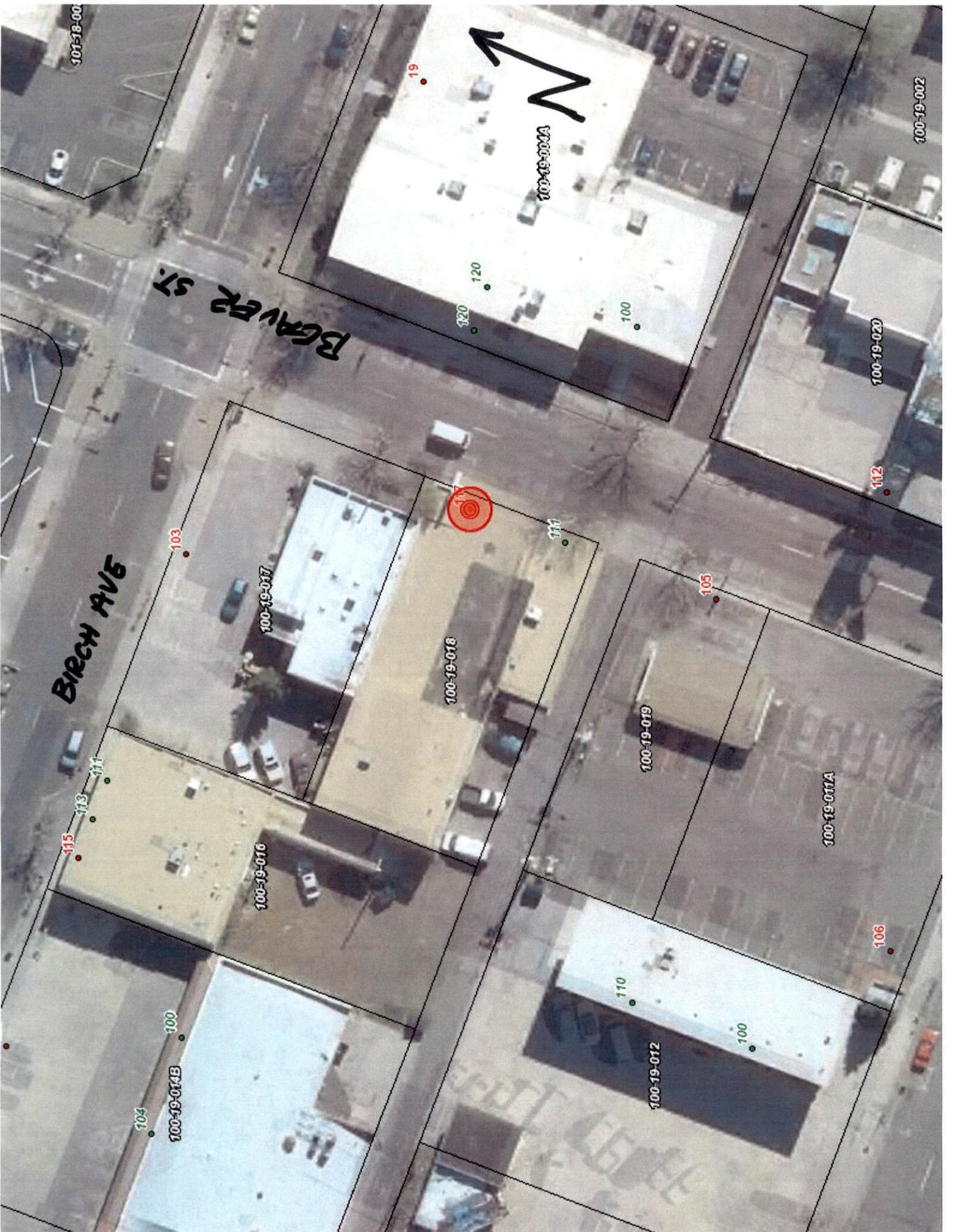
RE: Application for Liquor License #03033011
117 North Beaver Street, #A, Flagstaff, Arizona 86001
Assessor's Parcel Number 100-19-018
Laramie Sandlin on behalf of Dark Sky Brewing Company.

This application is a request for a new, Series 3, microbrewery liquor license, by Laramie Sandlin on behalf of Dark Sky Brewing Company. This microbrewery and serving bar is located within the Central Business district. This district does allow for this use.

There are no active Zoning Code violations associated with the applicant or the property at this time.

This liquor license is recommended for approval.





CITY OF FLAGSTAFF GIS Mapping Application
SERVICE AT A HIGHER ELEVATION

Enter address

More... City Base Map Aerial 2013 Aerial 2007

Address, Parcel,...

Locations found: 52

- 117 S KINGMAN ST
Score: 55
- 117 E ELLERY AVE
Score: 55
- 117 N BEAVER ST
Score: 55
- 117 E BENTON AVE
Score: 55
- 117 S O'LEARY ST

Layer List

Layer Visibility

- Property and Records(Parc
- Planning
- Facilities
- Transportation
- Utilities Water
- Utilities Stormwater
- Utilities Sewer
- Utilities Reclaim
- Environmental

200 ft

780136.5807407176 1527964.9342591753

esri

Memo

To: Stacy Saltzberg, Deputy City Clerk

From: Ranbir Cheema - Tax, Licensing & Revenue Manager

Date: January 7, 2014

Re: Series 3 Liquor License – New License – Dark Sky Brewing Company

Applicant Dark Sky Brewing Company LLC with Larami Jean Sandlin as one of its principals does not plan to start operations in the City until April 2015. Per Ms. Sandlin, their decision to open this business in Flagstaff would depend upon the approval of liquor license. Once approved she plans to fully comply with the requirements of the sales tax section. At this time I do not see a reason to hold up this liquor license approval.

/liquor licenses/Dark Sky Brewing.doc

CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Andy Wagemaker, Revenue Director
Co-Submitter: Candace Schroeder, Senior Procurement Specialist
Date: 01/14/2015
Meeting Date: 01/20/2015



TITLE:

Consideration and Approval of Contract: Services Agreement; Utility Payment, Bill Presentment and Notification Services. *(Approve Agreement for Payment Processing Services).*

RECOMMENDED ACTION:

- 1) Accept the Proposal and approve the agreement with Paymentus Corporation, for the annual services of Utility Payment, Bill Presentment and Notification Services.
- 2) Authorize the City Manager to execute the necessary documents.

Policy Decision or Reason for Action:

The City currently utilizes Wells Fargo as the main City payment processor. In conjunction with the implementation of new utility bill and cashiering systems through the Innoprise implementation, staff looked at integrating a new payment processor. This review was mainly driven by additional services that payment processors can now provide. Whereas payment processors used to only process financial transactions, payment processors now provide additional services such as online account management, e-billing, outbound notifications, e-checks, phone payments, among other services. The new features are items that many comparable utilities provide and are features that many City customers expect.

Subsidiary Decisions Points: None.

Financial Impact:

The City is currently utilizing payment processing services via Wells Fargo. Staff expects costs to decrease on a transaction to transaction level, however overall costs are increasing due to a larger charge volume and the addition of new services. The cost for FY2015 is anticipated to be \$152,000. Of this, \$113,000 is budgeted and the remaining \$39,000 will be funded through contingency. The future annual estimate for these services is \$200,000 of which approximately 80% (\$160,000) will be recaptured through a cost allocation to the Utility Enterprise fund.

Connection to Council Goal and/or Regional Plan:

Effective governance.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives:

- 1) Accept the Proposal and approve the agreement with Paymentus Corporation, for the annual services of Utility Payment, Bill Presentment and Notification Services. The City will be able to process payments via new payment channels.
- 2) Do not accept the Proposal and approve the agreement with Paymentus Corporation, for the annual services of Utility Payment, Bill Presentment and Notification Services. The City will continue to process payments with the current payment channels.

Background/History:

The table below provides a short synopsis of the services that the City is currently able to provide with Wells Fargo as the main City payment processor and the additional services that will be provided when the City moves to a new payment processor.

	Current Service	Proposed Service	Comments
Online Bill Payments (Utility)	YES	YES	None.
Online Bill Payments (Other)	NO	YES	Service enhancement.
Mobile Application Payments (Utility)	NO	YES	Service enhancement.
Mobile Application Payments (Other)	NO	YES	Service enhancement.
Over the Counter Payment (Utility)	YES	YES	None.
Over the Counter Payment (Other)	YES	YES	None.
Phone Payments (Utility)	NO	YES	Service enhancement.
Phone Payments (Other)	NO	NO	The phone system must integrate with an Innoprise program. The City uses many other databases that are unable to integrate with Innoprise.
e-Check Payments	NO	YES	Service enhancement.
Online Bank Payments	NO	YES	Service enhancement. Currently, the City gets a paper bank check up to seven days after a customer utilizes the "Online Billpay" functionality at his or her bank of choice. This paper check is manually processed by City staff. The payment processor would be able to process these online bank payments far quicker than the current manual paper process.
Outbound Customer Notifications (Utility Only)	NO	YES	Service enhancement. The City would be able to send outbound emails, texts, and phone calls to delinquent utility customers.

Autopay/Bankdraft Functionality	YES	YES	Service enhancement. Although the City currently provides this service, a significant amount of staff time is required to maintain sensitive information for autopay/bankdraft accounts. The new payment processor would assume all maintenance activities, freeing up City staff to help customers.
Online Account Management	YES	YES	Service enhancement. The City currently provides a basic online account management tool for utility accounts. The new payment processor will be able to expand options for the customer, giving the customer better tools to manage an account. Examples of enhanced services include e-check functionality, autopay/bankdraft maintenance, actual bill reproductions, among others.
e-Billing (Actual Bill)	NO	YES	Service enhancement. The current e-billing option offered by the City is a text filled email with minimal account details. The new payment processor will be able to send an electronic reproduction of the actual bill that is sent via mail to customers. This enhances the customer service experience by utilizing the same bill image for all customers, regardless of delivery method.

On November 16th, 2014 staff advertised a Request for Proposals solicitation for procuring the services of Utility Payment, Bill Presentment and Notification Services. A total of two (2) proposals were received on November 26th, 2014 and evaluated with the following criterion: Qualifications and experience, project personnel, presented approach, proposed price/fee structure. The proposal submitted by Paymentus was ranked the highest and determined to be the most advantageous for the City.

	Paymentus	Invoice Cloud
Qualification & Experience	1	2
Project Personnel	1	2
Presented Approach	1	2
Proposed Price/Fee Structure	1	2
Total Ranking	1	2

Key Considerations:

The City does not currently offer the varied payment channels, notification methods, and other enhancements that many organizations provide their customers. The services provided by this payment processor will allow the City to meet customer expectations.

Expanded Financial Considerations:

The City is currently utilizing payment processing services via Wells Fargo. Staff expects costs to decrease on a transaction to transaction level if the Paymentus contract is approved. However, the benefit of a new payment processor is in the additional services that the payment processor can provide. With Paymentus, the City will be able to open up a new payment channel (phone payments), new customer notification options (email, text, phone), and new payment options (e-check and credit/debit autopay). With these new options and the associated costs, staff expects costs to stabilize in future years.

If the City chose to remain with Wells Fargo for payment processing, costs will increase and new services would not be offered. The new billing system vendor, Innoprise, would charge an additional \$0.20 per transaction and a flat rate of \$29.95 per month for utilizing payment processing services from a vendor that is not a Harris Integrated Payment Partner. Those charges would not include any of the other additional services (phone payments, e-checks, etc.) that the City is looking to gain from a new payment processor. Paymentus is a Harris Integrated Payment Partner.

The current year cost is estimated to be \$152,000 of which \$113,000 is budgeted and contingency will fund the remaining \$39,000. Future annual costs are anticipated to be \$200,000 and staff anticipate this cost to remain stable. Approximately \$160,000 of the estimated payment processing fees will be recaptured with cost allocation to Enterprise Funds in the future.

Community Benefits and Considerations:

The community realizes benefits through the enhanced service provision as detailed above.

Community Involvement:

Inform

Expanded Options and Alternatives:

- 1) Accept the Proposal and approve the agreement with Paymentus Corporation, for the annual services of Utility Payment, Bill Presentment and Notification Services. The City will be able to process payments via new payment channels.
- 2) Do not accept the Proposal and approve the agreement with Paymentus Corporation, for the annual services of Utility Payment, Bill Presentment and Notification Services. The City will continue to process payments with the current payment channels.

Attachments: [Contract](#)

ATTACHMENT A

**CONTRACT FOR
PURCHASE OF MATERIALS AND/OR SERVICES**

Contract No. 2015-45

This Contract is entered into this 6th day of January, 2015 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Paymentus Corporation of Charlotte, NC, ("Contractor").

WHEREAS, the City of Flagstaff desires to receive, and Contractor is able to provide materials and/or services;

NOW THEREFORE, in consideration for the mutual promises contained herein, the parties agree as follows:

Scope of Work: Contractor shall provide the materials and/or services generally described as follows:

UTILITY PAYMENT, BILL PRESENTMENT and NOTIFICATION SERVICES

and as more specifically described in the scope of work attached hereto as **Exhibit A.**

Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as **Exhibit B** are hereby incorporated in this Contract by reference. Contractor hereby warrants that it has read and agrees to the same.

Contract Term: The Contract term is for a period of one (1) year, commencing on January 15th, 2015 and continues through January 14th, 2016.

Renewal: This Contract may be renewed for up to four (4) additional one (1) year terms by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.

Compensation: In consideration for the Contractor's satisfactory performance of the work, City shall pay Contractor in accordance with the Price Schedule attached hereto as **Exhibit A.**

Price Adjustment: If price adjustments are permitted (see Exhibit A), any price adjustment must be approved by the City in writing, pursuant to a formal Contract Amendment. The City Council must approve the price adjustment if the annual contract price exceeds \$50,000; otherwise the City Manager or his designee (the Purchasing Director) shall have authority to approve a price adjustment on behalf of the City.

Insurance: Contractor shall meet insurance requirements of the City, set forth in **Exhibit C.**

Notice. Any notice concerning this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

To Contractor:

City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001
_____ @flagstaffaz.gov

With a copy to:

With a copy to:

Authority. Each party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.

CONTRACTOR

Print name: _____

Title: _____

CITY OF FLAGSTAFF

Print name: _____

Title: _____

Attest:

City Clerk

Approved as to form:

City Attorney

Notice to Proceed issued: _____, 20__

Contract for Purchase of Services and/or Materials (Short form)
Form No.
Revised __, 2014

EXHIBIT A

City's specifications, as described in the City's Solicitation

City of Flagstaff Specific Terms and Conditions (specific to this Contract)

Contractor's response to Solicitation as accepted by City

Price Schedule

EXHIBIT B

City of Flagstaff Standard Terms and Conditions

EXHIBIT C

City insurance requirements

BACKGROUND/SCOPE

The City of Flagstaff is looking to partner with a Harris Computer Systems/Innoprise integrated payment partner as part of the City's implementation of Innoprise CIS (Customer Information Systems) and Innoprise CCR (Centralized Cash Receipts). The City currently utilizes the Sungard family of products on the AS400 platform. The City is looking to maintain current levels of service while greatly enhancing services for customers. Customers are requesting the newest and often easiest to use service methods that the City can currently not provide.

PAYMENT PROCESSING INFORMATION

General: The City is looking to both replace current customer payment options and enhance customer payment options for the locations noted in the table below. Additional locations may be added in the future. The City is looking to have one rate structure for all services and payment locations in order to more easily account for charges City wide. For example, the City prefers to have one rate for credit/debit, whether the payment is made online, at the counter, on the IVR, or with the mobile application.

The City also requires that all websites, phone options, etc., be specific to Flagstaff and for the use of Flagstaff customers only. No other utilities, jurisdictions, etc. should be able to utilize the website, phone options, etc.

The Counter payment locations noted in this document require credit/debit card terminals. The City expects to purchase 5-10 counter credit/debit terminals for operations. The terminals must meet all new EMV chip guidelines that the City is required to implement prior to October 2015. The City does not have a preferred terminal setup and will explore all options (I.E.- standalone terminals, swipe systems that attach to a computer monitor, swipe systems that attach to a computer keyboard, etc.). Most likely, each counter location will determine its preferred method of credit/debit processing.

The City uses Wells Fargo as its depository institution. The City requests that the selected vendor makes next day deposits to the City's Wells Fargo checking account.

In addition, it is expected that all vendors are PCI compliant across all payment platforms.

Online Payments (Utility): The City currently accepts online payments (credit/debit) for utility bills through the Sungard Click2Gov application. The City would like to continue to accept online utility payments via credit/debit but expand the online payment options to include e-checks and other payment options that might be available. The volume of online utility payments via credit/debit is provided in the Utility Web Payments section of the table below. Given that the City does not currently accept other online payment methods, staff estimates 500 monthly e-check payments per month.

Online Payments (Other): The City does not currently offer any other online payment options for non-utility services but would like to accept credit, debit, e-check, and other payment methods for Harris/Innoprise integrated programs (CIS - miscellaneous receivables (MR)) and non-Harris/Innoprise integrated programs such as the City water load station database and other items not billed through CIS. Given that the City does not currently accept any of these

payment methods, staff estimates 250 other payments will be processed online through these methods.

Mobile Application Payments The City does not currently accept payments for any service via a mobile application. The City would like to accept payments for Harris/Innoprise integrated programs as well as other payment types listed in the Online Payments area above. Given that the City does not currently accept any of these payment methods, staff estimates 250 other payments will be processed online through these methods.

Phone Payments (Utility and Miscellaneous Receivables): The City does not currently offer any sort of phone payment option but would like to accept phone payments for Harris/Innoprise integrated programs (CIS – utility billing and miscellaneous receivables) via a dedicated IVR system that is hosted by the vendor. The dedicated IVR should be available for customers to use 24 hours a day, 7 days per week. There is no historical data for this service but staff estimates a total of 500 phone payments a month.

Counter payments (All): The City uses card swipe technology at all counter locations for credit/debit card payment processing. The City would like to utilize credit/debit card swipe machines that integrate with Harris/Innoprise CCR. The total estimated number of counter payments that the City processes monthly across all counter operations is 2,100. The table titled Merchant Breakdown contains more detail on the number of payments at each merchant location. Please note that pricing should include the acceptance of American Express cards. The City does not currently accept American Express but plans on accepting it in the future.

Autopay Payments (Utility and Miscellaneous Receivables): The City currently processes autopay payments for utility bills and miscellaneous receivable bills. The City would like to turn over autopay maintenance and processing to the selected vendor. The current estimated monthly volume of autopay payments is 4,000 accounts.

Bank Online Checks: The City currently processes bank online checks with a manual paper check submitted by the bank. The City would like to have the selected payment processor process the bank online checks on behalf of the City. The City estimates that there are approximately 500 bank online checks processed monthly.

Payment Options with Estimates

Service (Payment Area)	Current Service?	Estimated # of Monthly Transactions
Online Payments (Utility- Credit Debit)	YES	2,700
Online Payments (Utility – e-Check/Other)	NO	500
Online Payments (Other)	NO	250
Mobile Application Payments (All)	NO	250
Phone Payments (Utility/MR)	NO	500
Counter Payments (All)	YES	2,100. See breakdown below.
Autopay Payments (Utility/MR)	YES	4,000
Bank Online Checks (All)	YES (Manual)	500

Payment Area Breakdown (Items, Amounts, Average)

Payment Area Description	Average # of Monthly Items Processed from July 2013 to June 2014	Average Monthly Amount Processed	Average Ticket
Customer Service Counter	924	\$ 183,353	\$ 198
Utility Web Payments	2,687	\$ 335,182	\$ 125
Comm. Development Counter	87	\$ 36,864	\$ 425
Municipal Court Counter	764	\$ 134,070	\$ 175
Public Works Counter	276	\$ 15,625	\$ 57
TOTAL:	4,738	\$ 705,094	\$ 149

Payment Breakdown*

Merchant	% of All Payments	% of Credit Card Payments
MasterCard	13%	15%
Visa	73%	83%
Discover	2%	2%
ATM/Debit	13%	N/A

*The City does not currently accept American Express payments. Please price American Express payments into the bid as the City is planning to accept American Express cards in the future.

BILL PRESENTMENT, E-BILLING, AND ONLINE ACCOUNT MANAGEMENT INFORMATION

General: The City is looking to enhance its bill presentment, e-Billing, and online account management services. Currently, the City is only able to provide minimal services in these areas. Details of current service levels are detailed in the descriptions below.

Bill Presentment (Utility Bills): The City can currently only display bill information through the Sungard Click2Gov application. The information displayed online does not match the utility bill that is actually sent to the customer. The City would like to display all bills online in exactly the same format as the customer would see if he or she received a paper bill in the mail. The City utilizes Infosend as its utility bill print vendor and will utilize an Infosend file as the source file for upload into the selected vendor's system. As noted in the table below, the City estimates a total of 20,500 utility bills are generated each month.

Bill Presentment (MR Bills): The City does not currently have the ability to display MR bill information. The City would like MR customers to view reproductions of actual paper bills online in the same manner noted under the utility bills section above. The City will eventually utilize Infosend as its MR bill print vendor and will utilize an Infosend file as the source file for upload into the selected vendors system. The City estimates that a total of 500 MR bills are sent each month.

Bill Presentment Information

Bill Type	Current Service?	Estimated # of Monthly Transactions
Utility	YES	20,500
MR	NO	500

E-Billing (Utility Bills): The City currently offers e-billing for utility bills, however, the City would like to enhance e-billing for customers. Currently, the City sends an email with text information in

the body of the email. The City would like to send an e-bill notification with an attached reproduction of the actual paper bill or with an embedded link that will allow the customer to view the electronic bill. The selected vendor should also be able to manage utility e-billing requests/notifications on behalf of the City. The City estimates there are 3,800 utility e-bill customers at this time.

E-Billing (MR Bills): The City does not currently have the ability to send e-bill notifications for MR bills. The City would like to send an e-bill notification with an attached reproduction of the actual paper bill or with an embedded link that will allow the customer to view the electronic bill. The selected vendor should also be able to manage MR e-billing requests/notifications on behalf of the City. The City estimates that 100 MR billing customers will opt into an e-billing notification method.

E-Bill Type	Current Service?	Estimated # of Monthly Transactions
Utility	YES	3,800
MR	NO	100

Online Account Management (Online and Mobile): As noted in the descriptions above in this section, the City is looking to greatly enhance its online account management functionality. The table below highlights some of the current service replacements and requested enhancements the City is looking to receive from the selected vendor for Harris/Innoprise integrated programs (CIS – utility billing and MR billing)

Services Proposed/Requested
Autopay/Bankdraft Management with Notifications (Amount not Processed, expiring credit card, etc.)
E-Billing Management
Account Update (Phone, address, etc.) Management with Harris/Innoprise Integration
New Service Requests (Utility Only) Management with Manual City Staff Review and Harris/Innoprise Integration
Service Termination Requests with Manual City Staff Review and Harris/Innoprise Integration
Confirmation Emails for Changes Made on the Vendor’s System (passwords, mailing addresses, etc.)

NOTIFICATION INFORMATION

General: The City does not currently utilize any automated outbound call, email, or text services for account delinquencies, expiring credit cards, unprocessed autopay transactions, etc. Any notifications are done on a manual basis at the discretion of staff if there is available time. The City would like to greatly enhance notification services for customers.

Delinquent Account Notifications: The City would like the ability to notify delinquent customers through email, phone, text, or other means that accounts are past due and should be paid immediately. The City would also like to give staff the ability to provide this information on a selective basis that fits the requirements and schedule of staff. Staff currently estimates that 1,000 notifications will be sent each month to delinquent customers.

Other Account Notifications: As noted above, the City would like to send notifications to customers for unprocessed autopay transactions, expiring credit cards, etc. Staff estimates that 50 of these notifications may be sent in a month.

REPORTING INFORMATION

The City has the need to produce reports on the information contained in the selected vendor's system. Please be sure to include and describe samples of key reports that the City may run for daily needs or that the City may run for beneficial customer information/trends that the City is currently unable to review.

PROPOSED TIMELINE

Below is a proposed timeline for the implementation of the requested services contained in this RFP. This timeline is tentative and will be solidified once the selected vendor is approved by Council.

Date	Payment Processing Area	Estimated # of Monthly Transactions
1/15/15	Community Development Counter (Credit/Debit Swipe). Integrated with Harris/Innoprise CCR.	100
2/1/15	Water Load Station Online Payments (Online Credit/Debit and e-Check, etc.). Standalone system, no Harris/Innoprise integration required.	50
2/15/15	Public Works Counter (Credit/Debit Swipe). Standalone payments, no Harris/Innoprise integration at this time.	276
3/1/15	Municipal Court Counter (Credit/Debit Swipe). Standalone system, no Harris/Innoprise integration required.	764
4/1/15	Customer Service Counter (Credit/Debit Swipe) and Utility Web (Credit/Debit, e-Check, etc.), phone payments (Utility and MR) and Utility and MR Bill Presentment, e-Bill, and Online Account Management.	4,000 payments. 21,000 bill images. 3,900 e-bills
5/1/15	Other online payments options, mobile applications, and other service enhancements.	N/A

Scoring:

Qualifications (30%)

Project Personnel (15%)

Presented Approach (25%)

Price/Fee Structure (30%)

Utility Payment, Bill Presentment, and Notification Services Proposal

Prepared for:

City of Flagstaff

Bid Number 2015-45

Wednesday, November 26, 2014
3:00 p.m.



Payment Options



Communication



Customer Self-Service



E-billing



Business Intelligence

Paymentus



Exhibit 1

November 20, 2014

Candace Schroeder, CPPB
Senior Procurement Specialist
Purchasing Division, City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001

Dear Candace:

Paymentus Corporation is pleased to submit our proposal to the City of Flagstaff in response to your Request for Utility Payment, Bill Presentment, and Notification services. We are confident that our solution will not only meet, but exceed the City's key business requirements:

- To offer an all-inclusive E-Bill Presentment and Payment platform (EBPP) to its residents;
- To ensure a PCI compliant and highly secure service offered in an ASP model. The City will not store or retain any personally identifiable information;
- To offer a solution that will support the City's current vendors of Infosend and the Innoprise CIS. (Please see recommendation letters within)

What makes Paymentus unique is that a single vendor is able to provision, service and manage your entire real time e-payments environment end-to-end, including 24 hour funds settlement and revenue flows.

We will demonstrate how Paymentus will provide an easy-to-use, yet powerful platform for all City of Flagstaff customers. They will appreciate using a modern system that supports all payment channels and all payment methods - IVR, web, mobile/tablet and agent-assisted counter payments. Paymentus is proud to maintain a stellar track record of 99.9% uptime in the past five years. As a PCI Level-1 certified solution, we are equally proud to state that Paymentus has never experienced a security breach.

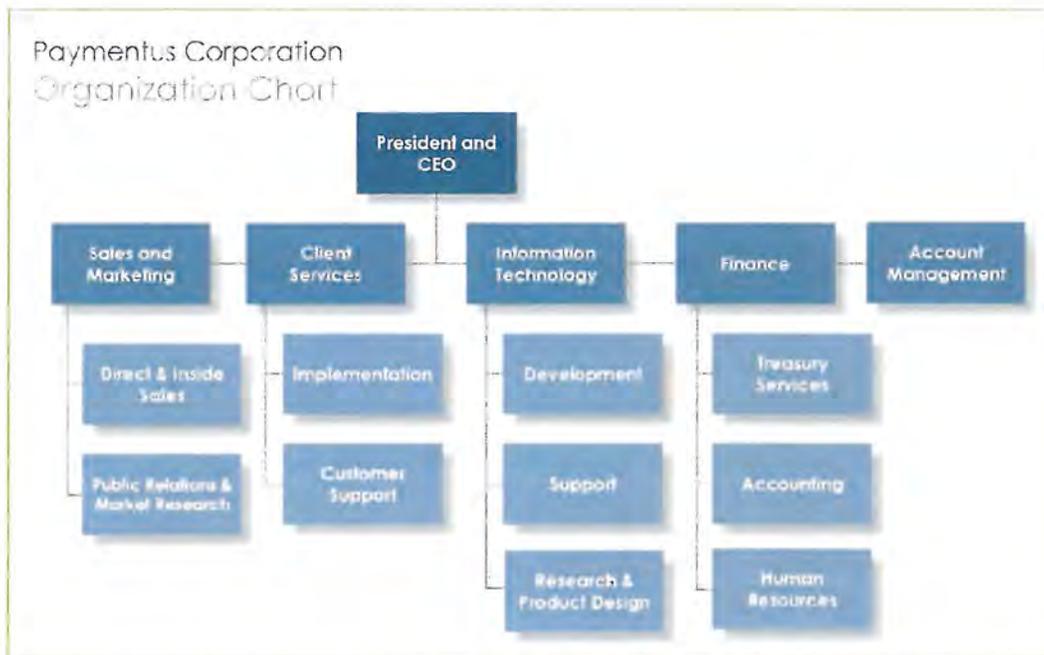
Leveraging our experience and expertise, we have architected our platform to easily and effectively integrate with our clients' billing systems to provide automated updates and absolutely accurate reconciliations. Typical integration usually takes 6-8 weeks. The integration with City of Flagstaff's billing systems will be fast and straightforward, and there will be no need to tie up your IT and business resources with complex and stressful data integration projects, as we'll do most of the integration effort ourselves. Paymentus will also share best practices gained through over 750 utility implementations to ensure an enhanced user experience.



Company Information

Paymentus Corporation
13024 Ballantyne Corporate Place
Suite 450
Charlotte, NC 28277

Paymentus was founded in 2004, is incorporated in the State of Delaware and headquartered in Charlotte, North Carolina. Regional offices are located in Atlanta; Blacksburg, VA; Chicago; Toronto and Vancouver. We have 187 employees.



In summary, we are confident that Paymentus will deliver a superior payment solution with the lowest risk and highest return on investment for City of Flagstaff and your customers. The Paymentus team looks forward to our continued discussions.

Sincerely,

Nicole Haskins
Director of Sales

nhaskins@Paymentus.com; (540)951-6462





November 14th, 2014
Flagstaff, AZ

To whom it may concern:

We understand that Flagstaff is currently evaluating companies for automated billing, payment and notifications services that will potentially integrate to the Innoprise CIS. Paymentus has a long standing partnership with Harris and we wanted to take the time to recommend their consideration in the evaluation process.

Strategic partnerships are a cornerstone for Harris / Innoprise. Our practice is to create add-on applications where we possess domain expertise and partner where there is a clear advantage for our customers. In the case of payment processing, the strength and flexibility of Paymentus' software made partnering perfect sense.

Harris has a successful history of working with Paymentus dating back to 2001, and we now have more than 100 joint customers significantly benefitting for the partnership and cooperative integration of our products.

Dennis Asbury
Executive Vice President



InfoSend wholeheartedly endorses Paymentus for payment processing, IVR, and Electronic Bill Presentment. Our integration of our archive with Paymentus has proved to be an excellent partnership and feature for our print and mail clients and the level of service that Paymentus offers has always been the highest in quality and service. We highly recommend to the City of Flagstaff that they seriously consider contracting with Paymentus for your payment and technology needs.

J. D. McNaul
Vice President of Sales
InfoSend, Inc.





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Portions of this proposal are proprietary and confidential and contain part of Paymentus trade secrets. Please refer to the "Confidential Materials" form included as part of this submission for more detail. If information needs to be published as part of the open records, Paymentus requires a written notice of the same. Paymentus will then provide a redacted version which will exclude the confidential, non-public information including the trade-secrets.





B. Qualifications and Experience

Company History

Paymentus was founded in 2004, is incorporated in the State of Delaware and headquartered in Charlotte, North Carolina. Regional offices are located in Atlanta; Blacksburg, VA; Chicago; Toronto and Vancouver. Recognized by Deloitte as "One of the fastest growing companies in North America," Paymentus works hard to maintain 100% customer reference-ability and a 99.2% retention rate since 2004. Nearly 1,000 clients appreciate the e-bill presentment and payment services delivered on a single platform.



Financial Strength

Processing more than 300 million customer transactions annually, Paymentus Corporation's next-generation platform provides real-time, multi-channel payment processing, and the industry's fastest and most simplified implementation experience. Founded by one of the pioneers of the e-payment/e-presentment industry, Paymentus is incorporated in the State of Delaware. Cash flow positive, Paymentus has operated as a private corporation since its inception. In September 2011, growth investment was provided from Silicon Valley-based Accel KKR a technology-focused private equity investment firm that invests primarily in software and IT-enabled businesses and has over \$2.0 billion of capital under management. The investment is being used by Paymentus to accelerate development, expand organic growth, and enhance the footprint of its real-time payment network.

Paymentus was acknowledged by Deloitte in 2013 as one of the 100 Fastest Growing Technology Companies in America. Growth has been organic, with approximately 90 new client agency customers each of the last three years.

Paymentus does not use subcontractors in implementing or running our platform and services for our clients. Paymentus has no conditions of bankruptcy, pending litigation, planned office closures, or impending mergers.

"Paymentus is a strong fit for Accel-KKR; it offers advanced payment technology, and a complete revenue management solution that billers have been challenged to access at an affordable price point. The company's truly unified technology solution provides billers unmatched flexibility, payment visibility and cost of deployment. We are pleased to partner with the team to further the company's leadership position."

- Jason Klein, Managing Director of Accel-KKR





C. Project Personnel

Paymentus takes great pride in our highly skilled team — all with extensive experience in the electronic bill presentment and payment industry.

<p>Nicole Haskins, Director of Sales</p>	<p>For over ten years Nicole has been dedicated in advancing service and automation through the use of technology; Nicole has worked with hundreds of the top counties and utilities in the country to implement successful streamlined revenue collection processes and procure payment solutions that evolve and transform these high volume payment centers. Nicole holds her degree and educational credentials in eCommerce, Marketing, and Business Administration.</p>
<p>Moana Araki, Executive Account Manager</p>	<p>Moana Araki provides account management and support for key accounts. Moana specializes in payment services across several Government industries including Municipalities and Utilities. Moana brings over a decade of sales relationship management experience.</p>
<p>Michael Hughes, Director Client Services</p>	<p>For the past six years, Mike has led the customer implementation and service functions within Paymentus. He has been actively involved in implementations for customers across North America including City Water & Light, Conway Corporation, Birmingham Water Works Board (AL), Clayton County Water Authority (GA), City of Pittsburgh (PA) and many other strategic accounts. Mike has a 15+-year track record of success in building solid, long-term business relationships within a wide variety of business environments.</p> <p>Previous experience includes business development and product management roles at Novell and Markham Computer Corp (IBM Distributor). Mike holds a degree in Business Administration.</p>
<p>Greg Leeves, Senior Technical Implementation Manager</p>	<p>As Senior Technical Implementation Manager, Greg leads, manages and coordinates customer implementations from project kick-off to delivery and customer training. Greg communicates directly with clients, manages client expectations, and delivers service within delivery timelines and budget. Greg also manages ongoing customer operational requirements such as change requests, configuration updates, technical and operational inquiries.</p> <p>Prior to joining Paymentus, Greg held roles in Systems Architecture, Operations and Project Management. He holds a Bachelor of Business Administration degree in Business Computer Information Systems.</p>
<p>Karla Wobito Client Services Manager</p>	<p>Karla is responsible as the key contact for onboarding. Karla has extensive experience with various and complex implementations. CSMs assist with banking coordinate set-up, organization of meetings involving multiple staff, marketing (web/IVR/inserts/outbound messaging).</p>
<p>Eugene Abramov, Director Technology & Operations</p>	<p>As the Director of Technology and Operations, Eugene leads the technology team and assigns technical project management staff for individual client implementations. He further ensures that all configurations are compliant to PCI, user accessibility, NACHA and Credit Card Regulatory requirements, and oversees the quality assurance process for new clients.</p> <p>Eugene has over 15 years of designing and developing e-commerce, e-billing, and e-payment enterprise applications. Most recently, Eugene has been involved in application architecture and software development on J2EE e-commerce platforms in the finance and telecom industries.</p> <p>Eugene specialized in the Object Oriented Design of open systems using J2EE/Java Web based applications. He has been directly involved in</p>





	<p>leading the ground-up architecture, design and development of mission critical, e-commerce applications for clients like Metavante Corporation, J.P Morgan Chase, Wells Fargo, Sprint and Virgin Mobile.</p> <p>He holds an Honors Bachelor of Science degree in Mathematics and Computer Science and a Bachelors of Education degree.</p>
David Simpson, Senior Operations Manager	<p>As the Senior Operations Manager, David leads the operations team in ensuring that all systems meet uptime requirements, are secure, and provide a quality service. David has 12 years experience developing applications, and building and maintaining infrastructure for large North American clients.</p>
Adalbert Homa, Lead Developer	<p>As acting manager and Lead Architect, Adalbert guides the development team in implementing new solutions and client implementations. Adalbert has over 15 years of experience in building and architecting payment solutions for various organizations in North America.</p>
Mark Solan, Vice President, Account Management	<p>Each of our clients are assigned to a specific Account Manager from our Account Management Team —accountable for the overall client experience and client satisfaction, and responsible for engaging the appropriate solutions and resources, as needed, to ensure a productive and mutually beneficial long-term relationship with our clients.</p> <p>Mark Solan has over 25 years of technology and business management experience and has invested the past 18 years in senior management and technology leadership roles in the payments and financial services industry. Mark held the role of SVP/CTO at both Princeton e-Com and Online Resources; now ACI — a company that provides innovative electronic billing and payment solutions for both banks and billers.</p>
Jairius S. McClendon, Senior Account Manager	<p>As Senior Account Manager, Jairius serves as the lead relationship contact and trusted advisor for Paymentus clients. He is responsible for developing account management strategy, facilitating contract renewals, overseeing the end-to-end client experience and ensuring overall client satisfaction. Jairius brings more than 20 years of diverse financial services experience, and has held key positions with several industry leaders, including PNC Bank, Vanguard Group of Investments, Wachovia, and Bank of America. Prior to joining Paymentus, he worked within the Electronic Payments Division of Fiserv, where he was responsible for institutional client relationship management and contact center strategy for both the biller solutions and bank solutions business channels.</p> <p>He studied Electrical Engineering and Computer Science at Drexel University and has held Financial Industry Regulatory Authority (FINRA) Series 6 and 63 licenses, Pennsylvania Life Insurance Producer license, and the Chartered Retirement Planning Counselor (CRPC®) designation through the College for Financial Planning.</p>
Theresa Bentley, Senior Account Manager	<p>Theresa Bentley serves as Senior Account Manager for Paymentus and is responsible for managing key client relationships, contract renewals, promoting product enhancements and ensuring overall client satisfaction. Theresa brings over 25 years of business experience in Account Management, Training and Sales. Most recently, Theresa held the position of National Senior Client Business Executive servicing financial institutions with assets above \$5B.</p>





D. Presented Approach

As an early pioneer in the electronic payments industry, Paymentus follows clear objectives. We maintain an intense focus on electronic payment solutions. We rigorously serve this market and we execute with precision. From the early days of interactive voice response solutions to current complex web services projects, Paymentus continues to stay ahead by dedicating the resources required to maintain or exceed the level of quality our premier clients have come to expect. *Our offering for the City of Flagstaff is based on these key essentials:*

1. **Electronic Bill Presentment** – 100% of your customers have the ability to view their bills electronically, suppressing the paper and printing, and reducing costs for the City.
2. **All Payment Options & Channels** – an intuitive platform that accepts payments from online, via IVR, through a mobile or tablet device or in-person.
3. **Customer Self Service Portal** – Customers can access a powerful Customer Portal to view billing and payment history, make a one-time or recurring payment and manage account details. This can be accessed online or through the mobile app.
4. **Business Intelligence & Reporting** – City staff has real-time visibility to view and track payments, as well as manage reports that will influence customer behavior through a powerful Agent Portal
5. **Outbound Notifications**– By leveraging the Outbound Notifications Platform, the City can remind customers of upcoming or late payments, accept automated payments on the spot via IVR (“Press Option 2 to make a payment now”), and keep customers informed of the latest news and events.
6. **E-Lockbox Payment Services** – Through our Enterprise Payment Aggregator, Paymentus provides clients with a simplified, secure and cost-effective means to receive electronic remittances from payments made by your customers through their online banks. Combining this service with our complete payment platform will provide simplicity in streamlining the City’s payment services and will simplify the reconciliation process.

1. Electronic Bill Presentment

Paymentus takes billing organizations of all sizes to the next level with a fully customized electronic payment solution. We provide a fully integrated service for Electronic Bill Presentment and Payment (EBPP), from data acquisition and bill presentment to payment and remittance. As part of our partnership with Infosend, Paymentus will work directly with Infosend during the implementation of E-bill. Our user-friendly interfaces and automated consumer notification tools help organizations to maximize paperless billing adoption while also lowering their cost of collections.

The Paymentus EBPP solution is based on two fundamental principles that drive what is delivered to our clients. The first is maximizing paperless billing adoption by simplifying the user experience



and by use of best practices to drive customers to adopt. During implementation, Paymentus will share our Roadmap to Adoption strategies with the City, to help maximize customer participation and adoption. The second is creating a business model and cost structure that allows our clients to maximize cost savings as they reduce the number of paper bills that are mailed monthly.

Paymentus offers a flexible platform for both bill presentment and payments that allows our clients to configure the solution to best address their business requirements as well as meet specific goals and metrics. Using our EBPP model, Paymentus e-bills can:

- Be seen by all of your customers (not just the ones enrolled in e-bill)
- Be a digitally rendered version of your paper bill, allowing your customers to view and print their e-bill with a look and page count that matches the paper bill it would be replacing – through all channels
- Be a summarized e-bill presentment in all channels
- Have different e-bill styles and formats based on biller's preferences
- Include usage and consumption charts
- Have user-selected notification methods

E-bill Presentation Options

When a registered customer adds a new account to their Customer Portal view, they have three secure options for viewing and paying their bill, including:

1. Secure PDF e-bills to securely view and pay their bill directly from a PDF attachment in their email inbox.
2. Pay-By-Text to securely review a bill summary and pay via text message.
3. Basic Bill Ready Email Notifications to view and pay their bill on-line via a web link which takes customers to the Customer Portal.

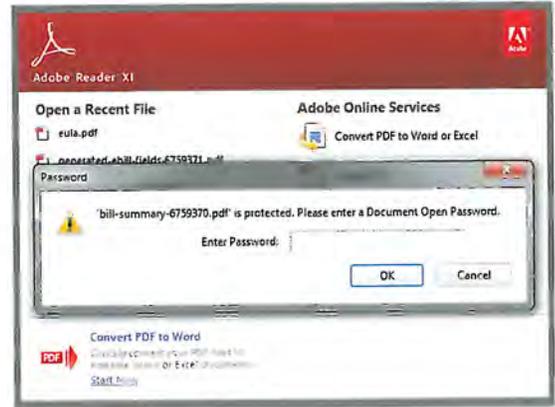
The “Add a New Account Screenshot” demonstrates how a user elects to use one or more of these bill-pay options.

The screenshot shows a web form titled "Add Account". It has several sections: "Select Account Type" with a green checkmark next to "Utility"; "Account Number" and "ZIP" fields; "Go Paperless (Yes/No)" with a green checkmark next to "Yes"; "How I Want Notifications Delivered" with radio buttons for "Email", "Text", and "Both"; "Terms & Conditions" with a red "I Read the Terms & Conditions" button; and a yellow "Add Account" button at the bottom.



Secure PDF e-bills: The customer will receive an email with an attached PDF bill summary when a new bill is loaded into our system.

When the customer opens the PDF they are prompted to enter their PDF password. The PDF displays the account number, amount due, due date, masked payment method to be used, and a field where the user can enter a payment amount.



The customer can review the information in the PDF, they can enter a payment amount (if enabled), and click Pay Now to make a payment.



Full, multi-page e-bill rendered digitally and available online: Accessible through both the one-time payment portal and the customer portal, users can view a full version of their bill online.

Sewer Bill Summary	Water Bill Summary														
<p>Customer Name: [Name]</p> <table border="1"> <tr><td>SEWER CHARGE TCCF @ \$7.40</td><td>51.80</td></tr> <tr><td>WATERING CREDIT 15%</td><td>7.77</td></tr> <tr><td>TOTAL SEWER CHARGES</td><td>44.03</td></tr> </table>	SEWER CHARGE TCCF @ \$7.40	51.80	WATERING CREDIT 15%	7.77	TOTAL SEWER CHARGES	44.03	<p>Billing Date: 06-18-2011 Regular Bill</p> <table border="1"> <tr><td>BASE SERVICE CHARGE</td><td>15.21</td></tr> <tr><td>WATER CHARGE TCCF @ \$2.61</td><td>18.27</td></tr> <tr><td>4% UTILITY TAX</td><td>1.34</td></tr> <tr><td>TOTAL WATER CHARGES</td><td>34.82</td></tr> </table>	BASE SERVICE CHARGE	15.21	WATER CHARGE TCCF @ \$2.61	18.27	4% UTILITY TAX	1.34	TOTAL WATER CHARGES	34.82
SEWER CHARGE TCCF @ \$7.40	51.80														
WATERING CREDIT 15%	7.77														
TOTAL SEWER CHARGES	44.03														
BASE SERVICE CHARGE	15.21														
WATER CHARGE TCCF @ \$2.61	18.27														
4% UTILITY TAX	1.34														
TOTAL WATER CHARGES	34.82														
TOTAL ACCOUNT BALANCE 78.85															
<p>Meiter Number: 510 Current Reading: 08-12-11 Previous Reading: 07-10-11 Consumption: 100 CCF</p> <p>Account History: 1200 gallons, 2102 gallons, 1400 gallons</p> <p>View Water Usage During the Previous 12 Months</p>	<p>Did you know that 50 percent of all high water bills are caused by leaks? Leaks in your home can waste 11,000 gallons of water every year - enough water to fill a backyard swimming pool! Taking simple steps to detect, prevent and repair leaks can save you as much as 10 percent on your water bill. Check your toilets and faucets for leaks, replace worn out toilet flappers and use water wisely to avoid throwing money down the drain. For more information, view the "Water Wise Tips" page at [link].</p> <p>Bill Summary By Percentage</p>														

Billing Summary	
Billing Date	06-18-2011
Account Number	[Account Number]
PAST DUE AMOUNT	0.00
Current Charges	78.85
Total	78.85
Print Date	09-01-2011



Pay by Text: The text will show a summary with the account number, amount due, due date, and some instructions. The customer can reply PAY to pay the full amount, PAY \$\$cc to pay a different amount, or STOP to opt out of SMS bill summary notifications.



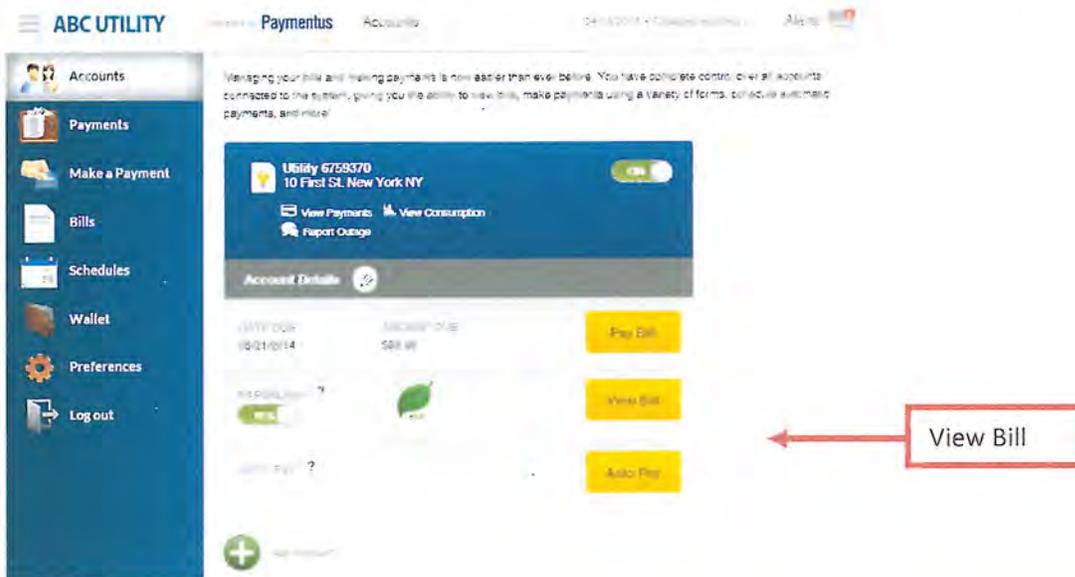
Basic Bill-Ready Notification:

Paymentus offers your consumers multiple options for notification when e-bill is ready to view. All e-bill notifications include ability for the user to make a secure payment electronically, with password controls, duplicate payment controls, verifications and validations, error notices and real-time confirmations.

Through email (or text) notification, users can follow a link to view their bill online.



Delivery Preferences: Customers can opt in and out of e-bill preferences at any time by updating their profile within the menu-driven options that are found in the Customer Portal.





Additional Options for E-bill

Consumption History: Smart meter data or water consumption data can be presented inside the utility's e-bill in the form of bar, pie, or other usage chart. Technology charts of usage and smart meter data will be available to both the enrolled consumer and also to your customer service reps.

Our system can be configured so as to offer a one-time payment user the ability to view their current e-bill rich with usage and smart meter data, without forcing them to enroll, thus increasing adoption.

Virtual Inserts: We can include electronic versions of your bill inserts along with the e-bill. Inserts can be presented as a page two or a separate PDF depending on your configuration.

2. All Payment Options & Channels

Regardless of which channel the customer chooses, Paymentus offers comprehensive end-to-end payment solutions customized for our clients' unique needs and integration into their core systems. Included, at no cost are:

- Integrated, multi-channel payment options including online web, IVR, mobile, and counter payments.
- Simplified one-time payment option
- Recurring and scheduled payments
- Scheduled payments with notification



The benefit to the City of a fully unified suite of payment options ensures that your customers can pay their bill when they want, where they want, with whatever method they want! Customers are not limited to one payment channel – they can pay online in the comfort of home, on the phone during the day, or even via a mobile device or tablet while on the road.

Online Payments

The Paymentus online payment channel has been designed for simplicity of use, reduction of user errors, maximum security, compliance and ease of integration. The payment channel is designed to meet our clients' needs, including branding, specialized fields, layout and flow. It also includes any programming requirements for integration with a site/return pages and customized page design.

One-time payment or enrolled (with single sign on if requested), this convenient payment access maximizes customer satisfaction and confidence while powerful authorization tools collect payment information. Customers find our systems easy to use as they follow prompts and step-by-step instructions supplemented with pictures to help the user locate necessary pay account information.

All secure and sensitive data is shielded and/or encrypted. Paymentus is Payment Card Industry (PCI) Level 1 certified.



"PAY NOW" – A Simple 3-Step Process to Making a One-Time Payment (Without registering)

ABC UTILITY Payments 10/21/2012 • Sign up to our Customer Dashboard... Alerts

Step 1 of 3 | Account Information

Bill Type

Utility

Water

Account Number

ZIP Code

[Continue](#)

Find your Account Number

Account Number 200011-10305	Bill Date 05/31/2013	Service Address 123 First New York	OB Number 12345678
--------------------------------	-------------------------	---------------------------------------	-----------------------

Did you know?

Signup for Customer Portal

- Manage one or all of your accounts
- Pay bills and manage payment history
- View e-Bills and e-Bill history for up to 13 months
- Setup and manage AutoPay
- Setup and manage your e-Wallet

[Explore](#) [Sign Me](#)

ABC UTILITY Payments 10/22/2012 • Sign up to our Customer Dashboard to make paying easier... Alerts

Step 2 of 3 | Contact Information

Email ?

smorgan@paymentus.com

Re-enter Email

smorgan@paymentus.com

[Sign up for Extra Features](#)

[Continue](#)

Bill Summary

Name	Samuel McCurdy
Account #	0750070
Service Address	101 Hummingbird Ln Charlotte NC 28215
Due Date	08/15/13
Total Amount Due	\$49.95

[Continue](#) [Pay Bill](#)



< Back **Step 3 of 3 | Payment Information**

Due Date: 10/21/13

Amount: \$69.86

Payment Date ?

Now

Later

Continue

Bill Summary

Name: Samuel McCurley

Account #: 6759370

Service Address: 101 Hummingbird Ln, Charlotte NC 28215

Due Date: 08/14/13

Total Amount Due: \$69.86

Confirmation **Full Bill**

< Back **Step 3 of 3 | Payment Information**

Payment Method

Last used payment method

VISA
**** * 4448
05/16
JOHN DOE

VISA

VISA

Continue

Bill Summary

Name: Samuel McCurley

Account #: 6759370

Service Address: 101 Hummingbird Ln, Charlotte NC 28215

Due Date: 08/14/13

Total Amount Due: \$69.86

Confirmation **Full Bill**

Payment Receipt

Your payment has been accepted.

Confirmation #	2013086
Account #	6759370
Refuse	000000
Payment Date	10/21/13
Payment Method	VISA** 1386
Payment Amount	\$69.86
Service Job #	6205
Total Amount	\$69.86

Print **Make another Payment**





Interactive Voice Response (IVR) Payments

Paymentus provides a fully integrated IVR payment channel with customized greetings and customizable prompts, payment options, flows and trees. Customers can dial a toll-free number, dedicated to the City to make self-service payments 24x7. Paymentus supports multiple languages including English, French and Spanish on its IVR. Paymentus offers industry leading flexibility to customize payment options, flows and trees, for example: Press “1” to make a residential payment, press “2” to make a commercial payment or press “1” to make a utility payment, press “2” to make pay a security deposit.

Paymentus IVR has achieved an industry-leading 90% success ratio for completed calls and payment transactions. This tremendous success can be attributed to the significant investment that Paymentus makes in simplifying the voice user interface for end-users, also balancing security and compliance requirements for IVR payment transactions. The IVR processes payments in the following manner:

- User accesses bill payment system via IVR or IWR
- User enters contact information, account information manually, via an automated transfer of information from a Customer Information File, or via a web transfer
- User enters payment information and confirms payment
- The system sends a real-time request to the payment processor who validates credit card number, expiration date, card security code and amount left on card
- Confirmation is sent back to user
- Confirmation is sent to Agent Portal for viewing and reporting
- Standard Funds settlement is 24-48 hrs. As per the City’s requirements, Paymentus is pleased to offer the City 24 hour funds settlement.

We support the use of TTY devices as part of our IVR channel. Our system has:

- Clear instructional prompts
- Gives sufficient response time for relay service assistance
- Gives auditory instructions that when typed are understandable when read by TTY users
- Our system maintains the integrity of TTY data.

The Paymentus application has been built to support multiple channels and multi-languages. Our IVR channel is designed to support different sets of voice prompts with different language preferences. We also offer the option to provide a separate access number for TTY subscribers.

Paymentus can integrate with most call center systems. One of the key drivers for such integration is in order to alleviate the biller of PCI compliance responsibilities. When a user is speaking to a customer service representative at the call center and then is ready to make a payment by phone, the agent can simply switch the user to Paymentus IVR in order to complete the payment process in a completely secure and PCI compliant environment. In this way neither the biller nor the call center agent can access the card or e-check payment data. Paymentus does not charge for the integration service.



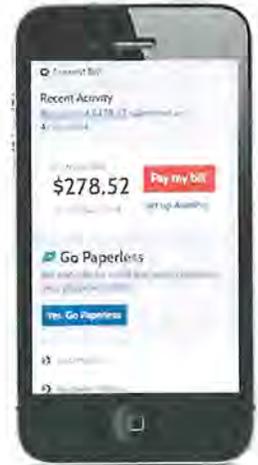


Mobile Payments

Mobile Web. Building off the exceptional experience we deliver via the web, the Paymentus technology and design teams have developed an online experience that is equally as enjoyable on a mobile device as it is on a PC. Our responsive design optimizes the web experience for smartphones or tablets, providing an ideal viewing experience and leading to more electronic payments.

Paymentus uses responsive web design (RWD) technology for all of our interfaces. RWD is an approach aimed at crafting web sites for easy reading and navigation with a minimum of resizing, panning, and scrolling across a wide range of devices, from mobile phones to tablets. Our web sites work great on any device, allowing users to have consistent payment experience every time.

All functionality available via the web payment channel is available through the mobile channel as well.



3. Customer Self Service Portal

The Customer Portal provides ultimate self-service capability for your customers. Customers can easily and conveniently make one-time payments or enroll online into a highly secure customer self-service portal to view bill details, due date, usage & history, make a payment, schedule payments, and view payment history.

The navigation bar helps them to easily choose the options available to them:

Accounts: The accounts screen gives a high-level overview of all accounts with amount due, due date and other details. From this screen, customers can choose either a paper bill or decide to go paperless at any time.

Payments: The payments screen shows historical payments made on the account(s), date payment was made, payment type and gives the option to view more detail of each payment.

Make a Payment: Customers can see a list of accounts and choose which account to pay. At this screen, customers can also add a new account.

Bills: Customers will see a list of bills along with bill status – due, past due, paid, etc. From this screen, customers can view the full bill or pay any of the bills.

Schedules: The schedules screen allows customers to schedule future payments or set up recurring payments.

Wallet: Customers can manage their payment types from the wallet screen. They can add new credit cards, debit cards or ACH methods as well as edit or delete existing payment types.

Preferences: Preferences screen allows customers to manage account information such as name, email address, phone number and change or reset passwords.





AutoPay

The Customer Portal allows your customers to enroll in AutoPay, a recurring payment option that allows customers to automatically pay by credit card, debit card, or e-check. Payment information is kept secure within the Paymentus PCI-certified platform. As part of our standard implementation, Paymentus will seamlessly transfer the City's 4,000 customers currently enrolled in the ACH program, to the Paymentus AutoPay program.

Scheduled and recurring payments encourage and enable the customer to pay on time, and reduce the possibility of their being delinquent should they be away. Customers can schedule payments before or on the due date. Our system allows flexibility as to how often payments are made and the amount they wish to pay to avoid late payments. Customers can be encouraged to set-up scheduled payments by City staff. City staff can also set-up scheduled payments on the customer's behalf utilizing the Agent Portal. Customers also have the ability to change the payment method or frequency schedule at any time.

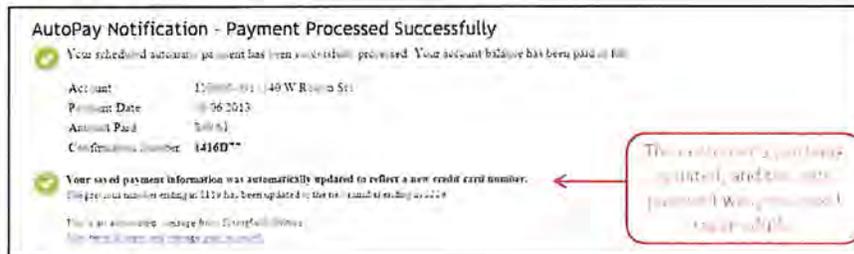


Decline Minimizer Service for auto-updating credit cards

Also standard to Paymentus customers is our optional Decline Minimizer product. If the customer's saved credit/debit card number changes due to a lost or stolen card or expiration date change, our system will automatically update the saved credit card information when the next payment is processed. If this service is activated, then the customer will receive an email notice after their next scheduled payment informing them that their card has been updated and their payment processed (see example below).

Without Decline Minimizer, payments will be declined and customers could be charged unnecessary late fees for non-payment. Decline Minimizer allows us to keep those payments going, keep customers happy, and avoid angry calls.

Snip of an AutoPay Confirmation w/ Decline Minimizer



4. Business Intelligence & Reporting

Agent Portal

The Paymentus Agent Portal is a 24/7 web-based portal specifically designed and dedicated for the agents at the City to support to your customers. The Agent Portal can be easily deployed across the City's customer service, collections and finance teams as access is role and permissions based. The Agent Portal is easily self-administered by the City through an intuitive and powerful administration interface. The Agent Portal allows your staff the ability to:

- View payments in real-time
- Accept resident payments (such as phone call payments and mailed-in-credit card payments)
- View and access reports
- Cancel payments in real-time (such as customer errors or reservation cancellations)
- Control resident and agent access

Types of Reports

- All reports are provided in a modular technology environment, so that the various City departments can choose the reports that they require specifically. The descriptions below illustrate our menu of real-time reports, our dashboard approach to individual reports, and the ability to drill down to see the details behind all of the data in each report. This is a sampling of our capabilities and by no means an exhaustive list of reports available.

AGENT PORTAL: Payments by Date Range

Confirmation Number	Pledged Payment	Amount	Government Fee	Payment Type	Account Number	Customer	Payment Date/Time	Payment Method	Origin	Channel	Originator	Status	Status Description	Final Status	Action
2015012	\$10.00	\$7.50	\$2.50	2015012	101012	John Doe	04/20/2015 10:10 AM	Check	Online	Online	Online	Success	Account	Success	View
2015013	\$10.00	\$7.50	\$2.50	2015013	101013	John Doe	04/20/2015 10:15 AM	Check	Online	Online	Online	Success	Account	Success	View
2015014	\$10.00	\$7.50	\$2.50	2015014	101014	John Doe	04/20/2015 10:20 AM	Check	Online	Online	Online	Success	Account	Success	View
2015015	\$10.00	\$7.50	\$2.50	2015015	101015	John Doe	04/20/2015 10:25 AM	Check	Online	Online	Online	Success	Account	Success	View
2015016	\$10.00	\$7.50	\$2.50	2015016	101016	John Doe	04/20/2015 10:30 AM	Check	Online	Online	Online	Success	Account	Success	View
2015017	\$10.00	\$7.50	\$2.50	2015017	101017	John Doe	04/20/2015 10:35 AM	Check	Online	Online	Online	Success	Account	Success	View
2015018	\$10.00	\$7.50	\$2.50	2015018	101018	John Doe	04/20/2015 10:40 AM	Check	Online	Online	Online	Success	Account	Success	View
2015019	\$10.00	\$7.50	\$2.50	2015019	101019	John Doe	04/20/2015 10:45 AM	Check	Online	Online	Online	Success	Account	Success	View
2015020	\$10.00	\$7.50	\$2.50	2015020	101020	John Doe	04/20/2015 10:50 AM	Check	Online	Online	Online	Success	Account	Success	View



User Management - Assign Roles and Permissions in Granular Detail

Search Users +

User Id	First Name	Last Name	Parent Group	Date Created	Creator Id	Status	Email Status	Action
Thomas	Johann	Esch	System Administrators	Oct 28, 2011 7:09:40 PM	6036561784	Active		View
Wolfgang	Wolfgang	Mischart	System Administrators	Oct 29, 2011 4:09:40 PM	6036566765	Active		View
Ludwig	Ludwig	Beemster	City Administrators	Oct 28, 2011 3:58:39 PM	6036561784	Active		View
Alysa	Alysa	Pate	Admin	Dec 28, 2012 4:02:21 PM	6036561784	Active		View
Suzanne	Suzanne	Neenan	Esac	Dec 27, 2012 4:10:13 PM	6036561784	Active		View

Account Management - Block a Payment Method to Ensure Good Funds

Authorized Agent clicks on appropriate check box of a particular account to restrict customer to pay by method preferred: credit card, debit card. Or, Agent can suspend an account from using part or all of the Paymentus platform (web, IVR, etc.) to make a payment.

Reporting

We provide a flexible reporting structure with CSV export capability for further analysis, support for Boolean search, and allow for easy customizability. The system is fully able to schedule pre-defined reports to run at user-defined intervals. Scheduled reports can be emailed automatically to pre-defined recipients. We also provide an efficient and seamless automatic transfer of files via secure FTP. We provide ad hoc/query reporting capabilities and are able to create new reports based on our clients' requirements. In fact, very often, we will develop reports or functionality for our customers to incorporate in our standard offering.

Standard Reporting Structures Include:

- Payments made today, Payments for other time periods
 - 7 days, 30 days, custom reports between any user defined times up to 13 months in the past (or longer as per the City's business rules)
- Deposits and returns
 - Net deposit summary report, Deposits previous 24 hours, Returns previous 24 hours, Custom reports between any user defined times
- Posting file report – all payments made previous day up to business day close
- Paper suppression reports



- Bill Lifecycle reports – late payer report
- Outbound Notification status reports
- Search for any payments in real time by: Confirmation number, Account number or other specific identifier set by the City, Payment Date or Date Range, Payment Status, Agent ID, Payment Amount Range, Payment Method (Visa, MC, Discover, Amex, ATM, Debit and ACH)

Standard Payment Reports: View upon Login



- **Report Totals Sub Tab:** See the number of transactions and revenue totals with just one click.
- **Posting File Report:** View transactions from previous 24 hour payment period to see daily posted payments. Billing systems may be updated in three ways – real-time, automated batch posting or manual batch posting (for departments with very few payments). Posting times are based on customer's preference.
- **Detailed Payment Reports, by Date Range:** Detailed payment reports. Download to CSV and analyze the data in Excel. View any payment in greater detail. Cancel a payment (rules-based).
- **View Details of an Individual Payment:** Agent sees exact details as customer sees in the original, automated payment confirmation email message sent from One-Time Payment or Customer Portal or Agent Portal Web Payment channels. Agent with assigned permissions can cancel a payment in real time (the Payer *cannot* do this). Once cancelled, Paymentus notifies the appropriate Credit Card vendor in real time to credit the bill payer.
- **Real-Time Payment Reversal:** Once the payment is cancelled, the transaction immediately appears in the Payments Made Today Report with the Bill Amount shown as negative. Customer gets email confirmation of the cancelled payment and the transaction is accurately posted for the Posting File.





- **Query Capabilities:** Each transaction carries a unique confirmation number generated by Paymentus which is noted to the customer (audibly on IVR, via email receipt for web payments). This unique verification number is maintained in all transaction information, and can be looked up via custom query. Paymentus provides the capability for users with permissions to do so to run ad hoc reports by querying the database.
 - In Agent Portal, Under Payments, ‘Find a Payment’ hyperlink is chosen
 - User selects criteria, and selects ‘Search’. Searchable fields include Staff ID, Transaction Confirmation Number, Account Number, Payment Type, Dollar Range, Date Range, Payment Method and Status of Payment (of any combination).
 - Data is revealed with Download .csv capability (as with all reports)
- **Bill Payer Analytics:** Online pie charts to instantly understand all of your customers’ automated bill payment profile. View how many payments are made by channel (web, IVR, Home Banking, Agent Assisted, etc.)
 - View method of payment details (Visa, Amex, Debit, cash, etc.)
 - View payment volumes, deposits and returns and much more detail.
 - View payments by date in the month – see potential late payment trends
- **Bill Lifecycle Reports:** Now you can really understand the payment behavior and patterns of your customers. Especially useful for monthly or regular interval bill categories, the Lifecycle Report compares the customer’s bill payment date and the amount paid with the:
 - Issue date of your bill, Due date of your bill, Date that your billing data was sent to Paymentus
 - You will be able to leverage the information to get full value from our automated outbound notification in order to encourage trending late-payers to make their payments sooner!

[Next Generation Reconciliation Reporting](#)

The challenges associated with multiple conventional and non-enterprise payment systems that do not recognize the complexity of reconciliation can effectively lead to many cases where the cost to process an electronic payment becomes significantly higher than a mailed paper check.

Paymentus provides an industry leading automated reconciliation process to ensure and simplify reconciliation including the reconciliation of number of credit card payments and correct dollars processed. Paymentus provides powerful reconciliation features available through the Paymentus Agent Portal.

Reports included in the “Deposits and Returns” tab include:

- Net Deposit Summary
- Returns
- Customized Deposit Reports



Real-time detailed and summary reports are available through the Paymentus Agent Portal to accurately view every transaction, payment and reconcile with the associated bank deposit.

Paymentus AGENT PORTAL: Deposits and Returns

Deposits and Returns

Select a Report

Net Deposit Summary - Nov 3, 2013
Deposit transfer summary (cash deposits, credit transfers) received within the last 24 hours.

Deposits - Nov 3, 2013
Deposits: 0, Deposit Amount: \$0.00, Returns: 0, Return Amount: \$0.00, Net Deposit: \$0.00
Cash transfers, deposits returned after business hours, deposits before last business day.

Returns - Nov 3, 2013
Returns: 0, Return Amount: \$0.00, Deposits: 0, Deposit Amount: \$0.00, Net Deposit: \$0.00
Returns: Deposits returned within 15 hours immediately before last business day.

Deposit Transfer Summary Elected
Deposit transfer summary for selected date range and entity.

Discontinued Deposits
Deposits received within the last 24 hours (pending).

Conditional Returns
Returns received within the last 24 hours (pending).

Consolidated Financial Report
Financial Summary Report over Paymentus account(s) for a period.

Reconciliation – Daily Deposits and Returns Reports

View all daily deposits information at a glance by clicking on the **Deposits and Returns** link. See the number of deposits for that date, total dollar amount of deposits, number of returns, total dollar amount of returns and the net deposit amount. By clicking on the Returns report, you can see a grid array of all return items for that date.

Financial Summary Report

Successful Deposits	Return Count	Return Amount	Return Count	Return Amount	Total Deposit Count	Total Net Deposit Amount	Final Transfer Date
Total Successful Deposits	66039	197,227.72	0	0.00	66039	197,227.72	
Settled Deposits							
USA Chq's	78794	32,460.00	0	0.00	78794	32,460.00	
Instantiated	6809	20,960.70	0	0.00	6809	20,960.70	
4-Week Deposits	4794	10,019.00	0	0.00	4794	10,019.00	
Bank-Related	1000	28,330.70	0	0.00	1000	28,330.70	
Business Check	650	1,270.18	0	0.00	650	1,270.18	
Surge Deposits	20485	187,987.72	0	0.00	20485	187,987.72	
Cancelled Deposits							
Cancelled Deposits	0	0.00	0	0.00	0	0.00	
Financial Activity Summary							
Total Settled Deposits Net Amount						197,227.72	
Total Assignment						0.00	
Net Financial Activity						197,227.72	



5. Communication - Outbound Notifications

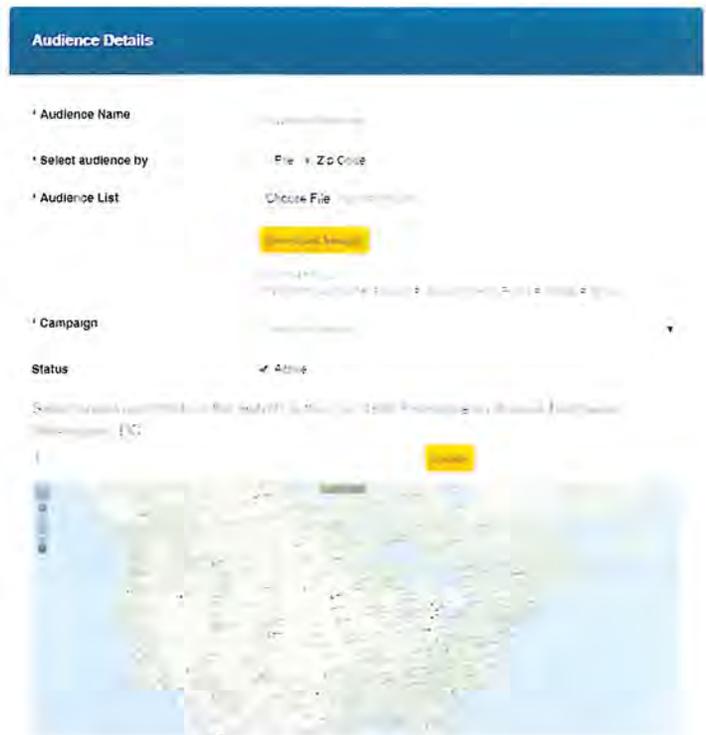


Leveraging the technologies available with the Paymentus IVR, email and text technologies, Paymentus offers an automated outbound notifications tool, which was developed to address requests from clients to be able to send out automated communications to customers to alleviate time and cost incurred by sending out late notices, and having CSRs make outbound calls to customers for reasons such as payment reminders, service interruption messaging and emergency messaging.

Outbound Notifications

With written or pre-recorded messages, you can send your customers automated billing notices, payment reminders and service alerts by e-mail, IVR, and by SMS text messaging. The outbound IVR notification will significantly reduce the City’s current 1,000 average monthly delinquent payments, as late payers will be prompted to make a payment on the spot (“Press Option 2 to make a payment now”).

You create and select the message content, assign the targets through your customer database and upload the file to Paymentus through the Agent Portal. Target audiences may also be chosen via a GIS mapping interface.



Online channel broadcast messages

Using our online payment channel, authorized staff can create custom broadcast messages that will appear in the “Pay Now” payment portal, Customer Portal or Agent Portal. It’s easy to learn and easy to implement!

Alerts

- 07/20/2015
Sign up to our Customer Dashboard to make paying your bills faster and more convenient.
- 07/20/2015
There is currently a service outage at Rexanne & Kerg. Power will be back up shortly.
- 07/20/2015
We have upgraded our service to serve you better.



6. E-Lockbox Payment Services

The Challenge: Payments through Personal Banking

Your customers make payments through their online bank. You receive a paper check from every bank for every payment. The convenience and efficiency gains of electronic payments have been extended to your customers. Meanwhile, it can take as much as seven business days before funds are actually remitted to your bank account, and the burden and cost of paper check processing have been re-introduced to you.

The Solution: The Paymentus Enterprise Payment Aggregator

Paymentus provides utilities with a simplified, secure and cost-effective means to receive electronic remittances from payments made by your customers through their online banks.

In partnership with MasterCard and other financial networks, Paymentus delivers a simplified and aggregated electronic remittance for online payments that come from various sources, including online bank payments.

Benefits

- Simplified and aggregated remittance and reconciliation for online bank payments
- Remittances deposited into your bank account in 24 hours Single posting process for CIS/Billing system reconciliation
- Fully integrated within the Paymentus next-generation bill payment platform
- Reduction of paper check collections
- Reduction of handling time and the cost of paper checks processed by bank's lockbox
- Reduction of NSF exceptions and returns

Home Banking & Paymentus Automated Payments: Aggregated in a Single View

Amount	Utility Bill	Account	Name	Date	Time	Payment Method	Processor	Status	Action
\$148.00	Utility Bill	15038	SCHONER CHERILE	Apr 13, 2011	12:00:00 AM	MasterCard RPPS External Payment	MasterCard RPPS Notification Process	Accepted	View Details
\$134.12	Utility Bill	381692	STANISHAM MEGAN	Apr 13, 2011	12:00:00 AM	MasterCard RPPS External Payment	MasterCard RPPS Notification Process	Accepted	View Details
\$80.00	Utility Bill	739684	WILLIAMS EMILY	Apr 13, 2011	12:00:00 AM	MasterCard RPPS External Payment	MasterCard RPPS Notification Process	Accepted	View Details
\$1.16	Utility Bill	723512	COOK TIFANY	Apr 13, 2011	12:00:00 AM	MasterCard RPPS External Payment	MasterCard RPPS Notification Process	Accepted	View Details
\$52.15	Utility Bill	919064	AKER BRYAN	Apr 13, 2011	12:00:00 AM	MasterCard RPPS External Payment	MasterCard RPPS Notification Process	Accepted	View Details
\$100.00	Utility Bill	83964	Kyle M. Crilly	Apr 12, 2011	12:18:13 PM	Checking Account	Customer One Time Payments	Approved	View Details
\$54.00	Utility Bill	10390		Apr 12, 2011	10:08:31 PM	Visa	IVR Interface	Accepted	View Details
\$127.00	Utility Bill	32384		Apr 12, 2011	9:58:13 PM	Visa (Check)	IVR Interface	Accepted	View Details
\$47.71	Utility Bill	31554	Erin Mosier	Apr 12, 2011	7:01:30 PM	Visa (Check)	Customer One Time Payments	Accepted	View Details
\$36.00	Utility Bill	66320	Brook Smith	Apr 12, 2011	1:31:03 PM	Visa	Customer One Time Payments	Accepted	View Details





Security and Compliance

Paymentus follows all security measures required through Visa and MasterCard guidelines and is PCI level 1 compliant.

Our service is supported in multiple data centers that are highly secure and reliable; and meet SSAE16 compliance. There are no single points of failure and every component of our service is built in an n+1 architecture.

Access Control to Servers. Two-factor authentication is used for administration and maintenance access to all servers. All access to the Paymentus applications are secured through the SSH protocol.

Monitoring. Paymentus has an Intrusion Detection System IDS which involves five layers of security on our servers, monitored 24/7. The IDS has both host-based and network-based components. Any unauthorized attempt to access the system initiates alerts to Paymentus Technology staff.

Authorization Processing. Paymentus uses industry standard conventions to enable authorizations. These include end user identification information such as Name, Account Number, Address / Zip Code, Phone Number, and Email Address.

We apply several methods to validate and authorize a user at the Account level:

1. The account number entered by the user must correspond with the format accepted by the Biller. For example, if the user enters a 7-digit account number and the Biller uses an 8-digit number, our system immediately displays a pop-up message highlighted in red text asking for a correction to be made.
2. Our IVR phone system alerts the user that the account number is incorrect and asks for the correct number to be entered.





Customer Care & Client Support

Live Customer Care. Paymentus live customer/consumer support hours are 7:30 am to 8:00 p.m. to support your consumers with any payment related questions/issues. This service is provided at no additional charge to you or your customers.

Client Support. Paymentus maintains a sophisticated case management system with all metrics managed and monitored daily, weekly and monthly by our client services team and senior management. Support requests generate a ticket and are responded to by Paymentus Client Services within the following timeframes:

Support Channel	Average Response Time
Paymentus Client Services	Within 2 hours during business hours Extended business hours
Email support	Within 2 hours during business hours Within 4 hours non-business hours
Phone Support	24x7 (including holidays)

System Overview/Network Configuration

We offer multiple options such as file delivery via secure FTP, real time web services and API interfaces. Essentially, our client-centric approach means we can communicate with your organizations in your desired formats.

Posting File Creation: Receipt of specifications of your existing settlement file allow us to configure/build the code to create a file that can be processed by your accounting system.

Customer Information File: The specifications of an existing customer information file (CIF) that details the tokens to be used for authenticating an end user, invoice number, payment amount due, etc.

Schedule Payments File: If you have an existing system with payment schedule data, we have a migration process to convert your data to our internal format. We would need to know the file format of the file.

Web service APIs: Paymentus offers extensive XML over HTTPS Web service API set. It includes but is not limited to making a payment, performing a pre-auth, submitting a recurring payment and Payment Notification Service (PNS) to post notification of payments to our clients' web services server applications. Our service has been designed to be extensible and customizable to allow for integration with our clients' existing services. If you have a web service for account validation and account retrieval, we can use it to verify and present account information to the citizens. Also, we can send a payment notification to the City's web service. We have a standard payment notification service which can be used for payment notification purposes as well.

**Innoprise offers Paymentus a real-time web-service API to utilize for all our clients*





Implementation/Training

Paymentus follows a formal Project Management process consisting of five high level phases.

Paymentus has already pre-implemented the payment platform for the City in a pre-production environment. This step is designed to reduce the overall implementation timeline, allowing for a much quicker launch of our services. There will be no charge for the implementation of this system and our experience shows minimal time needed from your staff. Paymentus currently averages a 56 day 'go-live' time frame from date of gathering business requirements to go-live date.

Paymentus will have you complete an account setup worksheet upon declaration of the partnership. Through this worksheet and meetings, your needs will be assessed and a detailed project proposal will be drafted. Paymentus will not start development until this project proposal passes your approval. Implementation timeline is as follows:

Week	Activity	Resources Required
Week 1	Paymentus Relationship Manager works with the client to confirm implementation requirements	Paymentus, City of Flagstaff
Week 2	Project kick-off meeting is conducted	Paymentus, City of Flagstaff
Week 3	Paymentus project manager finalizes technical requirements and project development cycle begins	Paymentus, City of Flagstaff
Week 4	Paymentus project development cycle continues	Paymentus, City of Flagstaff
Week 5	Paymentus project development cycle concludes; Internal testing is conducted	Paymentus
Week 6	The client conducts testing.	Paymentus, City of Flagstaff
Week 6	Training session	Paymentus, City of Flagstaff
Week 6-7	Launch Date	Paymentus

Detailed milestone dates for each phase of the Paymentus Implementation are mutually agreed upon between Paymentus and the client.





E. Proposed Fee Schedule

In order to extend the most competitive transaction costs to the City, it is most advantageous to provide pricing per payment type (qualified, non-qualified, e-checks, e-lock box), rather than a single fee. The simplified per payment transaction fees noted below are all-inclusive of our complete e-bill and payment solution, including: payment processing, 24-hour funds settlement, Decline Minimizer, implementation and ongoing support and maintenance.

Online Payment Processing: <u>Qualified Credit/Debit Cards</u>	UNIT PRICE	\$	<u>1.59</u>
Online Payment Setup Fees: _____	UNIT PRICE	\$	<u>0</u>
In-Person Payment Processing: <u>Qualified Credit/Debit Cards</u>	UNIT PRICE	\$	<u>1.59</u>
In-Person Payment Setup Fees: _____	UNIT PRICE	\$	<u>0</u>
EMV Enable Swipe Devices: <u>1-5 Devices no charge</u>	UNIT PRICE	\$	<u>0</u>
IVR Payment Processing: <u>Qualified Credit/Debit Cards</u>	UNIT PRICE	\$	<u>1.59</u>
IVR Payment Setup Fees: _____	UNIT PRICE	\$	<u>0</u>
Mobile Application Payments: <u>Qualified Credit/Debit Card</u>	UNIT PRICE	\$	<u>1.59</u>
Mobile Application Setup Fees: _____	UNIT PRICE	\$	<u>0</u>
Online Bank Check Payment Processing: <u>(E-Checks)</u>	UNIT PRICE	\$	<u>0.40</u>
Online Bank Check Setup Fees: _____	UNIT PRICE	\$	<u>0</u>
Other: <u>Online Banking Payments (E-Lockbox)</u>	UNIT PRICE	\$	<u>0.09</u>
Other: <u>Non-Qualified Credit/Debit Cards (Multi-Channels)</u>	UNIT PRICE	\$	<u>2.65%</u>
Other: <u>American Express Credit Card</u>	UNIT PRICE	\$	<u>AMEX Fees+ \$0.75</u>
Other: _____	UNIT PRICE	\$	<u> </u>
Miscellaneous charges: <u>Additional Swipe Devices (6+ count) \$150.00 ea.</u>			
	FREIGHT	\$	<u>0</u>
	TAX (0) %	\$	<u>0</u>
	TOTAL UNIT PRICE	\$	<u>0</u>





Bill Presentment Services

3 months of electronic PDF bills: _____	UNIT PRICE	\$	<u>0</u>
6 months of electronic PDF bills: _____	UNIT PRICE	\$	<u>0</u>
12 months of electronic PDF bills: _____	UNIT PRICE	\$	<u>0</u>
Other time period for electronic bills: _____	UNIT PRICE	\$	<u>0</u>
Electronic PDF bills setup fees: _____	UNIT PRICE	\$	<u>0</u>
E-mail notifications with attachment: _____	UNIT PRICE	\$	<u>0</u>
E-mail notification with bill link: _____	UNIT PRICE	\$	<u>0</u>
E-mail notifications Setup Fee: _____	UNIT PRICE	\$	<u>0</u>
Other: _____	UNIT PRICE	\$	<u>0</u>
Other: _____	UNIT PRICE	\$	<u>0</u>
Miscellaneous charges: <u>No other fees to be charged.</u>			

Notification Services

Outbound Call: <u>1,000 monthly combined messages incl.</u>	UNIT PRICE	\$	<u>Overage 0.12</u>
Outbound Call Setup Fees: _____	UNIT PRICE	\$	<u>0</u>
Outbound Text: <u>1,000 monthly combined messages incl.</u>	UNIT PRICE	\$	<u>Overage: \$0.05</u>
Outbound Text Setup Fees: _____	UNIT PRICE	\$	<u>0</u>
Outbound Email: <u>1,000 monthly combined messages incl.</u>	UNIT PRICE	\$	<u>Overage: \$0.05</u>
Outbound Email Setup Fees: _____	UNIT PRICE	\$	<u>0</u>
Other: _____	UNIT PRICE	\$	<u>0</u>
Other: <u>1,000 Outbound Messages (IVR,SMS,Email)</u>	UNIT PRICE	\$	<u>0</u>
	FREIGHT	\$	<u>0</u>
	TAX ()%	\$	<u>0</u>
	TOTAL UNIT PRICE	\$	<u>0</u>

Miscellaneous charges: No other fees to be charged.



OFFER (FORM)

TO THE CITY OF FLAGSTAFF:

The undersigned hereby offers and agrees to furnish materials and/or services in compliance with the Solicitation, including Addenda, and as described in this offer made to the City.

Representative or Contact Person's Name: Nicole Haskins

Telephone: (540) 951-6462

Fax: (704) 909-7228

Offeror (Vendor): Paymentus Corporation

Address: 13024 Ballantyne Corporate Place, Suite 450

City, State, Zip: Charlotte, NC 28277

Nicole J. Haskins

Signature of Person Authorized to Sign Offer

Director of Sales

Title

Nicole Haskins

Printed Name

11/20/14

Date

Attach: Addenda signed by vendor (if addenda were issued).

VENDOR QUESTIONNAIRE (FORM)

Vendor:

Company Name: Paymentus Corporation

Doing Business As (if different than above): _____

Address: 13024 Ballantyne Corporate Place Suite 450

City: Charlotte State: NC Zip: 28277 -

Phone: (540) 951-6462 Fax: (704) 909-7228

E-Mail Address: nhaskins@paymentus.com Website: www.paymentus.com

Taxpayer Identification Number: 46-0523150

Mailing Address (if different than above):

Address: _____

City: _____ State: _____ Zip: _____ -

Vendor Contact for Questions about Offer:

Name: Nicole Haskins Fax: (704) 909-7228

Phone: (540) 951-6462 E-Mail Address: nhaskins@paymentus.com

Transaction Privilege (Sales)Tax/Use Tax Information (check one):

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

OR

Vendor is located in Arizona (The vendor must invoice the applicable state and local tax to City, and remit taxes.)

Arizona Department of Revenue TPT License Number: _____
(Attach proof of registration)

Business License Information (check one):

Vendor does not have a business location within the City of Flagstaff

OR

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

Solicitation No. 2015-45
Buyer: Candace Schroeder, CPPB
PH: (928) 213-2278 FX: (928) 213-2209

____ Vendor has a business location (uses a building) within the City of Flagstaff

Flagstaff Business License Number: _____

Other Licenses (list any existing licenses you have required for work, e.g. Arizona Registrar of Contractor licenses, and attach copies):

Insurance (who will provide required coverages):

Insurance Company Name See the following page for our insurance certificate.

Contact & Phone Number _____

Subcontractors:

List any subcontractors to be utilized, if any.

Not applicable.

REFERENCES (FORM)

REFERENCES. Please submit at least three (3) and no more than five (5) references for projects your company has performed in the last five (5) years demonstrating your experience with providing materials and/or services comparable to the Solicitation. The project description should include sufficient detail for the City to evaluate your experience. You should also include the name, title, and telephone number of both the current project owner and the project owner at time of work.

Firm/Government Agency Name: City of Casa Grande, AZ	
Contact Person: Doug Sandstrom	Phone: (520) 421-8696
Title: Finance Director	Fax:
Address: 510 East. Florence Boulevard Casa Grande, AZ 85122	E-Mail Address: dsandstrom@ci.casa-grande.az.gov
	Reason for Selecting as Reference: Harris Innoprise integration, AZ client
Project Date, Size, Complexity, Scope and Duration: Client since 2014, Harris Innoprise, 15,000 bills per month	
Firm/Government Agency Name: Eagle River, CO	
Contact Person: John McCaulley	Phone: (970) 477-5452
Title: Customer & Metering Services Supervisor	Fax:
Address:	E-Mail Address: jmccaulley@erwsd.org
	Reason for Selecting as Reference: Harris integration
Project Date, Size, Complexity, Scope and Duration: Client since 2014, Harris Advanced, 10,000 bills per month	
Firm/Government Agency Name: City and County of Broomfield, CO	
Contact Person: Dianne Cooper	Phone: (303) 438-6319
Title: Billing and Accounts Administrator	Fax:
Address: One DesCombes Dr. Broomfield, CO 80020	E-Mail Address: dcooper@broomfield.org
	Reason for Selecting as Reference: Harris integration, comparable size

Project Date, Size, Complexity, Scope and Duration: Client since 2013, Harris Innoprise integration, 32,000 bills per month	
Firm/Government Agency Name: City of Toledo, OH	
Contact Person: Bret Telecsan	Phone: (419) 245-1529
Title: Operations	Fax:
Address: 420 Madison Ave. Ste. 200 Toledo, OH 43604	E-Mail Address: bret.telecsan@toledo.oh.gov
	Reason for Selecting as Reference: Long term client, utility payments
Project Date, Size, Complexity, Scope and Duration: Client since 2008, 127,000 bills per month	
Firm/Government Agency Name: City of Buford, GA	
Contact Person: Jeff Dobbs	Phone: (678) 889-4605
Title: Accounting Manager	Fax:
Address: 2300 Buford Highway Buford, GA 30518	E-Mail Address: jdobbs@cityofbuford.com
	Reason for Selecting as Reference: Long term client, similar size, utility payments
Project Date, Size, Complexity, Scope and Duration: Client since 2008, 35,000 bills per month	

EXCEPTIONS (FORM)

Notations. Any strikeouts, notes or modifications to the Solicitation documents shall be initialed in ink by the authorized person who signs the offer. If notations are made, they must be submitted with your offer and are considered Exceptions.

Exceptions: In addition to any notations on the Solicitation documents, please identify and list any exceptions to the Solicitation, by section/paragraph, on this Exceptions Form. The City reserves the right to reject, accept or further negotiate Exceptions. Exceptions may render the offer non-responsive.

Exceptions to Form of Contract: You may request changes to the form of contract (including any Standard or Special Terms and Conditions) on the Exceptions Form. You may also submit your own form of contract. The City will consider these in the same manner as any other exceptions.

You must indicate any and all exceptions taken to the requirements, specifications, and/or terms and conditions of this Solicitation, including the contract.

Exceptions (INITIAL ONE):

No exceptions

Exceptions taken (describe). Attach additional pages if needed.

CONFIDENTIAL MATERIALS (FORM)

If you believe part of your offer is confidential, mark the page(s) "CONFIDENTIAL" and isolate the pages as an attachment to this form. Also include an explanation why they are confidential.

Requests to deem the entire offer as confidential will not be considered.

If you want confidential information returned to you after contract award (and you are not selected for contract award), then note this below. You will be responsible for pick up.

Generally, information submitted in response to a Solicitation is subject to disclosure pursuant to the Arizona Public Records Law after contract award.

The information identified as confidential shall not be disclosed until the City makes a written determination whether the information may be treated as confidential. If the City determines it is necessary to disclose the information, the City will inform you in writing.

Confidential/Proprietary Materials (INITIAL ONE):

No confidential/proprietary materials have been included with this offer

Confidential/Proprietary materials are included in this offer. See attached.

SECTION/TITLE	PAGE #'s	REASON(S) FOR WITHHOLDING FROM DISCLOSURE
Electronic Bill Presentment screen images	10-12	Trade secrets
All Payment Options & Channels screen images	17-18	Trade secrets
Business Intelligence & Reporting screen images	19-21, 23	Trade secrets
Communication screen images	24	Trade secrets
E-lockbox Payment Services screen images	25	Trade secrets

COOPERATIVE PURCHASES (FORM)

The City of Flagstaff is a member of Flagstaff Alliance for the Second Century, along with the Coconino County Community College District, Northern Arizona University, Coconino County and Flagstaff Unified School District.

The City is also a member of S.A.V.E. (Strategic Alliance for Volume Expenditures), which consists of numerous municipalities, counties, universities, colleges, schools and other Arizona State agencies.

Cooperative purchasing arrangements such as the above are sanctioned by state law and allow a vendor to sell services and materials to any member of a cooperative group under the same pricing, terms and conditions of contract awarded to the vendor by any other member, following a competitive procurement process.

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

Yes No (INITIAL ONE)

If you answered No, that is acceptable. The City will not reject your offer or consider it to be non-responsive.

If you answered Yes, and a contract is approved, others may seek to do business with you under the same terms and conditions, subject to your approval.

DISCLOSURE (FORM)

Any offer must include this completed form. For any item checked YES, you must provide an explanation, including dates, company name(s), enforcing authority, court, agency, etc. Answering YES to one or more questions does not necessarily mean that you will be disqualified from this Solicitation. **FAILURE TO PROVIDE TRUE AND COMPLETE INFORMATION MAY RESULT IN DISQUALIFICATION FROM THIS SOLICITATION.**

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

1. Any offense indicating a lack of business integrity or honesty, including fraud, bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, theft, price fixing, proposal rigging, restraint of trade or other antitrust law violation? YES _____ NO X _____
2. Violation of the terms of any public contract? YES _____ NO X _____
3. Failure to pay any uncontested debt to any government agency? YES _____ NO X _____
4. Violation of any law or regulation pertaining to the protection of public health or the environment? YES _____ NO X _____

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

Has your company or any affiliate of your company in the past 5 years been named as a party in any lawsuit related to performance of a contract (you do not need to list subcontractor lien claims which have been fully paid/satisfied)?

YES _____ NO X _____

If yes, provide the case name and number, brief description, and disposition or current status.

Has your company or any affiliate of your company in the past 5 years been debarred, disqualified or suspended from submitting proposals on public contracts?

YES _____ NO X _____

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

Nicole J. Hashine
Signature

Director of Sales
Title

11/20/14
Date

DECLARATION RELATED TO SOLVENCY (FORM)

Is your firm currently involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or has a trustee or receiver been appointed over all or a substantial portion of the property of your firm under federal bankruptcy law or any state insolvency law?

 Yes X No (INITIAL ONE)

DECLARATION RELATED TO GRATUITIES (FORM)

I hereby verify and declare that, to the best of my knowledge, neither the vendor nor anyone associated with the vendor has given, offered to give, or intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the offer ("Gratuities").

Nicole J. Hashine
Signature of Person Authorized to Sign Offer

Director of Sales
Title

DECLARATION OF NON-COLLUSION (FORM)

I hereby verify and declare that:

The pricing for this offer has been arrived at independently and without consultation, communication or agreement with any other vendor who may submit an offer.

The pricing for this offer has not been disclosed to any other vendor who may submit an offer, and will not be, prior to the Closing Date and Time.

No attempt has been made or will be made to induce any firm or person to refrain from submitting an offer, or to submit an offer with higher pricing than this offer, or to submit an intentionally high or noncompetitive offer or other form of complementary offer.

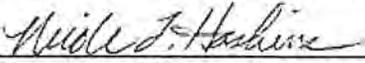
This offer is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or

CITY OF FLAGSTAFF PURCHASING DIVISION
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Solicitation No. 2015-45
Buyer: Candace Schroeder, CPPB
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found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.



Signature of Person Authorized to Sign Offer

Director of Sales

Title

Exhibit B
CITY OF FLAGSTAFF
STANDARD TERMS AND CONDITIONS

IN GENERAL

NOTICE TO PROCEED: Contractor shall not commence performance until after City has issued a Notice to Proceed.

LICENSES AND PERMITS: Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.

COMPLIANCE WITH LAWS: Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.

NON-EXCLUSIVE: The City's proposed form of contract is exclusive and is included as part of this procurement process for your review. The final form of contract will be conformed to match this Solicitation prior to Contract award.

SAMPLES: Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

MATERIALS

PURCHASE ORDERS: The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.

QUALITY: Contractor warrants that all materials supplied under this Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials, and will be safe and appropriate for use as normally used. City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.

ACCEPTANCE: All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.

MANUFACTURER'S WARRANTIES: Contractor shall deliver all Manufacturers' Warranties to City upon City's acceptance of the materials.

PACKING AND SHIPPING: Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.

TITLE AND RISK OF LOSS: The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery, and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.

NO REPLACEMENT OF DEFECTIVE TENDER: Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.

DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH: Contractor and may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute shall deliver conforming materials, or services, in each installment or lot of the contract a breach of the contract as a whole.

SHIPMENT UNDER RESERVATION PROHIBITED: Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.

LIENS: All materials and other deliverables supplied to the City shall be free of all liens other than the security interest held by Contractor until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.

CHANGES IN ORDERS: The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

PAYMENT

INVOICES: A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.

LATE INVOICES: The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.

TAXES: Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.

FEDERAL EXCISE TAXES: The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.

FUEL CHARGES: Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by City.

DISCOUNTS: If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by City.

AMOUNTS DUE TO THE CITY: Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to City or fees and charges owed to City under this Contract.

OFAC: No City payments may be made to any person in violation of Office of Foreign Assets Control regulations, 31 C.F.R. Part 501.

SERVICES

INDEPENDENT CONTRACTOR: Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.

CONTROL: Contractor shall be responsible for the control of the work.

WORK SITE: Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.

SAFEGUARDING PROPERTY: Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work.

QUALITY: All work shall be of good quality and free of defects, performed in a diligent and professional manner.

ACCEPTANCE: If work is rejected by the City due to noncompliance with the Contract, The City, after notifying Contractor in writing, may require Contractor to correct the

deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.

WARRANTY: Contractor warrants all work for a period of one (1) year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one-year warranty is in addition to, and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

RECORDS: The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.

RIGHT TO INSPECT BUSINESS: The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.

PUBLIC RECORDS: This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as "confidential", the City will endeavor to notify Contractor prior to release of such information.

CONTRACT ADMINISTRATION: Contractor will be required to participate in the City's Contract Administration Process. Contractor will be closely monitored for contract compliance and will be required to promptly correct any deficiencies.

INDEMNIFICATION, INSURANCE

GENERAL INDEMNIFICATION: Contractor shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney's fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents of Contractor or damages to any property arising or alleged to have arisen out of the negligent performance of the Contract, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the Contract. This indemnification clause shall not apply, if a different indemnification clause is included in the City's Specific Terms and Conditions.

INSURANCE: Contractor shall maintain all insurance coverage required by the City, including public liability and worker's compensation.

INTELLECTUAL PROPERTY INDEMNIFICATION: Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this Contract. Contractor shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the City against any and all expenses, losses, royalties, profits and damages, attorneys fees and costs resulting from such proceedings or settlement thereof. This indemnification provision shall survive termination or expiration of the Contract.

CONTRACT CHANGES

PRICE INCREASES: Except as expressly provided for in the Contract, no price increases will be approved.

COMPLETE AGREEMENT: The Contract is intended by the parties as a complete and final expression of their agreement.

AMENDMENTS: This Contract may be amended by written

SEVERABILITY: If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.

NO WAIVER: Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.

ASSIGNMENT: This Contract may be assigned by Contractor with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to City. The Purchasing Director shall have authority to consent to an assignment on behalf of City.

BINDING EFFECT: This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

SUBCONTRACTING: Unless expressly prohibited in the Contract, Contractor may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall include all the terms and conditions set forth in the Contract which shall apply with equal force to the subcontract. Contractor is responsible for contract performance whether or not subcontractors are used.

NONDISCRIMINATION: Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition any Contractor located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02 Civil Rights which also prohibits discrimination based on sexual orientation, or gender identity or expression.

DRUG FREE WORKPLACE: The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor shall require all its personnel to abstain from use or possession of illegal drugs while engaged in performance of this Contract.

IMMIGRATION LAWS: Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

DEFAULT AND TERMINATION

TERMINATION FOR DEFAULT: Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition Contract remedies provided for herein.

CITY REMEDIES: In the event of Contractor's default, City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.

CONTRACTOR REMEDIES: In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.

SPECIAL DAMAGES: In the event of default, neither party shall be liable for incidental, special, or consequential damages.

TERMINATION FOR NONAPPROPRIATION OF FUNDS: The City may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.

TERMINATION FOR CONVENIENCE: Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination.

TERMINATION DUE TO INSOLVENCY: If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate this Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.

PAYMENT UPON TERMINATION: Upon termination of this Contract, City will pay Contractor only for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.

CANCELLATION FOR GRATUITIES: The City may cancel this Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant ("Gratuities") in connection with award or performance of the Contract.

CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511): The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

ADVERTISING: Contractor shall not advertise or publish information concerning its Contract with City, without the prior written consent of the City.

NOTICES: All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract, or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent. Notice may be sent by email as a secondary form of notice.

THIRD PARTY BENEFICIARIES: This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.

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

FORUM: In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.

ATTORNEYS FEES: If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs, professional fees and expenses.

EXHIBIT C
INSURANCE

1. In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.
2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.
3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability –
Any Automobile or Owned, Hired
and Non-owned Vehicles
Combined Single Limit Per Accident
for Bodily Injury & Property Damage \$1,000,000

d. 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

4. Self-insured Retention. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents,

employees, and volunteers. Contractor shall be solely responsible for any self-insured retention amounts. City at its option may require Contractor to secure payment of such self insured retention by a surety bond or irrevocable and unconditional letter of credit.

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

- a. Additional Insured. In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.
- b. Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.
- c. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Contractor's insurance and shall not contribute to it.
- d. Each Insured. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- f. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.

6. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:

Attention: TBD
Contract No. TBD
Purchasing Department
City of Flagstaff,
211 W. Aspen Avenue
Flagstaff, Arizona 86001.

7. Acceptability of Insurers. Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

8. Certificates of Insurance. The Contractor shall furnish the City with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City project/contract number and project description shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance before the Contractor commences work.

9. Policies. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.

10. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.

CITY OF FLAGSTAFF
STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Dan Musselman, Deputy Police Chief (Support Services)
Co-Submitter: Rick Compau, Purchasing Director
Date: 01/14/2015
Meeting Date: 01/20/2015



TITLE:

Consideration and Approval of Sole Source Purchase: Consideration and approval to purchase an upgrade to the Police Department's Public Safety Computer Automated Records System, to a WEB based Records Management System and Services through Intergraph Corporation, in the amount of \$500,000 plus applicable taxes. Funding of this request will come through the FY2016/17 budget process. ***(THIS REQUEST IS TIME SENSITIVE DUE TO A JANUARY 31, 2015 DEADLINE BY THE VENDOR, SAVING THE CITY SUBSTANTIAL MONEY)***

RECOMMENDED ACTION:

- 1) Approve the agreement from Intergraph Corporation entitled "I/LEADS Upgrade to Web RMS, CAGIS, and BI Direct". This purchase shall be contingent upon budget approval through the FY2016/2017 budget process. If and when this purchase becomes a budgeted item, the Purchasing Director shall administratively award the contract.
- 2) Authorize the City Manager to sign the agreement documents.

Policy Decision or Reason for Action:

The Intergraph Corporation who is the vendor for the shared Records Management System at the Law Enforcement Administrative Facility is migrating all its customers to a web based Records Management System. Our current Intergraph Records Management System which we have used for over 12 years will no longer be supported at the end of 2017. Intergraph is offering a discount price of \$500,000 for those agencies who commit to purchasing the upgrade. To lock in the discount price we have to commit to the purchase by January 31, 2015. Intergraph expects the price tag to be closer to \$700,000 for those agencies who wait to purchase the upgrade at a later time.

Approval of the upgrade agreement with Intergraph Public Safety will allow the City to obtain implementation services, project management and training along with the upgrade. The vendor is a sole source provider in that they can transfer our existing records system client data into the new web based system and all of our current interfaces and other programs will be supported as well. Our Computer Aided Dispatch System is also an Intergraph product allowing for smooth transfer of call for service data between the systems.

Subsidiary Decisions Points: Software upgrades are crucial to all of our records system users in order to continue to document and track incidents and subjects across all local jurisdictions, and provide intelligence reports to help prevent crime.

Financial Impact:

The Police Department pays for system upgrades and maintenance as outlined by previous intergovernmental agreements. The City bills out partner agencies for reimbursement. By approving this agreement and purchase the City locks in the price at \$500,000. The bill out of the \$500,000 is based on the number of user seats per agency using the system. This is an unbudgeted request and will need future funding. The Police Department will request half of the funds (\$250,000) for the upgrade as one time request in FY 2016, and the other half in FY 2017 (\$250,000).

- a. Williams PD will pay 4.93% or (\$24,401)
- b. NAU will pay 10.56% of cost (\$52,289)
- c. CCSO will pay 27.11% or (\$134,208)
- d. City of Flagstaff will pay 57.39% or (\$284,102)

Connection to Council Goal:

Effective governance: Our Records Management System stores and retrieves information on incidents, arrests, warrants, property, case management, field interviews, traffic stops, citations, and many other types of information required to manage a public safety agency. Through Interfaces, it allows the public to purchase police reports on line.

Has There Been Previous Council Decision on This:

The Council approved the last upgrade agreement with Intergraph dated July 5th, 2011 in the amount of \$121,355.

Options and Alternatives:

Should the upgrade agreement not be approved, the current Records Management System will no longer be supported and its useful life will likely end in December of 2017.

Changing to another computer vendor would be twice as costly as the upgrade amount due to the initial purchase price, purchasing new interfaces and converting our existing data to a new system. Additionally there is no guarantee that our Intergraph Computer Aided Dispatch System and the Intergraph Jail Management System will be able to integrate with records systems from other vendors.

Background/History:

In 1997, the City and County realized that their law enforcement facilities were not adequate to meet the growing needs of both agencies. Agreements were made and beginning in 2000 agencies started moving into the shared building. City and County leadership realized further efficiencies could be gained by sharing services that both agencies needed. This resulted in a shared Dispatch Center, shared Information Technology Department, shared Facility Management and shared Records Section. In 2000, a shared Computer Aided Dispatch System was purchased along with a shared Records Management System from Intergraph Public Safety Corporation. The Records Management System continues to be the central repository where all City Police, Coconino County Sheriff, Northern Arizona University Police, Williams Police, and Coconino Detention Facility reports are received, stored, and disseminated in both paper and electronic formats. Many other local criminal justice agencies (i.e. City Court and Prosecutor, Adult Probation, Gang Intelligence and Team Enforcement Mission (GITEM) and the Bureau of Alcohol, Tobacco and Firearms) have immediate electronic access to the Records Management System.

Electronic information is entered into the Intergraph Public Safety Records Management System and hard copy documents can be electronically scanned and attached to allow both on and off-site criminal justice staff to view or reproduce reports from their local workstations. Detailed electronic information is now available on over 2,014,025 calls for service, over 390,599 incident. and crime reports, 272,973 vehicles, 203,954 arrests, and 161,550 jail bookings.

Over the years the system has been upgraded and expanded based on the needs of the agencies using

it. We have several additional modules and interfaces that have been purchased to allow information sharing. For examples some of these modules allow for on-line police reporting, call for service research, crime mapping, field report writing, critical event notifications, warrant checks, FBI crime reporting, etc..

Traditionally, we would complete an upgrade on one of our two main systems, Records Management or Computer Aided Dispatch, every year. In recent years we have skipped upgrades to help defer costs. Our last upgrade to our records system was completed in 2011.

Key Considerations:

Software upgrades are crucial to all of our records system users in order that we can continue to expand our ability to document and track incidents and subjects across all local jurisdictions. This upgrade will allow us to continue to meet a state mandate of Uniform Crime Reporting. Many enhancements, "fixes" and additions to the system are only available with the most recent upgrade.

Our Records Management System stores and retrieves information on incidents, arrests, warrants, property, case management, field interviews, and many other types of information required to manage a public safety agency. Additionally, officers in the field are able to use Intergraph's Field Reporting program that allows them to access Intergraph's Records Management software, report incidents, and accidents and transfer queries and responses using wireless technology. This promotes more efficient use of time by enabling officers to complete reporting tasks in the field instead of at the station. They can open and work on multiple reports at the same time, while maintaining data integrity and reducing reporting errors.

Expanded Financial Considerations:

We realize this upgrade puts an enormous financial burden on the City, and we have requested to break the expense between fiscal year 2016 and fiscal year 2017, at \$250,000 per year. We will formally request this funding during the budget process this year. The Police Department pays for the Records Management System upgrade as outlined in an Intergovernmental Agreement, and then bills out partner agencies. The bill out of the \$500,000 is based on the number of user seats per agency.

- a. Williams PD will pay 4.93% or (\$24,401).
- b. NAU will pay 10.56% of cost (\$52,289).
- c. CCSO will pay 27.11% or (\$134,208).
- d. City of Flagstaff will pay 57.39% or (\$284,102).

Community Benefits and Considerations:

Through the use of our combined Records Management System we are able to share data across agencies. This allows us to easily identify repeat offenders, hot spots of criminal activity and areas of concern to officers of all agencies. The data and reports generated help us identify dangerous intersections and high crime areas so we can allocate more resources into those areas and help prevent crime and loss of life.

Officers in the field type their police reports on their Mobile Data Computers in their cars. Through interfaces these reports are uploaded wirelessly into our Records Management System and then disseminated electronically to the courts and prosecutors as needed. Co-location of these types of services increases cost efficiencies for all agencies involved.

Community Involvement:



Customer:	City of Flagstaff, AZ
Quote Number:	Q010515_Flagstaff_ILEADS to WebRMS Promotion
Rev. #:	
Quote Date:	January 5, 2015
Expiration Date:	January 31, 2015

I/LEADS to WebRMS Upgrade Promotion

Software				
Part Number	Description	QTY	Unit Price	Extended Price
SXMA220	Exchange I/LEADS Server for WebRMS Server (SXMA220)	1	26,000.00	\$26,000.00
SXMA219	Exch I/LEADS RMS Client for WebRMS Concurrent User (SXMA219)	60	Included at no additional cost	
SBND3090L	BI Direct for inPURSUIT WebRMS (includes 20 CC User Licenses) (SBND3090L)	1	24,000.00	\$24,000.00
RMS0008	inPURSUIT CAGIS Server (RMS0008)	1	30,000.00	\$30,000.00
RMS0009	inPURSUIT CAGIS Client (RMS0009)	5	1,500.00	\$7,500.00
IPS3042	EdgeFrontier Runtime Engine (IPS3042)	1	20,000.00	\$20,000.00
IPS2043	Intergraph WebRMS Connect for EdgeFrontier (IPS2043)	1	35,000.00	\$35,000.00
SXMA227	Exchange I/Informer to I/LEADS for I/Informer for WebRMS (SXMA227)	1	Included at no additional cost	
Software Subtotal:				\$142,500.00

1st Year Software Maintenance				
Part Number	Description	QTY	Unit Price	Extended Price
SBND3090L	BI Direct for inPURSUIT WebRMS (includes 20 CC User Licenses) (SBND3090L)	1	5,904.00	\$5,904.00
RMS0008	inPURSUIT CAGIS Server (RMS0008)	1	7,212.00	\$7,212.00
RMS0009	inPURSUIT CAGIS Client (RMS0009)	5	360.00	\$1,800.00
IPS3042	EdgeFrontier Runtime Engine (IPS3042)	1	4,800.00	\$4,800.00
IPS2043	Intergraph WebRMS Connect for EdgeFrontier (IPS2043)	1	8,364.00	\$8,364.00
1st Year Software Maintenance Subtotal:				\$28,080.00

Implementation Services				
Part Number	Description	QTY	Unit Price	Extended Price
	WebRMS Migration Services	1	464,805.00	\$464,805.00
Implementation Subtotal:				\$464,805.00

Training				
Part Number	Description	QTY	Unit Price	Extended Price
IPST3501	WebRMS System Overview & Configuration Training (IPST3501)	1	9,500.00	\$9,500.00
IPST3502	WebRMS System IT Administrative Training (IPST3502)	1	7,500.00	\$7,500.00
IPST3503	WebRMS Train-the-Trainer Training (IPST3503)	1	11,500.00	\$11,500.00
IPST3504	WebRms Reports & Deployment (IPST3504)	1	7,500.00	\$7,500.00
IPST3301	BI Direct for WebRMS - End User Training (IPST3301)	1	11,500.00	\$11,500.00
IPST3300	BI Direct for WebRMS - Sys Admin Training (IPST3300)	1	7,500.00	\$7,500.00
IPST3013C	InPURSUIT Crime Analysis GIS Training (IPST3013C)	1	7,500.00	\$7,500.00
Training Subtotal:				\$62,500.00

Software Total:	\$142,500.00
1st Year Software Maintenance Total:	\$28,080.00
Services Total:	\$464,805.00
Training Total:	\$62,500.00
Subtotal:	\$697,885.00
One Time System Discount:	(\$202,885.00)
Quote Total (Not Including Taxes):	\$495,000.00

- Customer will be responsible for any difference in maintenance price between I/LEADS Client (IPS0020) licenses and WebRMS Client Licenses (RMS0017)
- Intergraph requires remote access to the customers' servers to complete the effort as quoted.
- Sales tax is not included in this quote. Final sales tax billed will reflect the applicable tax rates at time of sale as required by law.



Statement of Work

I/LEADS Upgrade to WebRMS,
CAGIS, and BI Direct

City of Flagstaff, Arizona

January 5, 2015

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Introduction

Intergraph submits this document to serve as a mutually acceptable Statement of Work (“SOW”) between Security, Government and Infrastructure, a Division of Intergraph Corporation (“Intergraph”) and the City of Flagstaff, Arizona (“Customer”). This SOW defines the software and services required to upgrade I/LEADS to WebRMS, and implement CAGIS and BI Direct software.

Unless specifically noted within this SOW, all software shall be the standard commercial off-the-shelf (“COTS”) product.

Functionality not identified in this SOW may be included at additional cost with appropriate revisions to the SOW.

DRAFT

General Assumptions

This SOW is based upon the following assumptions:

- Intergraph and the Customer will review the SOW and determine a mutually agreeable date for the services to be performed. Note: This purchase must be complete prior to any tentative dates being confirmed.
- Customer must be under a current software maintenance contract.
- I/LEADS will be upgraded to the most current point release version of WebRMS at the time the upgrade commences, as long as the level of effort remains the same as proposed in this SOW. If a major software release occurs during project implementation, this software release will not be included in the project. Intergraph generally releases one major features version of the software every 12 to 18 months. Major features releases generally are accompanied by multiple minor point releases, on a quarterly basis. During project implementation and prior to “live” production operations, if the inclusion of a point release is mutually determined by both the Customer and Intergraph to be required to meet system requirements, that point release version may be installed and implemented.
- This SOW encompasses the standard upgrade to Commercial Off-the-Shelf (COTS) WebRMS. If additional services and products are requested, they will be quoted separately.
- This SOW does not include upgrade of I/LEADS JMS.
- The Customer is responsible for the purchase of all applicable database licenses/software. See Attachment 3: Public Safety System Specifications for the minimum specifications required for the database needed for WebRMS, BI Direct for WebRMS and CAGIS.
- This SOW does not include upgrading any Oracle, Microsoft products, or Microsoft licensing changes that may be required for this upgrade.
- The Customer is responsible for the purchase, installation, and testing of any new hardware. The Customer is responsible for providing hardware that meets the Intergraph minimum configurations for hardware. See Attachment 3: Public Safety System Specifications. Note: If a more current release of software is certified for release at the time of the execution of this SOW, the Customer’s hardware must meet the current specifications should they elect to upgrade to that version.
- Customer is responsible for the WAN/LAN.
- Customer is responsible for the wireless infrastructure, if it is used with the new product.
- Customer’s network infrastructure meets minimum bandwidth requirements. See Attachment 3: Public Safety System Specifications.
- During system implementation, 24x7 unrestricted VPN access is required for Intergraph developers and implementers who will need to have multiple resources connecting at the same time. This requirement enables rapid development and testing of those interfaces that Intergraph cannot test in-house, resolution of system configuration issues, and troubleshooting capabilities. Intergraph will also require external VPN access while on site to access various Intergraph resource libraries. After system cutover, Intergraph will VPN into the live system only at the Customer’s request, and will follow all of the Customer’s required VPN access procedures.
- The Intergraph Implementation teams must have access to all servers and workstations that are applicable to the WebRMS, BI Direct for CAD and CAGIS project. This includes having a Domain Login with local administrative privileges to remove/install software, access to registries, the ability to set scheduled tasks, and remote access to applicable desktops.

- If the upgrade requires a change in operating system, the new OS will be purchased and installed by the Customer. See Attachment 3: Public Safety System Specifications for the minimum specifications required for operating system needed for WebRMS, BI Direct for WebRMS and CAGIS.
- The interface protocol and interface switches for any current I/Leads interfaces have not changed from the existing implementation.
- The third party interface functionality or version for any current I/LEADS interfaces has not changed from the existing implementation.
- Informer/Mobile/FBR functionality assumes Customer is using Mobile for Public Safety (MPS).
- This SOW includes a single Test/Training environment setup, which will be a copy of the production environment. Setup of a Disaster Recovery environment is not included, but can be added to the quote at the request of the customer.
- The Customer is responsible for any hardware and third party software necessary for implementing interfaces, beyond that provided by Intergraph per the contract agreement.
- No software product enhancements are included in the scope of this upgrade.
- Maximum training day is 8 hours in length, including breaks and will not exceed 8 hours per 24-hour period. Specific start and end times will be coordinated prior to the commencement of training.
- This SOW assumes the Customer is responsible for all internal training of all end users on the upgraded software.
- This SOW does not include data migration to a new or different database platform.
- System and training documentation provided by Intergraph with this upgrade will be standard COTS documentation and Help Files, and will not be customized to the Customer's site-specific configuration. All documentation will be provided in electronic format. Should printed copies be required, the Customer is responsible for providing them.
- It is understood by the Customer that this I/LEADS upgrade to WebRMS represents a significant change in the product architecture and functionality. All custom I/LEADS items that are on maintenance (including interfaces, custom reports, and customized functionality) will be reviewed and discussed. Some prior customizations may not be appropriate with WebRMS and may not be included in the upgrade. Intergraph will work with the Customer to determine which interfaces and customizations are candidates for upgrading to WebRMS. Those items not on maintenance may incur an additional expense to upgrade.
- Federal UCR and NIBRS are part of the COTS WebRMS product. Modifications required as a result of State mandated reporting requirement changes are not covered under maintenance, and could be quoted when requested by the Customer.
- Customer will coordinate and facilitate any discussions with third party vendors and ensure they are available for support during live Cutover, if needed.

Project Deliverables

The deliverables for this SOW will be as follows:

- Project Management Services: The Project Manager will, at a minimum, direct the following activities:
 - Act as single point of contact for the Customer from Kick off through Cutover to Production.
 - Determine, with Customer, a mutually agreed-upon conference call meeting schedule, during which project status and issues will be reviewed.
 - Provide a mutually agreed-upon upgrade schedule in Microsoft Project format within 30 days of execution of this SOW.
 - Verify the Intergraph product release schedule.
 - Order Intergraph software (if applicable).
 - Resolve any issues that arise during the project implementation by coordinating with appropriate Intergraph or Customer resources.
 - Prepare a checklist of responsibilities and tasks to be completed during the Cutover Task approximately 30 days prior to Cutover. Discuss the Cutover plan with Customer and the Intergraph on-site team.
 - Process Change Orders (if applicable).
 - Verify Customer activities related to this SOW have been completed in timely manner.
 - Verify Customer-provided hardware meets Intergraph specifications.
 - Verify software configuration is ready for live Cutover.
 - Coordinate resolution of any post live Cutover issues with the Customer and Intergraph.
 - Pricing includes up to seven (7) program manager trips including an onsite trip during the upgrade week.
- Software installation services as described in this SOW.
- RMS Data Conversion Services for COTS ILEADS and SysGUI Fields only.
- Transition to live operations services as described in this SOW.
- Training services as described in this SOW.
- Software updates for products covered under a current maintenance agreement. Below is a list of all products that are currently under maintenance and therefore will be included in the upgrade.
 - I/LEADS Server License(s) (IPS0019)
The Customer's current I/LEADS Server (IPS0019) product will be upgraded to Intergraph's WebRMS Server (RMS0016) application via Intergraph's special program (SXMA220) that facilitates this exchange. The Customer is responsible for any difference in maintenance cost between the I/LEADS product and the WebRMS product.
 - I/LEADS-Records Management Sys - Desktop Client Site License(s) (IPS0020)
The Customer's current I/LEADS-Records Management System CC - Desktop Client (IPS0020) licenses will be upgraded to Intergraph's WebRMS Concurrent User Licenses (RMS0017) via Intergraph's special program (SXMA219) that facilitates this exchange. The Customer is responsible for any difference in maintenance cost between the I/LEADS client licenses and the WebRMS Client licenses.
 - I/LEADS Interfaces currently on maintenance will be considered for upgrading.

- I/Informer to I/LEADS (IPS0004A)

The Customer's current I/Informer to I/LEADS (IPS0004A) license(s) will be upgraded to I/Informer for WebRMS (IPS0004WR) via Intergraph's special program (SXMA227) that facilitates this exchange.

- The following new products will be included with the Upgrade to WebRMS:

- BIDirect for inPURSUIT WebRMS (includes 20 CC User Licenses) (SBND3090L) – Qty 1
- *inPURSUIT* CAGIS Server (RMS0008) – Qty 1
- *inPURSUIT* CAGIS Client (RMS0009) – Qty 5
- EdgeFrontier Runtime Engine (IPS3042) – Qty 1
- Intergraph WebRMS Connect for EdgeFrontier (IPS2043) – Qty 1

- First year maintenance on new products:

- Maintenance on new Intergraph software will begin upon production use.
- Maintenance on BIDirect software will begin upon shipment to the Customer.
 - Business Intelligence Maintenance Begins with License Purchase; Maintenance Renewals Must be Received Before Current Maintenance Term Expires. Due to constraints related to third party content in the Business Intelligence suite, the maintenance term must begin when Business Intelligence licenses are purchased. The maintenance must renew, if elected, on the anniversary of the license purchase; therefore, your renewal instructions must be received prior to the performance period begin date shown in the attached quote and without any lapse in coverage. Any maintenance renewal received on or after the performance period begin date is considered to be a lapse in coverage and will not be accepted by Intergraph. Therefore, if your renewal for the Business Intelligence license maintenance is not received by Intergraph by the performance period begin date, when you wish to upgrade to a new version of Business Intelligence, you shall be required to purchase an upgrade of the Business Intelligence products at a price that is fifty percent (50%) of the then current list price, plus one year of maintenance coverage from the date of the upgrade purchase. You will not be eligible to obtain support services from Intergraph during any lapse in maintenance coverage for the Business Intelligence products.

Task 1: Server Software Staging

Intergraph will install and perform initial configuration of the WebRMS, BI Direct, and CAGIS system software on the server hardware designated by the Customer to be used for upgrade activities. The software to be installed and configured is detailed below.

Task Assumptions

In addition to the general assumptions detailed on pages 3 and 4, the following additional assumptions apply to this task:

- All work for this task will be performed remotely
 - Hardware designated by the Customer for staging the upgrade to WebRMS is for the sole purpose of upgrade staging and will not serve other roles

Task Prerequisites

The following items must be completed by the Customer and fully deployed prior to beginning this task:

- Production system hardware fully installed, racked, cabled, powered, and on the network
- Operating system fully installed, updated, configured, and joined to the Customer domain
- Hard disk configuration completed per Intergraph requirements
- Customer specific/enterprise applications installed and configured (remote management, anti-virus, etc.)
- Intergraph domain user account(s) created and provided with local administrative privileges on all server hardware to be staged under this task
- Remote access enabled on all servers for the Intergraph users account(s)
- VPN credentials and client (if needed) provided to the Intergraph Project Manager
 - Not required if Customer is using SecureLink

Task Description

Server Setup Verification

Intergraph resources will remotely connect to the servers and verify they have been set up according to the Intergraph setup standards. If no discrepancies are found, software installation will proceed.

Any deviation from the server setup standards will be documented and provided to the Intergraph and Customer Project Managers. The Intergraph resource assigned to this task will determine if the deviation affects task completion and notify the Intergraph Project Manager.

Any deviation that affects task completion will cause this task to be aborted and re-scheduled. All tasks dependent upon completion of this task are subject to schedule change.

Software Installation

Intergraph resources will remotely install the following software components on the Customer-designated server hardware. The software components to be installed are:

Apache Managing Server #1 (Configured as a Microsoft Load Balancing Cluster)

- Apache Tomcat – Manage and direct the traffic to the WebRMS Application servers
- CAGIS
- Address Server

Apache Managing Server #2 (Configured as a Microsoft Load Balancing Cluster)

- Apache Tomcat – Manage and direct the traffic to the WebRMS Application servers
- CAGIS
- Address Server

Apache App Server #1 (Load Balancing Managed by Apache Servers)

- Apache Tomcat – Instance 1 : WebRMS Services
- Apache Tomcat – Instance 2 : Report Server serves up Crystal Reports for Eclipse
- Apache Tomcat – Instance 3 : Interoperability Server
- Apache Tomcat – Instance 4 : Workflow Components
- Apache Tomcat – Instance 5 : BI Direct Application Components
 - INGR Rep Artifacts Direct WebRMS – Comp (IPS21182C)
 - SAP BusOBJ Intl Plat for Direct - 20 CC – Comp (IPS21183C)
 - SAP BusObj Web Intelligence for Direct - 20CC – Comp (IPS21184C)
- JVM – Queue
- Job Server

Apache App Server #2 (Load Balancing Managed by Apache Servers)

- Apache Tomcat – Instance 1 : WebRMS Services
- Apache Tomcat – Instance 2 : Report Server serves up Crystal Reports for Eclipse
- Apache Tomcat – Instance 3 : Interoperability Server
- Apache Tomcat – Instance 4 : Workflow Components
- Apache Tomcat – Instance 5 : BI Direct Application Components
 - INGR Rep Artifacts Direct WebRMS – Comp (IPS21182C)
 - SAP BusOBJ Intl Plat for Direct - 20 CC – Comp (IPS21183C)
 - SAP BusObj Web Intelligence for Direct - 20CC – Comp (IPS21184C)
- JVM – Queue
- Job Server

WebRMS Database Server #1 (Databases Configured with High Availability)

- Database – Oracle with DataGuard or SQL Server with an Active/Passive cluster

WebRMS Database Server #2 (Databases Configured with High Availability)

- Database – Oracle with DataGuard or SQL Server with an Active/Passive cluster

WebRMS BI Direct Database Server (Databases Maintained with Replication)

- Database – Oracle (populated by DataGuard) or SQL Server (populated with SQL Replication)

WebRMS Interface Server

- EdgeFrontier Centralized Platform - includes five (5) connections
- Intergraph WebRMS Connect for EdgeFrontier
- Other Interfaces, as needed to complete tasks within this SOW.

Task Completion Criteria

This task will be considered complete when all designated WebRMS server hardware has been staged.

The Customer will be provided with a task completion signature form to confirm that the task has been completed and the remaining tasks can proceed.

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Task 2: I/LEADS Database Conversion

Intergraph resources will convert the I/LEADS database schema by customizing the conversion scripts and executing the conversion application.

Task Assumptions

In addition to the general assumptions detailed on pages 3 and 4, the following additional assumptions apply to this task:

- The Customer has provided Intergraph with a recent full backup of their existing production database.
- This SOW includes data conversion for COTS I/LEADS fields only.
- If the I/LEADS field does not map to a COTS WebRMS field, the customer is responsible for creating the custom destination field in WebRMS; this information will then be used for the data migration
- There will be no data cleansing or data manipulation done for any migrated fields; data type and values will be consistent between the two databases
- Once the I/LEADS database full backup has been taken, which will be used for the conversion staging activity, the Customer will implement a change freeze on the production I/LEADS system.
 - If a change freeze is not possible, the Customer agrees to be responsible for replicating any and all changes performed to the production I/LEADS system to the upgrade staging WebRMS system.
- Any custom database options (i.e. triggers, stored procedures, functions) or custom views existing in the I/LEADS RMS database will be irrelevant and no specific work will be performed to bring these over during the upgrade as the WebRMS software uses a totally different schema.
- Due to new and changing functionality, the Customer should expect that not all administrative/configuration items will be converted. These items can be re-entered by the Customer after administrative and configuration training.

Task Prerequisites

The following items must be complete and fully deployed prior to beginning this task:

- Server Software Staging task complete
- The Customer has provided full database backup to Intergraph
- Change freeze in place on production I/LEADS system

Task Description

Intergraph will restore the full I/LEADS database backup provided by the Customer into the Intergraph SmartCloud. An Intergraph resource will then process the database conversion by initially upgrading the database to I/LEADS version 9.0 (if needed).

Conversion script customization is necessary if custom fields have been added to the I/LEADS database or if fields have been re-purposed. If this customization has been included in the pricing then it will be performed as part of this task.

Intergraph resources will then execute the conversion scripts on the I/LEADS 9.0 database to convert it to the WebRMS format. Intergraph resources will validate the data in WebRMS based on general

knowledge of the applications. It is important, however, for the customer to perform their own data verification and validation.

During the upgrade and conversion process it will be necessary to fix data anomalies and inconsistencies that would violate the structure of the new WebRMS database schema. None of these changes will alter the fundamental content of the database and no Customer data will be altered other than to correct errors necessary for the upgrade to process. The fixes performed may include changes to reformat dates, parse name or address data or bringing across legacy pick list data to the new WebRMS formats. This does not include any type of cleanup or cleansing of legacy data such as reformatting of free-form text fields, modifying data content to minimize or standardize existing pick list values or elimination of duplicate names. Intergraph will document all data issues that were addressed as part of the upgrade scripts and report those back to the Customer.

It may be necessary for the Customer to provide information to the Intergraph resources in order to fix data issues. If it is not obvious how to fix a data inconsistency or discrepancy, the Intergraph resource will seek guidance from the Customer. It is important that the Customer be prepared to respond quickly to any questions that arise. When the WebRMS conversion has been completed, the converted database will be transferred from the SmartCloud to the Customer's staging system. If the Customer-provided staging hardware and the upgrade work was done there, no transfer is required.

Task Completion Criteria

This task will be considered complete when:

- The WebRMS database schema conversion process has been finished and the converted database has been loaded onto the Customer staging hardware.
- Basic testing by the Intergraph resources has been completed and all necessary services start and run without error.
- The Customer will be provided with a task completion signature form to confirm that the task has been completed and the remaining tasks can proceed.

Task 3: Business Process Analysis

During this task Intergraph resources will conduct an on-site Business Process Analysis (BPA). If extended analysis services or product customizations have been purchased then those items will also be discussed and documented during this phase.

Task Assumptions

In addition to the general assumptions detailed on pages 3 and 4, the following additional assumptions apply to this task:

- This task consists of both on-site and remote activities
- The Customer has maintained a list of all customizations to the I/LEADS system and is prepared to discuss how those changes might be implemented within WebRMS. This includes anything that is in use on the existing system. Examples of this information would include:
 - System customizations
 - System configurations
 - Reports
 - Interfaces
- The Customer will identify the appropriate attendees and Subject Matter Experts (SMEs) for the BPA sessions. Note: appropriate SMEs have the authority to make requirements decisions
- The Customer will ensure attendees and SMEs are available to participate in their designated sessions

Task Prerequisites

The following items must be complete and fully deployed prior to beginning this task:

- Server Software Staging task has been completed
- The Customer has provided Intergraph with a copy of all change control documentation

Task Description

Intergraph resources will be on site to work through a BPA of the activities managed through the Customer's I/LEADS system. The BPA session will be conducted in a workshop environment to allow for Customer feedback and discussion. The session will consist of a morning session led by Intergraph personnel designed for discussion and demos pertaining to the business process scheduled for that day. The afternoon session will involve time for Intergraph to develop documentation of the knowledge and information gathered during the morning sessions. Customer involvement in the afternoon session is not required. Time will be scheduled during these sessions to review and confirm the validity of the documentation. Following the conclusion of the BPA session, Intergraph will develop a BPA document that provides a summary of the Customer's business processes (as discussed during the BPA meetings) through a combination of narrative and workflow diagrams. The document will also list any decisions and issues identified during the sessions.

Intergraph will provide the BPA document to the Customer for review and incorporate any Customer feedback and comments into the final version.

Any optional analysis services that have been purchased will be conducted during this phase.

Any additional custom configuration or development services that have been purchased (excluding interfaces) will be designed and documented during this phase.

It is expected that some functionality will be deprecated or replaced with newer enhanced functionality. Where this applies, Intergraph and the Customer will work together to appropriately configure the COTS system to meet the business requirements.

Requests to develop new functionality not available in the COTS WebRMS application or purchased as part of this upgrade will be priced as a separate SOW.

Task Completion Criteria

This task will be completed when Intergraph resources deliver the final BPA document to the Customer.

The Customer will be provided with a task completion signature form to confirm that the task has been completed and the remaining tasks can proceed.

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Task 4: Configuration of Products

During this task Intergraph resources will work with and train the Customer to configure the WebRMS and CAGIS applications based on the information collected during the Business Process Analysis.

Task Assumptions

In addition to the general assumptions detailed on pages 3 and 4, the following additional assumptions apply to this task:

- This task consists of both on-site and remote activities
- The maximum training day is 8 hours in length, including breaks
- No more than 12 agency personnel may attend

Task Prerequisites

The following items must be complete and fully deployed prior to beginning this task:

- Business Process Analysis task has been completed
- Appropriate training facilities have been identified and set up

Task Description

Intergraph resources will conduct several training classes designed to provide the Customer's System Administration and Core Team staff with the knowledge they will need to configure the WebRMS system.

Three configuration workshops will be conducted where Intergraph resources are on site to assist the Customer with configuring their system. It is expected that after each workshop, the Customer will have a period of time to complete the configuration covered in the prior workshop before the next workshop is conducted.

Classes include (Refer to Attachment 2: for course descriptions):

- WebRMS Configuration Training
 - WebRMS System Overview & Configuration Training (IPST3501)
 - Workflow Analysis for WebRMS Consulting
- Address Server Training
 - Mapping Configuration Consulting

Task Completion Criteria

This task will be completed when the configuration training has been completed.

The Customer will be provided with a task completion signature form to confirm that the task has been completed and the remaining tasks can proceed.

Task 5: Interface Upgrades

During this task, Intergraph resources will upgrade any custom interfaces that have been developed by Intergraph on an active maintenance agreement and as mutually agreed upon as being available for upgrade to WebRMS.

Task Assumptions

In addition to the general assumptions detailed on pages 3 and 4, the following assumptions apply to this task:

- All work for this task will be performed remotely
- The Customer will provide a list of all interfaces with their I/LEADS application, indicating which were developed by Intergraph, and which were developed in-house or by third parties
 - Although interfaces developed by others or developed by Intergraph and not on maintenance will not be upgraded under this SOW, it will be important to discuss how that functionality will be addressed after the migration to WebRMS.
- Only those interface products currently listed on the Customer's maintenance agreement may be included in the upgrade
 - If there are interfaces the Customer has in production that are not listed on the maintenance agreement, a change order will be required to add additional scope to the upgrade SOW, as well as an adjustment to the Customer's maintenance agreement and cost.

Task Prerequisites

The following items must be complete and fully deployed prior to beginning this task:

- Server Software Staging and Database Migration tasks completed
- The Customer has provided Intergraph with the documentation of all interfaces.

Task Description

For each interface on maintenance deemed feasible for WebRMS, Intergraph will use the functionality in the current custom interface to create an updated design document for use with WebRMS. This document, once reviewed by the customer, will then be used to develop the new interface.

After interface development and internal testing has been completed, the interface will be installed on site for Customer testing and verification.

In some cases, changes in product functionality may affect an interface on maintenance. If this happens, Intergraph will notify the Customer so that appropriate decisions can be made about interface functionality.

Requests to configure any new functionality previously not available will be priced as a separate SOW.

Task Completion Criteria

This task will be considered complete when the appropriate interfaces have been migrated to the WebRMS version.

The Customer will be provided with a task completion signature form to confirm that the task has been completed and the remaining tasks can proceed.

Task 6: Training

During this task Intergraph resources will conduct Administrative and Train-the-Trainer training sessions for Customer-designated personnel. Refer to Attachment 2: for a course description.

Task Assumptions

In addition to the general assumptions detailed on pages 3 and 4, the following additional assumptions apply to this task:

- The maximum training day is 8 hours in length, including breaks
- No more than 12 agency personnel may attend
- Session is a formal training presentation based on the COTS version
- Agency core team personnel will attend to address questions about workflow, policy, or agency specific procedure/configuration

Task Prerequisites

The following items must be complete and fully deployed prior to beginning this task:

- Server Software Staging, Database Migration, Product Configuration, and Interface Upgrades completed.
- The Customer has installed and configured at least 1 workstation for use by the Intergraph instructor during the sessions.
- The customer has installed and configured at least 1 workstation per student attending the session.
- An appropriate training room has been identified and set up with the workstation from item 2, at least one LCD projector, display screen or other appropriate surface to display a projected image, and white-board space or other ability to take notes and record questions.

Task Description

During the Training phase, Intergraph resources will conduct several classes covering the administration and maintenance of the WebRMS system. Train-the-Trainer sessions will also be conducted for WebRMS, BI Direct, and CAGIS.

Classes include:

- WebRMS System IT Administrator Training (IPST3502) – 1 Session
- WebRMS Train-the-Trainer Training (IPST3503) – 1 Session
- WebRMS Reports & Deployment Training (IPST3504) – 1 Session
- Business Intelligence Direct for WebRMS – Sys Admin Training (IPST3300) – 1 Session
- Business Intelligence Direct for WebRMS – End User Training (IPST3301) – 1 Session
- *in*PURSUIT Crime Analysis Train-the-Trainer (IPST3013C) – 1 Session

Task Completion Criteria

This task will be complete when Intergraph has delivered all contracted training sessions to the Customer.

The Customer will be provided with a task completion signature form to confirm that the task has been completed and the remaining tasks can proceed.

Task 7: System Functional Testing

During this task the Customer will conduct internal functional testing of the upgraded system. Intergraph does not perform functional testing of the Customer's upgraded system, but does provide the functional test plan as an aid to the Customer. All testing is the sole responsibility of the Customer. Intergraph resources will review issues filed via Siebel by the Customer as a result of the Customer testing conducted in the Functional Testing task. Intergraph resources will work within the product capabilities to resolve issues.

Task Assumptions

In addition to the general assumptions detailed on pages 3 and 4, the following additional assumptions apply to this task:

- The Customer will conduct functional testing in a timely manner, with remote support from Intergraph resources.
- The Customer will file a service request (SR) in the Siebel Customer Portal for all issues encountered as part of testing. SRs must contain all information required as specified on the Trouble Reporting Guide. SRs can be filed for, but not limited to:
 - Errors
 - Configuration change requests
 - Questions
- All SRs filed as part of the functional testing for the upgrade must have a summary that begins with "WebRMS UPGRADE:" This is required to ensure the issue is properly routed to the Intergraph resource assigned responsibility for issue resolution in the Functional Testing Issue Resolution task.
- The Customer will respond as quickly as possible to inquiries from Intergraph resources assigned to work reports of trouble.
- Issue resolution is defined as either:
 - The issue has been resolved with additional configuration via the COTS product tools
 - In the case of product defects, an appropriate change request, defect (CR-D) has been filed with the Intergraph product center for review and classification
- Issues that cannot be resolved by the Intergraph Public Safety services resources (implementation) will be tracked via Siebel.
- If the issue discovered is a priority 2 or higher it may qualify for a patch request.
- If the customer requests, a patch request will be filed for the version specified.
- Delivery of a patch is not guaranteed and is at the sole discretion of Intergraph.

Task Prerequisites

The following items must be complete and fully deployed prior to beginning this task:

- All prior tasks completed.

Task Description

Intergraph will provide to the Customer a standard Functional Test Plan for WebRMS tailored to the modules to be used at this site. The Customer may choose to further customize this test plan to incorporate their business processes. Customized Test Plans must be reviewed by Intergraph implementation staff prior to beginning the functional tests.

Once Intergraph informs the Customer in writing that the system is ready for functional testing, the Customer will complete this testing within a 30-day period.

During the functional tests, the Customer will work through the functional test plans, making note of the success or failure of each item. For any issues encountered, the Customer will file a service request via the Siebel Customer Portal. The appropriate Intergraph resources will respond as quickly as possible.

During functional testing issue resolution, the Intergraph resources will respond to those technical or functional problems the Customer has encountered or answer functionality questions the Customer has submitted.

Issue resolution is very much a team effort. Intergraph will rely on the Customer to report detailed and accurate information about the problems encountered including but not limited to:

- A complete and accurate description of the problem using Intergraph COTS terminology
- A complete workflow description that allows the problem to be reproduced
- The name and contact information for the person reporting the issue

When the Customer has notified Intergraph that their testing is complete, and Intergraph has completed the issue resolution tasks, a readiness review will be conducted to ensure the system and the Customer are ready for cutover to production use. This will be a remote meeting conducted via teleconference.

Task Completion Criteria

This task will be complete when the Customer provides written notification to Intergraph that the system has passed functional testing and is ready for production use or 30 days after written notice by Intergraph that the system is ready for functional testing (whichever comes first)..

The Customer will be provided with a task completion signature form to confirm that the task has been completed and the remaining tasks can proceed.

Task 8: Readiness Review

During this task Intergraph lead technical resources, the Intergraph Project Manager, and the Customer team will meet and determine if the upgraded system is ready for production use.

Task Assumptions

In addition to the general assumptions detailed on pages 3 and 4, the following additional assumptions apply to this task:

- This meeting will take place remotely via WebEx and/or conference call.

Task Prerequisites

The following items must be complete and fully deployed prior to beginning this task:

- All prior tasks must be completed
- All non-defect priority 2 or higher issues have been resolved

Task Description

The readiness review meeting is intended to ensure all parties involved with the I/LEADS migration to WebRMS review the system status and verify it is ready for production use.

During the meeting, a readiness review checklist will be provided and followed to ensure all necessary aspects of the system are addressed.

In addition, the Readiness Review verifies that the following has occurred:

- Cutover Plan is approved
- Pre-Cutover Testing according to the Functional Test Plan is completed
- Establishment and approval of a schedule for cutover activities
- Identification and scheduling of Intergraph and Customer resources required for go-live activities

System cutover notification is communicated to internal and external interface stakeholders supplying systems integral to go-live operations.

Task Completion Criteria

This task will be complete when the readiness review has been conducted and all parties agree that the system is ready for production use.

The Customer will be provided with a task completion signature form to confirm that the task has been completed and that cutover to production use can proceed.

Task 9: Cutover to Production Use

During this task, Intergraph personnel will assist the Customer in placing the system into productive use on the new version of WebRMS.

Task Assumptions

In addition to the general assumptions detailed on pages 3 and 4, the following additional assumptions apply to this task:

- Intergraph will have two implementation resources on site for the week of Cutover to production use.
- Intergraph personnel will be on site at least 1 day prior to live operations and will provide post-live on-site support for 3 days, with on-going focused phone support following the on-site support period.
- Cutover to production use will take place on the day and time designated by the Customer but will occur no later than Tuesday of the week designated for Cutover. If Cutover cannot take place due to issues solely within the control of the Customer, there may be a cost associated with re-scheduling the upgrade Cutover.
- Customer technical personnel must be present to provide support for the system. Customer training personnel and core team members will be scheduled to provide knowledgeable Customer support to all shifts during the first few days after cutover to live operations in conjunction with the scheduled Intergraph staff.

Task Prerequisites

The following items must be complete and fully deployed prior to beginning this task:

- All prior tasks must be completed.
- Readiness review has been conducted with Intergraph, and the Customer agreeing that cutover can proceed.

Task Description

The Cutover to production use is the culmination of the tasks that comprise this SOW. During the Cutover process, the following tasks will be completed:

- Production use of the existing version I/LEADS system will be stopped. Downtime varies and an estimated downtime will be provided by the Project Manager based on information gathered during configuration and testing phases. Interface downtime can be far longer depending on circumstances surrounding the cutover.
- The existing I/LEADS database will be migrated again to the new WebRMS system. This is done to capture all RMS data that has been generated since the full system backup was taken in the Database Migration task.
- System access will be restored and basic testing performed by Intergraph resources to ensure all components are functional.
- Production use of the system will be restored.

Task Completion Criteria

This task will be complete when the successful Cutover to live operations on WebRMS and CAGIS has taken place.

The Customer will be provided with a task completion signature form to confirm that the task has been completed.

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Task 10: Post-Cutover Support

During this task, Intergraph resources will provide support for the Customer who has just cut over to WebRMS and CAGIS.

Task Assumptions

In addition to the general assumptions detailed on pages 3 and 4, the following additional assumptions apply to this task:

- Post-Cutover support is performed on site for one week and remotely for the following week.
- Post-Cutover support is provided Monday-Friday during normal business hours. Standard after-hours emergency support procedures remain the same for the duration of this task.
- Issues will be reported via the Siebel Customer Portal and contain all information required as specified on the Trouble Reporting Guide provided with this SOW.

Task Prerequisites

The following items must be complete and fully deployed prior to beginning this task:

- All prior tasks must be completed.

Task Description

The Post-Cutover support task is designed to provide the Customer with dedicated, quickly accessible support for problems, questions, or errors encountered in the 14 days following the Cutover to production use of the upgraded system.

During this task, Intergraph resources will be assigned all SRs that are filed by the Customer against the upgraded system(s). Intergraph resources will work to identify and remedy the cause of the trouble reported.

Should the trouble discovered be categorized as a defect, the Intergraph resource will file a change request defect (CR-D) with the Intergraph product center. Any CR-D filed by the Intergraph resource becomes the responsibility of the Intergraph product center and shall not stop full system acceptance unless the priority of that CR-D is determined to be a priority 1 or 2. The priority levels are determined by the specifications in the customer support agreement.

The Post-Cutover support period is not a configuration period. Requests for new configurations that are not related to resolving an error condition cannot be supported during this time frame. This is done to ensure the stability of the system delivered and that focus remains on errors or problems rather than the introduction of new opportunities for errors or problems.

Task Completion Criteria

This task will be complete when the 14-day Post-Cutover period has expired and all open issues have been resolved, or categorized as defects and filed with the product center.

The Customer will be provided with a task completion signature form to confirm that the task has been completed.

Schedule

Scheduling of Intergraph services will occur upon receipt of this executed document, and receipt of Customer's purchase order (if applicable). Intergraph and the Customer will determine a mutually agreeable schedule for completion of the deliverables as described in this SOW.

Price

Pricing for the SOW is in accordance with Intergraph quotation number: **Q010515_Flagstaff_ILEADS to WebRMS Promotion** which is provided as an attachment.

This purchase is for software, services, and training only. First year maintenance is included for new Intergraph software which begins at production use. First year maintenance for new Business Intelligence (BI) software products begins upon shipment to the Customer.

Intergraph will submit invoices to the Customer at the following address:

City of Flagstaff AZ
Attn: Accounts Payable
City Hall
211 West Aspen Avenue
Flagstaff, AZ 86001

Refer to Attachment 1: Intergraph Remittance Instructions.

Terms of Payment

Payment for this SOW will be due according to the following payment schedule:

PAYMENT MILESTONE	PAYMENT PERCENTAGE
Upon execution of this SOW	20%
Upon acceptance of Project plan	20%
Upon delivery of software	20%
Upon completion of the pre-cutover training classes	20%
Upon acceptance as defined in the Acceptance Criteria	20%

Acceptance Criteria

The upgrade shall be considered accepted with either written authorization by the Customer or upon Production use, whichever comes first.

Approval Signatures

Signature by all parties listed below constitutes acceptance of and notice to proceed with this SOW, in accordance with this SOW.

This SOW may be executed in one or more counterparts, each of which shall be deemed to be original, and all of which together shall constitute one and the same agreement. A signature delivered by facsimile shall be deemed to be an original signature and shall be effective upon receipt thereof by the other party.

This document is approved by:

AUTHORIZED INTERGRAPH SIGNATURE		
Name:	Jennifer Williams Director, U.S. Sales Accounting Security, Government & Infrastructure Division	
Signature:		Date:

AUTHORIZED CUSTOMER SIGNATURE		
Name:		
Signature:		Date:

AUTHORIZED CUSTOMER SIGNATURE		
Name:		
Signature:		Date:

AUTHORIZED CUSTOMER SIGNATURE		
Name:		
Signature:		Date:

To place an order against this SOW, please have an authorized representative of your company sign this SOW, have your company issue a purchase order with the required information below and reference this SOW, or have your company remit payment via one of the methods described in the billing and payment instructions that follow, making sure to include a reference to this SOW. Please submit the signed SOW, your purchase order, or payment to the Intergraph Order Administration desk in accordance with the contact information provided below. This agreement shall only become binding and effective upon the written acceptance by Intergraph or the first delivery of the products/services within this SOW. The terms and conditions of this SOW cannot be superseded, altered, modified, or amended by subsequent Purchase Order or writing received from customer without the express written consent of Intergraph.

Attn: SG&I Order Administration
Intergraph Corporation
P. O. Box 240000
Huntsville, AL 35813
Phone: (256) 730-2705
Fax Numbers: 800-239-2972 or 256-730-6089
Email: sgiorsall@intergraph.com

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Attachment 1: Intergraph Remittance Instructions

Please check to indicate payment and billing instructions:

My PURCHASE ORDER (PO) is attached. (Your order will be processed upon written acceptance by Intergraph. Terms and conditions printed on a customer PO shall not supersede the applicable terms and conditions attached to this quotation.)

PO Number: _____ PO Amount: _____

I wish to pay by CREDIT CARD. Intergraph will contact you to obtain the credit card number. Please provide the name and telephone number of the credit card holder below. (Your order will be processed upon written acceptance by Intergraph and upon authorization/approval of your credit card.)

Name as it appears on Credit Card: _____

Telephone number of Cardholder: _____

Signature of Cardholder: _____

INVOICE ME based on my returning this signed acceptance sheet. (Your order will be processed upon written acceptance by Intergraph and upon credit approval.)

My CHECK payable to Intergraph Corporation has been sent to the following address

Intergraph Corporation
7104 Solution Center
Chicago, IL 60677-7001

(Your order will be processed upon written acceptance by Intergraph and after your check clears - approximately 5 days after receipt by our lockbox.)

Check Number: _____ Check Amount: _____

My DOMESTIC WIRE PAYMENT has been wired to:

ABA Number: 021000018
Bank Name: Bank of New York Mellon, New York, NY
Favor of: Bank: SEB (Skandinaviska Enskilda Banken)
Account Number: 890 043 9688
For further credit to: Intergraph Corporation SGI Division, Account #00007583

My ACH PAYMENT has been sent to:

Account Number: 1030429611
Company Name: Intergraph Corporation SGI
Routing Number: 043000096
Beneficiary Bank Name: PNC Bank N.A.
Address: Pittsburgh, PA 15222
Phone#: 1-877-824-5001, Opt 1 and Opt 3
Contact: Lockbox Group, Product Client Services

(Your order will be processed upon written acceptance by Intergraph.)

INTERGRAPH CONTACT FOR ALL PAYMENT NOTICES:

Cathy.Simpson@intergraph.com

Security, Government, & Infrastructure

305 Intergraph Way

Madison, AL 35758

Phone: 256.730.2000

TIN: 63-0573222

Correspondence Only:

PO Box 240000

Huntsville, AL 35813

www.intergraph.com

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Attachment 2: Training Course Descriptions

Intergraph will provide training services as outlined below.

Customer Responsibilities:

- The Customer will be responsible for providing a training area with a white board, projector, and sufficient workstations for the participating students. Intergraph recommends a maximum of one student per workstation, unless otherwise noted in the course description.
- The Customer will be responsible for loading all client software on training workstations and ensuring that all workstations are connected to the training LAN and database.
- The Customer must ensure that all training workstations and servers are operational prior to the agreed start of training classes. Intergraph will remotely VPN into the Customer network and check the training workstations to ensure they are functionally ready for training sessions. Customer will provide VPN or secured remote connectivity to these workstations; otherwise a trip, which will require additional cost, will be added to this SOW.
- The Customer will provide internal training to users that are unable to attend the Intergraph provided training.
- The following training courses will be provided under this SOW:
 - WebRMS System Overview & Configuration Training (IPST3501) – 1 Session
 - WebRMS System IT Administrator Training (IPST3502) – 1 Session
 - WebRMS Train-the-Trainer Training (IPST3503) – 1 Session
 - WebRMS Reports & Deployment Training (IPST3504) – 1 Session
 - Business Intelligence Direct for WebRMS – Sys Admin Training (IPST3300) – 1 Session
 - Business Intelligence Direct for WebRMS – End User Training (IPST3301) – 1 Session
 - inPURSUIT Crime Analysis GIS Training (IPST3013C) – 1 Session

WEBRMS SYSTEM OVERVIEW AND CONFIGURATION TRAINING (IPST3501)

This course provides an overview of, and introduction to, the WebRMS System and Global Features. It also discusses options for configuring the WebRMS application, and teaches participants how to use the built-in configuration tools of the WebRMS. It also includes how to create user security accounts, permission groups, workflow roles, and determine decisions to be made. This enables users to get an early start on configuring the WebRMS application.

MAJOR TOPICS

<ul style="list-style-type: none"> WebRMS Navigation Review of all modules Available to the Agency Global Features Linking Records Creating and Editing Records Searching for Data (Standard and Advanced Searches) Search Features Narratives Attachments Alerts on Records Understanding the Master Indices (Master Name, Vehicle and Location) Security – Groups, Users and Roles Combining Master Index Records 	<ul style="list-style-type: none"> Code Table Management Working in Customization Mode Code Maintenance Code Operations Code Expirations Password Maintenance UI Customization Customizing the Screens/Modules Panels Required and Hidden Fields Page Controls Label and Fields Adding Tabs Audit Trail
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PREREQUISITES

Knowledge of basic Agency's business process and workflow
An Introduction to Windows course, or equivalent knowledge and familiarity with the Windows user interface

METHOD	Conducted on site by Intergraph Personnel
TASK CLASSIFICATIONS	WebRMS Core Group; WebRMS System Administrators
PROJECT PHASE	After hardware has been installed and COTS WebRMS application has been installed
DURATION	3 days
STUDENT CAPACITY	12, with a maximum of one student per workstation
RESTRICTIONS	USA only

WEBRMS SYSTEM IT ADMINISTRATIVE TRAINING (IPST3502)

This course instructs IT support groups on how to maintain the server side components of WebRMS. This class includes technical discussion on the maintenance and troubleshooting of the Address Server. Support Issues will be discussed, including how to handle situations concerning connections, system monitoring, and other items of concern.

MAJOR TOPICS

WebRMS Security Groups Users Roles Individual Record Security Privileges Editing Records Linking and Unlinking Records Creating a New Agency User Interface Customization Customization Mode: User Interface Setting Required Fields Turning off Default Required Fields Restoring Default Required Fields Creating Custom Screens and Fields Code Maintenance Customization Mode: Customization Maintenance Code Maintenance: Alert Reason Code Maintenance: Attachment Type	WebRMS Code configuration Address Service Configuration Auto ID Configuration Additional Configurations Sealing and Expunging Initial Configuration Maintenance Case Management Alerts Workflow Administration Workflow Searching Add or Edit a Work Flow Process Creating a Process Definition Message of the Day/Bulletins View/Review Audit Trail Evidence Configuration Storage Location Configuration Case Review Date Configuration Barcode Configuration Category Configurations
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PREREQUISITES

RMS Configuration Training
 Knowledge of Windows Server operating Systems Administration
 Basic Understanding Of City's LAN and Mobile Network Infrastructure
 Basic Understanding of IIS and Internet Application Support

METHOD	Conducted on site by Intergraph Personnel
TASK CLASSIFICATIONS	IT WebRMS/FBR System Administrators
PROJECT PHASE	After hardware has been installed, COTS WebRMS application has been installed, and WebRMS System Overview and Configuration Training
DURATION	2 days
STUDENT CAPACITY	6, with a maximum of one student per workstation
RESTRICTIONS	USA only

WEBRMS TRAIN-THE-TRAINER TRAINING (IPST3503)

This course provides training for the Trainers for End Users at an Agency. All modules will be reviewed and related to each Department in the Agency such as Records, Patrol, Investigations, Personnel, Administration, Evidence and other departments. The users will review the Modules, Searching Capabilities, Reporting, and other features in WebRMS.

MAJOR TOPICS

WebRMS Navigation Understanding WebRMS Tabs: Home, Reports, Search, Master Indices, Investigations, Court, Jail Management, Traffic, Evidence Management, Department, Other Info Understanding the Master Indices (Master Name, Master Vehicle, Master Location) Review of WebRMS Modules Creating New Module Records Employee Module External Training/Education Training of Agency defined Modules (Any and All WebRMS Modules) Operational Modules Administrative Modules Record Properties Menu Records Linked Menu	Data Linking Configuring Alerts Exporting Search Results Setting Alerts Understanding Workflow Claiming a Task Using Workflow: Example Scenario Workflow Diagrams Combining Master Index Records Reports Training (Canned and Report Server Reports)
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PREREQUISITES

Knowledge of the Agency's business process for the Agency
 Knowledge of the basic public safety terminology
 An introduction to Windows course or equivalent knowledge and familiarity with the Windows user interface
 Agency defines the modules that will be used by the end users
 All WebRMS Configurations completed

METHOD	Conducted on site by Intergraph Personnel
TASK CLASSIFICATIONS	Agency Trainers or End Users
PROJECT PHASE	Training
DURATION	4 days
STUDENT CAPACITY	12, with a maximum of one student per workstation
RESTRICTIONS	USA only

WEBRMS REPORTS & DEPLOYMENT (IPST3504)

This course will discuss report creation and deployment. This course is designed to show Report Writers how to create a report and then deploy that report to the WebRMS.

MAJOR TOPICS

Reporting functionality in the WebRMS
 Data Sheets
 Canned Reports
 Agency Statistical Report
 Incident Summary
 Incident Daily Bulletin
 Incident Restricted
 Report Development
 Installing Eclipse
 Configuring Eclipse to use the Crystal Reports Plug-in
 Designing Reports
 Deploying Reports
 Report Deployment Workshop
 Adding Security to Deployed Reports
 Custom Agency Report Workshop(s)

PREREQUISITES

Have general knowledge of WebRMS
 Experience writing reports using Crystal Report Developer
 Have an understanding of Eclipse software and plugins
 Have a general understanding of SQL and relational database design
 Have knowledge of Windows Operating Systems Administration

METHOD	Conducted on site by Intergraph Personnel
TASK CLASSIFICATIONS	Experienced Report developers
PROJECT PHASE	After hardware has been installed, COTS WebRMS application has been installed, and when sufficient WebRMS data is available for obtaining good sample reports
DURATION	2 days
STUDENT CAPACITY	12, with a maximum of one student per workstation
RESTRICTIONS	USA only

BI DIRECT FOR WEBRMS - SYS ADMIN TRAINING (IPST3300)

Business Intelligence Direct (BI Direct) offers the ability to perform powerful and interactive reporting and analysis on data available in WebRMS databases. BI Direct provides capabilities for the user to view and modify reports as per needs and conduct ad-hoc queries through a secure web portal. With minimal knowledge of underlying database structures, users can create custom formulas and reports and analyze data with pre-configured Universes designed for easy reporting use and built with industry terminology. This course is designed to familiarize System Administrators and DBAs with the setup and maintenance of Intergraph's BI Direct product. It will provide instructions on the setup, site-specific configurations and installs, and administrative tasks needed to maintain the Business Intelligence system.

MAJOR TOPICS

- Overview of Site Setup & Configuration
- Client installs and requirements
- Business Objects BI Administration
 - Central Management Console
 - User Security and Administration
 - Access rights and managing reports and folders
- Universes
 - Configuration, and customizations
- BI Reports
 - Configuration, Scheduling and Security
- Site specific configuration
- Systems Backups and Troubleshooting techniques

PREREQUISITES

- Familiar with Windows-based applications, administrative tasks and Agency workflows
- Familiar with WebRMS databases and familiar with Oracle or SQL Server databases

METHOD	Conducted on site or at an Intergraph Certified Training Facility by Intergraph Personnel
TASK CLASSIFICATIONS	System Administrators, Database Administrators and other Personnel responsible for administering and maintaining the Business Intelligence Direct system
PROJECT PHASE	When BI Direct is setup and when sufficient WebRMS data is available for obtaining good sample reports
DURATION	2 days
STUDENT CAPACITY	6, with a maximum of one student per workstation
RESTRICTIONS	USA only

BI DIRECT FOR WEBRMS - END USER TRAINING (IPST3301)

Business Intelligence Direct (BI Direct) offers the ability to perform powerful and interactive reporting and analysis on data available in WebRMS databases. BI Direct provides capabilities for the user to view and modify reports as per requirements and conduct ad-hoc queries through a secure web portal. With minimal knowledge of underlying database structures, users can create custom formulas and reports and analyze data with pre-configured Universes designed for easy reporting use and built with industry terminology. This course is designed to familiarize the end user or administrator with the use of BI Direct product and will provide training on running reports, creating and editing reports, and performing ad-hoc queries and data analysis.

MAJOR TOPICS

- Overview of BI Direct
- BI Launch Pad
 - Accessing BI Launch Pad
 - Navigating BI Launch Pad
 - Workspace and user settings
 - Canned reports
 - Collaborating on Reports
- BI Direct Universes
- Web Intelligence (WEBI)
 - Navigate and view Web Intelligence Reports
 - Perform ad hoc queries, reports and analysis
 - Create Reports
 - Modifying Reports
 - Formatting Reports
 - Scheduling Reports
 - Filters, alerts, ranking and drilling operations in reports
- BI Client tools – Use BI with Rich Client, Widgets and Live Office

PREREQUISITES

- Familiar with Windows based applications
- Familiarization with WebRMS data
- Familiar with Agency workflows

METHOD	Conducted on site or at an Intergraph Certified Training Facility by Intergraph Personnel
TASK CLASSIFICATIONS	Business Intelligence operators or Personnel responsible for reporting and analysis, Trainers
PROJECT PHASE	When sufficient WebRMS data is available for obtaining good sample reports
DURATION	4 days
STUDENT CAPACITY	6, with a maximum of one student per workstation
RESTRICTIONS	USA only

INPURSUIT CRIME ANALYSIS GIS TRAINING (IPST3013C)

inPURSUIT Crime Analysis Geographic Information System (CAGIS) is a powerful tool to help Agency departments identify and visualize crime patterns within a jurisdiction or across boundaries and to analyze overall crime trends. The course is designed to teach students to display incident data via the *inPURSUIT* Crime Analysis tool, to define and zoom in on specific crime hot spots, to build a comprehensive picture of crime trends, to develop custom queries, and to generate and analyze Trend Analysis reports.

MAJOR TOPICS

CAGIS Client Installation and Administrative Functions
 Managing the CAGIS System Administrator tool for Agency-specific Crime Codes and GIS Updates
 Understanding GIS Layers
 Generating Crime Maps with queries
 Incident Queries
 Calls for Service Queries
 Time and Date Queries
 Person and Vehicle Queries
 MO Queries
 Utilizing GIS Data for Crime Analysis and Reporting
 Mapper/Analysis Functions
 Navigating the CAGIS Map Viewer
 Features
 Legends
 Pop-ups
 Generating Reports

PREREQUISITES

Knowledge of the RMS
 Knowledge of Shape Files and Layers

METHOD	Conducted on site by Intergraph Personnel
TASK CLASSIFICATIONS	Agency Trainers or End Users
PROJECT PHASE	After hardware has been installed and COTS CAGIS application has been installed and when sufficient RMS data is available for obtaining good sample reports
DURATION	2 days
STUDENT CAPACITY	12, with a maximum of one student per workstation
RESTRICTIONS	USA only

Attachment 3: Public Safety System Specifications

General Notes

This document provides the specifications for hardware and software required to support the Intergraph I/CAD System, Intergraph inPURSUIT System, and BI Premium. This document is available online through the Knowledge Management System at: <https://sgisupport.intergraph.com/>. To retrieve the specifications, enter the article ID "6706" or "Public Safety System Specification" in the Knowledge Search field. Before you proceed, make sure you have the most up-to-date version of this document for your software version. This document is specific to I/CAD 9.3.

The below specifications reflect technology that is currently considered standard and is routinely available from hardware vendors and should be used when purchasing new equipment. For those customers with existing hardware and planning on a software upgrade, these specifications are intended to serve as a guide for determining whether existing equipment should be upgraded or replaced to support a mission-critical configuration. These specifications apply to servers in any form factor, including rack mounted, blade, or standalone tower servers.

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WebRMS Specifications

The WebRMS Database may be Oracle or SQL Server. When bid by Intergraph a secondary\Redundant DB should always be included for redundancy. In addition a third Database for BI Direct is required. The BI Direct Database should use the same specifications as the production Database at this time.

WebRMS DB Server²

ITEM	SPECIFICATION
Processors	16 cores
Memory	Small 64 GB, Medium 96GB, Large 128GB
Disk Qty: (2) RAID1 15K RPM SAS for OS and log files (4) RAID10 15K RPM SAS for DB	(2) -146GB 15K disks ¹ (4) – 300GB 15K disks ¹
Network	Single 1Gb required, Teamed redundant NICs recommended
Windows Server 64bit	Enterprise Edition
RDBMS 64bit	Enterprise Edition
Example Hardware	Dell PowerEdge R620 or HP DL360

¹ Hard drive size selection and total storage needs are dependent on call/report volume and data retention plans – high volume customers may require larger capacity disks.

² If HA is desired then 2 DB Servers are required:

- SQL Server requires shared storage configured as a Microsoft Failover Cluster
- Available Disk Space (minimum storage)
 - Small 2TB
 - Medium 4TB
 - Large 6TB
- RAID10 configuration

FBR/WebRMS Application Servers Small Configuration

ITEM	SPECIFICATION
Processors	8 cores
Memory	32 GB
Disk Qty:	(2) – 300GB 15K RPM disks RAID1
Network	Single 1Gb required, Teamed redundant NICs recommended
Windows Server 64bit	Enterprise Edition
Example Hardware	Dell PowerEdge R620 or HP DL360

¹ Hard drive size selection and total storage needs are dependent on call/report volume and data retention plans – high volume customers may require larger capacity disks.

The application servers (Minimum of 2) in the small configuration receive all of the WebRMS application components, including BI, and FBR configured as in an NLB group. Each application server should be configured with Apache, IIS and 4 instances of TomCat, jobserver, CAGIS and SQL Express.

WebRMS Application Server Medium and Larger Configuration

ITEM	SPECIFICATION
Processors	Medium - 8 cores Large - 16 cores ¹
Memory	32 GB
Disk Qty:	(2) – 300GB 15K RPM disks RAID1
Network	Single 1Gb required, Teamed redundant NICs recommended
Windows Server 64bit	Enterprise Edition
Example Hardware	Dell PowerEdge R620 or HP DL360

¹ It is always an option of having more, smaller servers versus having fewer larger servers. This may be the preference in a virtual environment. If redundancy is desired it is recommended to add one server for every three required servers. So to support 1000 users you could have 2 servers in the large configuration or 4 Medium servers. You could then add one server for redundancy.

The application servers (Minimum of 2) in the medium and large configuration receive all of the application WebRMS components, including BI, configured as in an NLB group. Each application server should be configured with 4 instances of TomCat, jobserver, and CAGIS. FBR and Apache are installed on the Apache\FBR Server.

WebRMS Apache\FBR Server Medium and Larger Configuration Only¹

ITEM	SPECIFICATION
Processors	Medium – 4 cores, Large 8 cores
Memory	Medium 8GB, Large 16GB
Disk Qty:	(2) – 146GB 15K RPM disks RAID1
Network	Single 1Gb required, Teamed redundant NICs recommended
Windows Server 64bit	Standard Edition
Example Hardware	Dell PowerEdge R620 or HP DL360

¹ It is always an option of having more, smaller servers versus having fewer larger servers. This may be the preference in a virtual environment. If redundancy is desired it is recommended to add one server for every three required servers. So to support 1000 users you could have 2 servers in the large configuration or 4 Medium servers. You could then add one server for redundancy.

The WebRMS Apache\FBR Servers (Minimum of 2) in the medium and large configuration receive all of the application for FBR as well as SQL Express and Apache. FBR can also be pointed to the primary SQL Server if desired. The FBR servers are configured as an NLB. The small configuration can handle 250 users, the medium 500 and the large 1000.

WebRMS Interface-Communication Servers

ITEM	SPECIFICATION
Processors	8 cores
Memory	16GB
Internal Disk Qty: (2) RAID1 15K RPM SAS for OS and log files	(2) -146GB 15K disks
Network	Single 1Gb required, Teamed redundant NICs recommended
Windows Server 64bit	Standard Edition
Example Hardware	Dell PowerEdge R620 or HP DL360

WebRMS Standalone BI Direct Server

ITEM	SPECIFICATION
Processors	8 cores
Memory	64GB
Internal Disk Qty: (2) RAID1 15K RPM SAS for OS and log files	(2) -300GB 15K disks
Network	Single 1Gb required, Teamed redundant NICs recommended
Windows Server 64bit	Standard Edition
Example Hardware	Dell R620 or HP DL360

WebRMS, and CAGIS Workstation Specifications

ITEM	PERFORMANCE SPECIFICATIONS
Processors	Quad Core processor or better
Memory	4GB
Internal Disk	80GB
Network	Single 1Gb required, Teamed redundant NICs recommended
OS	Windows 7 64bit
Browsers	Internet Explorer (9.0, and above) or FireFox (25.0 and above)
Example Hardware	Dell or HP compatible
CAGIS Software required	Adobe Reader (free download) and Crystal Reports Viewer (free download)

** The inPURSUIT system does not require a serial port. However, if the agency has equipment that requires a serial port, they will need to purchase hardware that includes the necessary serial ports.*

FBR Computer/Laptop Hardware Specifications

ITEM	PERFORMANCE SPECIFICATIONS
Manufacturer	Dell XFR or Panasonic Toughbook Ruggedized w/Touchscreen
Operating System	Windows 7 64bit
Processor	Intel or AMD Dual-Core processors
RAM	8GB
Hard Drive Space Available	40GB
Serial Ports (RF Systems)	1
Network Cards	1GB physical and Wireless (WiFi and/or Cellular) 3G or 4G recommended of Cellular wireless data connectivity – either built-in or attached via USB port.
Installed Applications	Latest Service Pack, .NET 4.5, M/S SQL CE SP2, Adobe Reader, Active Reports

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System Software Specifications

For information on the System Software requirement see the Supported Environments documentation on the Customer Support page. To access the supported environments document from the support page

1. Go to the [SG&I Support page](http://support.intergraph.com/) at <http://support.intergraph.com/>

The first time you select this link, it displays the Intergraph Support page, and you need to select **Security, Government & Infrastructure Division** to display the SG&I Support page. When you select this link the next time, it will go directly to the SG&I Support page. If you later want to change the division, click **[Change Support Division]** at the bottom of the left panel on the Support page.

2. Under **Product Support**, select I/Dispatcher from the **Products** drop-down list; then click **Go**.
3. On the **Customer Log In** page, enter your user ID and password; then click **Log In**. If you do not have a user login, click the link to request one.

On the **I/Dispatcher** page, scroll down to the **Product Versions** table and click the download icon for the **Supported Environments**.

Attachment 4: Intergraph Terms and Conditions

Ownership in Data/Computer Software

All computer software related deliverables (data, programs, or program enhancements) prepared under this SOW shall be the property of Intergraph and shall be licensed to the Customer pursuant to Intergraph's current End User License Agreement.

Maintenance

For any new purchases of Intergraph software described in this SOW, the Customer shall be responsible for placing the newly purchased software under maintenance following expiration of the applicable warranty period. If the software is not placed under maintenance, the cost of development and services required to migrate the current functionality to the new version will be added to all future system upgrades. Enhancements to this software are not provided under the maintenance agreement.

For any software version upgrades described in this SOW, this upgraded software is provided at no cost to the Customer under the general terms of the Intergraph maintenance agreement. This maintenance agreement must be in effect and current before any scheduling or related work will occur.

Warranty

For any new software purchased as a part of this SOW, the following warranty applies. This warranty does not apply to software that is already covered under a paid maintenance agreement.

Intergraph software is warranted to substantially conform to the user documentation, free from defects in material and workmanship for a period of thirty (30) days from installation.

INTERGRAPH DISCLAIMS (TO THE EXTENT PERMITTED BY LAW) ALL WARRANTIES ON PRODUCTS FURNISHED HEREUNDER, EXCEPT THOSE SPECIFICALLY STATED ABOVE, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND REPRESENTS THE FULL AND TOTAL OBLIGATION AND/OR LIABILITY OF INTERGRAPH.

Disclaimer

IN NO EVENT WILL INTERGRAPH BE LIABLE TO THE CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH ANY SERVICES OR DELIVERABLES PROVIDED UNDER THIS SOW, EVEN IF INTERGRAPH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. INTERGRAPH'S TOTAL LIABILITY FOR ANY AND ALL DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS SOW FROM ANY CAUSE SHALL NOT EXCEED THE VALUE OF THIS SOW. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, NO CLAIM, REGARDLESS OF FORM, ARISING OUT OF OR IN CONNECTION WITH THIS SOW MAY BE BROUGHT BY THE CUSTOMER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS OCCURRED.

Infringement

In the event of any proceeding against the Customer arising from allegations that the deliverables or services furnished by Intergraph infringes U.S. patent, copyright, trade secret, or other proprietary right of any third party, Intergraph will, if such allegation is not a result from modifications made by the Customer, defend or settle such proceeding, at Intergraph's expense, provided the Customer promptly notifies Intergraph in writing and grants Intergraph full authority to defend and settle such proceeding. Intergraph shall make such defense by counsel of its own choosing and the Customer shall cooperate with said counsel.

Force Majeure

Neither party shall be deemed to be in default of any provision of this SOW or be liable for any delay, failure in performance, or interruption of service resulting from acts of war, acts of terrorism, acts of God, acts of civil or military authority, civil disturbance, or any other cause beyond its reasonable control.

Taxes

Prices are exclusive of all federal, state or local sales, use, property, gross receipts, value added or similar taxes based upon amounts payable to Intergraph pursuant to this SOW ("Taxes"). Such Taxes, however do not include franchise taxes or taxes based on net income. The Customer agrees to pay Intergraph any applicable Taxes or provide Intergraph documentary evidence of an appropriate statutory exemption.

Governing Law

This SOW shall for all purposes be construed and enforced under and in accordance with the laws of the State of Alabama.

Place of Performance

The Customer agrees to provide appropriate work place accommodations, computer equipment, software, and necessary access for Intergraph personnel.

Entire Agreement

These terms and conditions, the Intergraph quotation, together with any attachments hereto, constitute the entire agreement between the parties with respect to the subject matter hereof; all prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.

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Attachment 5: End-User License Agreement

IMPORTANT—READ CAREFULLY: This End-User License Agreement for Intergraph Corporation (“EULA”) is a legal agreement by and between “you” (either an individual or a single legal entity) and Intergraph Corporation d/b/a the Security, Government and Infrastructure division of Intergraph (“Intergraph”) for the Intergraph software product(s) (“SOFTWARE PRODUCT”) delivered with this EULA, which includes the computer software, object code copy, and all of the contents of the files, disk(s), CD-ROM(s) or other media with which this EULA is provided, including any templates, printed materials, and online or electronic documentation. All copies of the SOFTWARE PRODUCT and any Updates of the SOFTWARE PRODUCT, if any, are licensed to you by Intergraph pursuant to the terms of this EULA. Any software, including, without limitation, any open source components and/or Upgrades, associated with a separate end-user license agreement is licensed to you under the terms of that license agreement. By installing, copying, downloading, accessing or otherwise using the SOFTWARE PRODUCT, you agree to be bound by the terms of this EULA, which shall take precedence over any other document and shall govern your use of the SOFTWARE PRODUCT, unless Intergraph and you have agreed to a signed license agreement with Intergraph that specifically addresses the licensing of the applicable SOFTWARE PRODUCT(s) for a discrete transaction, in which case the signed license agreement shall take precedence and shall govern your use of the SOFTWARE PRODUCT. You agree that this EULA is enforceable against you the same as any written, negotiated contract signed by you. If you do not agree to the terms of this EULA, you are not authorized to, and you shall not, download, install or use the SOFTWARE PRODUCT.

1.0 DEFINITIONS. As used in this EULA, the following terms are defined as follows and other capitalized terms set forth in this EULA shall have the meaning ascribed to them in this EULA:

1.1 “Core” means a physical processor on a computer server that can respond to and execute the basic instructions that drive the computer. A Central Processing Unit (CPU) may have one or more Cores, and a given server may have multiple CPU sockets that may each contain multiple Cores.

1.2 “Desktop-based SOFTWARE PRODUCT” means a self-contained application that runs from a local drive and does not require network connectivity to operate.

1.3 “Installation Guide” means a computer file in a Microsoft Word or Adobe PDF document or a text file that contains information a User may need to install or operate a SOFTWARE PRODUCT program

1.4 “Primary License” means the license(s) of the SOFTWARE PRODUCT provided to you for general production use as authorized by this EULA.

1.5 “Supplementary License” means a license(s) of the SOFTWARE PRODUCT which is made available by Intergraph for select SOFTWARE PRODUCTS to augment Primary Licenses for special purposes. Each Supplementary License requires a Primary License and the term of the Supplementary License shall not exceed the term of the applicable Primary License.

1.6 “System” means a physical or operational location where the SOFTWARE PRODUCT resides and operates on an individual server or where a single operational identification number (“Site ID”) has been assigned by Intergraph.

1.7 “Update” means any modified version, fix, or patch of the SOFTWARE PRODUCT.

1.8 “Upgrade” means each new release of the SOFTWARE PRODUCT that is as a result of an architectural, major, or minor change to the SOFTWARE PRODUCT. Upgrades may be provided with a separate EULA. The EULA delivered with the Upgrade will supersede any EULA or signed license agreement associated with prior releases of the SOFTWARE PRODUCT.

1.9 “User” means you or an individual employed by you. A User may also include your contractor who requires temporary use of the SOFTWARE PRODUCT to provide services on your behalf.

1.10 “Web-based SOFTWARE PRODUCT” means a Webservices-based SOFTWARE PRODUCT that is accessed by Users solely over the World Wide Web, Internet or intranet.

1.11 “XML Files” means the XML (Extensible Markup Language) files generated by the SOFTWARE PRODUCT, where applicable.

1.12 “XSL Stylesheets” means the XSL (Extensible Stylesheet Language) presentation of a class of XML Files which, when included with the SOFTWARE PRODUCT, describe how an instance of the class is transformed into an XML (Extensible Markup Language) document that uses the formatting vocabulary.

2.0 LICENSE GRANT. Provided you are not in breach of any term or condition of this EULA, Intergraph hereby grants you a limited, non-exclusive license to install and use the SOFTWARE PRODUCT, in object code form only, strictly for your internal use and strictly in accordance with this EULA. The license is non-transferable, except as specifically set forth in this EULA. You assume full responsibility for the selection of the SOFTWARE PRODUCT to achieve your intended results, and for the installation, use and results obtained from the SOFTWARE PRODUCT.

2.1 Minimum Requirements. The SOFTWARE PRODUCT may require your System to comply with specific minimum software, hardware and/or Internet connection requirements. The specific minimum software, hardware and/or Internet connection requirements vary by SOFTWARE PRODUCT and per type of license and are available from Intergraph upon request.

2.2 License Type and Mode. SOFTWARE PRODUCTS are licensed as either Primary Licenses or Supplementary Licenses. There are two (2) types of Primary Licenses and seven (7) types of Supplementary Licenses as described below. Depending on your license, a license may be used in either Concurrent-Use mode or Node-Locked mode. The license type and mode for the SOFTWARE PRODUCT you subscribed to or obtained will be designated (per the abbreviations set forth below) in the product description set forth on the proposal, quote or packaging provided with the SOFTWARE PRODUCT, and, if an electronic license manager tool is incorporated in the SOFTWARE PRODUCT, verified by the Intergraph license system. If not otherwise indicated, your license type and mode will be a Node-Locked Primary License. Each license of the SOFTWARE PRODUCT is subject to the terms of this EULA.

2.2.1 Primary Licenses are described below:

- (a) **Concurrent-Use mode (CC)** allows for the checking in and checking out of the total available licenses of the SOFTWARE PRODUCT for Users. At any point, you may run as many copies of the SOFTWARE PRODUCT as you have licenses. If the SOFTWARE PRODUCT is enabled to be run in a disconnected mode, as set forth in the Installation Guide, a User may check out a license from the System for mobile or home use, thus reducing the total number of licenses available in the license pool until the license is checked back in to the System. If the SOFTWARE PRODUCT is not enabled to be run in a disconnected mode, the mobile or home computer will require a Node-Locked License. If the anticipated number of Users of the SOFTWARE PRODUCT will exceed the number of applicable licenses, and in the absence of a license manager tool incorporated in the SOFTWARE PRODUCT, you must use a reasonable mechanism or process to assure that the number of persons using the SOFTWARE PRODUCT concurrently does not exceed the number of licenses. You consent to the use of a license mechanism, license files, hardware keys, and other security devices in connection with the SOFTWARE PRODUCT and agree not to attempt to circumvent, reverse engineer, or duplicate such devices.
- (b) **Node-Locked mode (NL)** allows a single copy of the SOFTWARE PRODUCT to be stored on hard disk and loaded for execution on a single designated workstation, or, for software designed for use on a handheld device, for execution on a single designated handheld device.

2.2.2 Supplementary Licenses are described below:

- (a) **Backup License (BCK)** is licensed solely for “cold standby” when manual switchover of the SOFTWARE PRODUCT to the Supplementary License is required in the event of failure of the Primary License.
- (b) **Developer’s License (DEV)** is a license of a Web-based SOFTWARE PRODUCT that is delivered solely in connection with the Primary License of such SOFTWARE PRODUCT for the purposes of developing and testing your website built only with the SOFTWARE PRODUCT. Developer’s Licenses shall not be used for production purposes (i.e. a fully deployed website).
- (c) **Load Balancing License (LOB)** is a license of a Web-based SOFTWARE PRODUCT solely for use as a second or successive license on a web cluster to balance the load with the Primary License on multiple servers represented by one (1) IP address.
- (d) **Redundant License (RDT)** is licensed solely for “hot standby” when automatic switchover of the SOFTWARE PRODUCT to the Supplementary License is required in the event of failure of the Primary License.
- (e) **Test License (TST)** is licensed solely for testing purposes. However, Intergraph also allows a Test License to be used to conduct no-cost training on test servers for a maximum of thirty (30) days per year.
- (f) **Training License (TRN)** is licensed solely for training purposes.
- (g) **Secondary License (SEC or TFB)** is licensed for non-productive use for training, development, testing, failover, backup, etc. Number of Secondary Licenses cannot exceed the number of purchased Primary Licenses.

2.3 Updates and Upgrades. If the SOFTWARE PRODUCT is an Update or Upgrade to a previous version of the SOFTWARE PRODUCT, you must possess a valid license to such previous version in order to use the Update or Upgrade. The SOFTWARE PRODUCT and any previous version may not be used by or transferred to a third party. All Updates and Upgrades are provided to you on a license exchange basis and are subject to all of the terms and conditions of the EULA provided with the latest version of the SOFTWARE PRODUCT. By using an Update or Upgrade, you (i) agree to voluntarily terminate your right to use any previous version of the SOFTWARE PRODUCT, except to the extent that the previous version is required to transition to the Update or Upgrade; and (ii) acknowledge and agree that any obligation that Intergraph may have to support the previous version(s) of the SOFTWARE PRODUCT will end upon availability of the Update. If an Update is provided, you will take prompt action to install such Update as directed by Intergraph. If you fail to do so, you acknowledge that the SOFTWARE PRODUCT may not work correctly or that you will not be able to take advantage of all of the SOFTWARE PRODUCT's available features. In such event, Intergraph will not be liable for additional costs you incur as a result of your failure to install such Update.

3.0 RIGHTS AND LIMITATIONS. Please see specific exceptions and additional terms related to GeoMedia Viewer Software, Beta Software, Evaluation Software, and Educational Software set forth at the Addendum to this EULA.

3.1 THE FOLLOWING ARE PERMITTED FOR YOUR LICENSE:

3.1.1 You may make one copy of the SOFTWARE PRODUCT media in machine readable or printed form and solely for backup purposes. Intergraph retains ownership of all User created copies. You may not transfer the rights to a backup copy unless you transfer all rights in the SOFTWARE PRODUCT and license as provided for in Section 3.1.2. Any other copying of the SOFTWARE PRODUCT, any use of copies in excess of the number of copies you have been authorized to use and have paid for, and any distribution of the SOFTWARE PRODUCT not expressly permitted by this EULA, is a violation of this EULA and of federal or applicable governing law.

3.1.2 You may transfer the SOFTWARE PRODUCT and license within your company (intra-company transfer), subject to the Intergraph Security, Government & Infrastructure Software Transfer Policy ("SG&I Software Transfer Policy") and the terms of this EULA. The SG&I Software Transfer Policy is available from Intergraph upon request. If you transfer the SOFTWARE PRODUCT, you must at the same time either transfer all copies, modifications, or merged portions, in whatever form, to the same party, or you must destroy those not transferred.

3.1.3 For a Web-based SOFTWARE PRODUCT:

- (a) You may run multiple Websites and provide multiple Webservices to your client users with a single license.
- (b) You may distribute client side web page plug-ins (e.g., ActiveX controls, Java applets and applications, Enhanced Compressed Wavelet (ECW) plug ins) to Users.
- (c) You may load this Web-based SOFTWARE PRODUCT on multiple machines within a cluster that is acting as a single web server, provided you have obtained the applicable number of Load Balancing Licenses or number of Cores from Intergraph and the total number of map servers or number of Cores deployed do not exceed the quantity licensed.
- (d) Unless otherwise stated in the Installation Guide, you may only copy and distribute the Java script source files to support the Web-based SOFTWARE PRODUCT's output vector map type and your associated websites, and you may prepare derivative works solely for your internal use.

3.1.4 Unless otherwise stated in the Installation Guide, for SOFTWARE PRODUCTS which contain XSL Stylesheets for presenting XML Files, you may only use the XSL Stylesheets and derivative works thereof for the purpose of presenting XML Files and derivative works thereof (collectively, "XML Products") for your enterprise. You may not distribute the XSL Stylesheets or XML Products on a stand-alone basis. XSL Stylesheets may not be used in the production of libelous, defamatory, fraudulent, lewd, obscene or pornographic material, or any material that infringes upon any third party intellectual property rights, or otherwise in any illegal manner. All XSL Stylesheets supplied with the SOFTWARE PRODUCT are and will remain the property of Intergraph.

3.1.5 Unless otherwise stated in the Installation Guide, for SOFTWARE PRODUCTS that are delivered with an Application Programming Interface ("API") and/or configuration set-up, you may use the API(s) to write your own extensions to the SOFTWARE PRODUCTS, and you may use configuration setup to configure the SOFTWARE PRODUCT, but only to the extent permitted by the API(s) and/or configuration setup. Insofar as Intergraph does not transfer to you any rights in its Intellectual Property (as that term is defined in Section 6.1.2) by allowing you to write your own extensions using the API(s) or to configure the software via the configuration set-up, you hereby agree and acknowledge that Intergraph retains all rights in its SOFTWARE PRODUCT, API(s), and configuration setup. Intergraph does not make any representations or warranties with respect to such extensions

and/or configurations and to the maximum extent permitted by applicable law, Intergraph and its suppliers disclaim all warranties, either express or implied, relating to such extensions and/or configurations, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, high risk use and non-infringement. Your use of such extensions and/or configurations is solely at your own risk, and you hereby agree to indemnify and hold harmless Intergraph and its suppliers with respect to such extensions and/or configurations.

3.1.6 You are responsible, and bear the sole risk, for backing up all systems, software, applications, and data, as well as properly using the SOFTWARE PRODUCT.

3.1.7 At all times, you must keep, reproduce and include all copyright, patent, trademark and attribution notices on any copy, modification or portion of the SOFTWARE PRODUCT, including, without limitation, when installed, used, checked out, checked in and/or merged into another program.

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3.2 THE FOLLOWING ARE PROHIBITED FOR YOUR LICENSE:

3.2.1 You may not sell, rent, license, lease, lend or otherwise transfer the SOFTWARE PRODUCT, or any copy, modification, or merged portion thereof, to another company or entity (i.e. inter-company transfer) or person. Any such unauthorized transfer will result in automatic and immediate termination of the license.

3.2.2 You may not, and you may not authorize anyone else to, decompile, disassemble, or otherwise reverse engineer the SOFTWARE PRODUCT.

3.2.3 You may not, and you may not authorize anyone else to, work around any technical limitations in the SOFTWARE PRODUCT.

3.2.4 You may not, and you may not authorize anyone else to, publish the SOFTWARE PRODUCT for others to copy or use.

3.2.5 You may not, and you may not authorize anyone else to, use, copy, modify, distribute, disclose, license or transfer the SOFTWARE PRODUCT, or any copy, modification, or merged portion, in whole or in part, except as expressly provided for in this EULA.

3.2.6 You may not, and you may not authorize anyone else to, re-use the component parts of the SOFTWARE PRODUCT with a different software product from the one you are licensed to use or on different computers. The SOFTWARE PRODUCT is licensed as a single product.

3.2.7 You may not, and you may not authorize anyone else to, circumvent any license mechanism in the SOFTWARE PRODUCT or the licensing policy.

3.2.8 You may not, and you may not authorize or allow anyone else to, use or view the SOFTWARE PRODUCT for any purposes competitive with those of Intergraph.

3.2.9 You may not, and you may not authorize anyone else to, use the SOFTWARE PRODUCT except as expressly set forth in this EULA.

3.2.10 For a Desktop-based SOFTWARE PRODUCT that is Node-Locked:

- i. You may not run the SOFTWARE PRODUCT for Web-based applications.
- ii. You may not allow the SOFTWARE PRODUCT to be used by multiple Users on a single workstation at the same time.

3.2.11 You may not, and you may not authorize or allow anyone else to, use the Developer's License for production purposes (i.e., a fully-deployed website).

3.2.12 You may not, and you may not authorize or allow anyone else to, publish to a third party any results of benchmark tests run on the SOFTWARE PRODUCT. The sample and demo data set(s) and related script(s) delivered with some SOFTWARE PRODUCTS (the "Sample Data") are provided solely for the purpose of instructing the User on how to use the SOFTWARE PRODUCT with which the Sample Data are delivered. The Sample Data are licensed in conjunction with the SOFTWARE PRODUCT and are not to be redistributed, licensed, sold, transferred, used or otherwise dealt with in a production solution without Intergraph's prior written consent.

3.2.13 The SOFTWARE PRODUCT is not one hundred percent (100%) fault-tolerant. The SOFTWARE PRODUCT is not designed or intended for use in any situation where failure or fault of any kind of the SOFTWARE PRODUCT could lead to death or serious bodily injury of any person, or to severe physical, property or environmental damage ("High Risk Use"). You are not licensed to use the SOFTWARE PRODUCT in, or in conjunction with, any High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: operation of aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices. You hereby agree not to use the SOFTWARE PRODUCT in, or in connection with, any High Risk Use.

3.2.14 For a Web-based SOFTWARE PRODUCT:

- (a) You may not use the Web-based SOFTWARE PRODUCT to operate software as a service or hosting without the prior written consent of Intergraph.
- (b) You may not use a Load Balancing License (LOB) of the Web-based SOFTWARE PRODUCT detached of its Primary License.
- (c) You may not use Primary Licenses (and their allocated Load Balancing Licenses) ordered or delivered under a single part number (e.g. "product name – WORKGROUP") for other entities or organizations or at a different physical geographic address.

- (d) Core Restrictions for Intergraph APOLLO SOFTWARE PRODUCT: License fees and installation restrictions for Intergraph APOLLO SOFTWARE PRODUCTS may be based on the number of Cores present in the server on which the Intergraph APOLLO SOFTWARE PRODUCTS are installed. The license type for APOLLO will be designated in the product descriptions set forth on the proposal, quote or packaging provided with the SOFTWARE PRODUCT. If your APOLLO SOFTWARE PRODUCTS are Core based, this section will apply. Each product can be licensed in multiples of four (4) Cores, up to a maximum thirty-two (32) Cores. You are responsible for determining the number of Cores on your host server and ordering the appropriate number of Core licenses. Each license of an Intergraph APOLLO SOFTWARE PRODUCT must be installed only on a single server. For example, an 8-Core license does not permit you to install two copies of a component, each on a 4-Core server. In a virtualized data processing environment, where hyper-threading, "virtual machine" technology or other similar techniques create "virtual processors" which do not necessarily correspond to the physical Cores present on the server, your usage rights depend on the relationship between the number of Cores for which you are licensed, the number of physical Cores present on the host server, and the number of processors available to the Intergraph APOLLO SOFTWARE PRODUCT in the virtualized environment, as follows: if the number of Cores for which you are licensed equals or exceeds the number of physical Cores present on the host server, then additional virtual processors created by hyper-threading or other methods of multi-tasking a physical Core do not violate your licensing restriction. However, if you wish to install the Intergraph APOLLO SOFTWARE PRODUCT on a host server having a greater number of physical Cores present than the number of Cores for which you are licensed, you must operate the Intergraph APOLLO SOFTWARE PRODUCT only within a "guest" virtual machine that accesses a maximum number of processors (whether virtual, physical or both) that is less than or equal to the number of Cores for which you are licensed.

3.3 Indemnification by You. You agree to hold harmless and indemnify Intergraph for any causes of action, claims, costs, expenses and/or damages resulting to Intergraph from a breach by you or any User of any of the limitations or prohibited actions set forth in this EULA.

4.0 TERM. This EULA is effective until terminated or until your software subscription or lease expires without being renewed. this EULA may be terminated (a) by you, by returning to Intergraph the original SOFTWARE PRODUCT or by permanently destroying the SOFTWARE PRODUCT, together with all copies, modifications and merged portions in any form; (b) by Intergraph, upon your breach of any of the terms hereof or your failure to pay the appropriate license or subscription fee(s); (c) upon your installation of an Upgrade that is accompanied by a new license agreement covering the SOFTWARE PRODUCT Upgrade; or (d) by expiration of the applicable license files, if this is a temporary license. You agree upon the earlier of the termination of this EULA or expiration of your software subscription to cease using and to permanently destroy the SOFTWARE PRODUCT (and any copies, modifications and merged portions of the SOFTWARE PRODUCT in any form, and all of the component parts of the SOFTWARE PRODUCT) and certify such destruction in writing to Intergraph.

5.0 AUDIT. Intergraph shall have the right, during your normal business hours, to audit your use of the SOFTWARE PRODUCT and your compliance with the provisions of this EULA. Intergraph will provide you with thirty (30) days prior written notice of an audit. The right of audit shall be limited to twice per calendar year. Prior to the start of an audit, Intergraph's personnel will sign a reasonable non-disclosure agreement provided by you. During the audit, you shall allow Intergraph's personnel to be provided reasonable access to both your records and personnel. The cost of the audit shall be paid by Intergraph unless the results of the audit indicate that you have underpaid fees to Intergraph, in which case, you agree to promptly pay Intergraph such fees at the price previously agreed to for the SOFTWARE PRODUCT license or software subscription *plus* interest on such underpayments from the original due date at the lesser of two percent (2%) per month or the highest rate allowed by applicable law, and you further agree to bear all costs associated with the audit.

6.0 INTELLECTUAL PROPERTY.

6.1 Ownership.

6.1.1 Software. ALL SOFTWARE PRODUCTS ARE PROPRIETARY PRODUCTS OF INTERGRAPH AND ADDITIONAL THIRD PARTIES, AND ARE PROTECTED BY COPYRIGHT LAWS AND INTERNATIONAL TREATIES. TITLE TO SOFTWARE PRODUCTS AND ALL COPIES, MODIFICATIONS AND MERGED PORTIONS OF A SOFTWARE PRODUCT SHALL AT ALL TIMES REMAIN WITH INTERGRAPH AND SUCH THIRD PARTIES. SOFTWARE PRODUCTS are licensed, not sold pursuant to this EULA. Intergraph and additional third parties retain all right, title and interest in and to all SOFTWARE PRODUCTS, including, but not limited to, all Intellectual Property rights in and to each SOFTWARE PRODUCT. All rights not expressly granted to you by this EULA or other applicable third party software license agreement or terms and conditions are reserved by Intergraph and such third parties. No source code is deliverable hereunder unless otherwise agreed to in writing by Intergraph. Additional information regarding Intergraph patents, including a list of registered patents associated with the Intergraph SOFTWARE PRODUCTS, is available at www.intergraph.com/patents.

6.1.2 Intellectual Property. You acknowledge and agree that Intergraph and third party manufacturers, as applicable, own all rights in and to Intergraph's and the applicable third party manufacturer's trade names, and no right or license is granted to you pursuant to this EULA to use such trade names. You also acknowledge and agree that Intergraph and third party manufacturers, as applicable, own all right, title and interest in and to all intellectual property relating to and for the SOFTWARE PRODUCT, including, without limitation, patents, trademarks, copyrights, inventions (whether registerable or not), trade secrets, concepts, ideas, methods, techniques, formulae, algorithms, logic designs, screen displays, schematics, and source and object code computer programs (collectively, "Intellectual Property"). If you bring a patent claim against Intergraph or any third party manufacturer over patents you claim are being infringed by the SOFTWARE PRODUCT, your patent license from Intergraph and any applicable third party manufacturer(s) for the SOFTWARE PRODUCT automatically ends.

6.2 Intellectual Property Infringement.

6.2.1 Remedy by Intergraph. In the event the SOFTWARE PRODUCT is, in Intergraph's opinion, likely to or becomes the subject of a claim of infringement of any duly issued U.S. Intellectual Property, Intergraph may, at its sole option and expense (a) procure for you the right to continue using the SOFTWARE PRODUCT; (b) modify the SOFTWARE PRODUCT to make it non-infringing, but functionally the same; (c) replace the SOFTWARE PRODUCT with a SOFTWARE PRODUCT which is non-infringing, but functionally the same; or (d) provide a prorated refund to you of the actual amount you paid Intergraph for the SOFTWARE PRODUCT.

6.2.2 Indemnification by You. In the event any proceeding (suit, claim, or action) is based (in whole or in part) on modifications, enhancements or additions made by you or any person or entity on your behalf, or your use of the SOFTWARE PRODUCT in combination with other products not furnished by Intergraph, you agree to hold harmless and defend, at your sole cost and expense, all of Intergraph's right, title and interest in and to the SOFTWARE PRODUCT, as well as Intergraph's goodwill and reputation both in good faith and at a standard as if the claim is made against you. You shall reimburse Intergraph any defense expenses inclusive of reasonable attorneys' fees expended by Intergraph in defense of said claim, and pay any judgment rendered against Intergraph. You shall make such defense by counsel of your choosing and Intergraph shall reasonably cooperate with said counsel at your sole cost and expense. You shall have sole control of said defense, but you shall allow Intergraph to reasonably participate in its own defense and you shall reasonably cooperate with Intergraph with respect to the settlement of any claim. Notwithstanding the foregoing, Intergraph may at any time decide to take over any defense of Intergraph at Intergraph's cost and expense and you shall render full cooperation and assistance to transfer such defense to Intergraph and with respect to such defense.

6.3 DISCLAIMER OF INTELLECTUAL PROPERTY WARRANTIES AND LIMITATION OF LIABILITY. THE INTELLECTUAL PROPERTY LIMITED WARRANTIES SET FORTH IN THIS EULA ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATED TO INTELLECTUAL PROPERTY INFRINGEMENT AND THESE INTELLECTUAL PROPERTY LIMITED WARRANTIES ALONG WITH THE STATED REMEDIES REPRESENT THE FULL AND TOTAL WARRANTY OBLIGATION AND LIABILITY OF INTERGRAPH WITH REGARD TO INTELLECTUAL PROPERTY INFRINGEMENT. THE INTELLECTUAL PROPERTY LIMITED WARRANTIES PROVIDE YOU WITH SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION. IF ANY PART OF THIS DISCLAIMER OF EXPRESS OR IMPLIED WARRANTIES OR LIMITATION OF LIABILITY IS RULED INVALID, THEN INTERGRAPH DISCLAIMS EXPRESS OR IMPLIED WARRANTIES AND LIMITS ITS LIABILITY TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. IF A GREATER WARRANTY OR LIABILITY IS MANDATED PURSUANT TO THE LAW HELD APPLICABLE TO THIS AGREEMENT, THEN INTERGRAPH WARRANTS THE SOFTWARE PRODUCT AND PROVIDES LIABILITY TO THE MINIMUM EXTENT REQUIRED BY SAID LAW.

7.0 LIMITED WARRANTIES.

7.1 Intergraph warrants to you for a period of thirty (30) days from the date of shipment that the SOFTWARE PRODUCT delivery media will be free of defects in material and workmanship, provided the SOFTWARE PRODUCT is used under normal conditions and in strict accordance with the terms and conditions of this EULA. You agree to promptly notify Intergraph of any unauthorized use, repair or modification, or misuse of the SOFTWARE PRODUCT, as well as any suspected defect in the SOFTWARE PRODUCT delivery media.

7.2 Intergraph warrants that it has the right to grant you this license.

7.3 THE ABOVE LIMITED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND REPRESENT THE FULL WARRANTY OBLIGATION OF INTERGRAPH. THE LIMITED WARRANTIES PROVIDE YOU WITH SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION. IF THIS WARRANTY SECTION DOES NOT ADHERE TO LOCAL LAWS, THEN THE MINIMUM WARRANTY TERM PRESCRIBED BY THE LAWS OF YOUR JURISDICTION SHALL APPLY.

8.0 WARRANTY DISCLAIMERS. ALL WARRANTIES PROVIDED PURSUANT TO THIS EULA ARE VOID IF FAILURE OF A WARRANTED ITEM RESULTS DIRECTLY, OR INDIRECTLY, FROM AN UNAUTHORIZED USE OR MISUSE OF A WARRANTED ITEM, INCLUDING, WITHOUT LIMITATION, USE OF A WARRANTED ITEM UNDER ABNORMAL OPERATING CONDITIONS OR UNAUTHORIZED MODIFICATION OR REPAIR OF A WARRANTED ITEM OR FAILURE TO ROUTINELY MAINTAIN A WARRANTED ITEM. EXCEPT AS SPECIFICALLY SET FORTH IN THIS EULA, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTERGRAPH AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, RELATING TO THE SOFTWARE PRODUCT, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, HIGH RISK USE AND NON-INFRINGEMENT. INTERGRAPH DOES NOT WARRANT THAT ANY SOFTWARE PRODUCT WILL MEET YOUR REQUIREMENTS, AND UNDER NO CIRCUMSTANCES DOES INTERGRAPH WARRANT THAT ANY SOFTWARE PRODUCT WILL OPERATE UNINTERRUPTED OR ERROR FREE. THE SOFTWARE PRODUCT IS PROVIDED "AS IS" AND YOU BEAR THE SOLE RISK OF USING THE SOFTWARE PRODUCT. IF ANY PART OF THIS DISCLAIMER OF EXPRESS OR IMPLIED WARRANTIES IS RULED INVALID, THEN INTERGRAPH DISCLAIMS EXPRESS OR IMPLIED WARRANTIES TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. IF A GREATER WARRANTY OR LIABILITY IS MANDATED PURSUANT TO THE LAW HELD APPLICABLE TO THIS AGREEMENT, THEN INTERGRAPH WARRANTS THE SOFTWARE PRODUCT AND PROVIDES LIABILITY TO THE MINIMUM EXTENT REQUIRED BY SAID LAW.

9.0 LIMITATION OF LIABILITY. YOU ASSUME FULL AND COMPLETE LIABILITY FOR YOUR USE OF THE SOFTWARE PRODUCT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL INTERGRAPH OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE OR PRODUCTION, LOSS OF REVENUE OR PROFIT, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, BUSINESS INTERRUPTION, CLAIMS OF THIRD PARTIES OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT AND/OR THE USE OF OR INABILITY TO USE THE SOFTWARE PRODUCT, EVEN IF INTERGRAPH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL INTERGRAPH BE LIABLE FOR ANY CLAIM, DAMAGES, OR OTHER LIABILITY ARISING OUT OF, OR IN CONNECTION WITH, THE DOWNLOADING, VIEWING, USE, DUPLICATION, DISTRIBUTION OR DISCLOSURE OF ANY SAMPLE DATA PROVIDED BY INTERGRAPH, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM, LIABILITY OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOSS OR CORRUPTION OF DATA ARISING FROM, OUT OF OR IN CONNECTION WITH, THE SAMPLE DATA OR THE USE OR OTHER DEALINGS WITH THE SAMPLE DATA. INTERGRAPH'S ENTIRE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS EULA SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU TO INTERGRAPH FOR THE SOFTWARE PRODUCT OR SOFTWARE SUBSCRIPTION AT ISSUE AT THE TIME THE INITIAL EVENT GIVING RISE TO THE CLAIM OCCURS. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, NO CLAIM, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THIS EULA MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR FOLLOWING THE INITIAL EVENT GIVING RISE TO THE CAUSE OF ACTION. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IF ANY PART OF THIS SECTION IS HELD INVALID, THEN INTERGRAPH LIMITS ITS LIABILITY TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW.

9.1 In the event the SOFTWARE PRODUCT does not substantially comply with the limited warranties set forth in this EULA, Intergraph's entire liability and your exclusive remedy shall be, in Intergraph's sole and absolute discretion, either (i) the modification, repair or replacement of the SOFTWARE PRODUCT; or (ii) termination of this EULA and a prorated refund to you of the actual amount you paid Intergraph for the SOFTWARE PRODUCT for the period of time that the SOFTWARE PRODUCT did not substantially conform to the limited warranties set forth in this EULA. All replacements, Updates, and/or Upgrades made during the original warranty period will be warranted only for the remainder of the original warranty period. So long as Intergraph performs any one of the remedies set forth above, this limited remedy shall not be deemed to have failed of its essential purpose.

9.2 Intergraph is acting on behalf of its suppliers for the sole purpose of disclaiming, excluding and/or limiting obligations, warranties and liability as provided in this EULA, but in no other respects and for no other purpose.

10.0 RESTRICTIONS.

10.1 United States Government Restricted Rights. If the SOFTWARE PRODUCT (including any Updates, Upgrades, documentation or technical data related to such SOFTWARE PRODUCT) is licensed, purchased, subscribed to or obtained, directly or indirectly, by or on behalf of a unit or agency of the United States Government, then this Section 10.1 also applies.

10.1.1 For civilian agencies: The SOFTWARE PRODUCT was developed at private expense and is “restricted computer software” submitted with restricted rights in accordance with the Federal Acquisition Regulations (“FAR”) 52.227-19 (a) through (d) (Commercial Computer Software – Restricted Rights).

10.1.2 For units of the Department of Defense: The SOFTWARE PRODUCT was developed at private expense and is “commercial computer software” submitted with restricted rights in accordance with the Defense Federal Acquisition Regulations (“DFARS”) DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation).

10.1.3 Notice: This SOFTWARE PRODUCT is “commercial computer software” as defined in DFARS 252.227-7014 (Rights in Noncommercial Computer Software) and FAR 12.212 (Computer Software), which includes “technical data” as defined in DFARS 252.227-7015 (Technical Data) and FAR 12.211 (Technical Data). All use, modification, reproduction, release, performance, display or disclosure of this “commercial computer software” shall be in strict accordance with the manufacturer’s standard commercial license, which is attached to and incorporated into the governing Government contract. Intergraph and any applicable third party software manufacturer(s) are the manufacturer. This SOFTWARE PRODUCT is unpublished and all rights are reserved under the Copyright Laws of the United States.

10.1.4 Government Reserved Rights: MrSID technology incorporated in the SOFTWARE PRODUCT was developed in part through a project at the Los Alamos National Laboratory, funded by the U.S. Government, managed under contract by the University of California (the “University”), and is under exclusive commercial license to LizardTech, Inc. It is used under license from LizardTech. MrSID technology is protected by U.S. Patent No. 5,710,835. Foreign patents pending. The U.S. Government and the University have reserved rights in MrSID technology, including without limitation: (a) The U.S. Government has a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced throughout the world, for or on behalf of the United States, inventions covered by U.S. Patent No. 5,710,835 and has other rights under 35 U.S.C. § 200-212 and applicable implementing regulations; (b) If LizardTech’s rights in the MrSID technology terminate during the term of this EULA, you may continue to use the SOFTWARE PRODUCT. Any provisions of this license which could reasonably be deemed to do so would then protect the University and/or the U.S. Government; and (c) The University has no obligation to furnish any know-how, technical assistance, or technical data to users of MrSID technology and makes no warranty or representation as to the validity of U.S. Patent 5,710,835 nor that the MrSID technology will not infringe any patent or other proprietary right. For further information about these provisions, contact LizardTech, 1008 Western Ave., Suite 200, Seattle, WA 98104.

10.2 Export Restrictions. This SOFTWARE PRODUCT, including any technical data related to this SOFTWARE PRODUCT, is subject to the export control laws and regulations of the United States, including, but not limited to the U.S. Export Administrations Act. Diversion contrary to United States law is prohibited. This SOFTWARE PRODUCT, including any technical data related to this SOFTWARE PRODUCT and any derivatives of this SOFTWARE PRODUCT, shall not be exported or re-exported, directly or indirectly (including via remote access), under the following circumstances:

10.2.1 To Cuba, Iran, North Korea, Sudan, or Syria, or any national of these countries.

10.2.2 To any person or entity listed on any United States government denial list, including, but not limited to, the United States Department of Commerce Denied Persons, Entities, and Unverified Lists (www.bis.doc.gov/complianceand enforcement/liststocheck.htm), the United States Department of Treasury Specially Designated Nationals List (www.treas.gov/offices/enforcement/ofac/), and the United States Department of State Debarred List (<http://www.pmdetc.state.gov/compliance/debar.html>).

10.2.3 To any entity if you know, or have reason to know, the end use is related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other unsafeguarded or sensitive nuclear uses.

10.2.4 To any entity if you know, or have reason to know, that an illegal reshipment will take place.

If the SOFTWARE PRODUCT you received is identified on the media as being ITAR-controlled, this SOFTWARE PRODUCT has been determined to be a defense article subject to the U.S. International Traffic in Arms Regulations (ITAR). Export of this SOFTWARE PRODUCT from the United States must be covered by a license issued by the Directorate of Defense Trade Controls (DDTC) of the U.S. Department of State or by an ITAR license exemption. This SOFTWARE PRODUCT may not be resold, diverted, or transferred to any country or any end user, or used in any country or by any end user other than as authorized by the existing license or ITAR exemption. Subject to the terms of this EULA, this SOFTWARE PRODUCT may be used in other countries or by other end users if prior written approval of DDTC is obtained.

You agree to hold harmless and indemnify Intergraph for any causes of actions, claims, costs, expenses and/or damages resulting to Intergraph from a breach by you or any User of the export restrictions set forth in this EULA. Any questions regarding export or re-export of the SOFTWARE PRODUCT or concerning ITAR restrictions, if applicable, should be addressed to Intergraph's Export Compliance Department at 305 Intergraph Way, Madison, Alabama, United States 35758 or at exportcompliance@intergraph.com.

10.3 Territorial Use Restriction. Unless otherwise specifically permitted in writing by Intergraph, use of the SOFTWARE PRODUCT outside the country in which it is licensed is strictly prohibited.

10.4 Non-disclosure. You understand that Intergraph possesses information and data, including, without limitation, Intellectual Property, that was developed, created or discovered by Intergraph, or which has become known to or has been conveyed to Intergraph, which has commercial value in Intergraph's day-to-day business ("Confidential Information"). Intergraph considers such Confidential Information to be proprietary and confidential. You agree to treat and maintain as proprietary and confidential Intergraph's Confidential Information and any information or data provided by Intergraph, in whatever form, as you would treat your own proprietary and confidential information and data, but in any event, no less than with reasonable care, and to comply with all license requirements, copyright, patent, trademark and trade secret laws as they may pertain to any of Intergraph's Confidential Information or other information or data provided by Intergraph.

11.0 GENERAL.

11.1 Entire Agreement. You acknowledge that you have read this EULA, understand it and agree to be bound by its terms and conditions. You further agree that this EULA is the complete and exclusive statement of the agreement between you and Intergraph relating to the subject matter of this EULA and that this EULA supersedes any proposal or prior agreement, oral or written, and any other communications between you and Intergraph relating to the subject matter of this EULA. This EULA may be amended only by a written instrument signed by both you and Intergraph; *provided however*, certain Intergraph SOFTWARE PRODUCTS and Upgrades may be subject to additional, or different, as applicable, terms and conditions contained in a EULA Addendum or separate EULA that is delivered with the applicable SOFTWARE PRODUCT or Upgrade. Any reproduction of this EULA made by reliable means (for example, printed, photocopy or facsimile) will be deemed an original.

11.2 Severability. Whenever possible, each provision of this EULA shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this EULA shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this EULA.

11.3 Headings. The various headings in this EULA are inserted for convenience only and shall not affect the meaning or interpretation of this EULA or any section or provision of this EULA.

11.4 No Waiver. Any failure by either party to enforce performance of this EULA shall not constitute a waiver of, or affect said party's right to avail itself of, such remedies as it may have for any subsequent breach of the terms of this EULA.

11.5 Notices. Any notice or other communication ("Notice") required or permitted under this EULA shall be in writing and either delivered personally or sent by electronic mail, facsimile, overnight delivery, express mail, or certified or registered mail, postage prepaid, return receipt requested. A Notice delivered personally shall be deemed given only if acknowledged in writing by the person to whom it is given. A Notice sent by electronic mail or facsimile shall be deemed given when transmitted, provided that the sender obtains written confirmation from the recipient that the transmission was received. A Notice sent by overnight delivery or express mail shall be deemed given twenty-four (24) hours after having been sent. A Notice that is sent by certified mail or registered mail shall be deemed given forty-eight (48) hours after it is mailed. If any time period in this EULA commences upon the delivery of Notice to any one or more parties, the time period shall commence only when all of the required Notices have been deemed given. Intergraph's address for Notices is Intergraph Corporation, 305 Intergraph Way, Madison, Alabama 35758, Attn: Legal Department, 256-730-2333.

11.6 Assignment. Neither party shall have the right to assign any of its rights nor delegate any of its obligations under this EULA without the prior written consent of the other party, except that Intergraph may assign its rights and obligations under this EULA, without your approval, to (i) an entity which acquires all or substantially all of the assets of Intergraph or the Intergraph division providing a product or service subject to this EULA; (ii) an entity which acquires all or substantially all of the product or product line assets subject to this EULA; or (iii) any subsidiary, affiliate or successor in a merger or acquisition of Intergraph. Any attempt by you to sublicense, assign or transfer the license or the SOFTWARE PRODUCT, except as expressly provided in this EULA, is void and immediately terminates the license.

11.7 Other Intergraph software products. If you have or use other Intergraph software products, please read this EULA and all other terms and conditions carefully, as there may be differences in the terms and conditions.

11.8 Limited Relationship. The relationship between you and Intergraph is that of independent contractors and neither you nor your agents shall have any authority to bind Intergraph.

11.9 Governing Law; Venue and Jurisdiction. This EULA shall for all purposes be construed and enforced under and in accordance with the Laws of the State of Alabama and shall have been deemed to have been accepted in Madison, Alabama, United States. You and Intergraph agree that any legal action or proceeding arising, directly or indirectly, out of or relating to this EULA shall be instituted in the Circuit Court for Madison County, Alabama, United States or the United States District Court for the Northern District of Alabama, Northeastern Division. You and Intergraph agree to submit to the jurisdiction of and agree that venue is proper in these courts for any such legal action or proceedings. This EULA shall not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

11.10 Waiver of Jury Trial. INTERGRAPH AND YOU EACH HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY FOR ANY LEGAL PROCEEDING ARISING, DIRECTLY OR INDIRECTLY, OUT OF OR RELATING TO THIS EULA. BOTH INTERGRAPH AND YOU (I) CERTIFY THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; AND (II) ACKNOWLEDGE THAT BOTH INTERGRAPH AND YOU HAVE BEEN INDUCED TO ENTER INTO THIS EULA BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS WAIVER OF JURY TRIAL.

11.11 Injunctive Relief; Cumulative Remedies. You acknowledge and agree that a breach of this EULA by you could cause irreparable harm to Intergraph for which monetary damages may be difficult to ascertain or may be an inadequate remedy. You agree that Intergraph will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any breach of this EULA by you, and you expressly waive any objection that Intergraph has or may have an adequate remedy at law with respect to any such breach. The rights and remedies set forth in this EULA are cumulative and concurrent and may be pursued separately, successively or together.

11.12 Attorneys' Fees and Costs. In the event of any legal proceeding arising out of or relating to this EULA, the prevailing party in such action shall be entitled to an award of its reasonable attorneys' fees and costs for all such legal proceedings, including for trial and all levels of appeal.

11.13 Governing Language. The controlling language of this EULA is English. If you received a translation of this EULA into another language, it has been provided for your convenience only.

11.14 USE OUTSIDE THE United States. If you are located outside the United States, then the provisions of this section shall also apply: (i) Les parties en présence confirment leur volonté que cette convention de même que tous les documents y compris tout avis qui s'y rattachent, soient rédigés en langue anglaise (Translation: "The parties confirm that this agreement and all related documentation is and will be in the English language."); and (ii) You are responsible for complying with any local laws in your jurisdiction which might impact your right to import, export or use the SOFTWARE PRODUCT, and you represent that you have complied with any and all regulations or registration procedures required by applicable law to make this EULA fully enforceable.

11.15 Survival. The provisions of this EULA which require or contemplate performance after the expiration or termination of this EULA shall be enforceable notwithstanding said expiration or termination.

**INTERGRAPH END-USER LICENSE AGREEMENT
ADDENDUM FOR CERTAIN PRODUCTS**

This Addendum is applicable to you in the event that the “SOFTWARE PRODUCT” is one that also makes use of the products identified below. If applicable, this Addendum (“Addendum”) sets forth the terms of the Licensee’s use of the SOFTWARE PRODUCT in addition to the terms of the END-USER LICENSE AGREEMENT (“EULA”) provided to the Licensee at the time of purchase. This Addendum shall only apply to you if you use any of the products identified below by or through Intergraph. To the extent not inconsistent with this Addendum, all terms of the EULA shall apply to the use of the SOFTWARE PRODUCT. In the event of a conflict of terms between the EULA and this Addendum, this Addendum shall take precedence over the EULA. The EULA can be found at:

1.0. Geospatial Desktop Program. This section only applies if the “SOFTWARE PRODUCT” is that particular bundle of applications known as the “Geospatial Desktop Program.”

1.1. Definitions.

- 1.1.1. “**Effective Date**” shall mean the date of delivery of the License Key(s) to Licensee, or such later date as specified in the Quote.
- 1.1.2. “**Existing Products**” - any Intergraph software products held by Customer prior to entering into this Agreement that are duplicative of one or more components of the Geospatial Desktop made the subject of this Addendum.
- 1.1.3. “**License Key**” shall mean the unique key provided to the Licensee by Intergraph for the runtime use of the SOFTWARE PRODUCT
- 1.1.4. “**Licensee**” shall mean an individual or single legal entity authorized by Intergraph to utilize the SOFTWARE PRODUCT pursuant to the EULA and this Addendum.
- 1.1.5. “**Quote**” shall mean a quotation for the License of Licensed Software submitted to Licensee by Intergraph or an authorized Intergraph partner, and associated maintenance and support services as described herein this Agreement.

1.2. License Grant. Provided you are not in breach of any term or condition of the EULA or this Addendum, Intergraph hereby grants you a limited, non-exclusive license to install and use the SOFTWARE PRODUCT, in object code form only, strictly for your internal use and strictly in accordance with the EULA and this Addendum. The license is non-transferable, except as specifically set forth in the EULA. You assume full responsibility for the selection of the SOFTWARE PRODUCT to achieve your intended results, and for the installation, use and results obtained from the SOFTWARE PRODUCT.

1.2.1. License type and Mode: The SOFTWARE PRODUCT licensed pursuant to this Addendum shall be concurrent-use mode (CC) in accordance with Section 2.2.1(a) of the EULA.

1.3. Term. This Addendum and the rights granted to Licensee pursuant to this Addendum and the EULA shall begin upon the Effective Date and remain in effect for a period of twelve (12) months. This Agreement may be renewed in accordance with section 2.1 below. New License Keys and/or installation media will be issued annually upon renewal of this Agreement.

Approximately thirty (30) days prior to the end of the license term, Intergraph may submit a renewal Quote to the Licensee to renew the license(s) for the next subscription period at the prices provided in the renewal Quote. If the license(s) are not renewed at the end of the term, Licensee acknowledges that all rights and license grants provided by this EULA and this Addendum shall terminate upon expiration of the term described in Section 1.3 above.

1.4. Customer’s Existing Products. *Any Existing Intergraph products held by Customer are not a part of this Agreement.*

1.4.1. Any Existing Products must be subject to a separate Intergraph maintenance agreement. Customer may choose to not renew maintenance for Existing Products only at the expiration of the term of any maintenance agreement applicable to Existing Products. Early maintenance termination is not permitted for Existing Products under this Addendum.

2.0. Geospatial SDK. This section only applies if the “SOFTWARE PRODUCT” is the Geospatial Portal SDK.

2.1. License Limitations for Sencha Products. You shall not distribute the Sencha Products in stand-alone form. You shall not provide license rights, consulting, training or other services with the standalone functionality of the Sencha Products. You shall not allow third parties to develop or use the Sencha Products on a standalone basis. Copies of the Sencha Products are licensed and not sold. You may not: (a) modify the Sencha Products or permit or encourage any third party to do so; (b) rent, lease or sell or otherwise provide temporary access to the Sencha Products to any third party; (c) use the Sencha Products in any manner to assist or take part in the development, marketing, or sale of a product potentially competitive with the Sencha Products; (d) modify, remove or obstruct any copyright or other proprietary rights statements or notices contained within the Sencha Products; (e) distribute the

Sencha Products except as provided herein; (f) allow, assist or permit any others to do any of the foregoing. You agree to not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Sencha Products. You may only make a single copy of the Sencha Products for back-up purposes only.

- 2.2. Limitations on Use.** You may only use the Geospatial Portal SDK and Sencha Products in combination with the Geospatial Portal. For the avoidance of doubt, "You" in this Addendum means an individual person. Only one person may use the Geospatial Portal SDK per license. You are the only authorized user of this licensed copy of the Geospatial Portal SDK and you may not allow anyone other than yourself to use the Geospatial Portal SDK.

- 3.0. Remote Content Management.** This section only applies if the "SOFTWARE PRODUCT" is Remote Content Management and makes use of DotNetZip Library.

- 3.1. "Contributor"** shall mean any person that distributes its contribution under this license.
3.2. If you bring a patent claim against any contributor over patents that you claim are infringed by the software, your patent license from such contributor to the software ends automatically.

- 4.0. IMAGINE GeoPDF PUBLISHER.** This section only applies if the "SOFTWARE PRODUCT" is the IMAGINE GeoPDF PUBLISHER product.

- 4.1. Warranty Disclaimer.** Notwithstanding anything to the contrary herein, no warranty is provided with respect to the performance of IMAGINE GeoPDF PUBLISHER. For greater clarity IMAGINE GeoPDF PUBLISHER is provided on an 'AS IS' basis.
4.2. Limitation of Liability. Intergraph, its licensors or its suppliers shall not be liable for any claims relating to or arising out of IMAGINE GeoPDF PUBLISHER, regardless of form, in connection with your use of IMAGINE GeoPDF PUBLISHER.
4.3. Acceptance. IMAGINE GeoPDF PUBLISHER shall be deemed accepted upon your installation of the same.
4.4. Use Restrictions. You may use the GeoPDF PUBLISHER only for your internal business use, and you may not use IMAGINE GeoPDF PUBLISHER to render any files other than GeoPDF files.

- 5.0. Euclidean technology.** This section only applies if the SOFTWARE PRODUCT are APOLLO, ERDAS IMAGINE, Geospatial Portal or GeoMedia WebMap. These SOFTWARE PRODUCTS have Euclidean technology embedded within the final products and the intellectual property rights of such third-party technology remain with Euclidean. By installing and using these SOFTWARE PRODUCTS, you agree that you will not modify, reverse engineer, disassemble or decompile any Euclidean software, that you will not remove, obscure or alter any notice of patent, trademark, copyright or trade name.

- 6.0. mTransformer.** mTransformer by myVR Software AS is delivered with the Hexagon Geospatial Provider Suite and Platform Suite products. mTransformer may be installed on any machine and used within an organization that has a valid license for any product from the Provider Suite or the Platform Suite.

7.0. ADDITIONAL TERMS FOR SPECIFIC SOFTWARE PRODUCTS.

- 7.1. GeoMedia Viewer Software – Additional Terms.** The software license specifically for GeoMedia Viewer permits copies to be stored on hard disk and loaded for execution on one or more workstations. The GeoMedia Viewer software may be freely copied, transferred and loaned both inside and outside your company.
7.2. Beta Software - Additional Terms. If the SOFTWARE PRODUCT you received with this EULA is pre-commercial release or beta software ("Beta Software"), then the following additional terms apply. To the extent that any provision in this section is in conflict with any other terms or conditions in this EULA, this section shall supercede such other terms and conditions with respect to the Beta Software, but only to the extent necessary to resolve the conflict. You shall hold all information concerning Beta Software and your use and evaluation of such information and the Beta Software (collectively, "Beta Software Information") in confidence and with the same degree of care you use to keep your own similar information confidential, but in no event shall you use less than a reasonable degree of care; and you shall not, without the prior written consent of Intergraph, disclose such Beta Software Information to any person or entity for any reason at any time; *provided, however*, it is understood that you may disclose any Beta Software Information to those of your representatives who actually need such information for the purpose of participating in the proposed evaluation and testing ("Beta Testing") of the Beta Software, on the condition that, prior to such disclosure, such representative has been made aware of the terms of this EULA. You shall not use any Beta Software Information for any reason or purpose other than as necessary for Beta Testing. You agree to make no other use of the Beta Software Information or to incorporate any Beta Software Information into any work or product. You acknowledge

- that the Beta Software is a pre-release, beta version, does not represent final product from Intergraph, and may contain bugs, errors and other problems that could cause system or other failures and data loss. THE BETA SOFTWARE IS PROVIDED TO YOU “AS-IS”, AND INTERGRAPH DISCLAIMS ALL WARRANTY AND LIABILITY OBLIGATIONS TO YOU OF ANY KIND. **You may use the Beta Software only for evaluation and testing and not for general production use.** You acknowledge that Intergraph has not promised or guaranteed to you that Beta Software or any portion thereof will be announced or made available to anyone in the future, Intergraph has no express or implied obligation to you to announce or introduce the Beta Software and that Intergraph may not introduce a product similar to or compatible with the Beta Software. Accordingly, you acknowledge that any research or development that you perform regarding the Beta Software or any product associated with the Beta Software is done entirely at your own risk. During the term of this EULA, if requested by Intergraph, you will provide feedback to Intergraph regarding Beta Testing, including error or bug reports. Upon receipt of a later unreleased version of Beta Software or release by Intergraph of a publicly released commercial version of the SOFTWARE PRODUCT, you agree to return or permanently destroy all earlier Beta Software received from Intergraph. You agree that you will return or destroy all unreleased versions of the Beta Software within thirty (30) days of the completion of Beta Testing when such date is earlier than the date for Intergraph’s first commercial shipment of the publicly released commercial software.
- 7.3. Evaluation Software - Additional Terms.** If the SOFTWARE PRODUCT you have received with this EULA is provided specifically for evaluation purposes (“Evaluation Software”), then the following section applies until such time that you purchase a license of the full retail version of the SOFTWARE PRODUCT. To the extent that any provision in this section is in conflict with any other term or condition in this EULA, this section shall supercede such other terms and conditions with respect to the Evaluation Software, but only to the extent necessary to resolve the conflict. **You may use the Evaluation Software only for evaluation and testing and not for general production use.** You acknowledge that the Evaluation Software may contain limited functionality and/or may function for a limited period of time. Intergraph is licensing the Evaluation Software on an “AS-IS” basis, solely for your evaluation to assist in your purchase decision. If the Evaluation Software is a timeout version, then the program will terminate operation after a designated period of time following installation (the “Time Out Date”). Upon such Time Out Date, the Evaluation Software license will cease operation and you will not be able to use the SOFTWARE PRODUCT, unless you purchase a license for a full retail version of the SOFTWARE PRODUCT. You acknowledge that such Evaluation Software shall cease operation upon the Time Out Date and accordingly, access to any files or output created with such Evaluation Software or any product associated with the Evaluation Software is done entirely at your own risk.
- 7.4. Educational Software Product – Additional Terms.** If the SOFTWARE PRODUCT you have received with this EULA is Educational Software Product (where either an education price is paid for the SOFTWARE PRODUCT, or the SOFTWARE PRODUCT is received by virtue of your participation in an Intergraph program designed for educational or research institutions, or is received through an education grant from Intergraph), you are not entitled to use the SOFTWARE PRODUCT unless you qualify in your jurisdiction as an Educational End User. **You may use the Educational Software Product only for educational and research purposes.** Commercial and general production use of Educational Software Products is specifically prohibited. Additional terms and conditions, as well as the definition of an Educational End User, are detailed in Intergraph’s Education Policy which is available from Intergraph upon request.
- 7.5. ImageStation and Geospatial SDI Software – Additional Terms.** Some SOFTWARE PRODUCTS of the ImageStation and Geospatial SDI product families contain one or more dynamic link libraries (DLLs) that were built at least partially from open source code subject to the Code Project Open License (CPOL) 1.02 which may be found at . By installing and using these SOFTWARE PRODUCTS, you agree that the terms of the CPOL license apply to the portions of such DLLs built with CPOL-licensed open source code.
- 7.6. ECW Browser Plug-in – Additional Terms.** The Enhanced Compression Wavelet (ECW) browser plug-in SOFTWARE PRODUCT (“Browser Plug-in”) is designed to be used as a browser plug-in to view, within the Microsoft Internet Explorer, Google Chrome and Mozilla Firefox browsers (the “Browsers”), images created using ECW image technology. Browsers are not included with the Browser Plug-in. You may make and install as many copies of the Browser Plug-in as you need, as plug-ins to lawfully licensed Browsers on computers that you own or control. If you have a valid license to use Intergraph Enhanced Compression Wavelet (ECWP) server SOFTWARE PRODUCT (“ECWP Server Software”), you may also distribute copies of the Browser Plug-in to others whom you wish to authorize to access images residing on your ECWP server, provided you include this EULA with the distributed copies. All copies of the Browser Plug-in authorized as described herein are considered to be authorized copies. You may install and use the Browser Plug-in only to enable the Browsers to display images that are

created with ECW image technology, and that are accessed via your licensed ECWP Server Software. The Browser Plug-in is licensed only for research, commercial, governmental, and educational purposes and is not licensed, and shall not be used, for personal, family, or household purposes.

8.0. AAIC and RINAV - Limits on use. Licensee may not use a single license of AAIC or RINAV for more than four (4) simultaneous jobs. Licensees desiring to execute AAIC or RINAV simultaneously on more than four (4) cores may purchase additional licenses.

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**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Neil Gullickson, Planning Development Manager
Date: 01/14/2015
Meeting Date: 01/20/2015



TITLE:

Consideration and Approval of an Amendment to Settlement and Release Agreement: Canyon Del Rio.

RECOMMENDED ACTION:

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

Policy Decision or Reason for Action:

In 2008, CDR filed suit against the City of Flagstaff in Coconino County Superior Court seeking declaratory relief, monetary damages, and injunctive relief relative to CDR property. This suit relates to the appropriate Zoning Code to be used to allow CDR to proceed to plan and develop its property.

In 2010, the City of Flagstaff filed suit against CDR in Maricopa County Superior Court seeking monetary damages relating to CDR property; CDR filed counter claims. This suit relates to CDR reimbursing the City for past improvements to Butler Avenue.

In 2013, the Council reviewed and approved a Settlement and Release Agreement. The agreement outlined the development review process forward, including proposals for new zoning districts, review process, disposition of the pending lawsuits, assurance for payment of monetary damages and would toll the two law suits.

Both lawsuits remain tolled and are still pending.

If the Council approves this Amendment to Settlement and Release Agreement, the existing Notice of Tentative Settlement and Stipulation to Stay Action will remain active.

Subsidiary Decisions Points:

There are no additional decision points relating to this Amendment.

Financial Impact:

The funds currently held in an escrow account will be released. The payment of these funds will be secured by promissory note and Deed of Trust.

Release of the funds in the escrow account will require the payment of \$21,861.10 impact analysis review fees.

Connection to Council Goal and/or Regional Plan:

COUNCIL GOALS:

1. Effective governance

Has There Been Previous Council Decision on This:

Yes, Council approved the initial Settlement and Release Agreement on May 7, 2013.

Options and Alternatives:

Council may choose to either modify or deny the Amendment to Settlement and Release Agreement.

If the agreement is denied, the applicant may choose not to move forward with the entitlement application. In which case, both the Coconino and Maricopa County lawsuits may be revived.

Community Involvement:

Inform

Attachments: Settlement Agreement
 CDR.Deed of Trust
 CDR.Promissory Note
 CDR.Exhibits

AMENDMENT TO SETTLEMENT AND RELEASE AGREEMENT

This Amendment to Settlement and Release Agreement (“Amendment”) is made and entered into as of this ____ day of _____, 2014 (“Execution Date”), by and between: Canyon del Rio Investors, LLC, an Arizona Limited Liability Company (“CDRI”) and the City of Flagstaff, an Arizona Municipal Corporation (“City”).

CDRI and the City will be referred to collectively in this Amendment as “Parties, or each individual as a “Party”.

RECITALS

- A. On May 9, 2013, CDRI and the City entered into a Settlement and Release Agreement, a true and correct copy of which is attached hereto as “**Exhibit A**” (“Settlement Agreement”).
- B. CDRI and the City wish to amend the Settlement Agreement as set forth herein. All defined terms not specifically identified herein shall bear the meaning set forth in the Settlement Agreement.
- C. All terms of the Settlement Agreement remain in full force and effect except for those terms specifically amended herein.

In consideration of the mutual representations, warranties, covenants, agreements and releases set forth in the Settlement and Release Agreement as amended herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. The foregoing Recitals are incorporated as part of this Amendment. The Parties agree that the Recitals are contractual and not mere Recitals.
- 2. The “CDR Property” as described in the Settlement Agreement is amended to the “CDRI Property” in the Settlement Agreement and this Amendment.
- 3. Paragraph 2(a) of the Settlement Agreement (“Specific Plan Amendment”) is deleted and all further references in the Settlement Agreement to the Amended 1984 Plan and the MPRA are deleted because (a) the Parties concur the Specific Plan Amendment is not needed for Approval of the Zoning Application and (b) certain provisions of the 1984 Specific Plan, as agreed upon by the Parties, will be included in the Development Agreement. The removal of references to the proposed “Amended 1984 Plan” and/or to amending the 1984 Specific Plan do not terminate or effect the 1984 Specific Plan.

4. After the Execution Date of the Settlement Agreement (May 9, 2013), the City Council Approved (January 14, 2014) and the Flagstaff Voters Ratified (May 20, 2014) the Flagstaff Regional Plan 2030 (“Current Regional Plan”). The Parties concur the Zoning Application is in conformance with the Current Regional Plan and, accordingly, the Regional Plan Amendment is no longer needed. Therefore, paragraph 2(c) of the Settlement Agreement (“Regional Plan Amendment”) is deleted.
5. Paragraph 2(d) of the Settlement Agreement (“Zoning Application”) is modified to provide the Zoning Application was submitted and reviewed by the City. The last sentence of Section 2(d) of the Settlement Agreement is deleted and replaced with the following: The Parties agree to convert the Zoning Application to a “Rezone with Concept Plan” Application which will be submitted by CDRI and processed by the City, this along with the Development Agreement and the Block Plat referred to in Section 3(b) are the “Entitlement Documents.”
6. Paragraph 2(e) of the Settlement Agreement (“Timing and Procedures”) is deleted and replaced by the following: The Parties agree to develop a timeframe for the review of the Entitlements by the Planning and Zoning Commission and Council, as appropriate, once CDRI has completed its impact analyses and those analyses have been accepted as complete by the City. The Parties further agree to schedule and Notice the Entitlements Applications for Hearing by the Planning Commission and City Council for dates that are as expeditious as is reasonably and legally possible once the Entitlements Applications and associated supportive materials (such as, but not limited to, the impact analyses) are accepted as complete by the City and the on and off-site mitigations identified and attributable to CDR are documented in the development agreement. Attached as **Exhibit B** is a Timeline for Canyon del Rio. This Timeline is an estimation of reasonable, expeditious processing by the City. Both Parties recognize that circumstances unforeseen by either Party or both Parties may make the indicated timeframes impossible or unreasonable for the City and/or CDRI to accommodate whereupon the Parties will continue in good faith with their reasonable, expeditious processing of the Entitlements Applications through completion of the Entitlements processes.
7. Paragraph 3(b) of the Settlement Agreement (“Block Plat Approval”) and other references in the Settlement Agreement to Block Plats are amended to confirm that one Block Plat (not multiple Block Plats) will be processed for the approximately 262 acre CDRI Property.

8. Paragraph 3(c) of the Settlement Agreement (“Zoning Confirmation”) is amended to delete all references to “UC” (because that Zoning District no longer exists in the City), to replace all such references to “UC” with “HC” and all further references in the Settlement Agreement to the UC Zoning District and the “UC Parcels” are replaced with the HC Zoning District and the “HC Parcels”.
9. Paragraph 3(l) of the Settlement Agreement (“Parcel O&P Sale”) is amended to add (in the first sentence) “and/or school” after “church” and to add (also in the first sentence) “(if necessary)” after “the City’s CUP process.”
10. Paragraph 4 of the Settlement Agreement (“Settlement Implementation”) is amended to delete references to the Deposit (pursuant to paragraph 11 of this Amendment).
11. Paragraph 5 of the Settlement Agreement (“Existing Butler Avenue Assessment”) is deleted and replaced with the following:

Effective upon the Effective Date of this Amendment, the Parties hereby terminate the Account and hereby mutually instruct the Escrow Agent to disburse within ten (10) days of the Effective Date of this Amendment to the City of Flagstaff the amount of \$21,861.00 (\$11,387 (Traffic) + \$10,474 (WSIA)) for currently due fees. All funds remaining (including accrued interest) in the Account (less Escrow Agent’s fees, if any) shall be disbursed to CDRI. The Parties further agree:

- a. All fees (if any) charged by Escrow Agent in connection with the Account shall be CDRI’s (not the City’s) responsibility and shall be deducted from the Account prior to disbursement of remaining funds in the Account to CDRI.
- b. Without prejudice or effect (for or against) either Party’s legal, factual and/or procedural position in the Maricopa County Action, the Maricopa County Action shall remain pending and stayed until below paragraph 11.b.1, 2 and/or 3 is satisfied.
 1. If the Zoning Application is Approved and Effective, the Development Agreement is Approved, Effective and Recorded, and the Block Plat is Approved, Effective and Recorded (collectively the “Approved and Effective Entitlements”), then CDRI shall pay to the City the sum of \$123,781.50 representing the remaining amount of the Butler Avenue assessment at issue in the Maricopa County Action. Attached to this Amendment as Exhibits C, D and E are: 1) a fully executed Promissory Note for \$123,781.50 secured by; 2) a Deed of Trust which places the City of Flagstaff in first priority position; and 3) a Deed of Release and Reconveyance. Exhibit D

(Deed of Trust) may be recorded by the City in the event that CDRI does not pay the sum of \$123,781.50 within thirty days of the effective date of the last adopted Entitlement Document and CDRI hereby agrees to pay the property taxes then due on the CDR Land Investors I, LLC Property as defined in the Deed of Trust (Exhibit D hereto) prior to the City's Recordation of the Deed of Trust. If Exhibit D (Deed of Trust) is recorded then the City shall Record E (Deed of Release and Reconveyance) upon either:

(i) CDRI paying the sum of \$123,781.50 to the City; or

(ii) A final determination in the Maricopa County Action that CDRI is not required to pay the \$123,781.50 to the City.

2. Contingent on CDRI having submitted or re-submitted (as applicable) its Entitlements Applications (including updated impact analyses) by January 27, 2015 or at such time before or after as CDRI submits such Applications ("Application Submittal Date") then City Staff and CDRI representatives shall, within the spirit of above paragraph 6 of this Amendment, exercise good faith and diligent efforts to mutually resolve (to the extent reasonably possible) outstanding Staff Comments on the Entitlements Applications whereupon City Staff shall provide clearance for the Entitlements Applications to be Noticed, Advertised and Posted for Planning Commission and City Council Hearings. If CDRI determines that the Entitlements Applications have not been or will not be timely reviewed and processed by City Staff and/or will not be heard by the Planning Commission and City Council within the spirit of above paragraph 6 of this Amendment, then CDRI may elect to defer pursuit of the Entitlements and re-activate the Maricopa County Action whereby, upon re-activation of such Action, the Promissory Note for \$123,781.50 and the Deed of Trust securing that Note are void.

3. If the Council does not approve the Zoning Application, Development Agreement and Block Plat after the hearings, then the Promissory Note for \$123,781.50 and the Deed of Trust securing that Note are void and the Maricopa County Action shall be reinstated.

12. Paragraph 6 of the Settlement Agreement ("Disposition of the Lawsuits") is amended as necessary to provide that, pursuant to Paragraph 11 of this Amendment, the Coconino

1/15/2015

County Action may be Dismissed prior to Dismissal of the Maricopa County Action because:

- a. The Coconino County Action will be Dismissed within ten (10) days of achieving Approved and Effective Entitlements; provided, however,
- b. The Maricopa County Action will not be Dismissed until either:
 - 1. The \$123,781.50 is paid to the City pursuant to Paragraph 11(b)(1) of this Amendment, or
 - 2. Disposition of the Maricopa County Action is finally decided by the Court pursuant to Paragraph 11(b)(2) of this Amendment.

The Parties have executed this Amendment as of the Execution Date.

CANYON DEL RIO INVESTORS, LLC

CITY OF FLAGSTAFF

By: _____
Robert M. Semple, Manager

By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT BY COUNSEL:

CITY OF FLAGSTAFF

By: _____
Michelle D'Andrea
City Attorney

ATTEST:

By: _____
City Clerk

1/15/2015

BURCH & CRACCHIOLO, P.A.

By: _____
EDWIN C. BULL
Attorney for Canyon del Rio Investors, LLC

ACKNOWLEDGED AND AGREED BY CDRI SUBSIDIARIES:

CDR LAND INVESTORS I, LLC,
an Arizona limited liability company

By: _____
Robert M. Semple, Manager

CDR LAND INVESTORS II, LLC,
an Arizona limited liability company

By: _____
Robert M. Semple, Manager

CDR LAND INVESTORS III, LLC,
an Arizona limited liability company

By: _____
Robert M. Semple, Manager

When recorded, return to:
City Clerk-City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001

DEED OF TRUST

Borrower: CDR Land Investors I, LLC
2700 N. Central Ave.
Ninth Floor
Phoenix, AZ 85004

Lender: City of Flagstaff, an Arizona municipal corporation
211 West Aspen Avenue
Flagstaff, AZ 86001

Date: January 6, 2015

Trustee: Pioneer Title Agency, Inc.
112 North Elden Street
Flagstaff, AZ 86001
Attn: Marcia Brown
Chief Title Officer

PROPERTY in Coconino County, State of Arizona, described in the attached **Exhibit "A"**, Legal Description of the Property (the "Property").

THIS DEED OF TRUST is made among the Borrower, Lender and the Trustee named above (singularly, "Party" and collectively, the "Parties"). Borrower irrevocably grants and conveys to Trustee in trust, with power of sale, the above-described real property and all buildings, improvements and fixtures located on the Property or erected on the Property after execution of this Deed of Trust; subject, however, to covenants, conditions, restrictions, rights-of-way, and easements of record.

THIS DEED OF TRUST IS MADE FOR THE PURPOSE OF SECURING:

- A. Performance of each agreement of Borrower contained in this Deed of Trust; and
- B. Payment of the indebtedness evidenced by a Promissory Note of the date of this Deed, and any extension or renewal thereof, in the principal sum of One Hundred Twenty Three Thousand Seven Hundred Eighty One and 50/100 Dollars (\$123,781.50) executed by Borrower in favor of Lender.

1. Borrower's Obligations.

1.1 Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall keep the Property in good condition and repair; comply with all laws affecting the Property; not commit or permit waste of the Property; not commit, suffer or permit any act upon the Property in violation of law; and do all other acts, which from the character or use of the Property, may be reasonably necessary.

1.1.1 In addition to all other obligation to maintain, preserve and care for the Property set forth in this Deed of Trust or imposed by law or equity, Borrower shall maintain the Property in a clean and reasonable condition and shall remove all debris, salvage, junk cars and trash on, in or around the Property.

1.1.2 Violation of any provision of Section 1.1.1 shall be deemed a default of the Note and Deed of Trust provided that Lender shall first give notice to Borrower of the default and Borrower shall have failed to cure the default within thirty (30) days of the receipt of the notice, or if the default is not capable of being cured within such thirty (30) day period, Borrower fails to make good faith efforts to cure the default.

1.2 Claims. Borrower shall appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Lender or Trustee and to pay all costs and expenses of Lender and Trustee, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Lender or Trustee may appear or be named and in any suit brought by Lender to foreclose this Deed of Trust.

1.3 Charges; Liens. Except for 2014 real property taxes pertaining to the Property in the approximate amount of \$21,000 as is addressed in Paragraph 11.b.1 of the Amendment to Settlement and Release Agreement entered into by the parties, Borrower shall pay before delinquent all taxes and assessments affecting the Property when due, all encumbrances, charges and liens, with interest, on the Property or any part of the Property which appear to be prior or superior to this Deed of Trust, and any and all other amounts that may become payable with respect to the Property; all costs, fees and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance; and all lawful charges, costs, and expenses in the event of reinstatement, or following default, of this Deed of Trust or the obligations secured by this Deed.

1.3.1 Should Borrower fail to make any payment or to do any act as required by this Deed of Trust, then Lender or Trustee, without obligation to do so and without notice to, or demand upon, Borrower and without releasing Borrower from any obligation of this Deed of Trust, may make or do the same in such manner and to such extent as either may deem necessary to protect the security of this Deed of Trust. Lender or Trustee are authorized to enter upon the Property for such purposes; appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Lender or Trustee; pay,

purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior to this Deed of Trust; and in exercising any such powers, pay necessary expenses, employ counsel, and pay counsel's reasonable fees.

1.4 Lender's and Trustee's Expenses. Borrower shall pay immediately and without demand all sums expended by Lender or Trustee pursuant to the provisions of this Deed of Trust. Any amounts so paid by Lender or Trustee shall become part of the debt secured by this Deed of Trust, and a lien on the Property, or shall become immediately due and payable, at option of Lender or Trustee.

2. General Terms and Conditions.

2.1 Condemnation. The Parties agree that any award of damages in connection with any condemnation, or any such taking, or for injury to the Property by reason of public use or for damages for private trespass or injury to the Property, is assigned and shall be paid to Lender as further security for all obligations secured by this Deed of Trust (reserving to the Borrower, however, the right to sue for such award of damages and for the ownership thereof subject to this Deed of Trust), and, upon receipt of such moneys, Lender may hold the same as such further security or apply or release the same in the same manner and with the same effect as provided for in Section 1.2 regarding disposition of proceeds of fire or other insurance.

2.2 Time is of the Essence. The Parties agree that time is of the essence of this Deed of Trust, and that by accepting payment of any sum secured hereby after its due date, Lender does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

2.3 Release and Reconveyance. Upon written request of Lender stating that all sums secured by this Deed of Trust have been paid, and upon surrender of this Deed of Trust and the Promissory Note to Trustee for cancellation, and upon payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the Property then held under this Deed of Trust. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

2.4 Default. Upon default by Borrower in the payment of any indebtedness secured by this Deed of Trust, Lender may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice setting forth the nature of the default, and of election to cause to be sold the Property under this Deed of Trust. Lender also shall deposit with Trustee this Deed of Trust, the Promissory Note and all documents evidencing expenditures secured by this Deed of Trust. A default under the Promissory Note shall constitute a default under this Deed of Trust.

2.4.1 Trustee shall record and give notice of Trustee's sale and shall sell the Property at public auction, all in the manner required by law. Any persons, including Borrower, Trustee or Lender, may purchase at such sale. Trustee shall deliver to

such purchaser its Deed conveying the Property so sold, but without any covenant or warranty, express or implied. Borrower requests that a copy of any notice of Trustee's sale under this section be mailed to Borrower at the address given by Borrower in this Deed of Trust.

2.4.2 After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale in the manner provided by law. To the extent permitted by law, an action may be maintained by Lender to recover a deficiency judgment for any balance due under this Deed of Trust.

2.4.3 In lieu of sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real Property. Lender shall also have all other rights and remedies available to it in this Deed of Trust and at law or in equity. All rights and remedies shall be cumulative.

2.5 Resignation of Trustee; Successor Trustee. Trustee may resign by mailing or delivering notice of resignation to Lender and Borrower. Lender may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties.

2.6 Words of Gender and Number. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

2.7 Acceptance of Trust. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is recorded in the records of the Coconino County Recorder. Trustee is not obligated to notify any Party of a pending sale under any other Deed of Trust or of any action or proceeding in which Borrower, Lender or Trustee shall be a party unless brought by Trustee.

2.8 Trustee's Duties. The trust relationship created by this Deed of Trust is limited solely to the creation and enforcement of a security interest in real property. All of Trustee's duties, whether fiduciary or otherwise, are strictly limited to those duties imposed by this instrument and A.R.S. § 33-801 *et sequentia*, and no additional duties, burdens or responsibilities are or shall be placed on Trustee.

2.9 Successors. This Deed of Trust applies to, inures to the benefit of and binds all Parties, their heirs, legatees, devisees, administrators, executors, successors and assigns.

2.11 Notices. All notices required under this Deed of Trust shall be given to the Party entitled to the notice by personal delivery or by certified mail, return receipt requested, addressed to the address of the receiving Party set forth in this Deed of Trust (or any new address of which the Party giving notice has been notified in writing). Any such notice shall be deemed received on receipt. A copy of any notices sent to Borrower shall also be sent to council for Borrower either by personal delivery or by certified mail, return receipt requested, addressed as follows:

Burch & Cracchiolo, PA
702 E. Osborn Road, Suite 200
Phoenix, AZ 85014
Attention Ed Bull, Esq.

2.12 Waiver. Acceptance by Lender of any performance which does not comply strictly with the terms of this Deed of Trust shall not be deemed to be a waiver or bar of any right of Lender, nor a release of any obligation of the Borrower to Lender.

Signature Page

Borrower's Signature: CDR LAND INVESTORS I, LLC

By _____ Date: _____
Its Authorized Representative

STATE OF ARIZONA)
) SS.
COUNTY OF COCONINO)

I, Dorris Hester Wood, a Notary Public in and for said County and State, do hereby certify that _____, personally known or satisfactorily proven to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this ____ day of _____, 2015.

Dorris Hester Wood
Notary Public
My Commission Expires: May 10, 2017

**Exhibit A
To
Deed of Trust
(Legal Description)**

The following is a legal description of two parcels of land located in Section 24, Township 21 North, Range 7 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, as shown on a ALTA/ACSM Land Title as recorded in Book 20, Page 45 in the Coconino County Recorder's Office, more particularly described as follows:

Parcel 1-A:

Beginning at the Northwest corner of Section 24, from which the North Quarter corner of Section 24 bears North 89°34'20" East a distance of 2655.62 feet (measured and Basis of Bearings for this description);

Thence South 00°43'05" East along the west line of Section 24, a distance of 799.67 feet to a point on the south Right of Way line of Butler Avenue, from which a found 1965 B.L.M. brass capped monument at the east Quarter corner bears South 00°43'05" East, a distance of 1845.86 feet;

Thence leaving said west line, North 70°10'43" East, along said Right of Way line, a distance of 230.49 feet to the TRUE POINT OF BEGINNING;

Thence continuing along said Right of Way line, North 70°10'43" East, a distance of 374.33 feet to a point herein referred to as Point "A";

Thence leaving said Right of Way line South 10°03'15" West, a distance of 621.33 feet;

Thence South 82°58'09" West, a distance of 101.76 feet to the beginning of a curve concave to the west having a radius of 1800.00 feet and a central angle of 11°13'12", also being subtended by a chord which bears North 14°12'41" West, a distance of 351.92 feet;

Thence northerly along said curve, a distance of 352.48 feet;

Thence North 19°49'17" West tangent to said curve, a distance of 166.00 feet to the TRUE POINT OF BEGINNING.

Containing 2.80 Acres, more or less.

Parcel 1-B:

Beginning at the above referenced Point "A";

Thence North 70°10'43" East along the southerly Right of Way line of Butler Ave., a distance of 98.27 feet to the beginning of a curve tangent to said line;

Thence easterly a distance of 21.78 feet along the curve concave to the south, having a radius of 666.00 feet and a central angle of 01°52'25" to the TRUE POINT OF BEGINNING;

Thence continuing along said Right of Way line, a distance of 266.94 feet along the curve concave to the south, having a central angle of 22°57'54";

Thence South 84°58'58" East tangent to said curve, a distance of 692.72 feet;

Thence leaving the southerly Right of Way line of Butler Ave., South 39°59'30" East, a distance of 21.22 feet;

Thence South 04°59'59" West, a distance of 41.02 feet to the beginning of a curve tangent to said line;

Thence southerly and southeasterly a distance of 468.63 feet along the curve concave to the east, having a radius of 659.01 feet and a central angle of 40°44'38";

Thence South 35°44'39" East tangent to said curve, a distance of 310.29 feet to the beginning of a curve tangent to said line;

Thence southeasterly and southerly a distance of 711.47 feet along the curve concave to the west, having a radius of 1444.03 feet and a central angle of 28°13'46";

Thence South 07°31'08" East, a distance of 65.73 feet to the beginning of a curve concave to the east having a radius of 656.00 feet and a central angle of 28°12'16", also being subtended by a chord which bears South 21°37'04" East, a distance of 319.67 feet;

Thence southerly and southeasterly along said curve, a distance of 322.92 feet;

Thence South 35°43'12" East tangent to said curve, a distance of 206.51 feet;

Thence North 81°41'19" West, a distance of 717.59 feet;

Thence North 07°15'36" West, a distance of 298.88 feet;

Thence North 06°59'12" West, a distance of 147.05 feet;

Thence North 11°48'42" West, a distance of 67.96 feet;

Thence North 16°09'28" West, a distance of 75.16 feet;

Thence North 17°37'04" West, a distance of 108.34 feet;

Thence North 17°24'24" West, a distance of 86.37 feet;

Thence North 21°03'10" West, a distance of 96.82 feet;

Thence North 20°59'59" West, a distance of 232.95 feet;

Thence North 21°18'13" West, a distance of 181.61 feet to the beginning of a curve concave to the south having a radius of 500.00 feet and a central angle of 32°45'50", also being subtended by a chord which bears North 74°12'08" West, a distance of 282.04 feet;

Thence northwesterly and westerly along said curve, a distance of 285.92 feet;

Thence North 20°27'19" West, a distance of 329.34 feet;

Thence North 86°29'57" West, a distance of 108.30 feet;

Thence North 45°57'58" West, a distance of 326.95 feet to the TRUE POINT OF BEGINNING.

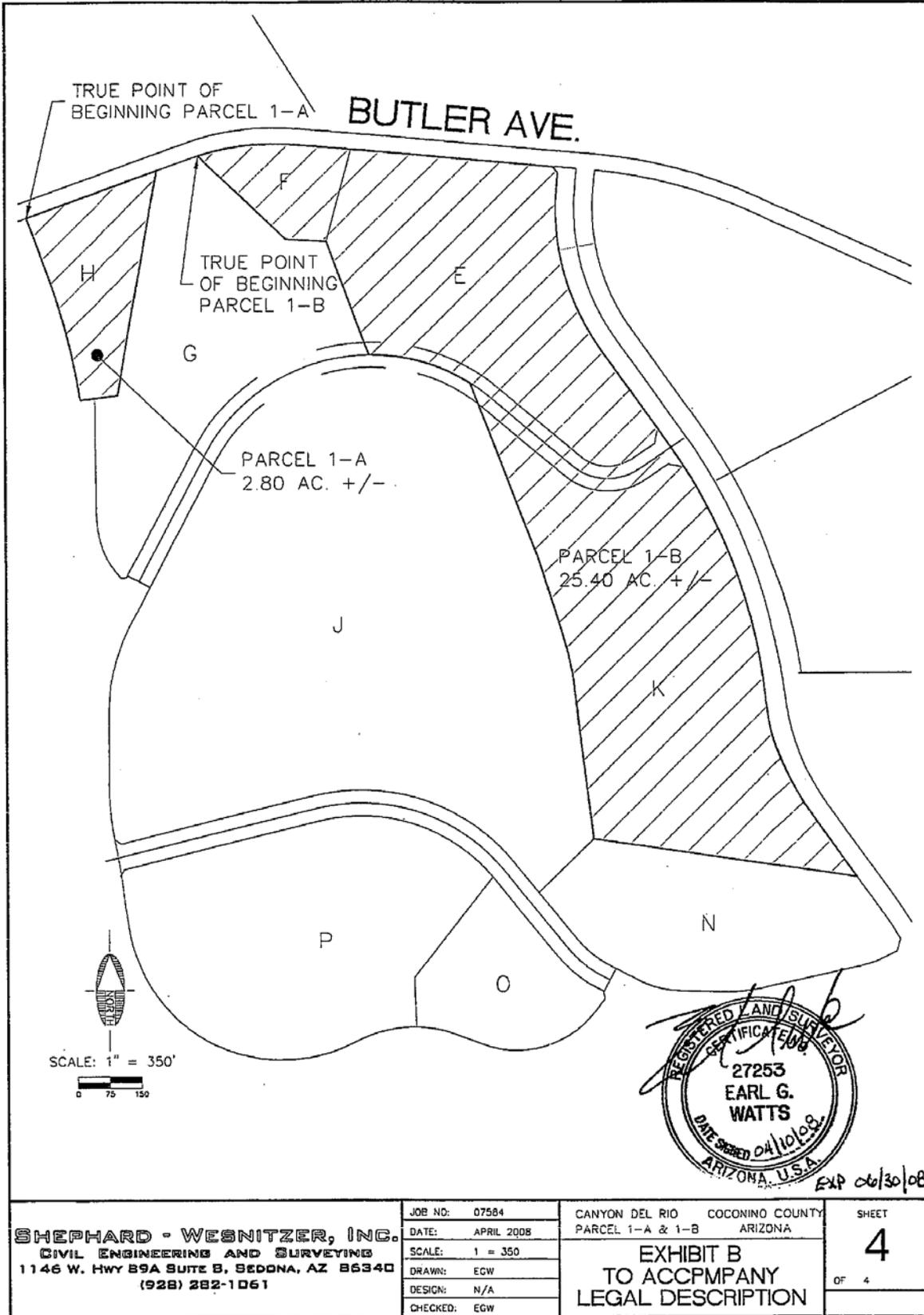
Containing 25.40 Acres, more or less.

The purpose of this preliminary legal description is to describe a potential parcel configuration. No survey was conducted on the above described parcel of land and no monuments were set.

Upon final determination of new boundary line configuration, a proper boundary survey will be conducted, monuments will be set and a final legal description will be prepared for recording.

See Exhibit B attached to and made a part hereof.

**Exhibit B
To
Deed of Trust**



SHEPARD - WESNITZER, INC. CIVIL ENGINEERING AND SURVEYING 1146 W. HWY 89A SUITE B, SEDONA, AZ 86340 (928) 282-1061	JOB NO: 07584	CANYON DEL RIO COCONINO COUNTY	SHEET
	DATE: APRIL 2008	PARCEL 1-A & 1-B ARIZONA	4
	SCALE: 1 = 350	EXHIBIT B TO ACCOMPANY LEGAL DESCRIPTION	OF 4
	DRAWN: ECW		
	DESIGN: N/A		
CHECKED: ECW			

When recorded, mail to:
City Clerk – City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001

PROMISSORY (NO INTEREST) NOTE

Principal Amount: **\$123,781.50**
Date: **As of January 6, 2015**

For value received, CDR Land Investors I, LLC, an Arizona limited liability company whose address is: 2700 N. Central Ave., Ninth Floor, Phoenix, AZ 85004 ("Borrower"), promises to pay to the order of the City of Flagstaff, an Arizona municipality, ("Lender"), in lawful money of the United States, the principal sum of One Hundred Twenty Three Thousand Seven Hundred Eighty One and 50/100 Dollars (\$123,781.50) without interest, payable as follows:

1. Security for Note. This Note will be secured by a Deed of Trust on certain real property located in Coconino County, Arizona and described in Exhibit "A" to the Deed of Trust (the "Property") which may be recorded by the City in the event that CDRI does not pay the principal amount of this Note within thirty (30) days of the effective date of the last adopted Entitlement Document.
2. Settlement and Release Agreement. Borrower and Lender are parties to that certain Settlement and Release Agreement dated May 9, 2013 (the "Agreement") and to that certain Amendment to Settlement and Release Agreement dated as of January 6, 2015 (the "Amendment"). The Agreement as amended by the Amendment is collectively referred to herein as the ("Settlement Agreement"). All capitalized terms used herein and not specifically defined shall have the meanings ascribed to such terms in the Settlement Agreement. The principal amount of this Note is based upon the remaining outstanding amount of the Butler Avenue assessment at issue in the Maricopa County Action.
3. Terms of Repayment; Duration. The principal amount of this Note shall be due and payable in full thirty (30) days following the the effective date of the last adopted Entitlement Document. If the City Council does not achieve Final Approval of the Entitlements after a hearing before City Council, then this Note and the Deed of Trust shall be terminated and deemed null and void and of no further force or effect, and the parties shall resolve the dispute regarding the Butler Avenue assessemnt through the re-activation of the Maricopa County Action. If CDRI determines that the Entitlement Applications have not been or will not be timely reviewed and processed by City Staff and/or will not be heard by the Planning

Commission and City Council within the spirit of paragraph 6 of the Amendment, then CDRI may elect to defer pursuit of the Entitlements and re-activate the Maricopa County Action whereby, upon re-activation of such Action, this Note and the Deed of Trust securing this Note shall be terminated and deemed null and void and of no further force or effect, and the parties shall resolve the dispute regarding the Butler Avenue assessemnt through the re-activation of the Maricopa County Action.

5. Prepayment and Controlling Law. This Note can be prepaid in whole or in part at any time without prepayment penalty. This Note shall be governed and construed in accordance with the laws of the State of Arizona, except to the extent that such laws are preempted by Federal law or regulation, in which case such Federal law or regulation shall govern.

6. No Release or Waiver; Payment of Costs. Borrower hereby agrees:

6.1 That no extensions and renewals of this Note, from time to time, without notice, shall constitute or be deemed a release of any obligation of any of the Borrower to Lender;

6.2 That the acceptance by Lender of any performance which does not comply strictly with the terms of this Note shall not be deemed to be a waiver or bar of any right of Lender, nor a release of any obligation of the Borrower to Lender;

6.3 That Borrower will pay Lender, without demand, any and all costs, expenses and fees incurred before, after, or irrespective of whether suit is commenced if action is required by the Lender to enforce this Note.

6.4 For purposes of this Note, costs and expenses payable under the Deed of Trust or incurred as a result of filing by or against the Borrower (or any said surety or guarantor) of any proceeding under any chapter of the Bankruptcy Code, or any similar state or Federal law relating to Bankruptcy, insolvency or receivership shall be borne by Borrower as permitted under applicable law. In the event suit is brought to enforce payment of this Note, such costs, expenses and fees and all other issues in such suit shall be payable by Borrower as permitted under applicable law.

7. Default. Should default be made in the payment of principal, as above provided, or other default occur in the performance of or compliance with any of the covenants or condition of said Deed of Trust, then in any such event Lender may, in addition to such other remedies or combination of remedies Lender may have under law and equity, exercise its remedy of non-judicial sale by the trustee in accordance with the Arizona Deed of Trust Act and the Deed of Trust; provided, in the event Lender elects to exercise the power of sale by the trustee, in order to reinstate the Deed of Trust, the Borrower need only pay the amount of his default under this Note.

8. Obligations are Joint and Several. Should this Note be signed by more than one person, all of the obligations herein contained shall be the joint and several obligations of each signer hereof.

9. Amendments. This Note may not be changed orally, but by on agreement in writing and signed by the duly authorized representative of the party against whom enforcement of any waiver, change, modification of discharge is sought.

10. No Deficiency Judgment. THIS NOTE IS A NON RECOURSE NOTE, SO THAT IN THE EVENT OF ANY DEFAULT, THE LENDER'S SOLE REMEDY SHALL BE TO ENFORCE THE DEED OF TRUST AND REALIZE ON THE SECURITY THROUGH JUDICIAL FORECLOSURE, POWER OF SALE, OR OTHER LAWFUL MEANS OF ENFORCING AGAINST THE SECURITY. HOWEVER, NO DEFICIENCY JUDGMENT SHALL BE TAKEN AGAINST BORROWER.

CDR LAND INVESTORS I, LLC

By: _____
Its Authorized Representative

Date

EXHIBIT A

ORIGINAL

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT ("Agreement") is made and entered into as of the 7th day of May, 2013 ("Execution Date"), by and between: (i) CANYON DEL RIO INVESTORS, LLC, an Arizona limited liability company ("CDR"); and (ii) THE CITY OF FLAGSTAFF, an Arizona municipal corporation ("City"). CDR and the City will be referred to collectively in the Agreement as the "parties," or each individually as a "party".

RECITALS

A. In May 2002, CDR purchased a parcel of real property ("Initial Property") from the Arizona State Land Department ("ASLD"), at public auction. The Initial Property is located within the City.

B. Between 2002 and 2006, CDR sold portions of the Initial Property to third party purchasers. That portion of the Initial Property held by CDR (or CDR's wholly owned subsidiaries) as of the Execution Date ("CDR Property") is described in Table Four, below.

C. In 2008, CDR filed suit against the City in Coconino County Superior Court, CV 2008-0245 ("Coconino County Action"), seeking, *inter alia*, declaratory relief, monetary damages, and injunctive relief relating to CDR Property.

D. In 2010, the City filed suit against CDR in Maricopa County Superior Court, CV 2010-017142, seeking, *inter alia*, monetary damages relating to CDR Property, and CDR filed Counterclaims (collectively, "Maricopa County Action").

E. The Coconino County Action and the Maricopa County Action (collectively, "Lawsuits") have not been resolved and remain pending.

F. Each party to this Agreement has made a careful and independent investigation into all of the facts deemed by such party to be material. Because of the expense and uncertain outcome of any litigation involving the claims asserted in the Lawsuits, the parties desire to enter into this Agreement in order to forever resolve all past, and present disputes or claims existing between them which relate to the Lawsuits or the CDR Property.

G. Each party acknowledges this Agreement is the product of arm's length negotiation and the compromise and settlement of disputed claims. The parties further agree and acknowledge that this Agreement is not intended to be, and shall not be construed as, a confession or admission of liability by any party or an admission of any fact. Without

limiting the foregoing, the parties further agree that this Agreement does not manifest an acceptance of the factual or legal positions taken or asserted by the other party in the Lawsuits.

IN CONSIDERATION OF the mutual representations, warranties, covenants, agreements and releases set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Recitals.** The foregoing Recitals are incorporated as a part of this Agreement, and the parties represent and warrant the truth of all that is contained in the Recitals. The parties agree the Recitals are contractual and not mere recitals.

2. **Development of CDR Property.** CDR and the City have agreed to settle and resolve the Lawsuits by implementing a comprehensive zoning and development plan for the CDR Property. CDR and the City shall use their best efforts to negotiate and implement the settlement using the following framework:¹

a. **Specific Plan Amendment.** The Canyon del Rio 1984 Specific Plan ("**1984 Plan**") will be amended as required to make the 1984 Plan compatible and consistent with the terms and provisions of this Agreement and the City's current 2011 zoning code ("**2011 Zoning Code**"). The 1984 Plan, as amended ("**Amended 1984 Plan**"), will be re-confirmed as the applicable planning document governing the development on those portions of the Canyon del Rio project currently owned by CDR ("**CDR Property**"), in conjunction with the MRPA and the DA. CDR, through the adoption of the Amended 1984 Plan, will be identified as the successor to the ASLD with respect to the CDR Property. In case of conflict between the Amended 1984 Plan and the 2011 Zoning Code, the Amended 1984 Plan will control as to the non-rezoned parcels identified in Table Four, and the 2011 Zoning Code will control as to the rezoned parcels identified in Table Four. In all cases, the terms and conditions of this Agreement will control.

b. **Development Agreement.** The Development Agreement ("**DA**") will be a separate component of the Entitlement Documents and will identify physical and financial responsibilities for specific and necessary public improvements, project phasing, and other related items, as outlined in this Agreement.

¹ The Amended 1984 Plan, the Zoning Application, the DA, the MRPA and the Block Plats (all as defined in this Agreement) will be referred to collectively as the "**Entitlement Documents**."

c. **Regional Plan Amendment.** A Minor Regional Plan Amendment ("**MRPA**") that modifies the existing Regional Plan as required to accommodate the Amended 1984 Plan, the DA and the Final Zoning will be processed for COF Council action.

d. **Zoning Application.** An application and supporting documentation ("**Zoning Application**") which proposes to implement the Final Zoning will be submitted by CDR and processed by the City. The Zoning Application will reflect the terms and conditions set forth in this Agreement, will meet the threshold requirements for a "Large Scale Zoning Map Amendment" and will be processed by the City concurrently with the balance of the Entitlement Documents.

e. **Timing and Procedures.** The DA, the MRPA, the Zoning Application, the Amended 1984 Plan, and all ancillary zoning and land use documents will be completed for submission to the COF Council within 180 days following CDR's formal submission of the rezoning applications. The COF Council will then have 60 days to approve or reject the entire settlement package. The 240 day aggregate period described in the preceding two sentences ("**Final Approval Period**") may be extended by the mutual written agreement of CDR and the City if, notwithstanding the parties' diligent and good faith efforts, additional time is required to complete any required task. If, for any reason, the COF Council has not granted final approval to the entire settlement package within the Final Approval Period (including any extensions), the Settlement Agreement will be null and void and the parties will resolve their disputes through the Lawsuits.

3. **Substantive Provisions of the Entitlement Documents.** The Entitlement Documents, as applicable, will contain and/or incorporate the following concepts and/or provisions:

a. **Resource, Open Space & Easement Requirements.** The forest and slope resources (collectively, "**Resources**") previously calculated by Nasser Turk and Shepard Wesnitzer ("**Resource Report**") may be used by CDR and incorporated in the DA and the Zoning Application and used as the basis for the Resource Report. The Resources may exist in the two "resource banks" and will be allocated by CDR within CDR Property as Parcels are sold and/or developed. This "banking" will allow Resources within residential areas to be transferred and reallocated to other residential areas and, similarly, Resources within commercial areas to be transferred and reallocated to other commercial areas. Accordingly, while Resource allocations for specific Parcels may vary from applicable zoning requirements, the aggregate Resource allocations for the residential and commercial areas within the CDR Property will be consistent with the City's 1991 Zoning Code or the 2011 Zoning Code, at CDR's election, and the resource plan approved as part of the zoning. CDR and the City will incorporate a specific

"Resource Plan" for the CDR Property in the Amended 1984 Plan, MRPA and as part of the Zoning Application, and that Resource Plan will govern resource allocation within the CDR Property. CDR anticipates granting a deed of conservation easement to the Nature Conservancy (or similar non-profit organization) as part of the overall Resource Plan, which may (in CDR's discretion) include the establishment of a public park, open spaces and/or City's trail system. In addition, CDR (or CDR's successors) will grant and/or reconfirm existing and future easements for utilities, drainage, FUTS, etc., which will be included in the final recorded plat for each Parcel within the CDR Property (each, a **"Final Plat"**).

b. **Block Plat Approval.** Subject to the terms and conditions set forth in this Agreement, the Amended 1984 Plan, the Zoning Application and the DA will be based on a block plat concept for the CDR Property, with specific zoning and densities applied to each Parcel. The Block Plats will reflect spine infrastructure and large development tracts (i.e., Parcels). The final Block Plats will be consistent with the structure outlined in this Agreement and the Zoning Application and will be incorporated in the Amended 1984 Plan and, as applicable, the MRPA. The City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with this Agreement and the City's Subdivision Ordinance. As used in this Agreement, the term **"Block Plat"** means plats for the individual Parcels listed in Table Four, below, that are consistent with the City's Subdivision Ordinance, but do not include or reflect internal roadway or utility plans or lot, building or amenity locations.

c. **Zoning Confirmation.** City Staff will support the zoning and, as applicable, the residential densities set forth in the following Table Four, which will be incorporated in the Zoning Application:

Table Four

Parcel	Zoning	Use	Development Units ²
E-1*	UC-Commercial	Office / Retail	N/A
E-2*	UC	Office / Retail	N/A

² Notwithstanding the maximum densities set forth in Table Four, CDR will retain the right to make minor density transfers between/among residential Parcels, provided that any proposed density transfer by CDR complies with the underlying zoning.

	Commercial		
F*	UC-Commercial	Office / Retail	N/A
G*	MR-Med Density	Attached Residential	50
H*	UC-Commercial	Office / Retail	N/A
I	R1-SFR	Detached Residential	50
J-1*	HR-High Density	Attached Residential / Multi-Family/Apartments	240
J-2*	HR-High Density	Attached Residential / Multi-Family/Apartments	432
K-1*	UC-Commercial	Retail	N/A
K-2*	UC-Commercial	Retail	N/A
N*	MR-Med Density	Attached Residential / Duplex Units	42
O*	MR-Med Density	Attached Residential / Church or School	49
p*	MR-Med Density	Attached Residential / Church or School	40
Q-1	R1-SFR	Detached Residential	41

Q-2	R1-SFR	Detached Residential	21
Q-3	MR-Med Density	Attached Residential / Duplex Units	80
R 1-5	MR-Med Density	Planned Community	367
S	SR-LG Lot Residential	Detached Residential	14

All zoning relating to the CDR Property as set forth above ("Final Zoning") will be confirmed and approved in connection with the adoption and approval of the Entitlement Documents by the COF Council. Parcels marked with an * in Table Four, above, are to be re-zoned. A future Parcel owner may elect to seek a change to the zoning of any Parcel from the Final Zoning set forth above. If that occurs, the zoning change will be subject to the City's then applicable rules and procedures. CDR acknowledges that the City may not "pre-commit" to grant the Final Zoning and that approval and implementation of the Final Zoning is subject to the COF Council final approval in accordance with the 2011 Zoning Code, the Amended 1984 Plan and this Agreement. The City, however, acknowledges that implementation of the Final Zoning (and all of the Entitlement Documents) is a condition precedent to the implementation of the final settlement.

d. *Parcels I, Q-1, Q-2, R & S.* CDR will be permitted to develop Parcels I, Q-1, Q-2, R and S (collectively, "Residential Parcels") as residential properties, with no required attached residential product, based on the zoning designations and densities set forth in Table Four, above. Final Plat approval for the Residential Parcel(s) may be considered as part of a separate subdivision application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. The Amended 1984 Plan will reflect the densities set forth in Table Four, above. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

e. *Parcels G, N, O & P.* The 1984 Plan provides an alternative medium density residential zoning classification for Parcels G, N, O and P (collectively, "Med-Den Reserve Parcels"). CDR will be permitted to develop the Med-Den Reserve Parcels as attached single-family residential properties, based on the zoning designations and densities set forth in Table 4, above. Final Plat approval for the Med-Den Reserve

Parcel(s) may be considered as part of a separate application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. The Amended 1984 Plan will reflect the densities set forth in Table Four, above. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

f. *Parcels J-1 and J-2.* The 1984 Plan provides an alternative high density residential zoning classification for Parcels J-1 and J-2 ("High-Den Reserve Parcels"). CDR will develop the High-Den Reserve Parcels as multi-family residential properties (apartments), based on the zoning designations and densities set forth in Table Four, above. Final Plat approval for the High-Den Reserve Parcels may be considered as part of a separate application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. The Amended 1984 Plan will reflect the densities set forth in Table Four, above. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

g. *Parcels E-1, E-2, F, H, K-1 & K-2.* CDR and the COF Staff agree that the Urban Commercial ("UC") zoning is the appropriate zoning under the 2011 Zoning Code for Parcels E-1, E-2, F, H, K-1 and K-2 (collectively, "UC Parcels"). Final Zoning of the UC Parcels will occur concurrently with the final adoption of the Entitlement Documents. Final Plat approval for the UC Parcel(s) may be considered as part of a separate application concurrently with the final adoption of the Entitlement Documents or following the settlement, as CDR or future purchasers may determine. As outlined above, the City will not unreasonably withhold, delay or condition approval of Final Plats that are submitted in substantial accordance with the Block Plats and the Amended 1984 Plan.

h. *Transfer of Parcel Q3 to the City.* The DA will include the transfer of Parcel Q3 ("COF Residential Parcel") to the City, at no cost to the City, for its use in providing affordable housing ("AH"). The COF Residential Parcel represents approximately five percent (5%) of the overall residential density for CDR and satisfies the AH requirement for the CDR Property as a whole. CDR recognizes the City target for receiving AH incentives is ten percent (10%) of the overall residential density; therefore, if any developer of portions of the CDR Property (other than Q3) elects to include additional AH, the City will credit 5% or one-half of the 10% requirement when making its incentive calculations. AH development in addition to Parcel Q3 will not, however, be a prerequisite or condition to the development of any portion(s) of the CDR Property or the issuance of Final Plats in accordance with the terms and conditions set forth in this memo and the Entitlement Documents. The COF Residential Parcel will be

provided on an unimproved basis with the Q-3 Utility Infrastructure (as defined below) brought to the COF Residential Parcel property line. CDR will also be responsible for dedicating the Harold Ranch Road ROW and for the completion of the Q-3 Roadway Improvements (as defined below). The term "Q-3 Utility Infrastructure" will mean improvements identified by the Impact Studies (as defined below) that meet City's municipal requirements and are of sufficient size and capacity to accommodate the development of Parcel Q-3 for AH purposes and extending these water, sewer, traffic and drainage etc. improvements for that portion of Harold Ranch Road which is located on the CDR Property. The term "Q-3 Roadway Improvements" will mean the dedication of the Harold Ranch Road ROW and completing the roadway improvements required to finish that portion of Harold Ranch Road which is located on the CDR Property in a manner consistent with the City's Engineering Standards, the Impact Studies and the Final Zoning. The exact size and scope of the Q-3 Utility Infrastructure and the Q-3 Roadway Improvements will be set forth in the DA, provided, however, that the Q-3 Roadway Improvements East of Parcel Q-3 shall be limited to one lane of pavement in each direction installed to meet ten-year storm requirements, with no curb and gutter required. CDR's obligation to install the Q-3 Utility Infrastructure and the Q-3 Roadway Improvements will be subject to the Phasing Plan (to be developed in the rezoning case, as outlined below) and will be triggered by the recordation of a Final Plat for Parcel R-4 within the CDR Property.

i. ***Infrastructure; Development Phasing & Drainage.*** CDR will provide the infrastructure improvements required for the development of the CDR Property on a phased basis. City and CDR will work together in good faith to prepare, as part of the Zoning Application, a development and infrastructure phasing plan ("Phasing Plan") which is consistent with the Amended 1984 Plan and the Final Zoning. The Phasing Plan will be incorporated in the DA and/or the Amended 1984 Plan, as appropriate. CDR anticipates completing specific infrastructure improvements for the CDR Property at the point(s) required for the development of individual Parcels, based on sales and the overall demand for property in the Flügstaff market. The Phasing Plan will include applicable requirements for fire access, water and sewer service, and other public facilities. The City's current ordinances impose a rainwater harvesting regulation and an LID (low impact design) regulation of one inch (1") on-site storm water retention. The 1984 Plan does not include LID or rainwater harvesting provisions. CDR has agreed to comply with the City's LID requirements up to (but not exceeding) on-site stormwater retention of one-half inch ($\frac{1}{2}$ "). CDR requests COF Council approval of: (i) an exemption from the rainwater harvesting regulations for the CDR Property; and (ii) application of a one-half inch ($\frac{1}{2}$ ") maximum LID requirement to the CDR Property (collectively "Waiver"). In all cases, CDR will obtain a Drainage Impact Analysis ("DIA") based on the City's LID/Stormwater standards at the time of preparation, as part of the Impact Studies. Drainage for the CDR Property will be handled, and LID calculations will be made, on a master-planned basis, with the use of regional drainage

facilities. The Waiver will be submitted to the COF Council for approval as part of the Settlement Agreement.

j. ***Butler Avenue / Butler & Fourth Street Intersection.*** CDR will agree to make all remaining payments relating to the existing Butler Avenue and Fourth Street Assessment ("Existing Assessment") immediately upon final approval and adoption of the Entitlement Documents and all associated zoning. The DA will include a budget for, and an allocation of, costs associated with anticipated future improvements to Butler Avenue, the Butler & Fourth Street intersection ("Intersection") and any other off-site/regional improvements reasonably required by the City and accepted by CDR as part of the approved DA (collectively, "Off-Site Improvements") based on the following structure:

- (A) Promptly following execution of this Agreement, CDR will obtain an updated Traffic Impact Analysis, Water and Sewer Impact Analysis and DIA (collectively, "Impact Studies"), as reasonably required based on the Final Zoning.
- (B) Subject to terms approved by the City and CDR, the DA will impose an obligation on CDR to pay for its proportionate share of the actual cost of the Off-Site Improvements attributable to the CDR Property's anticipated impact on public infrastructure as determined by the Impact Studies ("CDR Share").
- (C) CDR will not be required to pay for (and the CDR Share will not include) Off-Site Improvements that are required to:
 - (i) elevate the existing Butler Avenue and Fourth Street intersection;
 - (ii) elevate the existing Butler Avenue roadway leading to or from the Butler Avenue and Fourth Street intersection;
 - (iii) elevate the existing north leg of Fourth Street roadway leading to or from the Butler Avenue and Fourth Street intersection;
 - (iv) Off-Site Improvements that are not necessitated by the CDR Property's anticipated impact on public infrastructure as determined by the Impact Studies; and

- (v) Any drainage features or infrastructure required to convey stormwater under Butler Avenue and/or the Butler Avenue and Fourth Street intersection.

CDR understands and acknowledges the Final Zoning may require a new calculation of the CDR Share based on the Impact Studies. The revised CDR Share and the Phasing Plan will be an Exhibit to the DA in order to avoid any potential for future dispute.

k. *Fourth Street South of Butler Avenue.* With respect to the Fourth Street roadway south (from Butler Avenue through Parcel M), CDR will agree to pay for those improvements attributable to the CDR Property's anticipated impact on public infrastructure as determined by the Impact Studies. CDR also acknowledges that the City's Engineering Standards may require certain improvements to the Fourth Street roadway extending south from the Butler and Fourth Street intersection which otherwise exceed the CDR Property's anticipated impact on public infrastructure as determined by the Impact Studies and the City agrees, in connection with the preparation of the DA, to work with CDR, in good faith, to minimize any expense CDR may be required to incur in connection with the Fourth Street roadway south of the Butler and Fourth Street intersection which otherwise exceed the CDR Property's anticipated impact on public infrastructure and/or the CDR Share ("Additional Expense"). CDR will not be obligated to construct any other east-half roadway or edge improvements adjacent to Parcels D and L. CDR shall be free to seek a contribution agreement from the ASLD for the Additional Expense or any other aspect of the existing (or expected future) improvement of the Fourth Street roadway south of the Butler and Fourth Street intersection.

l. *Parcel O & P Sale.* CDR and the City agree Parcels O and P may be sold to, and developed as, a church – using the City's CUP process. Otherwise, the zoning for Parcels O and P will be as outlined in Paragraphs 3(c) and (e), above.

4. Settlement Implementation. CDR and the COF Staff have approved the terms of this Agreement. CDR and the COF Staff will act diligently to submit this Agreement to the COF Council for approval at the earliest possible date (anticipated to be during the month of May 2013). Upon COF Council approval (including the Waiver), CDR and the City will promptly execute this Agreement, and CDR will promptly make the Deposit required by Paragraph 5, below. Upon execution of this Agreement ("Effective Date"), the parties will take the following actions to implement and carry out the terms of this Agreement as expeditiously as possible:

- (A) CDR and the City will begin work on the MRPA and the DA;
- (B) CDR will obtain the Impact Studies and initiate and diligently pursue the Zoning Application; and

- (C) once finalized, the MRPA, the Zoning Applications, the DA and any other Entitlement Documents reasonably required to obtain final COF Council approval will be submitted to the City Planning and Zoning Commission for review and recommendation, and thereafter to the COF Council for final approval.

5. **Existing Butler Avenue Assessment.** Within ten (10) days of the Effective Date, CDR shall deposit, by wired or cashed funds, the sum of \$123,781.50 ("Deposit"), representing the remaining principal amount of the Butler Avenue assessment at issue in the Maricopa County Action, in a mutually-agreed interest bearing escrow account ("Account") with First American Title Insurance Company, Phoenix, Arizona ("Escrow Agent"), to be disbursed by Escrow Agent (with accrued interest) upon the first of the following events to occur:

- (A) To the City upon the COF Council's formal and final approval of the Entitlement Documents;
- (B) In accordance with written mutual instructions to the Escrow Agent executed by the City and CDR; or
- (C) By order of the Court in the Maricopa County Action, in accordance with Paragraph 6, below.

CDR and the City will enter into Escrow Agent's standard form escrow instructions with respect to the Account. Any fees charged by Escrow Agent in connection with the Account will be deducted from the Account.

6. **Disposition of the Lawsuits.**

a. ***Interim Stay.*** Following the Effective Date and upon CDR's delivery of the Deposit to Escrow Agent pursuant to Paragraph 5, above, CDR and the City shall authorize and instruct their respective counsel to jointly file with the Courts in both the Coconino County Action and the Maricopa County Action, a Notice of Tentative Settlement and Stipulation to Stay Action, in substantially the form of Exhibit "A" to this Agreement. CDR and the City, through their respective counsel, will take any and all necessary and appropriate actions to obtain an order of the Court to stay the Lawsuits pending the COF Council's formal and final approval of the Entitlement Documents. If either Court declines to issue such an order, CDR and the City agree to enter into an appropriate tolling agreement with respect to and to preserve their respective claims and defenses in that action, pending final approval of the Entitlement Documents.

b. ***Final Dismissal.*** Upon the formal and final approval of the Entitlement Documents and the Escrow Agent's disbursement of the Deposit to the City as contemplated in Paragraph 5(A), above, and provided that CDR and the City have each fully performed their respective obligations under this Agreement, CDR and the City shall authorize and direct their respective counsel to file with the Courts in the Maricopa County Action and the Coconino County Action a Stipulation for Dismissal With Prejudice.

c. ***Return to Litigation.*** If, despite the good faith and diligent efforts of COF Staff and CDR, final approval of the Entitlement Documents has not occurred within the time provided in Paragraph 2(e), above, or such additional period as the parties agree to in writing, CDR and the City shall authorize and instruct their respective counsel to jointly file a motion to reinstate the Lawsuits on the Courts' active calendars in order to determine the merits of the parties' respective claims and defenses, including, but not limited to, the disposition of the Deposit. CDR and the City shall further authorize and instruct their respective counsel to work in good faith to establish a revised scheduling order that will permit the disclosure, discovery and motion practice reasonably required to properly and efficiently adjudicate the Lawsuits. In addition to awarding the Deposit to the appropriate party, the Court may award any other relief to which a party is entitled at law or in equity, including, but not limited to interest, attorneys' fees, and costs.

7. **Mutual Release of Claims.** Effective upon the COF Council's final approval of the Entitlement Documents and dismissal of the Lawsuits in accordance with Paragraph 6(b), above, the parties mutually release each other as follows:

a. ***Release by CDR.*** Except as otherwise expressly provided in this Agreement or the Entitlement Documents, CDR, hereby irrevocably releases and discharges the City, and its current and former mayors, council members, department managers, employees, agents, representatives, and attorneys, from any claim, cause or right of action, liability, or obligation of any kind, type, or nature, whether presently known or unknown, accrued or not accrued, which arises out of or which in any manner relate to the CDR Property, the zoning of the CDR Property, the 1984 Plan, and/or the existing Butler Avenue assessment, including, but not limited to any claims which were or which could have been asserted in either of the Lawsuits.

b. ***Release by City.*** Except as otherwise expressly provided in this Agreement or the Entitlement Documents,, the City hereby irrevocably releases and discharges CDR, and its current and former members, agents, subsidiaries, employees, managers, partners, shareholders, representatives, and attorneys, from any claim, defense, cause or right of action, liability, or obligation of any kind, type, or nature, whether presently

known or unknown, accrued or not accrued, which arises out of or which in any manner relate to the CDR Property, the zoning of the CDR Property, the 1984 Plan, and/or the existing Butler Avenue assessment, including, but not limited to any claims which were or which could have been asserted in either of the Lawsuits.

Notwithstanding anything to the contrary, no provision of this Agreement shall constitute a release of any claim arising out of a breach of this Agreement; all such claims being expressly reserved.

8. **Time is of the Essence.** Time is of the essence of this Agreement and each term and provision hereof.

9. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, representatives and assigns (and, in the case of CDR, its subsidiaries that hold legal title to the CDR Property).

10. **Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement except: (i) those persons identified in the release provisions of this Agreement (Paragraph 7, above) who are expressly designated as actual and intended third-party beneficiaries of such release provisions; and (ii) CDR's wholly owned subsidiaries that hold legal title to the CDR Property.

11. **Attorneys' Fees.** Should any litigation be commenced between the parties concerning the terms of this Agreement, or the rights and duties of CDR or the City under this Agreement, the prevailing party or parties in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to payment of all of its costs, expenses (including, but not limited to, expert fees), and reasonable attorneys' fees incurred in connection with the dispute.

12. **Entire Agreement.** This Agreement is a fully integrated document, containing the entire understanding among the parties, and supersedes and integrates any prior understandings or written or oral agreements among the parties including, without limitation, the Settlement Memorandum dated March 29, 2013 (and all earlier drafts and versions of that document).

13. **Representations, Warranties and Covenants.** Each party to this Agreement represents, warrants and covenants to the other parties as follows:

- (A) This Agreement is the result of arm's length negotiations between parties experienced in business and financial affairs who have equal access to information concerning this transaction. They have obtained legal advice concerning the meaning and effect of this Agreement and

that they had sufficient time to consider the meaning and effect of this Agreement;

- (B) They have taken all necessary action to authorize the execution, delivery, and performance of this Agreement and have the authority to execute, deliver and perform this Agreement and all the transactions contemplated hereby, including, without limitation, the releases provided for in Paragraph 7, above;
- (C) The enforceability of this Agreement is not affected by the provisions of any other agreement to which such party is a party and will not conflict with any provision of any law or regulation to which such party is subject;
- (D) CDR has the full power and authority to bind its subsidiaries and the CDR Property to the terms and provisions of this Agreement; and
- (E) Except for the Lawsuits, there are no actions, suits or proceedings pending or threatened against either party in any court or by or before any governmental agency or instrumentality and no existing judgments, orders or other restraints, which would materially affect the ability of such party to carry out the transactions contemplated by this Agreement.

14. Controlling Law and Choice of Forum. This Agreement and all questions relating to its validity, interpretation, performance, and inducement shall be governed by and construed, interpreted, and enforced in accordance with the substantive laws of the State of Arizona (without reference to conflict of law principles). Any action pertaining to this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona, in and for the County of Maricopa, and all parties irrevocably consent to exclusive jurisdiction and venue in such court for such purposes.

15. Indulgences Not Waivers. Neither any failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver; nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of any other right, remedy, power or privilege.

16. Construction. This Agreement is the result of negotiations between the parties and was initially drafted by the attorneys for the City as a matter of convenience only and shall not be construed for or against any party on account thereof, but shall be construed according to its plain meaning.

17. Additional Instruments and Acts. Without limiting the provisions of Paragraphs 2 through 7 of this Agreement, the parties shall promptly execute and deliver all such other instruments and take all such other action as any party may reasonably request from time to time, before or after the execution of this Agreement, in order to effectuate the transactions contemplated by this Agreement.

18. Modifications and Amendments. There shall be no amendments or modifications to this Agreement unless any such amendment or modification is in writing and signed by all parties to this Agreement. Any alleged or purported amendment or modification shall be void and unenforceable unless it is in writing and signed by all parties to this Agreement. This provision concerning amendments or modifications cannot be waived or otherwise made unenforceable except by a written document signed by all parties to this Agreement.

19. Exhibits. All Exhibits attached to this Agreement are fully incorporated herein and are made a part of this Agreement whether the Exhibits are executed by any or all of the parties.

20. Miscellaneous.

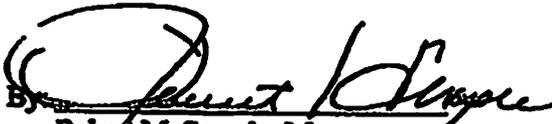
a. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

b. Words used in this Agreement, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, or other gender, masculine, feminine or neuter, as the context requires; the words "including," "includes" and "include" shall mean without limitation, by reason of enumeration.

The parties have executed this Agreement as of the Execution Date.

CANYON DEL RIO INVESTORS, LLC

CITY OF FLAGSTAFF

By: 
Robert M. Semple, Manager

By: 
Its: City Manager

Settlement and Release Agreement
Canyon Del Rio

ATTEST:

Nancy L. Saltburg for
CITY CLERK

APPROVED AS TO FORM AND CONTENT BY COUNSEL:

DICKINSON WRIGHT/MARISCAL WEEKS

By: Michael S. Rubin
Michael S. Rubin
Attorneys for City of Flagstaff

DATED: 7/18/13

CHESTER & SHEIN, P.C.

By: David E. Shein
David E. Shein
Attorneys for Canyon del Rio Investors, LLC

DATED: 7/16/13

ACKNOWLEDGED AND AGREED BY CDR SUBSIDIARIES:

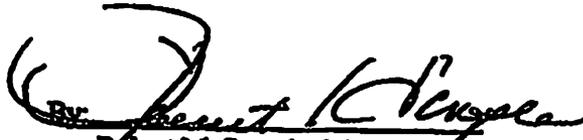
CDR LAND INVESTORS I, LLC,
an Arizona limited liability company

By: 
Robert M. Semple, Manager

CDR LAND INVESTORS II, LLC,
an Arizona limited liability company

By: 
Robert M. Semple, Manager

CDR LAND INVESTORS III, LLC,
an Arizona limited liability company

By: 
Robert M. Semple, Manager

PHOENIX 63878-3 61331v1
4/11/2013

EXHIBIT B

TIMELINE FOR CANYON DEL RIO

December 17, 2014

The following timeline outlines the review process from application submission to second reading of rezoning ordinance.

Amended Settlement Agreement approved by City Council
January 6, 2015

Concept zoning Block plat/preliminary plat application and draft DA.
January 13 or 27th, 2015

Staff substantive review of the rezoning and completeness review of the block plat applications begin 28 days

Completeness review of block plat begins 28-days

Substantive review begins when complete 46 days

Water and Sewer Impact Analysis (WSIA), Traffic Impact Analysis TIA and Drainage Impact Analysis review continues. Impact reviews include review and acceptance of analysis, acceptance of proposed mitigations, proportional share analysis and cost estimates for offsite improvements. 90 days.

Impact analysis reviews can run concurrent with application submission.

Development Agreement negotiation 60-days,
can run concurrent with substantive review after impact analysis are complete. DA must be in draft format for P&Z review and final format for Council.

Submit final plat (at risk) application

Schedule first P&Z hearing 30-days

Schedule second P&Z hearing 14 days

Schedule Council meeting and potential first reading of ordinance 21-days

Schedule second reading of ordinance 14 days

Re-zoning and DA effective 30-dys

Final Plat scheduled for Council review

The times identified above are time periods that are necessary for staff review. They do not reflect any time periods that staff is waiting for responses or additional information from the applicant.

EXHIBIT E

RECORDING REQUESTED BY

APN #:

WHEN RECORDED MAIL TO

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF RELEASE AND FULL RECONVEYANCE

The undersigned is the legal owner and holder of the Note or Notes for the total original sum of \$ _____ and of all other indebtedness secured by Deed of Trust dated _____, made by _____, Trustor, to _____, Trustee, and recorded on _____, as Instrument No. _____, in Docket _____, Page _____, of Official Records, in the office of the County Recorder of _____ County, Arizona, which encumbers the following described property:

Legal Description

Said Note or Notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied. Therefore, pursuant to Arizona Revised Statutes § 33-707, the undersigned Beneficiary does hereby release and reconvey to the person or persons legally entitled thereto, all right, title and interest in and to the property described in said Deed of Trust.

Dated

State of _____
County of _____

The foregoing instrument was acknowledged before me this _____ day of _____,
by _____

Notary Public

My commission expires: _____

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Nicole Woodman, Sustainability Manager
Date: 01/14/2015
Meeting Date: 01/20/2015



TITLE:

Consideration and Adoption of Resolution No. 2015-03: A resolution of the Flagstaff City Council Regarding Walnut Canyon. *(Adopt resolution supporting Congressional designation of a special management area for protection of lands surrounding Walnut Canyon National Monument).*

RECOMMENDED ACTION:

- 1) Read Resolution No. 2015-03 by title only
- 2) Clerk reads Resolution No. 2015-03 by title only (if approved above)
- 3) Adopt Resolution No. 2015-03

Policy Decision or Reason for Action:

Subsidiary Decisions Points: The U.S. Forest Service and the National Park Service jointly initiated the Walnut Canyon Study in February 2010 to explore management options for the Study Area, per the Omnibus Public Lands Management Act of 2009. The City of Flagstaff signed on as a cooperating partner and has been a participant throughout the process.

Financial Impact:

At this time there are no known costs to the City of Flagstaff. Staff time may be required in the future to assist with review of Congressional legislation.

Connection to Council Goal and/or Regional Plan:

REGIONAL PLAN:

- Goal E&C.4. Integrate available science into policies governing the use and conservation of Flagstaff's natural resources.
- Goal E&C.5. Preserve dark skies as an unspoiled natural resource, basis for an important economic sector, and core element of community character.
- Goal E&C.6. Protect, restore, and improve ecosystem health and maintain native plant and animal community diversity across all land ownerships in the Flagstaff region.
- Goal E&C.7. Give special consideration to environmentally sensitive lands in the development design and review process (Policy E&C.8.2).
- Goal E&C.8. Maintain areas of natural quiet and reduce noise pollution.
- Goal E&C.9. Protect soils through conservation practices.
- Goal OS.1. The region has a system of open lands, such as undeveloped natural areas, wildlife corridors and habitat areas, trails, access to public lands, and greenways to support the natural environment that sustains our quality of life, cultural heritage, and ecosystem health.
- Goal LU.3. Continue to enhance the region's unique sense of place within the urban, suburban, and rural context (Policy LU.3.3).

Has There Been Previous Council Decision on This:

On December 17, 2002 the Flagstaff City Council and Coconino County Board of Supervisors passed a joint resolution supporting federal authorization for a special resources and land management study of federal lands surrounding Walnut Canyon National Monument for purposes of determining how best to protect these lands from future development.

On December 16, 2014 staff presented boundary alternatives in support of Option Two as outlined in the Walnut Canyon Special Study. City Council directed staff to return with a resolution in support of this option based on the Study Area Boundary.

Options and Alternatives:

Option 1: Adopt Resolution No. 2015-03

Option 2: Revise Resolution No. 2015-03

Option 3: Do not adopt Resolution No. 2015-03

Background/History:

The Walnut Canyon Study was compiled by the U.S. Forest Service (USFS) and National Park Service (NPS) for purposes of determining how best to manage the USFS lands adjacent to the Walnut Canyon National Monument. The Study was authorized in Section 7201 of the Omnibus Public Land Management Act of 2009, Public Law 111-11, passed by Congress and signed into law by President Obama on March 30, 2009. The text of Section 7201 requests that the Study aim to assess “the suitability and feasibility of designating all or part of the study area as an addition to Walnut Canyon National Monument, continued management of the study area by the Forest Service or any other designation or management option that would provide for (i) protection of resources within the study area; and (ii) continued access to, and use of, the study area by the public.”

Key Considerations:

The Study was supported by the Coconino County Board of Supervisors and Flagstaff City Council in a joint resolution numbered 2002-65 and 2002-92, respectively. In the joint resolution, the City Council and the Board of Supervisors supported a federal authorization for a special resources and land management study of federal lands surrounding Walnut Canyon National Monument for purposes of determining how best to protect these lands from future development.

The final Walnut Canyon Study was released on January 31, 2014. On April 15, 2014, the Coconino Board of Supervisors adopted Resolution 2014-17 regarding Walnut Canyon. The resolution supports Option Two in the Study, which could provide the highest level of protection for Federal land that Congress can bestow and to continue existing access and uses.

Community Benefits and Considerations:

If the Walnut Canyon Study Area were to receive a special management designation, Option Two could provide the highest level of protection for lands that surround the Walnut Canyon National Monument.

Community Involvement:

Involve

Collaborate

The public, stakeholders, tribes, organizations, and other agencies were engaged throughout the Walnut Canyon Special Study. A Study website was established and meetings were held in the Flagstaff vicinity. Meetings were held and public comments solicited during three phases of the project - at the beginning, when draft management options were developed, and when the report was released. During

the final phase, comments received on the draft report were incorporated into the final report as appropriate to the scope of the study (page 9 of the Walnut Canyon Special Study).

Expanded Options and Alternatives:

Option 1: Adopt Resolution No. 2015-03. Adoption of the resolution will uphold previous support offered by the City Council in 2002 and help to ensure that existing and future water rights are recognized by Congress if legislation is drafted.

Option 2: Revise Resolution No. 2015-03.

Option 3: Do not adopt Resolution No. 2015-03.

Attachments: [Res. 2015-03](#)

RESOLUTION NO. 2015-03

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL REGARDING WALNUT CANYON

RECITALS:

WHEREAS, the Walnut Canyon National Monument was established by Presidential Proclamation Number 1318 on November 30, 1915, and subsequently expanded by Presidential Proclamation in 1938, by a Public Land Order in 1956 and by Congress in 1996 to protect certain prehistoric ruins of ancient cliff dwellings located in and adjacent to Walnut Canyon; and

WHEREAS, the boundaries of the Walnut Canyon National Monument are contiguous to lands within Coconino County, the City of Flagstaff and lands managed by the Coconino National Forest and the Arizona State Land Department; and

WHEREAS, land-use management plans within Coconino County and the City of Flagstaff have identified the ecological, social, economic and cultural impacts of the Walnut Canyon National Monument as significant to the region; and

WHEREAS, on December 10, 2001, a Stipulation was signed by the City of Flagstaff and the United States on behalf of the National Park Service and the Forest Service, and confirmed by the Apache County Superior Court on August 8, 2002, In Re: The General Adjudication of All Rights to Use Water in the Little Colorado River System and Source (Civil. No. 6417) (the "Stipulation"); and

WHEREAS, the Stipulation confirms, among other things, the City of Flagstaff's right to use existing wells and develop future production wells, and access to utility corridors on U.S. Forest Service lands, including development of groundwater supplies on lands within two miles of the current boundary of Walnut Canyon National Monument, and

WHEREAS, the Stipulation also confirms, among other things, the United States' and City of Flagstaff's commitment to enhance municipal water supply values in the Walnut Canyon Watershed (as defined in the Stipulation); and

WHEREAS, this Resolution in support of a Congressional "special designation area" for the Walnut Canyon Study Area is expressly conditioned on establishment of said "special designation area" being subject to the Stipulation; and that said "special designation area" shall not modify or otherwise limit the terms of the Stipulation or the City of Flagstaff's access to surface water or groundwater supplies, or to wells or utility corridors as provided in the Stipulation; and

WHEREAS, in December 2002, following numerous public hearings, the Coconino County Board of Supervisors and the Flagstaff City Council passed a joint resolution supporting additional protection for lands surrounding Walnut Canyon National Monument and requested Federal authorization for a special resource and land management study of Federal lands surrounding Walnut Canyon National Monument to determine how best to protect the lands and resources in perpetuity while allowing existing uses to continue; and

WHEREAS, the resolution passed by the Coconino County Board of Supervisors and the City of Flagstaff requested that the study recommend the most desirable and feasible means for the future management of the Walnut Canyon Study Area and the management designation best suited to ensure in perpetuity protection for the Study Area and ensure continued opportunities for public access, enjoyment, recreation and economic benefit; and

WHEREAS, in 2009, the United States Congress authorized and the President signed the Walnut Canyon Study Act into law (Public Law 111-11) directing the Secretary of Agriculture and the Secretary of Interior to jointly conduct a special study of management options in the Walnut Canyon Study Area; and

WHEREAS, following the authorization of the Walnut Canyon Special Study, the National Park Service and the U.S. Forest Service initiated the Walnut Canyon Special Study which provided data collection, assessment of the resources and coordination of interagency meetings and public meetings throughout the region; and

WHEREAS, on January 31, 2014, the National Park Service and the U.S. Forest Service transmitted the Walnut Canyon Special Study to the Secretaries of the Interior and Agriculture and identified three management options for the Federal land surrounding the National Monument: 1) Continuation of current management by the U.S. Forest Service, 2) Congressional designation of a special management area, and 3) Congressional action that prohibits exchange of federal lands to other than federal land management agencies. All three options retain management by the U.S. Forest Service; and

WHEREAS, the Flagstaff City Council has reviewed all three options identified in the final Walnut Canyon Special Study to determine if the options can achieve the goals of protection and of maintaining current uses as identified in the 2002 joint resolution and are consistent with and do not modify the Stipulation signed in 2001; and

WHEREAS, the Flagstaff City Council supports the second option, namely, Congressional designation of a special management area, such as a National Conservation Area, that will meet the goals of the 2002 resolution, including Congressional protection for the Federal lands within the Study Area as well as ensuring continued opportunities for public access, enjoyment, recreation and economic benefit; and

WHEREAS, the support of the second option would not be directly applicable to the Arizona State Trust Lands, private land, surface or mineral land holdings within the Study Area. Federal land and resource management strategies, agency policies and designation would apply to these state lands only, if and when they have been transferred to federal agency management.

WHEREAS, a Congressional designation of a special management area, such as a National Conservation Area, can incorporate the gold standard for protection against loss of federal land by exchange. The protection would be the same as that for National Parks provided that it is subject to and does not modify the Stipulation; and

ENACTMENTS:

THEREFORE, BE IT RESOLVED THAT, the Flagstaff City Council supports the continued protection of lands surrounding Walnut Canyon National Monument through a Congressional

designation of a special management area, such as a National Conservation Area, to provide the highest level of protection for Federal land; provided however that the legislation expressly ensures and confirms the following:

- a) Existing public uses as allowed by the U.S. Forest Service (See definitions);
- b) Rights and uses defined and agreed upon in “Stipulation between the City of Flagstaff and the United States on behalf of the National Parks Service and the Forest Service in RE the General Adjudication of all rights to use water in the Little Colorado River system and source (Civil No. 6417)”; and
- c) New utility corridors shall be allowed within existing or adjacent to existing utility corridors if they are consistent with the Stipulation and when existing corridors are used to their maximum capacity, given obtaining appropriate environmental permits and environmental and visual impacts are acceptable or the proposed utility is incompatible in the existing right-of-way.

DEFINITIONS:

1. Existing Public Uses as Allowed by the U.S. Forest Service:
 - a) Access to forested areas
 - b) Bird watching
 - c) Camping
 - d) Driving for pleasure on roads/trails
 - e) Education
 - f) Firewood gathering
 - g) General exercise
 - h) Group uses
 - i) Hiking
 - j) Horseback riding
 - k) Hunting
 - l) Livestock grazing and associated infrastructure
 - m) Mountain biking
 - n) Non-motorized winter sports
 - o) Painting
 - p) Rock climbing
 - q) Sightseeing
 - r) Snowmobiling
 - s) Target practice as permitted
 - t) Walking with pets
 - u) Wildlife viewing

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 20th day of January, 2015.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM

CITY ATTORNEY

**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: The Honorable Mayor and Council
From: Stacey Brechler-Knaggs, Grants Manager
Co-Submitter: Gail Jackson, Econ. Dev. Sales & Marketing Specialist
Date: 01/14/2015
Meeting Date: 01/20/2015



TITLE:

Consideration and Approval of Agreement(s): Amending the Service Provider Agreement and Business Incubator Master Lease, and approving the Business Accelerator Master Lease

RECOMMENDED ACTION:

Authorize the City to enter into the Service Provider Agreement and both of the Master Lease Agreements for the use and operation of City-owned facilities on McMillian Mesa.

Policy Decision or Reason for Action:

Subsidiary Decisions Points: Acceptance of the Service Provider Agreement, Business Incubator Master Lease, and Business Accelerator Master Lease will allow Northern Arizona Center for Entrepreneurship and Technology (NACET) to continue providing assistance to small business startups, Tier 2 companies, and entrepreneurs in connection with the development of new and innovative businesses within northern Arizona.

Financial Impact:

The City of Flagstaff was received funding through the Economic Development Administration (EDA), Arizona Corporation Commission (ACA) and Northern Arizona University (NAU) for the design and construction of the Business Incubator and Accelerator. In addition, the City will issue bonds which will be repaid through lease proceeds.

Per each Master Lease, the financial obligation of the City of Flagstaff to NACET for the Business Incubator remains the same for services performed and costs incurred not to exceed \$220,000 per fiscal year. For the Business Accelerator, the financial obligation of the City of Flagstaff is to compensate NACET for personnel costs in the amount of \$45,000 (year 1) and increases annually \$5,000 per year until year 4. These costs as well as the additional operational costs are anticipated to be fully supported through lease revenues by year five. These financial commitments are budgeted in the Economic Development Fund in FY 2015.

Connection to Council Goal and/or Regional Plan:

COUNCIL GOALS:

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

REGIONAL PLAN:

ED.3. Regional economic development partners support the start-up, retention, and expansion of existing, business enterprises.

ED.4 Support efforts to recruit diverse new businesses and industries compatible with the region.

ED.7 Continue to promote and enhance Flagstaff's unique sense of place as an economic development driver.

Has There Been Previous Council Decision on This:

Yes, in September of 2008, as well as subsequent amendments, all were approved by City Council authorizing the Service Agreement and Master Lease for the Business Incubator. In addition, City Council has approved the EDA grant application, grant award, and the design and construction contracts for the Business Accelerator over the last two years.

Options and Alternatives:

1. Approve Service Agreement and both Master Leases to continue existing operational services with NACET.
2. Don't approve the Service Agreement and both Master Leases with NACET, and seek another service provider for both the Incubator and Accelerator. This action may jeopardize the funding from EDA, community partnerships such as Northern Arizona University, Northern Arizona Council of Governments, and Arizona Commerce Authority, and the sublease agreements between NACET and the clients within the facility.
3. Amend Service Agreement and/or both Master Lease documents.

Background/History:

The Science and Technology Park was conceived in 2003, and during the 2004 election, bonds in the amount of \$61.2 million were approved by the voters to advance the project. The debt is to be paid with lease revenues and not secondary property taxes. McMillan Mesa was chosen as an ideal site due to the existing, nearby USGS Campus. Through investigation, a critical part of the science park would be the establishment of a business incubator for entrepreneurs and business start-ups. An overall science park master plan was developed around 2005.

The master plan included a remodeled USGS Campus, a 10,000 square foot business incubator, and a science park on nine acres of adjacent land. The business incubator (Phase 1) was constructed in 2008 through a U.S. Department of Commerce Economic Development Administration (EDA) grant and is currently operated by Northern Arizona Center for Entrepreneurship and Technology (NACET), a separate private non-profit. Northern Arizona University was the original recipient of a grant from the Economic Development Administration to construct an Incubator facility. Construction was completed and a Certificate of Occupancy for the building was issued in November 2008.

City staff began to investigate the merits of a Public-Private Partnership (P3) to continue progress on the project (now known as Innovation Mesa - Phase 2). In the fall of 2011, the City along with several partners including EDA, ACA, NAU, NACET, Economic Collaborative of Northern Arizona (ECoNA), and NACOG, began discussions to advance the Innovation Mesa - Phase 2 project. Innovation Mesa - Phase 2 is intended to be the first of three buildings located adjacent to the USGS Campus and the business incubator (Phase 1), and will include a 28,000 square foot building featuring wet and dry labs/office space (89%) and light manufacturing space (11%), a conference room/alternate secondary EOC, and server facilities. The primary purpose of Phase 2 is to provide space for Tier 2 companies and graduates of NACET, as well as grow business startups and advance entrepreneurship and economic gardening programs within the region, and to retain and expand existing businesses through the creation

of 300 jobs. As noted above, the building will feature a secondary or alternate EOC (as part of the conference room) should disaster related circumstances arise and warrant the need by either City and/or County personnel. Given the intent and purpose of this facility, the Business Accelerator was funded in part by EDA, and is currently under construction to be completed July 2015.

Key Considerations:

NACET currently has a Service Agreement and a Master Lease with the City that funds the Business incubator general operations, and has now been revised to include the Business Accelerator. The Service Agreement reflects the operations for both facilities. Each Master Lease will allow NACET to sublease the facilities to tenants that are start-up science and technology companies and are from the NACOG region.

More specifically, the Service Agreement outlines monitoring and oversight of both facilities, as well as obligations of the City and Provider (NACET). The Master Leases outline the terms and conditions for both facilities, including financial obligations and also reflects the sublease agreement between NACET and the tenants.

The operation of both the Incubator and Accelerator requires a long-term City commitment for both monitoring and financial operations. The City has the responsibility to ensure to the EDA that the facilities are being used for economic development purposes in line with both EDA grants, or the City could face recapture of the funding.

Expanded Financial Considerations:

In addition to the above-mentioned financial obligations of the City, NACET pays all staffing and utility charges for the Business Incubator and the City pays for maintenance and the debt service. For the Business Accelerator, the City will pay all operational and debt expenses including the site management oversight. These Accelerator is anticipated to fully recover these costs at an average 80% occupancy on an annual basis.

Community Benefits and Considerations:

Given the success of the Business Incubator, the intent of the Business Accelerator is to provide the next stage of business support, and as such the Business Accelerator will provide "soft landing" space for Tier 2 companies and graduates exiting NACET's incubation program, and allow new companies wishing to enter the program to have space in Phase 1 (Incubator). The Accelerator is intended to create over 300 jobs and \$20 million in private investment within the first three years of operation. The addition of wet and dry laboratories in this next phase is critical to expand and grow existing companies in the region as there is no known existing lab space for them to locate to. This project also allows our community to retain local businesses that may have otherwise left the region to seek these types of services and facilities.

Specifically, this project will benefit four groups:

- High technology and bioscience startups will result from technology transfer and commercialization of research conducted by NAU faculty and students.
- Local entrepreneurs will become more competitive in the global market through the technical and business advice from NACET staff and their statewide mentors group.
- Existing firms and new firms will locate facilities in Northern Arizona to take advantage of the Innovation Mesa's facilities and to be near growing industry clusters. However, this facility is unlikely to compete with existing commercial facilities due to small lease areas, non-traditional finance terms, and filling a lack of lab space.
- Native American culturally specific businesses will be encouraged to expand their service areas through guidance from and access to NACET staff and business leaders serving on NACET's Advisory Committee.

Lastly, the purpose of the EDA grant is twofold: It will enable the City of Flagstaff to create an environment within a secondary facility for incubator graduates to expand and grow their businesses.

**AGREEMENT FOR SERVICES FOR THE BUSINESS INCUBATOR AND
ACCELERATOR**

**CITY OF FLAGSTAFF
and
NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC., DBA
NACET**

Agreement made by and between the City of Flagstaff (the "City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and Northern Arizona Technology & Business Incubator, Inc., dba NACET (the "Provider"), an Arizona corporation, with offices at 2225 North Gemini Drive, Flagstaff, Arizona, 86001 effective as of the date written below.

RECITALS

- A. The City is the Landlord, and NACET is the Provider under the Business Incubator Master Lease Agreement and the Business Accelerator Master Lease Agreement executed contemporaneously herewith.
- B. The previous Agreement for Services for the Business Incubator between the parties, and Amendments thereto, are hereby terminated, null and void, as they are superseded and replaced by this Agreement for Services for the Business Incubator and Accelerator; and
- C. The City desires to enter into a contract with Provider for purposes of using Provider's expertise to provide incubator and accelerator services for the City; and
- D. Provider has available and offers to provide personnel necessary to accomplish services in accordance with the Services set forth in **Section 2** of this Agreement;

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

1. TERM

- 1.1. Term. The term of this Agreement (the "Term") shall be three (3) years and shall commence on _____, 2015 (the "Commencement Date"), and shall expire on _____, 2017 (the "Termination Date"), unless the Term is extended as hereinafter provided. Both parties shall have the right to extend this Agreement for one or more of the Extension Terms pursuant to Section 1.2 of this Agreement.
- 1.2. Options to Extend Term. Subject to the satisfaction of the conditions hereinafter set forth, the parties shall have the right to elect to extend the Term of this Agreement for up to three (3) consecutive five (5) year extension terms (each, an "Extension Term"). The conditions precedent to elect to extend the Term of this Agreement for any one or more of such Extension Terms are as follows:

- 1.2.1. Provider shall not then be in default under this Agreement;
- 1.2.2. Provider shall provide written notice to Landlord of its desire to elect to extend the Term of this Agreement not later than one hundred eighty (180) days prior to the end of the initial Term or the then current Extension Term, as applicable;

All terms and conditions of this Agreement shall remain in full force and effect and shall define the legal relationship between Landlord and Provider during each Extension Term.

- 1.3. Mutual Cancellation/Termination. The parties may cancel and terminate this Agreement upon mutual consent. In the event the parties desire to mutually cancel/terminate this agreement, a date of cancellation/termination shall be mutually agreed upon by the parties. If a mutual termination occurs, each party shall be entitled to, and obligated under this agreement on a pro-rated basis up to and including the date of cancelation/termination.

2. RIGHTS AND OBLIGATIONS OF PROVIDER

- 2.1. Independent Contractor. The parties agree that the Provider performs specialized services and that Provider enters this Agreement with the City as an independent contractor. Nothing in this Agreement shall be construed to constitute the Provider or any of Provider's agents or employees as the agent, employee or representative of the City. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of this Agreement caused by Provider and subject to the indemnification provision set forth in **Section 5**.
- 2.2. Provider's Control of Services. All services to be provided by Provider will be performed at Provider's place of business or as otherwise determined by Provider. Provider will furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider will be responsible for and in full control of the services of all such personnel.
- 2.3. Reports, Budgets and Plans to the City. Although the Provider is responsible for control and supervision of services performed under this Agreement, the services provided must be acceptable to the City and will be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision may include periodic activity reports provided by Provider to the City Council. The City shall have the right to audit Provider's records related to the performance of this Agreement. The City and Provider agree to define the scope of Provider's periodic activity report, including measures to protect or eliminate confidential material. In addition, Provider will prepare and provide to the City during the term of this Agreement annual budgets, not including other income streams, and a business plan.

- 2.4. Provider's Performance Criteria. Evaluation of Provider will be based on Provider's successful completion of its annual business plan and Provider's compliance with EDA grant criteria. For guidance purposes only, reference may be made to selected pages of the application and Agreement for the U.S. Department of Commerce, Economic Development Administration Grant for Public Works and Facilities for the Northern Arizona Technology & Business Incubator and Business Accelerator. Upon request, the City will provide a full and complete copy of the Grant application and Agreement to Provider, and the City's authorized representative will work with Provider to clarify EDA grant criteria.
- 2.5. The Provider will attract and retain business start-ups, Tier 2 companies and entrepreneurs to both the Business Incubator and Accelerator as referenced in each Master Lease; Provider will provide services such as, business consulting, mentoring and coaching including but not limited to strategic planning, marketing, distribution, logistics, operation and financial analysis to those in the Business Incubator and the Accelerator.
- 2.6. Provider will exercise good faith efforts to promote the Business Incubator and Accelerator, both within and outside the northern Arizona region and State of Arizona. Provider may consult with the City to develop mutually agreeable plans for implementation.
- 2.7. Provider will create a desirable and optimum transition of clients from the Business Incubator to the Business Accelerator and ultimately to a local commercial facility when Provider determines that such transition is appropriate. Graduates of the Incubator have first option to move into the Accelerator.
- 2.8. Provider will exercise good faith efforts to maintain the confidentiality of any Provider and/or Business Incubator and Accelerator client proprietary information gained in the process in updates, reviews, etc., subject to any disclosure requirements imposed upon the City by law.
- 2.9. The Provider will appoint an Advisory Board. The Advisory Board will be expected to:
 - 2.9.1. Meet monthly, review performance of the Business Incubator and Accelerator and report back to the City Council at least annually or on an as needed basis;
 - 2.9.2. Provide public outreach and recruitment to regional communities for the Business Incubator and Accelerator, create awareness for the incubator and accelerator, invite guests to tour, and create remote speaking engagements regarding the Business Incubator and Accelerator;
 - 2.9.3. Provide ongoing recommendations of clients to be reviewed for admittance into the program under the Provider's review and admission process.

- 2.9.4. Give information regarding each sublease to the City to allow the City to review and approve all sublease agreements.
- 2.10. Work with outside funding agencies and groups to locate capital and venture capital for start up businesses.
- 2.11. Recruit new Business Incubator and Accelerator clients from the science and technology sectors.
- 2.12. Lease and operate, upon mutual agreement, the Incubator Building and Accelerator Building.
- 2.13. Seek long-term partnerships and the accompanying financial commitments from government and private sector partners.
- 2.14. Provider will demonstrate that within three (3) years of the receipt of the Certificate of Occupancy for the Business Accelerator, 300 jobs should be created and \$20 million in private investment per U.S. Department of Commerce, Economic Development Administration (EDA) grant requirements, and adhere to any other EDA award conditions.
- 2.15. Provider will comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement.
- 2.16. Provider will submit to City a written report of the following on a quarterly basis: the number of direct project jobs, the number of jobs created, the number of jobs retained, and the private investment generated as a result of the EDA investment, in a manner that conforms with the requirements of the Government Performance and Results Act Data Collection Form.
- 2.17 Sponsorships (after grant period) - Provider is eligible to conduct fundraising efforts for building improvements, amenities, supplies or any purpose as deemed suitable by the City of Flagstaff.

3. RIGHTS AND OBLIGATIONS OF CITY

- 3.1. City will exercise good faith efforts to promote the Business Incubator and Accelerator, both within and outside the northern Arizona region and State of Arizona. City may consult with the Provider to develop mutually agreeable plans for implementation of this **Section 3.1**.
- 3.2. The City will review subleases and shall have the sole discretion to approve or disapprove of each sublease with written justification. Such approval shall not be unreasonably withheld.

- 3.3. City will exercise good faith efforts to maintain the confidentiality of Provider and/or Business Incubator and Accelerator client proprietary information gained in the process in updates, reviews, etc., subject to any disclosure requirements imposed upon the City by law.
- 3.4. The City will reimburse Provider within thirty (30) days of receipt of invoices and required documentation, unless the City disputes any amount thereof, in which case, the City shall tender any undisputed amounts to Provider and work diligently with Provider to resolve the dispute, resorting to mediation in accordance with **Section 7.10**, if necessary.
- 3.5. The City will meet monthly with Provider's President and CEO.
- 3.6. The City will provide the information submitted to the City pursuant to Section 2.16 to EDA in the Government Performance and Results Act Data Collection Form.

4. NOTICE PROVISIONS

- 4.1. Notice. Any notice concerning this Agreement must be in writing and sent by certified or registered mail, return receipt requested, as follows:

To the City's Authorized Representative:

Economic Vitality Director
 City of Flagstaff
 211 West Aspen Avenue
 Flagstaff, Arizona 86001
 (928)213-2905

To the Provider:

President/CEO
 Northern Arizona Center for
 Entrepreneurship and Technology
 2225 North Gemini Drive
 Flagstaff, Arizona 86001

5. INDEMNIFICATION AND INSURANCE

- 5.1. Indemnification. Provider agrees to indemnify, defend and hold harmless the City for, from and against any and all penalties, costs, expenses (including attorneys' fees), claims, demands and causes of action arising out of or in connection with any accident or other occurrence in or on the common areas (including without limiting the generality of the term "common areas," including but limited to, parking areas, stairways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas, area utilized by the EOC, sidewalks or driveways), the use of which Provider may have in conjunction with other tenants and occupants of the Premises, when such injury or damage shall be caused in part or in whole by the act, neglect, fault or omission of any duty with respect to the same by Provider, its agents, servants, employees, invitees, visitors, permittees, customers, clients, guests or tenants.
- 5.2. Insurance. Provider shall procure and maintain, for the duration of the Lease, insurance against claims for injury to persons or damage to property, which may

arise from or in connection with this Lease by Provider, Provider's agents, representatives, employees or contractors, and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Landlord does not represent or warrant that the minimum limits set forth herein are sufficient to protect Provider from liabilities that might arise out of this Lease, and Provider is free to purchase such additional insurance as Provider may determine is necessary.

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

5.2.1.1. Commercial General Liability - Occurrence Form

(Form CG 0001, ed. 10/93 or any replacement thereof)

General Aggregate -- \$2,000,000

Personal and Advertising Injury -- \$1,000,000

Each Occurrence -- \$1,000,000

Fire Damage (any one fire) -- \$50,000

Medical Expense (any one person) -- Optional

5.2.1.2. 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

5.2.1.3. Professional Liability

Each Claim -- \$1,000,000.00

Annual Aggregate -- \$1,000,000.00

5.2.2. Self-Insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by Landlord.

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

5.2.3.1. Commercial General Liability and Automobile Liability Coverages.

5.2.3.1.1. Landlord, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Lease and activities performed by or on behalf of Provider, including products and completed operations of

Provider; and automobiles owned, leased, hired or borrowed by Provider.

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

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

5.2.3.1.4. Provider's insurance coverage shall be primary insurance with respect to Landlord, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by Landlord, its officers, officials, agents, employees or volunteers, shall be in excess to the coverage of Provider's insurance and shall not contribute to it.

5.2.3.1.5. Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

5.2.3.1.7. The policies shall contain a waiver of subrogation against Landlord, its officers, officials, agents, employees and volunteers for losses arising from Provider's operations, occupancy and use of the Premises subject to this Lease.

5.2.3.2. Workers' Compensation and Employee's Liability Coverage.

The insurer agrees to waive all rights of subrogation against Landlord, its officials, officers, agents, employees and volunteers for losses arising from Provider's operations, occupancy and use of the Premises subject to this Lease.

5.2.4. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Landlord.

- 5.2.5. Acceptability of Insurers. Provider shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Landlord does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.
- 5.2.6. Verification of Coverage. Provider shall furnish Landlord with certificates of insurance (*ACORD form*) as required by this Lease. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.
- 5.2.7. Policy Review and Adjustment. Such policies of insurance shall be subject to review and adjustment on the fifth (5th) anniversary of the Commencement Date of this Lease and on each subsequent fifth (5th) anniversary during the Term hereof, as may be extended, in order to determine the adequacy of the insurance amounts in light of the then existing circumstances.
- 5.2.8. Failure to Maintain Insurance. If Provider fails or refuses to provide copies of the renewal insurance policies, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and upon five (5) days' notice to Lessee, to procure and maintain such insurance. Any premiums paid by Landlord hereunder shall be due and payable by Provider to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s).
- 5.3. Liability Insurance. Provider agrees to procure and maintain at its own cost and expense, during the entire term of this Agreement and any extensions thereof, comprehensive public liability insurance covering the Premises, which insurance shall also name Master Lessor as additional named insureds. The liability coverage under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury, illness or death to persons or damage to property in any one incident. Prior to, and as a condition of, taking possession of the Premises, Provider will provide Master Lessor with certificates of such insurance and endorsements, satisfactory to Master Lessor, evidencing Provider's compliance with the requirements of this **Section 5.3**.
- 5.4. Personal Property. Provider hereby acknowledges that Provider's insurance will not cover any Sublessee's specialized equipment or any other fixtures, furniture or personal property owned by Sublessee. Neither Master Lessor nor Sublessor shall be liable to Sublessee, or to any other person, for any damages on account of loss, damage, fire or theft to any personal or business property, and Sublessee shall be

solely responsible for obtaining and maintaining any property loss insurance in connection therewith.

6. DEFAULT AND TERMINATION

6.1. Events of Provider Default Defined. The following will be Events of Provider Default under this Agreement:

6.1.1. Any material misrepresentation made by Provider to the City;

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

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

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

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

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

6.2. Events of City Default Defined. The following will be Events of City Default under this Agreement:

6.2.1. Any material misrepresentation made by the City to Provider;

6.2.2. Any failure by the City to perform its obligations under this Agreement including, but not limited to, the following:

6.2.2.1. Failure to comply with a material term of this Agreement; and

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

6.3. Remedies.

6.3.1. Subject to the dispute resolution provision under **Section 7.10**, upon the occurrence of any Event of Default of a party, the non-defaulting party may declare the defaulting party in default under this Agreement by providing written notice thereof and specifying the nature of the default. The defaulting party will have forty-five (45) days to cure the default, unless the nature of the default is such that it cannot be cured within such time period with reasonable diligence, and the defaulting party commences to cure the default within the forty-five (45) day time period and continues diligently to take all

reasonable steps necessary to cure the default. If the defaulting party fails to cure the default as set forth herein, the non-defaulting party, upon written notice to the defaulting party, may invoke any or all of the following remedies:

- 6.3.1.1. The right to cancel this Agreement;
- 6.3.1.2. The right of specific performance, an injunction or any other appropriate equitable remedy;
- 6.3.1.3. The right to monetary damages;
- 6.3.1.4. The right to withhold all or any part of funds payable under this Agreement;
- 6.3.1.5. The right to seek recoupment of public funds spent for impermissible purposes.

7. GENERAL PROVISIONS

- 7.1. Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.
- 7.2. Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona. The Provider hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.
- 7.3. Severability. If any part of this Agreement is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.
- 7.4. Assignment. This Agreement is binding on the successors and assigns of the parties hereto. The Agreement may not be assigned by either the City or Provider without prior written consent of the other.
- 7.5. Conflict of Interest. The Provider covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Provider further covenants that in the performance of this Agreement it will not engage any employee or apprentice having any such interest. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.
- 7.6. Authority to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder, and

that it has taken all required acts or actions necessary to authorize entering into this Agreement.

- 7.7. No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
- 7.8. Integration. This Agreement represents the entire understanding of City and Provider as to those matters contained in the Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.
- 7.9. Nonappropriation. In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, the City will notify Provider of such occurrence, and this Agreement 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 Agreement are exhausted. No payments shall be made or become due to Provider under this Agreement beyond these amounts appropriated and budgeted by the City to fund payments under this Agreement.
- 7.10. Dispute Resolution.
- 7.10.1. Mediation. If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation will be self-administered and 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. 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 section does not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

7.10.2. Litigation and Attorneys' Fees. Except as otherwise agreed by the parties, 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.

7.11. Relationship of Parties. Provider shall perform all work and services as described herein as an independent contractor. No person performing any of the work or services described herein shall be considered an officer, agent, servant or employee of the City. Provider shall be solely responsible for the acts or omissions of its officers, agents, employees and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between City and Provider.

8. DURATION OF THE AGREEMENT

This Agreement shall be effective on and from the day and year executed by the parties, indicated below, and shall continue in force as provided in **Section 1**, unless sooner terminated as provided above.

City of Flagstaff

**Northern Arizona Technology & Business
Incubator, Inc., dba NACET (Provider)**

Gerald Nabours, Mayor

Annette Zinky, President and CEO

Attest:

City Clerk

Approved as to form:

City Attorney

Date of Execution: _____

BUSINESS INCUBATOR MASTER LEASE

THIS MASTER LEASE ("Lease") is entered into as of this ____ day of _____, 2015, by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation ("Landlord"), and NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC., dba Northern Arizona Center for Entrepreneurship and Technology (NACET) an Arizona nonprofit corporation ("Tenant").

RECITALS

- A. All previous Lease Agreements and Amendments thereto are hereby terminated, null and void, as they are superseded and replaced by this Lease.
- B. Landlord previously received a grant from the United States Department of Commerce, Economic Development Administration ("EDA") (the "Grant") for which Grant was provided by the EDA for the sole purpose of the establishment, development, construction and operation of a science, technology and clean-energy startup business incubator facility to promote, among other things, business development, job creation and private investment within the greater northern Arizona economic community.
- C. Pursuant to the terms of the Grant, Landlord has constructed, equipped and furnished an approximate 10,000 square foot building on that parcel of real property located at 2225 North Gemini Drive in the city of Flagstaff, Arizona, which building is commonly known as the Business Incubator Facility (the "Premises").
- D. Tenant has been formed as an Arizona nonprofit corporation for the purpose of assisting small business startups and entrepreneurs in connection with the development of new and innovative businesses within northern Arizona. In connection therewith, Landlord and Tenant are executing contemporaneously herewith that Agreement for Services pursuant to which Tenant agreed to perform the foregoing described services and other services for the benefit of Landlord and its citizenry as more particularly described in the Agreement for Services, including, without limitation, entering into this Lease of the Premises.
- E. Landlord desires to continue to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord for the purpose of the operation for research and development, science, technology and clean energy focused business incubator for the benefit of Landlord, Tenant and the citizens of the city of Flagstaff and the State of Arizona. In connection therewith, subject to the limitations and other provisions of this Lease, the parties hereto acknowledge that the Tenant intends to sublease portions of the Premises to third parties for the purpose of the development of technology and science startup companies meeting the objectives of the Grant, a copy of which has been provided to Tenant.

NOW THEREFORE, in consideration of the foregoing and of the rents, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

1. **LEASE OF PREMISES; CONDITION OF PREMISES.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises described in *Recital C* above, together with all equipment, furnishings and fixtures currently located in or which are a part of the Premises. Tenant's rights under this Lease are subject to and restricted by the provisions of the Grant and of any covenants, conditions, restrictions and easements, and all other matters of record which may affect the Premises, including, without limitation, that first priority lien recorded against the Premises in favor, and for the benefit, of the EDA, which lien restricts and imposes conditions upon any sale, transfer, conveyance or encumbrance of the Premises. Tenant acknowledges that it has examined the Premises, is familiar with the physical condition, status of title and use that may be made of the Premises, and is leasing the same in its "as is," "where is" condition existing on the date of this Lease. Landlord has not made and does not make any representation or warranty whatsoever with respect to the Premises or otherwise with respect to this Lease except as is expressly provided in this Lease. Except as otherwise provided herein, Tenant assumes all risks resulting from any defects (patent or latent) in the Premises or from any failure of the same to comply with any applicable laws, rules, regulations or requirements.

2. **TERM; EXTENSION OPTIONS.**

2.1. **Term.** The term of this Lease (the "Term") shall be three (3) years and shall commence on _____, 2015 (the "Commencement Date"), and shall expire on _____, 2017 (the "Termination Date"), unless the Term is extended as hereinafter provided. The parties shall have the right to request extension of this Lease for one or more of the Extension Terms pursuant to Section 2.2 of this Agreement by providing a written notice of intent to extend to the other party no later than six (6) months prior to the expiration of the term of this Lease.

2.2. **Options to Extend Term.** Subject to the satisfaction of the conditions hereinafter set forth, the parties shall have the right to elect to extend the Term of this Lease for up to three (3) consecutive five (5) year extension terms (each, an "Extension Term"). The conditions precedent to the party's right to elect to extend the Term of this Lease for any one or more of such Extension Terms are as follows:

2.2.1. Tenant shall not then be in default under this Lease;

2.2.2. Tenant shall provide written notice to Landlord of its desire to elect to extend the Term of this Lease not later than one hundred eighty (180) days prior to the end of the initial Term or the then current Extension Term, as applicable;

2.2.3. Tenant shall have been in compliance with the Minimum Sublease Occupancy Requirement set forth in *Section 13* below at all times during the Term or the then-current Extension Term, as applicable;

2.2.4. The Landlord shall have approved and otherwise agreed to provide continued funding to Tenant in connection with the services to be provided by Tenant to Landlord under the terms and conditions of the Agreement for Services (or a similar agreement), or Tenant shall have demonstrated to Landlord, to Landlord's reasonable satisfaction, that Tenant has secured a third-party funding source which will provide operational funding to Tenant in amounts sufficient to satisfy Tenant's obligations under this Lease, including without limitation, the payment of

Base Rent and all other monetary obligations of Tenant, during the entire Extension Term with respect to which Tenant is exercising its right and option to extend;

- 2.2.5. Tenant shall have provided to Landlord evidence satisfactory to Landlord that Tenant is not then in default of any other obligations of Tenant, including any financial instruments, agreements, loans or grants;
- 2.2.6. Tenant shall be in good standing with the Arizona Corporation Commission as an Arizona nonprofit corporation; and
- 2.2.7. Tenant shall not then be in default under the Agreement for Services, if such agreement is still in effect.

All terms and conditions of this Lease shall remain in full force and effect and shall define the legal relationship between Landlord and Tenant during each Extension Term.

- 2.3. **Mutual Right to Cancel/Terminate.** The parties may cancel and terminate this Agreement upon mutual consent. In the event the parties desire to mutually cancel/terminate this agreement, a date of cancellation/termination shall be mutually agreed upon by the parties. If a mutual termination occurs, each party shall be entitled to, and obligated under this agreement on a pro-rated basis up to and including the date of cancelation/termination.

3. **FINANCIAL OBLIGATIONS.**

- 3.1. **Base Rent.** A base monthly rent in the amount of one dollar (\$1.00) (“Base Rent”). The Base Rent shall be paid on the first day of each calendar month during the Term hereof, as may be extended;
- 3.2. **Monthly Maintenance Payment.** Tenant shall make monthly payments to the Landlord in the amount of three thousand three hundred and thirty four dollars (\$3334.00) to assist the Landlord in its upkeep and maintenance of the Premises (“Maintenance Payment”). The Maintenance Payment shall be paid on the first day of each calendar month during the Term hereof, as may be extended. From and after the anniversary of the commencement date of this Agreement, on the first full calendar month thereafter (the “Adjustment Date”) and on every anniversary of the Adjustment Date thereafter, the Maintenance Payment due hereunder shall be adjusted on a percentage basis of the Consumer Price Index for all Urban Consumers using the US City average. Tenant agrees that the Landlord alone shall determine the timing and scope of the maintenance of the Premises and may contract for some or all of the maintenance work to be performed on the Premises. The Landlord agrees to maintain the Premises in good condition and repair.
- 3.3. Tenant agrees that the total maximum compensation for services performed and costs incurred under this Agreement shall not exceed the sum of Two-Hundred Twenty Thousand Dollars (\$220,000) per fiscal year (July 1 – June 30) , and Tenant agrees to perform all services required by this Agreement for an amount not to exceed such dollar amount. This dollar amount is the maximum amount that the City shall pay to Tenant as reimbursement, not as advances, during the applicable time periods.

- 3.4. Tenant agrees to submit quarterly invoices to the City based upon actual expenses incurred during the term of this Agreement. Tenant will also submit with its invoices a balance sheet and profit and loss statement for each such quarter.
- 3.5. In the event that the City makes any advances to Tenant, which Tenant understands is not a requirement under this Agreement, Tenant agrees that any unexpended funds which have been advanced to the Tenant by the City and which remain in Tenant's possession at the end of each fiscal year of this Agreement will be refunded to the City within ninety (90) days after the end of such fiscal year if the sum of any advances and reimbursements exceeds the maximum amounts set forth above for a given fiscal year.
- 3.6. All disbursement of funds to Tenant from the City under this Agreement will be subject to the annual appropriation by the City Council and limitations of the State of Arizona budget law and all other applicable laws.
- 3.7. **Payment.** All sums payable pursuant to this Lease shall be paid when due, in lawful money of the United States of America, without deduction, offset, prior notice or demand to Landlord at the address set forth in ***Section 23 below***, or at such other place or to such other person as Landlord may from time to time designate by notice hereunder.
- 3.8. **"Lease Year" Defined.** "Lease Year" is each twelve (12) month period during the Term or Extension Term, as applicable, with the first Lease Year commencing at 12:01 A.M. on the Commencement Date and ending at midnight on the day immediately preceding the first (1st) anniversary of the Commencement Date.

4. **TAXES.**

- 4.1. **Real Estate Taxes.** Landlord and Tenant believe that, as a result of the fact that Landlord will retain ownership of fee simple title to the Premises during the entire Term of this Lease, as may be extended, the Premises will not be subject to Real Estate Taxes and Assessments or that Tenant may be entitled to apply for an exemption to any such Real Estate Taxes and Assessments; provided, however, that, if for any reason, the Premises becomes subject to any obligation for the payment of Real Estate Taxes and Assessments, for which no exemption applies, Tenant shall pay all such Real Estate Taxes and Assessments levied upon the Premises during the Term of this Lease as may be extended. The term "Real Estate Taxes and Assessments" shall mean all taxes and assessments imposed or levied upon the real property and improvements constituting the tax parcel of which the Premises is a part.
- 4.2. **Taxes on Rent.** Tenant shall pay to Landlord, in addition to and together with the Rent payable hereunder, a sum equal to the aggregate of any municipal, city, county, state or federal excise, sales, use or transaction privilege taxes levied or imposed against or on account of the amounts payable hereunder or the receipts thereof by Landlord (except state, federal or any other income taxes imposed or levied against Landlord).
- 4.3. **Personal Property Taxes.** Unless exempt under law, Tenant shall pay or cause its Subtenants to pay, prior to delinquency, all taxes assessed against or levied upon any fixtures, equipment, leasehold improvements and all personal property located in or upon

the Premises and which is owned by Tenant or such Subtenant ("Taxed Personal Property").

4.4. **Changes in Taxing Methods.** If any authority having the power to tax or assess shall alter the methods and/or standards of taxation and assessment in existence as of the date of this Lease against the interests of Landlord in the Premises, in whole or in part, so as to impose a different or additional tax plan, all such taxes or assessments based upon such other tax plan shall be considered as "real estate taxes" for purposes of this Lease, including, without limitation:

4.4.1. A tax, assessment, surcharge, fee, levy, penalty, bond or similar imposition (collectively, "impositions") on Landlord's right to rental or other income from the Premises or as against Landlord's business of leasing the Premises,

4.4.2. Any impositions allocable to or measured by the area of the Premises,

4.4.3. Any impositions with respect to the possession, leasing, operation, maintenance, alteration, use or occupancy by Tenant of the Premises,

4.4.4. Any impositions upon the Lease transaction or any document to which Tenant is a party which creates or transfers any interest or estate in or to the Premises, or

4.4.5. Any special, unforeseen or extraordinary impositions however described.

5. **USE OF PREMISES.**

5.1. **Permitted Uses; Uses Limited to Those Permitted Under Grant.** Tenant shall operate, manage, occupy and use the Premises only for the purpose of the operation of a science, technology and clean-energy startup business incubator facility consistent and strictly in accordance with the Grant obtained by Landlord from the EDA, which use shall include the sublease of portions of the Premises to Subtenants who (a) meet the requirements set forth in *Section 13.1* below, (b) are approved by Landlord pursuant to the provisions set forth in *Section 13.1*, and (c) shall utilize such subleased portions of the Premises only for the purposes permitted under the Grant. In no event shall Tenant utilize the Premises for any other purpose without the prior written approval of Landlord and the EDA, which approval may be given or withheld in the sole and absolute discretion of Landlord and the EDA, respectively. In connection with the foregoing, Tenant hereby acknowledges, covenants and agrees that it shall not use or permit the use of the Premises for any purpose that is not consistent with the general and special purpose of the Grant. In addition, Tenant hereby acknowledges, covenants and agrees that, in its use of the Premises, it shall observe and comply with all requirements of the EDA as described in the Grant, including, without limitation, prohibitions against discrimination on the basis of race, color, national origin, handicap, age, religion or sex, and all requirements regarding environmental impacts which any uses within the Premises may have on the environment.

5.2. **Insurance Requirements.** In addition to the requirements in *Section 7* of this Lease, Tenant shall not engage in or permit any activity which will cause the cancellation of, or increase the existing premiums on, any insurance relating to the Premises. Tenant shall

not permit to remain in or about the Premises any article that may be prohibited by the broadest form of "All Risk" or "Special Form" property damage insurance policies.

5.3. **Compliance with Laws.** Tenant, at its expense, shall observe and comply with all applicable rules, regulations, ordinances, orders, codes, laws and requirements of all municipal, county, state, federal and other applicable governmental authorities, the Board of Fire Underwriters, Landlord's insurance companies and other organizations that establish insurance rates pertaining to the Premises. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether or not Landlord is a party thereto, that Tenant has violated any such rule, regulation, ordinance, order, code, law or requirement, shall be conclusive of that fact as between Landlord and Tenant.

5.4. **Hazardous Substances.** Tenant shall not construct or use any improvements, fixtures or equipment, or engage in any act on or about the Premises, or permit any Subtenant from engaging in any of the foregoing, that would require the procurement of any license or permit pursuant to any Environmental Law. Tenant shall immediately notify Landlord of:

5.4.1. The existence of any Hazardous Substance on or about the Premises that may be in violation of any Environmental Law (regardless of whether Tenant is responsible for the existence of such Hazardous Substance),

5.4.2. Any proceeding or investigation by any federal, state or local governmental authority regarding the presence of any Hazardous Substance on the Premises or the migration thereof to or from any other property,

5.4.3. All claims made or threatened by any third party against Tenant relating to any loss or injury resulting from any Hazardous Substance, or

5.4.4. Tenant's notification of the National Response Center of any release of a reportable quantity of a Hazardous Substance in or about the Premises.

"Environmental Laws" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health, industrial hygiene or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Hazardous Materials Transportation Act, as amended, the Federal Water Pollution Control Act, as amended, the Resource Conservation and Recovery Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, and the Arizona Environmental Quality Act, as amended.

"Hazardous Substance" shall mean all substances, materials and wastes that are or become regulated, or classified as hazardous or toxic, under any Environmental Law. Notwithstanding anything in this Lease to the contrary, Landlord acknowledges that the Premises may be used (in whole or in part) for scientific, technological, medical, biological and/or "biomedical" treatment, research and manufacturing and related purposes, including practices, substances, procedures, or otherwise that are potentially hazardous (collectively, "Scientific Activities"); and that as long as such Scientific Activities are conducted or performed in accordance with all applicable laws and in manners that are consistent with generally-accepted theory or practice at the time such

Scientific Activities are conducted or performed, all such Scientific Activities shall be permitted and shall not constitute a breach of this Lease.

5.5. **Collaborative Marketing.** Tenant and Landlord agree to work together in good faith to attract and secure Subtenants for the Premises that comply with or complement the permitted use of the Premises as contemplated in this Lease. In connection therewith, Landlord and Tenant shall agree upon and adopt a protocol for the purpose of marketing the Premises which shall, among other things, require prior mutual approval of all press releases, public notices and marketing activities relating to the Premises and its operation. Notwithstanding the foregoing, the primary obligation to attract and secure Subtenants for the Premises shall be that of Tenant.

6. **LANDLORD'S MAINTENANCE; LANDLORD'S INSURANCE.** Landlord shall, at Landlord's sole cost and expense, keep, maintain and repair the Premises, including the interior and exterior of all improvements on or within the Premises, in good, safe and sanitary order, condition and repair. Landlord's obligations for such maintenance and repair shall include providing normal and customary janitorial services and providing maintenance and repair of all structural portions of the Premises, including the foundation, roof, glass, doors, window casements, glazing, plumbing, pipes, electrical wiring and conduits, and the heating and air-conditioning systems, as well as all exterior landscaping, parking areas and sidewalks, including snow removal; provided, however, that in no event shall Landlord be responsible for the maintenance, repair or cleaning of any laboratory within the Premises and either Tenant or the applicable Subtenant shall be responsible for all maintenance, repair and cleaning of such laboratory areas and any other areas which are secured-work areas. If Tenant determines that some item of maintenance or repair is needed, Tenant shall notify Landlord and Landlord shall cause such maintenance or repair to occur within a reasonable period of time after receipt of Tenant's notice. Tenant hereby acknowledges and agrees that Landlord shall have the right to enter upon the Premises at any reasonable time for the purpose of performing its maintenance and repair obligations under this Lease.

In addition, Landlord shall, at Landlord's sole cost and expense, obtain and maintain casualty loss insurance with respect to the Premises in such amounts as Landlord may determine.

7. **WAIVER, INDEMNITY AND TENANT'S INSURANCE.**

7.1. **Assumption and Waiver.** Tenant assumes all risk of, and waives all claims against Landlord arising from, damage, loss or theft of property or injury to persons in, upon or about the Premises from any cause, except for loss or damage caused by the gross negligence or intentional acts of Landlord or its agents or employees. The foregoing waiver includes, without limitation, the following risks against which Tenant should maintain adequate insurance to protect Tenant equipment and other personal property:

7.1.1. All-risk casualty loss insurance with respect to all Improvements constructed by Tenant on the Premises,

7.1.2. Any defect in or failure of plumbing, heating or air-conditioning equipment, electric wiring, water pipes, stairs, railings or walks;

7.1.3. The disrepair of any equipment;

- 7.1.4. The bursting, leaking or running of any tank, washstand, water closet, drain or any pipe or tank in, upon or about the Premises;
- 7.1.5. The backup of any sewer pipe or down spout;
- 7.1.6. The escape of steam or hot water;
- 7.1.7. Water, snow or ice;
- 7.1.8. The falling of any fixture, plaster or stucco;
- 7.1.9. Broken glass; and
- 7.1.10. Any unauthorized or criminal entry of third parties within the Premises.

7.2. **Indemnification.**

7.2.1. **Tenant's Indemnification of Landlord.** Tenant agrees to indemnify, defend, save and hold harmless Landlord, and its officers, officials, council members, citizens, agents, employees and volunteers (hereinafter referred to as "Indemnitee") for, from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage caused, in whole or in part, by the acts, errors, omissions, negligence, or alleged negligence of Tenant or any of Tenant's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Tenant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Tenant for, from and against any and all Claims. It is agreed that Tenant will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. The foregoing indemnity by Tenant shall extend, but not be limited, to:

- 7.2.1.1. Construction by or through Tenant of any improvements or any other work or thing done in, on or about the Premises or any part thereof;
- 7.2.1.2. Any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises and any improvements, areas adjacent thereto or improvements thereon by or through Tenant, or any nuisance made or suffered thereon or any failure by Tenant to keep the Premises or any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof in a safe condition;

- 7.2.1.3. Any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises, areas adjacent thereto or improvements thereon or any part thereof or in, on or about any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof;
- 7.2.1.4. Any lien or claim which may be alleged to have arisen against or on the Premises or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto;
- 7.2.1.5. Any acts of Tenant or any Subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;
- 7.2.1.6. Any failure on the part of Tenant to pay rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with, including without limitation, the failure to comply with or observe the requirements of the Grant, and the exercise by Landlord of any remedy provided in this Lease with respect thereto;
- 7.2.1.7. Any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Improvements or any part thereof, on Tenant's part to be kept, observed or performed;
- 7.2.1.8. Any tax which Tenant is obligated to pay or cause to be paid.

The foregoing provisions shall survive the expiration or earlier termination of this Lease to the extent the act, error, omission, negligence or alleged negligence arose prior to such expiration or termination.

Tenant will hold all goods, materials, furniture, fixtures, equipment, and machinery and other property whatsoever on the Premises at the sole risk of Tenant, and, to the extent set forth above, save Landlord harmless from any loss or damage thereto by any cause whatsoever.

The obligations of Tenant under this **Section 7.2** shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

If any claim, action or proceeding is made or brought against Landlord by reason of any event, specified or unspecified, which is the subject of Tenant's foregoing indemnity, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name. Notwithstanding the foregoing, Landlord may engage its own attorneys to defend

it or to assist in its defense and Tenant shall pay the reasonable fees and disbursements of such attorneys.

7.2.2. **Landlord's Indemnification of Tenant.** Landlord agrees to indemnify, defend, save and hold harmless Tenant, and its officers and directors, for, from and against any and all Claims arising as a result of the negligence or willful misconduct of Landlord or from the failure of Landlord to perform its obligations under this Lease as and when required herein. If any Claim is made or brought against Tenant by reason of any event, specified or unspecified, which is the subject of Landlord's foregoing indemnity, then, upon demand by Tenant, Landlord, at its sole cost and expense, shall resist or defend such Claim in Tenant's name. Notwithstanding the foregoing, Tenant may engage its own attorneys, subject to the approval of Landlord, to defend it or to assist in its defense, and Landlord shall pay the reasonable fees and disbursements of such attorneys.

7.3. **Environmental Indemnification of Landlord by Tenant.** Tenant shall defend, indemnify, and hold harmless Landlord for, from and against any and all future claims, demands, complaints and/or actions made or brought against Landlord pertaining to the Premises and arising under any Environmental Law, Rule, Regulation or otherwise based upon any Hazardous Materials condition. This defense and indemnity includes, without limitation, any claims, demands, complaints, and/or action, asserted under CERCLA, WQARF, RCRA, and federal and state common law pertaining to Hazardous Materials, including any such claim based upon Landlord's alleged liability as an owner or operator of the Premises under CERCLA or WQARF.

7.4. **Insurance.** Tenant shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Tenant, Tenant's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Landlord does not represent or warrant that the minimum limits set forth herein are sufficient to protect Tenant from liabilities that might arise out of this Lease, and Tenant is free to purchase such additional insurance as Tenant may determine is necessary.

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

7.4.1.1. **Commercial General Liability - Occurrence Form**

(Form CG 0001, ed. 10/93 or any replacement thereof)

General Aggregate -- \$2,000,000

Personal and Advertising Injury -- \$1,000,000

Each Occurrence -- \$1,000,000

Fire Damage (any one fire) -- \$50,000

Medical Expense (any one person) -- Optional

7.4.1.2. **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

7.4.1.3. **Professional Liability**

Each Claim -- \$1,000,000.00
Annual Aggregate -- \$1,000,000.00

7.4.2. **Self-Insured Retention/Deductibles**. Any self-insured retentions and deductibles must be declared to and approved by Landlord.

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

7.4.3.1. **Commercial General Liability and Automobile Liability Coverages**.

7.4.3.1.1. Landlord, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Lease and activities performed by or on behalf of Tenant, including products and completed operations of Tenant; and automobiles owned, leased, hired or borrowed by Tenant.

7.4.3.1.2. Tenant's insurance shall contain broad form contractual liability coverage.

7.4.3.1.3. Landlord, its officers, officials, agents, employees and volunteers shall be named as additional insureds to the full limits of liability purchased by Tenant even if those limits of liability are in excess of those required by this Lease.

7.4.3.1.4. Tenant's insurance coverage shall be primary insurance with respect to Landlord, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by Landlord, its officers, officials, agents, employees or volunteers, shall be in excess to the coverage of Tenant's insurance and shall not contribute to it.

7.4.3.1.5. Tenant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

7.4.3.1.6. Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.

7.4.3.1.7. The policies shall contain a waiver of subrogation against Landlord, its officers, officials, agents, employees and volunteers for losses arising from Tenant's operations, occupancy and use of the Premises subject to this Lease.

7.4.3.2. **Workers' Compensation and Employee's Liability Coverage.** The insurer agrees to waive all rights of subrogation against Landlord, its officials, officers, agents, employees and volunteers for losses arising from Tenant's operations, occupancy and use of the Premises subject to this Lease.

7.4.4. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Landlord.

7.4.5. **Acceptability of Insurers.** Tenant shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Landlord does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.

7.4.6. **Verification of Coverage.** Tenant shall furnish Landlord with certificates of insurance (*ACORD form*) as required by this Lease. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

7.4.7. **Policy Review and Adjustment.** Such policies of insurance shall be subject to review and adjustment on the fifth (5th) anniversary of the Commencement Date of this Lease and on each subsequent fifth (5th) anniversary during the Term hereof, as may be extended, in order to determine the adequacy of the insurance amounts in light of the then existing circumstances.

7.4.8. **Failure to Maintain Insurance.** If Tenant fails or refuses to provide copies of the renewal insurance policies, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and upon five (5) days' notice to Lessee, to procure and maintain such insurance. Any premiums paid by Landlord hereunder shall be due and payable by Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s).

8. **ALTERATIONS.**

8.1. **Landlord's Approval.** Neither Tenant nor any Subtenant shall make any alteration, addition or improvement to the Premises, including, without limitation, to the entrances and exits of the Premises, or to any fixture, wiring, plumbing, heating and air-

conditioning or other equipment therein without Landlord's prior written consent, including obtaining any required building permits from the Landlord which shall be obtained through Landlord's normal review processes for such permits. If such consent is granted, Tenant or the respective Subtenant, as applicable, must acquire, prior to the commencement of construction, all necessary building permits and must provide Landlord with certificates of property (course of construction), workmen's compensation and liability insurance in form and amounts satisfactory to Landlord. Any alteration, addition or improvement to which Landlord consents shall be completed in the exercise of due diligence in a good and workmanlike manner, in accordance with plans, specifications and drawings approved in writing by Landlord, and in compliance with this Lease and all applicable laws, regulations and codes and all requirements of any insurer providing coverage for the Premises. Tenant, or the respective Subtenant, as applicable, shall pay in a timely manner all costs and fees incurred in connection therewith.

8.2. **Alterations Become Part of Premises.** All alterations, additions or improvements to the Premises by Tenant or any Subtenant (except movable furniture, equipment and trade fixtures installed and/or owned by Tenant or any Subtenant, as applicable) shall become part of the Premises and Landlord's property immediately upon expiration or termination of this Lease.

9. **LIENS.** Tenant shall keep the Premises free and clear of all liens incurred by or resulting from acts of Tenant and any Subtenant. If any lien is filed, Tenant shall, within thirty (30) days thereafter, and at its expense, cause the lien to be fully discharged by either paying the obligation secured thereby or, at Tenant's election, by obtaining and recording a surety bond in accordance with A.R.S. §33-1004. Tenant is not authorized to act for or on behalf of Landlord for the purpose of constructing any improvements to the Premises and neither Landlord nor Landlord's interest in the Premises shall be subject to any obligations incurred by Tenant. Landlord shall be entitled, but not obligated, to post on the Premises during the course of any construction by Tenant such notices of nonresponsibility as Landlord deems appropriate. Tenant shall, at least five (5) days before the commencement of any work which might result in a liens, including, without limitation, the initial construction of the Improvements, provide notice thereof to Landlord so that Landlord may post such notices. If any lien is filed or any action affecting the title to the Premises is commenced, the party receiving such information shall immediately notify the other party.

10. **DAMAGE AND DESTRUCTION OF PREMISES.** In the event that all or any portion of the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, this Lease shall continue in full force and effect and Landlord, utilizing the proceeds of any casualty loss insurance policy, may, but shall not be obligated to, rebuild or repair the same. Landlord and Tenant agree that the provisions of A.R.S. §33-343 shall not apply to this Lease. If Landlord elects not to repair or restore the Premises, then in that event, this Lease shall terminate as to that portion of the Premises that has been damaged or destroyed and the Base Rent shall be equitably adjusted to reflect the fact that the area of the Premises has been reduced by such damage or destruction; provided, however, that if the damage or destruction renders more than fifty percent (50%) of the Premises unusable or untenable, then in that event, Tenant shall have the right to elect to terminate this Lease by written notice to Landlord so long as such thirty (30) days after Tenant's receipt of Landlord's election not to repair or restore the Premises.

11. **EMINENT DOMAIN.**

- 11.1. **Total Condemnation.** If the entire Premises are taken under the power of eminent domain or conveyed by Landlord under the threat thereof (a "Condemnation"), this Lease shall terminate as of the date of Condemnation. All Rent and other obligations of Tenant shall be paid and performed up to such date.
- 11.2. **Partial Condemnation.** If any portion of the Premises is taken by a Condemnation and such partial taking renders the Premises unsuitable for Tenant's purposes, this Lease shall terminate as of the date of Condemnation. If the partial taking by Condemnation does not render the Premises unsuitable for Tenant's purposes, Landlord shall, in the exercise of reasonable diligence and utilizing all or a portion of any condemnation award, restore the Premises to a condition comparable to its condition prior to the Condemnation less the portion lost in the Condemnation and this Lease shall continue in full force and effect. In the event a partial Condemnation results in the taking of a portion of the Premises, the Rent shall be reduced in proportion to the gross area of the Premises so taken.
- 11.3. **Condemnation Award.** In the event of a Condemnation, whether whole or partial, Landlord shall be entitled to the entirety of the condemnation award and Tenant shall have no right or interest therein.
- 11.4. **Date of Condemnation.** The date of Condemnation shall mean the earlier of the date (a) possession of the Premises is delivered to the condemning authority, or (b) title to the Premises is vested in the condemning authority.

12. **ASSIGNMENT.**

- 12.1. **Restriction on Transfers.** Tenant shall not, without the prior written consent of Landlord and the EDA, which consent may be given or withheld in the sole and absolute discretion of Landlord and the EDA, respectively, assign, hypothecate, mortgage or otherwise encumber or convey Tenant's interest in this Lease (herein, a "Transfer"); provided, however, that Tenant shall use commercially reasonable efforts to sublease and shall have the right to sublease portions of the Premises to Subtenants pursuant to and in accordance with the provisions set forth in *Section 13* below.
- 12.2. **Void Transfers.** Any Transfer or attempted Transfer which has not first been approved by Landlord and the EDA shall be null and void and shall constitute a default by Tenant under this Lease.

13. **SUBLEASES; MINIMUM SUBLEASE OCCUPANCY REQUIREMENT.**

- 13.1. **Subleases; Form of Sublease.** Notwithstanding anything contained herein to the contrary, including, without limitation, the provisions of *Section 12* above, Tenant shall use commercially reasonable efforts, and shall have the right, to sublease portions of the Premises (herein, a "Sublease") to subtenants (each herein, a "Subtenant") who are located or reside within the general service area of the Northern Arizona Council of Governments ("NACOG"), whose use of its subleased portion of the Premises is consistent with the permitted uses described in *Section 5* above, and who has been approved as a Subtenant of the Premises by the Landlord. In connection therewith, prior

to entering into a Sublease for space in the Premises to a Subtenant, Tenant shall provide written notice to Landlord, which notice shall include the identity of the Subtenant, the proposed use of the portion of the Premises to be subleased by the Subtenant, the term of the proposed Sublease and the Subrent to be paid by the Subtenant in connection therewith. The Tenant hereby acknowledges and agrees that each Sublease entered into by Tenant for any portion of the Premises shall be in the form attached hereto as Exhibit "A" unless another form of Sublease is approved by Landlord.

13.2. **Minimum Sublease Occupancy Requirement.** Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant hereby acknowledge and agree that, as a material part of the consideration to Landlord for its execution of this Lease, Tenant shall, commencing upon the first anniversary of the Commencement Date, and continuing thereafter through the duration of the Term, and each Extension Term, as applicable, maintain a minimum number of Subtenants within the Premises occupying at least sixty percent (60%) of the total gross square footage of leasable space within the Premises, exclusive of any space occupied by Tenant for Tenant's offices (the "Minimum Sublease Occupancy Requirement"). Except for any delay caused by the completion of the Business Accelerator, and except by mutual agreement otherwise between the parties, after the Business Accelerator is completed, at any time after the first anniversary of the Commencement Date, if Tenant fails to satisfy the Minimum Sublease Occupancy Requirement for a period of ninety (90) consecutive days or more, Landlord shall have the right, but not the obligation, to elect to terminate this Lease by written notice to Tenant, whereupon all further rights, duties and obligations of the parties hereunder shall terminate, except with respect to any continuing indemnity obligations of the parties hereunder. The City of Flagstaff reserves the right to extend the occupancy requirement period with a written notice to the Tenant.

13.3. **Effect of Lease Termination on Subleases.** In the event that this Lease is terminated for any reason, including as a result of a default by Tenant under this Lease, such termination shall not effect a cancellation of any Subleases, but shall operate as an assignment to Landlord of any and all such affected Subleases. So long as any Subtenant under a Sublease is not in default under the terms, covenants or conditions of its Sublease beyond any applicable notice and cure period, and attorns to and accepts Landlord as the successor sublessor to Tenant, Landlord shall honor such Sublease and shall not disturb the use of such Subtenant, except in accordance with the applicable provisions of such Sublease. Landlord will agree to recognize each such Subtenant and not disturb the possession of the Subtenant, except that Landlord shall not be:

13.3.1. Liable for any act or omission of (i) any prior sublessor (including Tenant) under the Sublease, or (ii) Subtenant (or its successors or permitted assigns) under the Sublease; or

13.3.2. Subject to any offsets or defenses which Subtenant may have against any prior sublessor (including Tenant) under the Sublease; or

13.3.3. Bound by any payment which Subtenant might have paid for more than one (1) month in advance to any prior sublessor (including Tenant); or

- 13.3.4. Bound by any provision set forth in the Sublease requiring Tenant to indemnify or hold Subtenant harmless; or
- 13.3.5. Liable for any security deposit unless actually delivered to Landlord; or
- 13.3.6. Responsible for representations, warranties, covenants and indemnities of Tenant except to the extent that such representations, warranties, covenants and indemnities apply to the Premises and relate to the operation of the Premises prior to assignment of the Sublease to Landlord; or
- 13.3.7. Liable for any of Tenant's obligations for alterations, demolition or other improvements or work upon the Premises subject to the Sublease.

14. **MAINTENANCE AND UTILITIES.**

14.1. **General Utilities.** Prior to delinquency, Tenant shall set up and pay all charges for water, wastewater/sewer, stormwater, environmental management fee, natural gas, electricity, power, telephone and internet service, trash removal, recyclables and all other services or utilities used within or about the Premises by the Tenant or any Subtenant.

14.2. **Specific Obligations of Tenant and Subtenants.** Tenant and the Subtenants agree to:

- 14.2.1. Furnish their own office equipment, lab materials, manufacturing equipment, office supplies, etc. in their own area areas.
- 14.2.2. Provide for individual blue recyclable bins in each utilized space.
- 14.2.3. Provide for collection on a regular basis of individual blue bins and group bins in breakroom and cardboard collection in copy room, for distribution to outside dumpster recycle bin and glass container.
- 14.2.4. Provide for pick-up of recyclables including at a minimum of paper, corrugated cardboard, glass, plastics and metal from the outside dumpster enclosure by solid waste on a contract basis.
- 14.2.5. Provide for onsite cleaning of the walk-off mats at the entry doors each week, and offsite cleaning of the same mats, at a minimum on quarterly basis.
- 14.2.6. Provide shower facilities to the occupants of Innovation Mesa (which are already located in the Business Incubator), for those who elect to bike to work. A total of two shower facilities shall be made available.
- 14.2.7. Provide the building utility usage data to the United States Green Building Council (USGBC upon request.
- 14.2.8. Cooperate with Leadership in Energy and Environmental Design (LEED) survey takers to periodically provide information about comfort, energy use patterns, etc.

15. **SURRENDER OF PREMISES.** Tenant shall, upon the expiration or prior termination of this Lease for any reason, quit and peaceably surrender the Premises, to Landlord in good order,

condition, repair (reasonable wear and tear excepted), free of refuse in a broom-clean state and in accordance with this **Section 15**. At least thirty (30) days prior to the expiration or termination of this Lease as to the Premises, Tenant shall provide Landlord with written notice of the specific date upon which Tenant will surrender the Premises. Tenant shall deliver all keys for the Premises to Landlord at the address at which Tenant makes rent payments and shall inform Landlord in writing of the combinations of all safes, locks and vaults, if any, in the Premises. Landlord's acceptance of surrender of the Premises by Tenant shall only arise from, and must be evidenced by, written acknowledgment of acceptance of surrender signed by Landlord. No other act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be an acceptance by Landlord of the surrender of the Premises by Tenant prior to the expiration of the Term as may be extended.

16. **ENTRY AND INSPECTION**. Upon reasonable prior notice, which notice may be given in writing, verbally or telephonically (provided, however, that no notice shall be required in the event of an actual or perceived emergency), Landlord and its agents shall be entitled to enter upon the Premises at any time for the purpose of conducting inspections, to show the Premises to any prospective purchaser, tenant, lender or insurer, and to take necessary action in the event of an emergency. No such entry shall entitle Tenant to terminate this Lease, to reduce or abate rent or other amounts due hereunder or to any claims for damages. Landlord shall be entitled to use any reasonable means to enter the Premises in the event of emergency and shall not be liable for any damages resulting therefrom.
17. **ESTOPPEL CERTIFICATE**. Upon receipt of a request from either Landlord or Tenant, the other party shall within thirty (30) days after receipt of such request, execute, acknowledge and deliver to the requesting party a written statement (a) certifying that this Lease is unmodified (or, if modified, stating the nature of such modification) and in full force and effect and the dates to which rent and other charges are paid in advance, (b) acknowledging that there are no uncured defaults by the requesting party, or specifying any claimed defaults, and (c) certifying or acknowledging any other matters that the requesting party may reasonably request. Any such statements may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Premises, or of Tenant's interest in the leasehold established by this Lease. Tenant's failure to timely deliver such statement to Landlord shall be conclusive against Tenant that (i) this Lease is in full force and effect, without modification, except as represented by Landlord in the request, (ii) there are no uncured defaults by Landlord, and (iii) Rent has not been paid more than one (1) year in advance.
18. **QUIET ENJOYMENT**. Provided Tenant is not in default hereunder, Landlord will do nothing to prevent Tenant from peaceably and quietly enjoying and occupying the Premises during the Term of this Lease, as may be extended. This covenant shall not extend to, and Landlord shall not be liable for, any disturbance, act or condition brought about by anyone not otherwise claiming by or through Landlord, or to any action required or permitted to be taken by or on behalf of Landlord under this Lease. This Lease conveys no interest to Tenant in light, air or view and Landlord shall not be liable to Tenant for interference with or diminution of the light, air or view.
19. **DEFAULT; REMEDIES**.

19.1. **Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

19.1.1. Tenant's abandoning or vacating the Premises;

19.1.2. Tenant's failure to make any payment of Rent or other sum due under this Lease, as and when due, together with Default Interest thereon, where such failure continues for a period of fifteen (15) days after the date such payment is due;

19.1.3. Tenant's failure to observe or perform any of Tenant's obligations under this Lease (except as described in *Section 19.1.2*, including without limitation, failing to observe the restrictions on the use of the Premises as set forth in the Grant, where such failure continues for a period of thirty (30) days after written notice from Landlord;

19.1.4. Any Transfer of Tenant's interest in this Lease contrary to *Section 12* or any Sublease contrary to *Section 13*;

19.1.5. To the extent not prohibited by law, (i) the making by Tenant of any general assignment or general arrangement for the benefit of creditors; (ii) the filing by or against Tenant of a proceeding under state or federal insolvency and/or bankruptcy laws (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets at the Premises or of Tenant's interest in this Leases where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets at the Premises or of Tenant's interest in this Lease;

19.1.6. Tenant's failure to satisfy the Minimum Sublease Occupancy Requirement for a period in excess of ninety (90) consecutive days. Unless the City has exercised its right under Section 13.2 to extend the occupancy requirement;

19.1.7. Tenant's failure to maintain its status as a nonprofit corporation; or

19.1.8. Tenant defaults under or breaches any provision of the Agreement for Services, if such agreement is still in effect.

19.2. **Remedies.** In the event of any such default or breach, Landlord shall be entitled to exercise the following rights and remedies at any time thereafter, with or without notice or demand:

19.2.1. To terminate this Lease effective immediately upon delivery of notice to Tenant and Tenant shall immediately surrender possession of the Premises upon receipt of such notice. Notwithstanding such termination, Tenant shall remain liable for any and all damages incurred by Landlord as a result of Tenant's breach.

19.2.2. To immediately reenter and remove all persons and property from the Premises, without liability for damages sustained by reason of such reentry and removal.

Such property may be stored in a public warehouse or elsewhere at Tenant's expense. If Landlord elects to reenter or take possession pursuant to legal proceedings or any notice provided by law, Landlord shall have the right to terminate this Lease (as provided in *Section 19.2.1* above), or without terminating this Lease, to relet the Premises or any part thereof for such term (which may be for a term in excess of the Term) and upon such conditions as Landlord, in its sole discretion, may deem advisable (which may include concessions of free rent, alterations or repairs). If Landlord elects to relet the Premises, the rents received thereafter shall be applied first to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, employees expenses, alteration, remodeling and repair costs and expenses of preparing for such reletting; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied to payment of future rent as the same becomes due. If the rent to be received from such reletting will be less than the total of all rental and other payments that Tenant would have been obligated to make during the balance of the Term, Tenant shall immediately pay any such deficiency in full to Landlord. No such reentry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless termination is decreed by a court. Notwithstanding any such reletting without termination, Landlord may, at any time thereafter, elect to terminate this Lease for such previous breach, upon delivery of notice to Tenant.

19.2.3. To seek or pursue any other remedies which may be available at law or in equity.

- 19.3. **Remedies Cumulative.** No remedy or option of Landlord shall be considered exclusive of any other remedy, but the same shall be cumulative and in addition to every other remedy or option given hereunder, or now or hereafter existing at law, in equity or by statute, including, without limitation an action to recover amounts due hereunder. Landlord may exercise its rights and remedies at any time, in any order, to any extent, and as often as Landlord deems advisable.
- 19.4. **Landlord's Right to Act.** If Tenant fails to perform any of its obligations, Landlord shall have the right, without any passage of time or declaring Tenant in default, to perform such obligation on Tenant's behalf and to charge to Tenant all costs and expenses (including an administration fee equal to ten percent (10%) of such costs and expenses) incurred in connection therewith.
- 19.5. **Rent Defined.** Rent and all other sums payable by Tenant hereunder shall be deemed to be rent payable for use of the Premises for all purposes, including, without limitation, for purposes of Section 502(b)(6) of the Bankruptcy Code, whether or not such sums are designated as rent hereunder.
- 19.6. **Late Charges.** The late payment by Tenant of any sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of

any encumbrance covering the Premises. Accordingly, if amounts payable by Tenant are not received by Landlord within five (5) days after the due date of such payment, Tenant shall immediately pay to Landlord a late charge equal to five percent (5%) of such payment. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of Tenant's late payment, and shall be in addition to the payment of Default Interest.

19.7. **Interest on Past-Due Obligations.** Any amount owed Landlord that is not paid when due shall bear interest from the date due until paid at a rate equal to the lesser of (a) 18% per annum, or (b) a variable rate per annum equal to five (5) percentage points in excess of the Prime Rate designated as such in the Wall Street Journal from time to time during the period such amount is owed to Landlord ("Default Interest"). If the Wall Street Journal is no longer in publication or ceases to publish or designate a Prime Rate, Landlord shall, in its reasonable judgment, substitute another means of determining the annual interest rate charged by major commercial banks on 90-day unsecured commercial loans to their most creditworthy borrowers, and such interest rate as so determined shall thereafter be the Prime Rate. Payment of such interest shall not excuse or cure any default by Tenant.

19.8. **Attorneys' Fees; Waiver of Jury Trial and Counterclaims.** In any dispute between the parties, the prevailing party shall be entitled to recover from the other party immediately upon demand all costs and attorneys' fees, expert witness fees, costs of tests and analysis, travel and accommodation expenses, deposition and trial transcript copies, court costs and other similar costs and fees incurred in enforcing its rights and remedies under this Lease, regardless of whether legal proceedings are actually commenced. The parties waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises and/or any claim of injury or damage. If Landlord commences any proceedings for nonpayment of rent, Tenant shall not interpose any counterclaim of whatever nature or description in any such proceedings, other than compulsory counterclaims. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in any separate action or action brought by Tenant.

19.9. **Accord and Satisfaction.** Payment by Tenant or receipt by Landlord of a lesser amount than the rent or other charges due hereunder shall be deemed to be on account of the earliest due stipulated rent or other charges, and no endorsement or statement on any check or any letter accompanying any check or payment shall be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or other charges or pursue any other remedy in this Lease.

20. **LANDLORD'S LIABILITY.**

20.1. **Default by Landlord.** Landlord shall not be considered in default or breach of this Lease for the nonperformance of any obligation imposed herein unless such nonperformance shall continue for a period of at least thirty (30) days after notice from Tenant; provided, however, if the nature of the nonperformance is such that it cannot be reasonably cured

within thirty (30) days, Landlord shall not be deemed to be in default if Landlord commences to cure such nonperformance within such 30-day period and thereafter pursues such cure to completion in the exercise of reasonable diligence.

20.2. **Sale of Landlord's Interest.** Upon any sale or conveyance of Landlord's interest in this Lease, and the assumption by the transferee of Landlord's obligations arising under this Lease, Landlord shall be entirely relieved of all liability for Landlord's obligations under this Lease accruing thereafter, and the assignee or purchaser shall be deemed without any further agreement between the parties or their successors in interest to have assumed all of Landlord's obligations accruing after such conveyance.

20.3. **Nonrecourse Liability.** If Landlord fails to perform any of its obligations under this Lease and, as a consequence of such nonperformance, Tenant recovers a money judgment against Landlord, such judgment shall be satisfied only out of Landlord's interest in the Premises. Landlord shall have no liability whatsoever for any deficiency, and no other assets of Landlord shall be subject to levy, execution or other enforcement procedures as a result of such judgment. None of Landlord's obligations under this Lease shall be subject to specific performance or injunctive remedies, and Tenant waives all rights with respect to such remedies. No officer, official, employee, agent or representative of Landlord, including, without limitation, any City Council member, shall be liable to Tenant or any Subtenant or successor-in-interest in the event of a default or breach by Landlord under this Lease.

21. **DISPUTE RESOLUTION; MEDIATION.** If a dispute arises out of or relates to this Lease 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, 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. 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 section does not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

22. **FORCE MAJEURE.** If either party is delayed or prevented from the performance of any act by reason of acts of God, strikes, lockouts, labor troubles, failure or refusal of governmental authorities to timely issue permits or approvals or conduct reviews or inspections, civil disorder, abnormally inclement weather (i.e., not typical of the normal weather for the City of Flagstaff during the relevant season), inability to procure materials, restrictive governmental laws or regulations, or other causes beyond the control of the party obligated (financial inability of Tenant excepted), performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing herein shall excuse Tenant from the prompt payment of rent or any other sum.

23. **BROKERS**. Tenant represents and warrants that Tenant has not retained a broker and there are no claims for brokerage commissions or finder's fees in connection with this Lease, and Tenant shall indemnify, defend and hold harmless Landlord for, from and against any claim by any party claiming through Tenant for a brokerage commission or finder's fee in connection with this Lease.
24. **NOTICES**. No notice, consent, approval or other communication given in connection herewith shall be validly given, made, delivered or served unless in writing and delivered in person or sent by registered or certified United States mail, postage prepaid, to the parties at the following addresses:

To Landlord:	City of Flagstaff 211 West Aspen Avenue Flagstaff, Arizona 86001 Attn: City Manager
With a Copy to:	City of Flagstaff 211 West Aspen Avenue Flagstaff, Arizona 86001 Attn: City Attorney
With a Copy to:	City of Flagstaff 211 West Aspen Avenue Flagstaff, Arizona 86001 Attn: Economic Vitality Director
To Tenant:	NACET 2225 N. Gemini Dr. Flagstaff, Arizona 86004 Attn: President/CEO

Notices, consents, approval or communications shall be deemed given or received upon delivery, if delivered in person, or upon thirty-six (36) hours after deposit in the mail, if delivered by mail.

25. **GENERAL**.
- 25.1. **Arizona Law; Venue**. This Lease shall be construed in accordance with the laws of the State of Arizona. The parties agree that Coconino County, Arizona shall be the venue for any litigation relating to this Lease.
- 25.2. **No Partnership**. Nothing contained in this Lease shall be deemed to create any relationship other than that of landlord and tenant.
- 25.3. **Amendments**. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties.
- 25.4. **No Waiver**. No delay or omission of Landlord to exercise any right or power shall impair any such right or powers or shall be construed to be a waiver of any nonperformance by Tenant or an acquiescence therein. No waiver of any

- nonperformance shall be effective unless it is in writing. No written waiver by Landlord shall be deemed to be a waiver of any other Lease provision, or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act by Tenant shall not be deemed to render unnecessary the procurement of Landlord's consent to or approval of any subsequent act of Tenant, whether or not similar to the act so consented to or approved.
- 25.5. **Exhibits.** All exhibits and addenda attached hereto shall by this reference be deemed a part of this Lease as if set forth in full herein.
- 25.6. **Partial Invalidity.** If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, that provision may be modified to the minimum extent necessary and the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 25.7. **Captions.** The various headings and numbers herein and the grouping of the provisions of this Lease into separate articles and sections are for the purpose of convenience only and shall not control or affect the meaning or construction of any of the provisions.
- 25.8. **Time.** Time is of the essence. If any time period provided for herein expires on a Saturday, Sunday or legal holiday, such time period shall be extended to the next succeeding day that is not a Saturday, Sunday or legal holiday.
- 25.9. **No Third-Party Rights.** Except as expressly provided herein, no Term of this Lease is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder.
- 25.10. **Joint and Several Obligations.** If Tenant is constituted of two or more persons, corporations or other entities, all agreements, covenants, representations and warranties of Tenant herein are the joint and several obligations of the entities constituting Tenant. If Tenant is husband and wife, the obligations hereunder shall extend individually to the sole and separate property of each as well as to their community property. Notice given to any one of the entities constituting Tenant shall be deemed as having been given to all such entities.
- 25.11. **Authority to Execute.** Any individual executing this Lease on behalf of or as representative for a corporation or other person, partnership or entity represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of such party, and that this Lease is binding upon such party in accordance with its terms. If Tenant is a corporation or a partnership, Tenant shall deliver to Landlord within ten (10) days after the execution of this Lease a certified copy of a resolution of the board of directors or of all partners, as the case may be, authorizing or ratifying the actions of the individual(s) executing and delivering this Lease.
- 25.12. **Binding on Successors and Assigns.** Each of the provisions of this Lease shall bind, extend to, and inure to the benefit of the respective heirs, legal representatives, and successors and assigns of both Landlord and Tenant; provided however, that this clause shall not permit any assignment contrary to the provisions of ***Section 12*** or Sublease contrary to the provisions of ***Section 13***.

- 25.13. **Impartial Interpretation.** This Lease is the result of negotiations between Landlord and Tenant and, therefore, the language contained in this Lease shall be construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant.
- 25.14. **Plurals.** The words "Landlord" and "Tenant," as herein used, shall include the plural as well as the singular. The neuter gender shall include the masculine and feminine genders.
- 25.15. **Not Binding Until Signed.** Submission of this instrument to Tenant for examination shall not bind Landlord in any manner, until this instrument is executed and delivered by both Landlord and Tenant.
- 25.16. **Notice of Cancellation.** Notice is hereby given that this Lease is subject to cancellation in accordance with the provisions of A.R.S. §38-511.
26. **LANDLORD'S USE OF CONFERENCE ROOM.** The Landlord and Tenant hereby acknowledge and agree that, during the Term of this Lease, as may be extended, the Landlord shall have the right to utilize the main conference room within the Premises, together with all equipment and facilities contained therein, at no cost or charge to Landlord; provided, however, that (a) Landlord's use of such conference room and facilities shall be limited to economic development purposes, (b) Landlord shall provide at least forty-eight (48) hours prior notice to Tenant of its desire to use such conference room, and (c) Landlord shall coordinate such use with the use of Tenant and any Subtenants within the Premises who shall have priority in scheduling the use of such conference room.
27. **GRANT REQUIREMENTS.** Landlord and Tenant hereby acknowledge that this Lease has been approved by EDA as being consistent and in accordance with the terms and purposes of the Grant and each of Landlord and Tenant shall, during the term of this Lease, observe and perform their respective duties and obligations under this Lease such that the Premises shall be operated in a manner which provides adequate employment and economic benefits for the greater northern Arizona business community in accordance with the terms, covenants, restrictions and limitations of the Grant.
28. **FEDERAL COMPLIANCE.**
- 28.1. **Civil Rights.** The Lessee shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, religion, sex, age or physical or mental disability.
- 28.2. **Audits and Inspections.** At any time during normal business hours, and as frequently as is deemed necessary, the Lessee shall make available to the Lessor and the Economic Development Administration (EDA) or EDA's authorized agents, for their examination, all of its records pertaining to matters covered by this Agreement and only matters relating to the Agreement.
- 28.3. **Retention of Records.** All records in the possession of the Lessee pertaining to this Agreement shall be retained for a period of three (3) years after the expiration of the Agreement or any extensions thereof. All records shall be retained beyond the three (3)

year period if audit findings have not been resolved within that period or if other disputes have not been resolved.

28.4. **Assignment and Subletting.** Assignment and subletting are not permitted under this Agreement without prior written approval of the Economic Development Administration.

28.5. **Environmental Compliance.**

28.5.1. Lessor warrants and represents to the Lessee that it has no knowledge of the presence or of the release, now or in the past, of any hazardous substance or material on the Premises. Lessor agrees to hold Lessee free, harmless and indemnified from any penalty, fine, liability, cost or charge whatsoever related to any damage or condition that might be caused by any existing environmental condition that currently exists on the Premises.

28.5.2. Lessee covenants and agrees that throughout the Term its use and occupancy of the Premises will at all times be in strict compliance with all governmental regulations, be they federal, state or local, that pertain to the use and storage of hazardous materials and substances, and Lessee shall save and hold Lessor free, harmless and indemnified from any penalty, fine, liability, cost or charge whatsoever which Lessor may incur by reason of Lessee's failure to comply with this **Section 28.5**. Such covenants, however, shall not apply to any condition that existed at the time Lessee first took possession of any part of the Premises, or which is caused or results from acts of others, including Lessor.

28.5.3. Lessee's obligations under this **Section 28.5** shall automatically terminate and expire one (1) year after Lessee no longer occupies the Premises unless an action has been filed in some judicial tribunal of competent jurisdiction prior to that time which related to a period during which Lessee in fact did occupy any part of the Premises.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have duly executed this Master Lease as of the date first above written.

"LANDLORD"

CITY OF FLAGSTAFF, an Arizona municipal corporation

By _____
Name: _____
Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

"TENANT"

NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC., dba NACET an Arizona nonprofit corporation

By _____
Name _____
Title _____

EXHIBIT "A"

NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR INC., dba NACET

BUSINESS INCUBATOR

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (hereinafter referred to as this "Sublease") is made and entered into as of this ____ day of _____, 20____, by and between NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC., dba NACET an Arizona nonprofit corporation (hereinafter referred to "Sublessor"), whose address for rents and notices is _____, and _____, a _____ (hereinafter referred to as "Sublessee"), whose address for notices is _____.

R E C I T A L S

- A. Sublessor is the Tenant under that Master Lease (the "Master Lease") dated as of _____, 2014, entered into by Sublessor and the City of Flagstaff, an Arizona municipal corporation (the "Master Lessor"). Pursuant to the Master Lease, Sublessor leased from Master Lessor those premises consisting of approximately 10,000 rentable square feet and commonly known as the "Business Incubator Facility" (the "Premises").
- B. Sublessee has expressed an interest in subleasing from Sublessor that portion of the Premises described in *Exhibit "A"* attached hereto, together with all existing furnishings and fixtures therein (the "Subleased Premises"), on the terms and conditions set forth herein. Sublessor has agreed to sublease the Premises to Sublessee subject to the matters set forth in this Sublease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

S U B L E A S E

- 1. ACKNOWLEDGEMENT OF MASTER LEASE. It is hereby expressly understood, acknowledged and agreed by Sublessor and Sublessee that this Sublease is subject to the terms, covenants, provisions and conditions of the Master Lease. Sublessee agrees to observe, and comply with, all obligations of Sublessor as the tenant under the Master Lease as applicable to the use and occupancy of the Subleased Premises, including, without limitation, limiting its use of the Subleased Premises to those uses which are permitted under the terms of the Master Lease and the Grant provided by the United States Department of Commerce, Economic Development Administration (the "EDA"), provided by the EDA in connection with the development and construction of the Premises. Sublessee shall not commit or permit to be committed on the Subleased Premises any act or omission which shall violate any term or condition of the Master Lease or any term or condition of the Grant. Sublessee hereby agrees that, in the event that Sublessor's rights with respect to the Subleased Premises expire or are terminated for any reason, whether as a result of the termination of the Master Lease by the Master Lessor in accordance

with the Master Lessor's rights under the Master Lease or otherwise, then this Sublease and all of the rights and obligations of Sublessee hereunder shall continue in full force and effect; provided, however, that Sublessee shall attorn to and perform all of its obligations under this Sublease to and for the benefit of the Master Lessor pursuant to the terms of the Master Lease. A copy of the Master Lease and the Grant provided by the EDA to Master Lessor shall be made available from time to time by Sublessor to Sublessee for Sublessee's review.

2. LEASE OF SUBLEASED PREMISES. In consideration of the rents to be paid and the covenants to be performed by Sublessee hereunder, Sublessor does hereby lease to Sublessee, and Sublessee does hereby lease from Sublessor, upon the terms and conditions hereinafter set forth, the Subleased Premises.
3. TERM. The Term of this Sublease shall be for _____ (____) months, commencing on _____, 20__ ("Commencement Date"), and continuing through _____, 20__ ("Termination Date").
4. RENTAL. The Sublessee shall pay monthly rent in an amount equal to \$_____, plus current rental tax of 2.051% (\$_____), for a total rental of \$_____ per month payable on or before the first day of each month during the Term hereof. Rental for any partial month of occupancy shall be prorated.
5. SECURITY DEPOSIT. Upon execution of this Sublease, Sublessee has deposited with Sublessor the sum of \$_____, as security for the full and faithful performance of each and every term, condition, covenant and provision of this Sublease on Sublessee's part to be performed. In the event that Sublessee fails to pay any installment of monthly rent required to be paid under this Sublease as and when due, then Sublessor shall have the right to apply the security deposit to the obligations of Sublessee, whereupon Sublessee shall immediately upon demand of Sublessor replenish the security deposit to the amount described herein. If, upon the expiration or termination of this Sublease, Sublessee returns the Subleased Premises, including all furnishings and fixtures therein, to Sublessor in the condition in which the Subleased Premises was delivered to Sublessee, ordinary wear and tear excepted, then within fourteen (14) days after the expiration or termination of this Sublease, the security deposit shall be returned by Sublessor to Sublessee.
6. PURPOSE AND USE OF THE SUBLEASED PREMISES. The Subleased Premises are to be used only for the following purpose and for no other purpose without the prior written consent of Sublessor and the Master Lessor pursuant to the terms of the Master Lease, which consent may be withheld in the sole and absolute discretion of Sublessor and the Master Lessor, respectively:
_____.
7. CONDITION OF SUBLEASED PREMISES; ALTERATIONS. Sublessee hereby acknowledges and agrees that it shall accept the Subleased Premises on the Commencement Date in their existing "as is" condition, and neither Sublessor nor Master Lessor shall have any obligation for the construction or installation of any improvements within the Subleased Premises other than the existing improvements. If Sublessee desires to make any alterations or improvements to the Subleased Premises, then prior to commencing any such alterations or improvements, it must obtain the prior written consent of the Sublessor and the Master Lessor pursuant to the terms of the Master Lease and, if such approvals are provided, then all construction, alterations or

improvements within the Subleased Premises by Sublessee must be performed in accordance with the terms and conditions of the Master Lease applicable thereto.

8. REPAIRS AND MAINTENANCE. Except for damage caused by the negligent or intentional acts of Sublessee, its agents, employees or invitees, and except for any areas including laboratory, office, manufacturing or other areas within the Subleased Premises which are secured work areas (with respect to which Sublessee shall clean, maintain and repair at its expense), the parties hereto acknowledge that the Master Lessor shall keep, maintain and repair the Premises, including the Subleased Premises, in good, safe and sanitary order, condition and repair and, as a result thereof, Sublessor shall have no responsibility in connection therewith, except to provide notice to Master Lessor of the need for any maintenance or repairs within the Subleased Premises after receipt of notice of the need therefor from Sublessee. Sublessee shall, upon the expiration or sooner termination of the term of this Sublease, surrender the Subleased Premises to Sublessor, including all furnishings and fixtures therein, in the same condition as received, ordinary wear and tear excepted.
9. SERVICES AND UTILITIES. The parties hereby acknowledge that utilities and services to the Subleased Premises shall be provided by Master Lessor under the terms of the Master Lease. The Master Lessor will monitor the above mentioned utility costs and reserves the right to amend the terms to require the Sublessee to pay Sublessor all or a portion of anything that is in excess of a reasonable amount for typical utility usage, which excess amounts Sublessor will in turn pay to Master Lessor.): sewer, water, natural gas, electricity and trash removal. Sublessee shall be responsible for obtaining and paying for any other utilities and services to the Subleased Premises, including telephone, data communications, cable and the like. Notwithstanding anything contained in the foregoing or elsewhere in this Sublease to the contrary, Sublessor and Master Lessor shall have the right to install a submeter to the Subleased Premises for the purpose of monitoring Sublessee's electricity usage within the Subleased Premises and, if such electricity usage exceeds that of normal office use as reasonably determined by Sublessor or Master Lessor, then Sublessor and/or Master Lessor shall have the right to charge Sublessee for such additional electrical usage, without profit or markup, which shall be paid by Sublessee within then (10) days after receipt of invoices or statements therefor from Sublessor and/or Master Lessor.
10. ASSIGNMENT AND SUBLETTING. Sublessee shall not assign, transfer, mortgage, pledge, hypothecate or encumber this Sublease, or any interest therein, nor further sublet the Subleased Premises or any part thereof, or any right or privilege appurtenant thereto, or permit any other person (the agents and servants of Sublessee excepted) to occupy or use the Subleased Premises or any part thereof, and any such assignment, transfer, mortgage, pledge, hypothecation or encumbrance of this Sublease or any interest therein, or any attempt to effect any of the foregoing, shall be deemed to be an immediate and incurable default under this Sublease by Sublessee.
11. INDEMNIFICATION OF SUBLESSOR AND MASTER LESSOR. Sublessee agrees to indemnify, defend and hold harmless Sublessor and the Master Lessor for, from and against any and all penalties, costs, expenses (including attorneys' fees), claims, demands and causes of action arising out of or in connection with any accident or other occurrence in or on the common areas (including without limiting the generality of the term "common areas," including but limited to, sidewalks, driveways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas), the use of which Sublessee may have in conjunction with other tenants and

occupants of the Premises, when such injury or damage shall be caused in part or in whole by the act, neglect, fault or omission of any duty with respect to the same by Sublessee, its agents, servants, employees, invitees, visitors, permittees, customers, clients, guests or tenants.

12. INSURANCE.

12.1. Insurance. Sublessee shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Sublessee, Sublessee's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Master Lessor and Sublessor do not represent or warrant that the minimum limits set forth herein are sufficient to protect Sublessee from liabilities that might arise out of this Lease, and Sublessee is free to purchase such additional insurance as Sublessee may determine is necessary.

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

12.2.1. Commercial General Liability - Occurrence Form

(Form CG 0001, ed. 10/93 or any replacement thereof)

General Aggregate -- \$2,000,000

Personal and Advertising Injury -- \$1,000,000

Each Occurrence -- \$1,000,000

Fire Damage (any one fire) -- \$50,000

Medical Expense (any one person) -- Optional

12.2.2. 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

12.3. Self-Insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by Master Lessor and Sublessor.

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

12.4.1. Commercial General Liability and Automobile Liability Coverages.

12.4.1.1. Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Lease and activities performed by or on behalf of Sublessee, including products and completed operations of Sublessee; and automobiles owned, leased, hired or borrowed by Sublessee.

- 12.4.1.2. Sublessee's insurance shall contain broad form contractual liability coverage.
- 12.4.1.3. Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers shall be named as additional insureds to the full limits of liability purchased by Sublessee even if those limits of liability are in excess of those required by this Lease.
- 12.4.1.4. Sublessee's insurance coverage shall be primary insurance with respect to Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by Master Lessor and Sublessor, its officers, officials, agents, employees or volunteers, shall be in excess of the coverage of Sublessee's insurance and shall not contribute to it.
- 12.4.1.5. Sublessee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 12.4.1.6. Coverage provided by Sublessee shall not be limited to the liability assumed under the indemnification provisions of this Lease.
- 12.4.1.7 The policies shall contain a waiver of subrogation against Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers for losses arising from Sublessee's operations, occupancy and use of the Premises subject to this Lease.
- 12.4.2. Workers' Compensation and Employee's Liability Coverage. The insurer agrees to waive all rights of subrogation against Master Lessor and Sublessor, its officials, officers, agents, employees and volunteers for losses arising from Sublessee's operations, occupancy and use of the Premises subject to this Lease.
 - 12.4.2.1. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Master Lessor and Sublessor.
 - 12.4.2.2. Acceptability of Insurers. Sublessee shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Master Lessor and Sublessor does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.
 - 12.4.2.3. Verification of Coverage. Sublessee shall furnish Master Lessor and Sublessor with certificates of insurance (*ACORD form*) as required by this Lease. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

12.4.2.4. **Policy Review and Adjustment.** Such policies of insurance shall be subject to review and adjustment on the fifth (5th) anniversary of the Commencement Date of this Lease and on each subsequent fifth (5th) anniversary during the Term hereof, as may be extended, in order to determine the adequacy of the insurance amounts in light of the then existing circumstances.

12.4.2.5. **Failure to Maintain Insurance.** If Sublessee fails or refuses to provide copies of the renewal insurance policies, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Master Lessor and Sublessor shall have the right, at Master Lessor and Sublessor's election, and upon five (5) days' notice to Lessee, to procure and maintain such insurance. Any premiums paid by Master Lessor and Sublessor hereunder shall be due and payable by Sublessee to Master Lessor and Sublessor on the first day of the month following the date on which the premiums were paid. Master Lessor and Sublessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s).

12.5 **Liability Insurance.** Sublessee agrees to procure and maintain at its own cost and expense, during the entire term of this Sublease and any extensions thereof, comprehensive public liability insurance covering the Subleased Premises, which insurance shall also name Sublessor and Master Lessor as additional named insureds. The liability coverage under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury, illness or death to persons or damage to property in any one incident. Prior to, and as a condition of, taking possession of the Subleased Premises, Sublessee will provide Sublessor with certificates of such insurance, satisfactory to Sublessor, evidencing Sublessee's compliance with the requirements of this **Section 12.5**.

12.6 **Personal Property.** Sublessee hereby acknowledges that Sublessor's insurance will not cover Sublessee's specialized equipment or any other fixtures, furniture or personal property owned by Sublessee. Neither Master Lessor nor Sublessor shall be liable to Sublessee, or to any other person, for any damages on account of loss, damage, fire or theft to any personal or business property, and Sublessee shall be solely responsible for obtaining and maintaining any property loss insurance in connection therewith.

13. **PERSONAL PROPERTY TAXES.** Sublessee agrees to pay or cause to be paid before delinquent any and all taxes levied or assessed and which become payable during the term of this Sublease and any renewal thereof upon all equipment, furniture, fixtures and other personal property owned by Sublessee and located in the Subleased Premises, except that which may be owned by Master Lessor.

14. **RULES AND REGULATIONS.** Sublessor has established Building Rules and Regulations which are annexed as **Exhibit "B"** to this Sublease. Sublessor may from time to time make such modifications, additions and deletions in the building Rules and Regulations as are reasonably

necessary or convenient for the management and operation of the Premises on reasonable notice to tenants.

15. HOLDING OVER. If Sublessee remains on the Subleased Premises after the expiration of the term hereof, Sublessee shall become, at Sublessor's election, a tenant on a month-to-month basis at a rent equal to one hundred twenty-five percent (125%) of the rent payable for the last month of the term hereof. Such holdover rent shall be payable by Sublessee in advance on the first day of such holdover period and on the first day of each month thereafter until Sublessee vacates the Subleased Premises. Such tenancy shall be subject to all of the other provisions of this Sublease.
16. ENTRY BY SUBLESSOR AND MASTER LESSOR. Sublessor and Master Lessor shall each have the right to enter the Subleased Premises at any time to inspect the same or to cure any default (including a breach of the Building Rules and Regulations), to supply any service to be provided by Sublessor and/or Master Lessor hereunder, to submit the Subleased Premises to prospective subtenants, purchasers or mortgagees, to post notices of nonresponsibility and to alter, improve or repair the Subleased Premises and any portion of the Subleased Premises without abatement of rent.
17. EVENTS OF DEFAULT. In addition to any events defined elsewhere in this Sublease as constituting a default of Sublessee, any of the following shall also be considered an event of default by Sublessee hereunder:
 - 17.1. If Sublessee shall fail to pay rent or any part thereof or any other sums payable pursuant to this Sublease on the date where such failure continues for ten (10) days after written notice by Sublessor to Sublessee;
 - 17.2. If Sublessee shall fail to observe or perform any of the other covenants or agreements contained in this Sublease to be observed or performed by Sublessee;
 - 17.3. If the Sublessee's interest in this Sublease shall pass to any person or entity except that named as Sublessee herein, by law or otherwise, in violation of **Section 10** above.
18. REMEDIES OF SUBLESSOR. In the event of any default by Sublessee, then Sublessor, in addition to any other rights or remedies it may have by statute or otherwise, including the right to take no action other than to sue for damages or rental in default, shall have the immediate right of reentry and may remove all persons and property from the Subleased Premises.
19. ESTOPPEL CERTIFICATES. Sublessee agrees at any time, and from time to time, upon not less than ten (10) days prior request by the Sublessor, to execute, acknowledge and deliver to the Sublessor estoppel certificates in such form as may reasonably be required by Sublessor.
20. ATTORNEYS' FEES. In the event of any action or proceeding to compel compliance with, or for a breach of, the terms and conditions of this Sublease, the prevailing party shall be entitled to recover from the losing party all costs and expenses of such action or proceeding, including, but not limited to, the reasonable attorneys' fees of the prevailing party.
21. WAIVER. The waiver by Sublessor of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance

of rent hereunder by Sublessor shall not be deemed to be a waiver of any preceding breach by Sublessee of any term, covenant or condition of this Sublease, other than the failure of Sublessee to pay the particular rent so accepted, regardless of Sublessor's knowledge of such preceding breach at the time of acceptance of such rent.

22. CONSTRUCTION AND SEVERABILITY. This Sublease shall be governed by and construed in accordance with Arizona law. The invalidity or unenforceability of any provision of this Sublease shall not affect or impair the validity of any other provision of this Sublease.
23. NOTICES. All notices and demands which may or are required to be given by either party to the other hereunder shall be in writing. All notices and demands by the Sublessor to the Sublessee shall be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the Sublessee at the address indicated on page one hereof, or to such other place as the Sublessee may from time to time designate in a notice to the Sublessor. All notices and demands by the Sublessee to the Sublessor shall be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the Sublessor at the address indicated on page one hereof, or to such other person or place as the Sublessor may from time to time designate in a notice to the Sublessee. Any notice shall be deemed to have been given at the time of personal delivery or, if mailed, three (3) days after the date of mailing thereof. Each of the parties hereto hereby acknowledges, covenants and agrees that any notice or demands provided by one party to the other under the terms of this Sublease shall also be provided to Master Lessor at the following address:

City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attention: City Attorney

24. TIME OF ESSENCE. Time is of the essence of this Sublease and of each provision hereof.
25. SUCCESSORS AND ASSIGNS. Subject to all limitations on assignment and subletting set forth herein, all of the terms and provisions of this Sublease shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.
26. APPROVAL OF SUBLEASE BY MASTER LESSOR. Notwithstanding anything contained in this Sublease to the contrary, the Sublessor and Sublessee hereby acknowledge that this Sublease is subject to the review and approval of the Master Lessor pursuant to the provisions set forth in the Master Lease. Promptly after the mutual execution of this Sublease by Sublessor and Sublessee, Sublessor shall submit a fully-executed copy of this Sublease to the Master Lessor for its review and approval. Upon Sublessor's receipt of approval of this Sublease by the Master Lessor, Sublessor shall deliver exclusive possession of the Subleased Premises to Sublessee. If the Master Lessor disapproves this Sublease for any reason, then immediately upon Sublessor's delivery of notice of such disapproval to Sublessee, this Sublease shall be null and void and of no further force or effect.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties have executed this Sublease Agreement as of the day and year first written above.

"SUBLESSOR"

NORTHERN ARIZONA TECHNOLOGY & BUSINESS
INCUBATOR, INC., dba NACET an Arizona nonprofit
corporation

By _____
Name _____
Title _____

"SUBLESSEE"

_____,
a _____

By _____
Name _____
Title _____

**CONSENT AND ACKNOWLEDGEMENT
OF MASTER LESSOR**

The undersigned, as the Master Lessor referred to in the foregoing Sublease, hereby consents to the Sublease of the Subleased Premises described herein on the terms and conditions contained in the Sublease. This Consent shall apply only to the foregoing Sublease and shall not be deemed to be a consent to any other sublease of any other portion of the Premises or any assignment by Sublessor of the Master Lease to any other party.

DATED: this ____ day of _____, 20__.

CITY OF FLAGSTAFF, an Arizona municipal corporation

By _____
Name _____
Title _____

BUSINESS ACCELERATOR MASTER LEASE

THIS MASTER LEASE ("Lease") is entered into as of this ____ day of _____, 2015, by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation ("Landlord"), and NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC., dba Northern Arizona Center for Entrepreneurship and Technology (NACET) an Arizona nonprofit corporation ("Tenant").

RECITALS

- A. Landlord previously received a grant from the United States Department of Commerce, Economic Development Administration ("EDA") (the "Grant") for which Grant was provided by the EDA for the sole purpose of the establishment, development, construction and operation of a science, technology and clean-energy business accelerator and to promote, among other things, business development, job creation and private investment within the greater northern Arizona economic community and separately to house an alternate/secondary Emergency Operations Center (EOC) when activated if necessary.
- B. Pursuant to the terms of the Grant, Landlord has constructed, equipped and furnished an approximate 28,000 square foot LEED facility on that parcel of real property located at 2400 North Gemini Drive in the city of Flagstaff, Arizona, which building is commonly known as Innovation Mesa Business Accelerator Facility (the "Premises").
- C. Tenant has been formed as an Arizona nonprofit corporation for the purpose of assisting small business startups, Tier 2 companies, and entrepreneurs in connection with the development of new and innovative businesses within northern Arizona. In connection therewith, Landlord and Tenant are executing contemporaneously herewith that Agreement for Services, pursuant to which Tenant agreed to perform the foregoing described services and other services for the benefit of Landlord and its citizenry as more particularly described in the Agreement for Services, including, without limitation, entering into this Lease of the Premises.
- D. Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord for the purpose of the operation for research and development, science, technology and clean energy focused business accelerator for the benefit of Landlord, Tenant and the citizens of the city of Flagstaff and the State of Arizona. In connection therewith, subject to the limitations and other provisions of this Lease, the parties hereto acknowledge that the Tenant intends to sublease portions of the Premises to third parties for the purpose of the development of technology and science startups, Tier 2 companies, and entrepreneurs meeting the objectives of the Grant, a copy of which has been provided to Tenant.
- E. Landlord has the authority to enter this Agreement pursuant to Flagstaff City Charter, Article VIII, Section 9.

NOW THEREFORE, in consideration of the foregoing and of the rents, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

1. **LEASE OF PREMISES; CONDITION OF PREMISES.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises described in *Recital B* above, together with all equipment, furnishings and fixtures currently located in or which are a part of the Premises with the exception of any time period during which the EOC is activated, in which event the EOC shall have full access to an use of the Premises as necessary to complete its functions and operations. Tenant's rights under this Lease are subject to and restricted by the provisions of the Grant and of any covenants, conditions, restrictions and easements, and all other matters of record which may affect the Premises, including, without limitation, that first priority lien recorded against the Premises in favor, and for the benefit, of the EDA, which lien restricts and imposes conditions upon any sale, transfer, conveyance or encumbrance of the Premises. Landlord has not made and does not make any representation or warranty whatsoever with respect to the Premises or otherwise with respect to this Lease except as is expressly provided in this Lease. Except as otherwise provided herein, Tenant assumes all risks resulting from any defects (patent or latent) in the Premises or from any failure of the same to comply with any applicable laws, rules, regulations or requirements.

2. **TERM; EXTENSION OPTIONS.**

2.1. **Term.** The term of this Lease (the "Term") shall be three (3) years and shall commence on _____, 2015 (the "Commencement Date"), and shall expire on _____, 2017 (the "Termination Date"), unless the Term is extended as hereinafter provided. The parties shall have the right to request extension of this Lease for one or more of the Extension Terms pursuant to Section 2.2 of this Agreement by providing a written notice of intent extension to the other party no later than six (6) months prior to the expiration of the term of this Lease.

2.2. **Options to Extend Term.** Subject to the satisfaction of the conditions hereinafter set forth, the parties shall have the right to elect to extend the Term of this Lease for up to three (3) consecutive five (5) year extension terms (each, an "Extension Term"). The conditions precedent to the party's right to elect to extend the Term of this Lease for any one or more of such Extension Terms are as follows:

2.2.1. Tenant shall not then be in default under this Lease;

2.2.2. Tenant shall provide written notice to Landlord of its desire to elect to extend the Term of this Lease not later than one hundred eighty (180) days prior to the end of the initial Term or the then current Extension Term, as applicable;

2.2.3. Tenant shall have been in compliance with the Minimum Sublease Occupancy Requirement set forth in *Section 13* below at all times during the Term or the then-current Extension Term, as applicable;

2.2.4. The Landlord shall have approved and otherwise agreed to provide continued funding to Tenant in connection with the services to be provided by Tenant to Landlord under the terms and conditions of the Agreement for Services (or a similar agreement), or Tenant shall have demonstrated to Landlord, to Landlord's reasonable satisfaction, that Tenant has secured a third-party funding source which will provide operational funding to Tenant in amounts sufficient to satisfy Tenant's obligations under this Lease, including without limitation, the payment of Base Rent and all other monetary obligations of Tenant, during the entire

Extension Term with respect to which Tenant is exercising its right and option to extend;

- 2.2.5. Tenant shall have provided to Landlord evidence satisfactory to Landlord that Tenant is not then in default of any other obligations of Tenant, including any financial instruments, agreements, loans or grants;
- 2.2.6. Tenant shall be in good standing with the Arizona Corporation Commission as an Arizona nonprofit corporation; and
- 2.2.7. Tenant shall not then be in default under the Agreement for Services, if such agreement is still in effect.

All terms and conditions of this Lease shall remain in full force and effect and shall define the legal relationship between Landlord and Tenant during each Extension Term.

2.3. **Mutual Right to Cancel/Terminate.** The parties may cancel and terminate this Agreement upon mutual consent. In the event the parties desire to mutually cancel/terminate this agreement, a date of cancellation/termination shall be mutually agreed upon by the parties. If a mutual termination occurs, each party shall be entitled to, and obligated under this agreement on a pro-rated basis up to and including the date of cancelation/termination.

3. **RENT.**

3.1 **Rent.** At the times and in the manner set forth herein, Tenant shall pay to Landlord as rent for the Premises ("Rent") the sum of the following amounts:

3.1.1. **Rental Agent/Calculation of Rents.** NACET will act as the Rental Agent for the City of Flagstaff. A Base Rent of \$24 per square foot for commercial office space/wet and dry labs and \$15 per square foot for manufacturing space will be initial rental rate for the Business Accelerator. In addition, NACET will levy a 6% common area (such as conference room, policy room, collaborative space, kitchen, etc.) charge to each tenant's base rent. NACET will collect these rents per the terms and conditions noted in the Sublease Agreement. The Base Rent payable shall be calculated on July 1 by the increase (if any) (on a percentage basis) in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U), USA City Average (1982 – 84 =100) ("Index") for the prior month and applied on annual anniversary date. In addition, the City of Flagstaff will monitor utility usage and costs on an annual basis and reserves the right to make adjustments based on mutual consent.

3.1.2. **Compensation of Rental Agent.** The City of Flagstaff will remit to NACET the amounts shown on the following table to pay NACET for its work as Rental Agent:

Year 1 – if partial year (a year that begins prior to July 1, 2015)	\$3,750 per month
Year 1 – subsequent full year	\$3,750 per month/\$45,000 annually

Year 2	\$4,167 per month/\$50,000 annually
Year 3	\$4,583 per month/\$55,000 annually
If contract renewed	
Year 4	\$5,000 per month/\$60,000 annually

3.1.3. **Excess Subrents.** In any full year, if the calculated occupancy rate for the entire year exceeds that as shown in *Section 3.4* below, and all the rents are timely in collection and remittance to the City, the City shall provide an incentive reimbursement to NACET of 20% of the excess rents. An example is shown below:

Year 1:

Minimum square feet to be leased on an annual basis:	4,706x 12 = 56,472
Actual square feet leased:	75,000
Lease income based on minimum occupancy:	\$114,000
Lease income collected and remitted to the City of Flagstaff:	\$134,000
Excess rents:	\$20,000
Incentive payment to NACET:	20% or \$4,000

3.2. **Payment.** All sums payable pursuant to this Lease shall be paid when due, in lawful money of the United States of America, without deduction, offset, prior notice or demand to Landlord at the address set forth in *Section 24* below, or at such other place or to such other person as Landlord may from time to time designate by notice hereunder.

3.3. **"Lease Year" Defined.** "Lease Year" is each twelve (12) month period during the Term or Extension Term, as applicable, with the first Lease Year commencing at 12:01 A.M. on the Commencement Date and ending at midnight on the day immediately preceding the first (1st) anniversary of the Commencement Date.

3.4. **Rental Agent Responsibilities.** NACET's responsibility as Rental Agent includes:

3.4.1. Maintaining minimum occupancy in the Accelerator at the following rates based on 18,823 leasable square footage:

3.4.1.1. Year 1 (partial and/or full) - 25% of leasable square footage or 4,706 square feet;

3.4.1.2. Year 2 - 50% of leasable square footage or 9,412square feet;

3.4.1.3. Year 3 - 75% of leasable square footage or 14,117 square feet;

3.4.1.4. Year 4 and subsequent years - 80% of leasable square footage or 15,058square feet;

3.4.2. Keeping the building in good condition and managing the tenants;

3.4.3. Providing overall building oversight and notifying the City of Flagstaff in a timely manner of any maintenance concerns;

- 3.4.4. Collecting and remitting rents to the City of Flagstaff on a monthly basis by the 20th of each month;
- 3.4.5. Monitor utility usage to be efficient; and
- 3.4.6. Manage conference room usage and ancillary rooms such as breakout rooms, bathrooms, kitchen, etc., and maintain AV in good condition.

4. **TAXES.**

- 4.1. **Real Estate Taxes.** Landlord and Tenant believe that, as a result of the fact that Landlord will retain ownership of fee simple title to the Premises during the entire Term of this Lease, as may be extended, the Premises will not be subject to Real Estate Taxes and Assessments or that Tenant may be entitled to apply for an exemption to any such Real Estate Taxes and Assessments; provided, however, that, if for any reason, the Premises becomes subject to any obligation for the payment of Real Estate Taxes and Assessments, to which no exemption applies, Tenant shall pay all such Real Estate Taxes and Assessments levied upon the Premises during the Term of this Lease as may be extended. The term "Real Estate Taxes and Assessments" shall mean all taxes and assessments imposed or levied upon the real property and improvements constituting the tax parcel of which the Premises is a part.
- 4.2. **Taxes on Rent.** Tenant shall pay to Landlord, in addition to and together with the Rent payable hereunder, a sum equal to the aggregate of any municipal, city, county, state or federal excise, sales, use or transaction privilege taxes levied or imposed against or on account of the amounts payable hereunder or the receipts thereof by Landlord (except state, federal or any other income taxes imposed or levied against Landlord).
- 4.3. **Personal Property Taxes.** Tenant shall pay or cause its Subtenants to pay, prior to delinquency, all taxes assessed against or levied upon any fixtures, equipment, leasehold improvements and all personal property located in or upon the Premises and which is owned by Tenant or such Subtenant ("Taxed Personal Property").
- 4.4. **Changes in Taxing Methods.** If any authority having the power to tax or assess shall alter the methods and/or standards of taxation and assessment in existence as of the date of this Lease against the interests of Landlord in the Premises, in whole or in part, so as to impose a different or additional tax plan, all such taxes or assessments based upon such other tax plan shall be considered as "real estate taxes" for purposes of this Lease, including, without limitation, (a) a tax, assessment, surcharge, fee, levy, penalty, bond or similar imposition (collectively, "impositions") on Landlord's right to rental or other income from the Premises or as against Landlord's business of leasing the Premises, (b) any impositions allocable to or measured by the area of the Premises, (c) any impositions with respect to the possession, leasing, operation, maintenance, alteration, use or occupancy by Tenant of the Premises, (d) any impositions upon the Lease transaction or any document to which Tenant is a party which creates or transfers any interest or estate in or to the Premises, or (e) any special, unforeseen or extraordinary impositions however described.

5. **USE OF PREMISES.**

- 5.1. **Permitted Uses; Uses Limited to Those Permitted Under Grant.** Except for the housing of an EOC when activated if necessary, Tenant shall operate, manage, occupy and use the Premises only for the purposes of the operation of a science, technology and clean-energy business accelerator facility consistent and strictly in accordance with the Grant obtained by Landlord from the EDA, which use shall include the sublease of portions of the Premises to Subtenants who (a) meet the requirements set forth in *Section 13.1* below, (b) are approved by Landlord pursuant to the provisions set forth in *Section 13.1*, and (c) shall utilize such subleased portions of the Premises only for the purposes permitted under the Grant. In no event shall Tenant utilize the Premises for any other purpose without the prior written approval of Landlord and the EDA, which approval may be given or withheld in the sole and absolute discretion of Landlord and the EDA, respectively. In connection with the foregoing, Tenant hereby acknowledges, covenants and agrees that it shall not use or permit the use of the Premises for any purpose that is not consistent with the general and special purpose of the Grant. In addition, Tenant hereby acknowledges, covenants and agrees that, in its use of the Premises, it shall observe and comply with all requirements of the EDA as described in the Grant, including, without limitation, prohibitions against discrimination on the basis of race, color, national origin, handicap, age, religion or sex, and all requirements regarding environmental impacts which any uses within the Premises may have on the environment.
- 5.2. **Insurance Requirements.** In addition to the requirements in *Section 7* of this Lease, Tenant shall not engage in or permit any activity which will cause the cancellation of, or increase the existing premiums on, any insurance relating to the Premises. Tenant shall not permit to remain in or about the Premises any article that may be prohibited by the broadest form of "All Risk" or "Special Form" property damage insurance policies.
- 5.3. **Compliance with Laws.** Tenant, at its expense, shall observe and comply with all applicable rules, regulations, ordinances, orders, codes, laws and requirements of all municipal, county, state, federal and other applicable governmental authorities, the Board of Fire Underwriters, Landlord's insurance companies and other organizations that establish insurance rates pertaining to the Premises. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether or not Landlord is a party thereto, that Tenant has violated any such rule, regulation, ordinance, order, code, law or requirement, shall be conclusive of that fact as between Landlord and Tenant.
- 5.4. **Hazardous Substances.** Tenant shall not construct or use any improvements, fixtures or equipment, or engage in any act on or about the Premises, or permit any Subtenant from engaging in any of the foregoing, that would require the procurement of any license or permit pursuant to any Environmental Law. Tenant shall immediately notify Landlord of:
- 5.4.1. The existence of any Hazardous Substance on or about the Premises that may be in violation of any Environmental Law (regardless of whether Tenant is responsible for the existence of such Hazardous Substance),

- 5.4.2. Any proceeding or investigation by any federal, state or local governmental authority regarding the presence of any Hazardous Substance on the Premises or the migration thereof to or from any other property,
- 5.4.3. All claims made or threatened by any third party against Tenant relating to any loss or injury resulting from any Hazardous Substance, or
- 5.4.4. Tenant's notification of the National Response Center of any release of a reportable quantity of a Hazardous Substance in or about the Premises.

"Environmental Laws" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health, industrial hygiene or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Hazardous Materials Transportation Act, as amended, the Federal Water Pollution Control Act, as amended, the Resource Conservation and Recovery Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, and the Arizona Environmental Quality Act, as amended. "Hazardous Substance" shall mean all substances, materials and wastes that are or become regulated, or classified as hazardous or toxic, under any Environmental Law. Notwithstanding anything in this Lease to the contrary, Landlord acknowledges that the Premises may be used (in whole or in part) for scientific, technological, medical, biological and/or "biomedical" treatment, research and manufacturing and related purposes, including practices, substances, procedures, or otherwise that are potentially hazardous (collectively, "Scientific Activities"); and that as long as such Scientific Activities are conducted or performed in accordance with all applicable laws and in manners that are consistent with generally-accepted theory or practice at the time such Scientific Activities are conducted or performed, all such Scientific Activities shall be permitted and shall not constitute a breach of this Lease.

- 5.5. **Collaborative Marketing.** Tenant and Landlord agree to work together in good faith to attract and secure Subtenants for the Premises that comply with or complement the permitted use of the Premises as contemplated in this Lease. In connection therewith, Landlord and Tenant shall agree upon and adopt a protocol for the purpose of marketing the Premises which shall, among other things, require prior mutual approval of all press releases, public notices and marketing activities relating to the Premises and its operation. Notwithstanding the foregoing, the primary obligation to attract and secure Subtenants for the Premises shall be that of Tenant.

- 6. **LANDLORD'S MAINTENANCE; LANDLORD'S INSURANCE.** Landlord shall, at Landlord's sole cost and expense, keep, maintain and repair the Premises, including the interior and exterior of all improvements on or within the Premises, in good, safe and sanitary order, condition and repair. Landlord's obligations for such maintenance and repair shall include providing normal and customary janitorial services and providing maintenance and repair of all structural portions of the Premises, including the foundation, roof, glass, doors, window casements, glazing, plumbing, pipes, electrical wiring and conduits, and the heating and air-conditioning systems, as well as all exterior landscaping, parking areas and sidewalks, including snow removal; provided, however, that in no event shall Landlord be responsible for the maintenance, repair or cleaning of any laboratory, office and manufacturing space within the Premises and either Tenant or the applicable Subtenant shall be responsible for all maintenance, repair and cleaning of such laboratory office and manufacturing space areas and any other areas

which are secured-work areas. If Tenant determines that some item of maintenance or repair is needed, Tenant shall notify Landlord and Landlord shall cause such maintenance or repair to occur within a reasonable period of time after receipt of Tenant's notice. Tenant hereby acknowledges and agrees that Landlord shall have the right to enter upon the Premises at any reasonable time for the purpose of performing its maintenance and repair obligations under this Lease.

In addition, Landlord shall, at Landlord's sole cost and expense, obtain and maintain casualty loss insurance with respect to the Premises in such amounts as Landlord may determine.

7. **WAIVER, INDEMNITY AND TENANT'S INSURANCE.**

7.1. **Assumption and Waiver.** Tenant assumes all risk of, and waives all claims against Landlord arising from, damage, loss or theft of property or injury to persons in, upon or about the Premises from any cause, except for loss or damage caused by the gross negligence or intentional acts of Landlord or its agents or employees. The foregoing waiver includes, without limitation, the following risks against which Tenant should maintain adequate insurance to protect Tenant equipment and other personal property:

- 7.1.1. All-risk casualty loss insurance with respect to all Improvements constructed by Tenant on the Premises,
- 7.1.2. Any defect in or failure of plumbing, heating or air-conditioning equipment, electric wiring, water pipes, stairs, railings or walks;
- 7.1.3. The disrepair of any equipment;
- 7.1.4. The bursting, leaking or running of any tank, washstand, water closet, drain or any pipe or tank in, upon or about the Premises;
- 7.1.5. The backup of any sewer pipe or down spout;
- 7.1.6. The escape of steam or hot water;
- 7.1.7. Water, snow or ice;
- 7.1.8. The falling of any fixture, plaster or stucco;
- 7.1.9. Broken glass; and
- 7.1.10. Any unauthorized or criminal entry of third parties within the Premises.

7.2. **Indemnification.**

7.2.1. **Tenant's Indemnification of Landlord.** Tenant agrees to indemnify, defend, save and hold harmless Landlord, and its officers, officials, council members, citizens, agents, employees and volunteers (hereinafter referred to as "Indemnatee") for, from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") for personal injury (including

death) or property damage caused, in whole or in part, by the acts, errors, omissions, negligence, or alleged negligence of Tenant or any of Tenant's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Tenant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Tenant for, from and against any and all Claims. It is agreed that Tenant will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. The foregoing indemnity by Tenant shall extend, but not be limited, to:

- 7.2.1.1. Construction by or through Tenant of any improvements or any other work or thing done in, on or about the Premises or any part thereof;
- 7.2.1.2. Any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises and any improvements, areas adjacent thereto or improvements thereon by or through Tenant, or any nuisance made or suffered thereon or any failure by Tenant to keep the Premises or any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof in a safe condition;
- 7.2.1.3. Any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises, areas adjacent thereto or improvements thereon or any part thereof or in, on or about any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof;
- 7.2.1.4. Any lien or claim which may be alleged to have arisen against or on the Premises or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto;
- 7.2.1.5. Any acts of Tenant or any Subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;
- 7.2.1.6. Any failure on the part of Tenant to pay rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with, including without limitation, the failure to comply with or observe the requirements of the Grant, and the exercise by Landlord of any remedy provided in this Lease with respect thereto;
- 7.2.1.7. Any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Improvements or any part thereof, on Tenant's part to be kept, observed or performed;

- 7.2.1.8. Any tax which Tenant is obligated to pay or cause to be paid.
- 7.2.2. The foregoing provisions shall survive the expiration or earlier termination of this Lease to the extent the act, error, omission, negligence or alleged negligence arose prior to such expiration or termination.
- 7.2.3. Tenant will hold all goods, materials, furniture, fixtures, equipment, and machinery and other property whatsoever on the Premises at the sole risk of Tenant, and, to the extent set forth above, save Landlord harmless from any loss or damage thereto by any cause whatsoever.
- 7.2.4. The obligations of Tenant under this **Section 7.2** shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.
- 7.2.5. If any claim, action or proceeding is made or brought against Landlord by reason of any event, specified or unspecified, which is the subject of Tenant's foregoing indemnity, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name. Notwithstanding the foregoing, Landlord may engage its own attorneys to defend it or to assist in its defense and Tenant shall pay the reasonable fees and disbursements of such attorneys.
- 7.2.6. Landlord's Indemnification of Tenant. Landlord agrees to indemnify, defend, save and hold harmless Tenant, and its officers and directors, for, from and against any and all Claims arising as a result of the negligence or willful misconduct of Landlord or from the failure of Landlord to perform its obligations under this Lease as and when required herein. If any Claim is made or brought against Tenant by reason of any event, specified or unspecified, which is the subject of Landlord's foregoing indemnity, then, upon demand by Tenant, Landlord, at its sole cost and expense, shall resist or defend such Claim in Tenant's name. Notwithstanding the foregoing, Tenant may engage its own attorneys, subject to the approval of Landlord, to defend it or to assist in its defense and Landlord shall pay the reasonable fees and disbursements of such attorneys.
- 7.3. **Environmental Indemnification of Landlord by Tenant.** Tenant shall defend, indemnify, and hold harmless Landlord for, from and against any and all future claims, demands, complaints and/or actions made or brought against Landlord pertaining to the Premises and arising under any Environmental Law, Rule, Regulation or otherwise based upon any Hazardous Materials condition. This defense and indemnity includes, without limitation, any claims, demands, complaints, and/or action, asserted under CERCLA, WQARF, RCRA, and federal and state common law pertaining to Hazardous Materials, including any such claim based upon Landlord's alleged liability as an owner or operator of the Premises under CERCLA or WQARF.
- 7.4. **Insurance.** Tenant shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Tenant, Tenant's agents, representatives, employees or

contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Landlord does not represent or warrant that the minimum limits set forth herein are sufficient to protect Tenant from liabilities that might arise out of this Lease, and Tenant is free to purchase such additional insurance as Tenant may determine is necessary.

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

7.4.1.1. **Commercial General Liability - Occurrence Form**

(Form CG 0001, ed. 10/93 or any replacement thereof)

General Aggregate -- \$2,000,000
Personal and Advertising Injury -- \$1,000,000
Each Occurrence -- \$1,000,000
Fire Damage (any one fire) -- \$50,000
Medical Expense (any one person) -- Optional

7.4.1.2. **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

7.4.1.3. **Professional Liability**

Each Claim -- \$1,000,000.00
Annual Aggregate -- \$1,000,000.00

7.4.2. **Self-Insured Retention/Deductibles.** Any self-insured retentions and deductibles must be declared to and approved by Landlord.

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

7.4.3.1. **Commercial General Liability and Automobile Liability Coverages.**

7.4.3.1.1. Landlord, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Lease and activities performed by or on behalf of Tenant, including products and completed operations of Tenant; and automobiles owned, leased, hired or borrowed by Tenant.

7.4.3.1.2. Tenant's insurance shall contain broad form contractual liability coverage.

- 7.4.3.1.3. Landlord, its officers, officials, agents, employees and volunteers shall be named as additional insureds to the full limits of liability purchased by Tenant even if those limits of liability are in excess of those required by this Lease.
- 7.4.3.1.4. Tenant's insurance coverage shall be primary insurance with respect to Landlord, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by Landlord, its officers, officials, agents, employees or volunteers, shall be in excess to the coverage of Tenant's insurance and shall not contribute to it.
- 7.4.3.1.5. Tenant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 7.4.3.1.6. Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.
- 7.4.3.1.7. The policies shall contain a waiver of subrogation against Landlord, its officers, officials, agents, employees and volunteers for losses arising from Tenant's operations, occupancy and use of the Premises subject to this Lease.
- 7.4.3.2. **Workers' Compensation and Employee's Liability Coverage.** The insurer agrees to waive all rights of subrogation against Landlord, its officials, officers, agents, employees and volunteers for losses arising from Tenant's operations, occupancy and use of the Premises subject to this Lease.
- 7.4.4. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Landlord.
- 7.4.5. **Acceptability of Insurers.** Tenant shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Landlord does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.
- 7.4.6. **Verification of Coverage.** Tenant shall furnish Landlord with certificates of insurance (*ACORD form*) as required by this Lease. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.
- 7.4.7. **Policy Review and Adjustment.** Such policies of insurance shall be subject to review and adjustment on the fifth (5th) anniversary of the Commencement Date

of this Lease and on each subsequent fifth (5th) anniversary during the Term hereof, as may be extended, in order to determine the adequacy of the insurance amounts in light of the then existing circumstances.

7.4.8. **Failure to Maintain Insurance.** If Tenant fails or refuses to provide copies of the renewal insurance policies, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and upon five (5) days' notice to Lessee, to procure and maintain such insurance. Any premiums paid by Landlord hereunder shall be due and payable by Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s).

8. **ALTERATIONS.**

8.1. **Landlord's Approval.** Neither Tenant nor any Subtenant shall make any alteration, addition or improvement to the Premises, including, without limitation, to the entrances and exits of the Premises, or to any fixture, wiring, plumbing, heating and air-conditioning or other equipment therein without Landlord's prior written consent, including obtaining any required building permits from the Landlord which shall be obtained through Landlord's normal review processes for such permits. If such consent is granted, Tenant or the respective Subtenant, as applicable, must acquire, prior to the commencement of construction, all necessary building permits and must provide Landlord with certificates of property (course of construction), workmen's compensation and liability insurance in form and amounts satisfactory to Landlord. Any alteration, addition or improvement to which Landlord consents shall be completed in the exercise of due diligence in a good and workmanlike manner, in accordance with plans, specifications and drawings approved in writing by Landlord, and in compliance with this Lease and all applicable laws, regulations and codes and all requirements of any insurer providing coverage for the Premises. Tenant, or the respective Subtenant, as applicable, shall pay in a timely manner all costs and fees incurred in connection therewith.

8.2. **Alterations Become Part of Premises.** All alterations, additions or improvements to the Premises by Tenant or any Subtenant (except movable furniture, equipment and trade fixtures installed and/or owned by Tenant or any Subtenant, as applicable) shall become part of the Premises and Landlord's property immediately upon expiration or termination of this Lease.

9. **LIENS.** Tenant shall keep the Premises free and clear of all liens incurred by or resulting from acts of Tenant and any Subtenant. If any lien is filed, Tenant shall, within thirty (30) days thereafter, and at its expense, cause the lien to be fully discharged by either paying the obligation secured thereby or, at Tenant's election, by obtaining and recording a surety bond in accordance with A.R.S. §33-1004. Tenant is not authorized to act for or on behalf of Landlord for the purpose of constructing any improvements to the Premises and neither Landlord nor Landlord's interest in the Premises shall be subject to any obligations incurred by Tenant. Landlord shall be entitled, but not obligated, to post on the Premises during the course of any construction by Tenant such notices of nonresponsibility as Landlord deems appropriate. Tenant shall, at least five (5) days before the commencement of any work which might result in a liens, including, without limitation, the initial construction of the Improvements, provide notice thereof to

Landlord so that Landlord may post such notices. If any lien is filed or any action affecting the title to the Premises is commenced, the party receiving such information shall immediately notify the other party.

10. **DAMAGE AND DESTRUCTION OF PREMISES.** In the event that all or any portion of the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, this Lease shall continue in full force and effect and Landlord, utilizing the proceeds of any casualty loss insurance policy, may, but shall not be obligated to, rebuild or repair the same. Landlord and Tenant agree that the provisions of A.R.S. §33-343 shall not apply to this Lease. If Landlord elects not to repair or restore the Premises, then in that event, this Lease shall terminate as to that portion of the Premises that has been damaged or destroyed and the Base Rent shall be equitably adjusted to reflect the fact that the area of the Premises has been reduced by such damage or destruction; provided, however, that if the damage or destruction renders more than fifty percent (50%) of the Premises unusable or untenable, then in that event, Tenant shall have the right to elect to terminate this Lease by written notice to Landlord so long as such thirty (30) days after Tenant's receipt of Landlord's election not to repair or restore the Premises.

11. **EMINENT DOMAIN.**

11.1. **Total Condemnation.** If the entire Premises are taken under the power of eminent domain or conveyed by Landlord under the threat thereof (a "Condemnation"), this Lease shall terminate as of the date of Condemnation. All Rent and other obligations of Tenant shall be paid and performed up to such date.

11.2. **Partial Condemnation.** If any portion of the Premises is taken by a Condemnation and such partial taking renders the Premises unsuitable for Tenant's purposes, this Lease shall terminate as of the date of Condemnation. If the partial taking by Condemnation does not render the Premises unsuitable for Tenant's purposes, Landlord shall, in the exercise of reasonable diligence and utilizing all or a portion of any condemnation award, restore the Premises to a condition comparable to its condition prior to the Condemnation less the portion lost in the Condemnation and this Lease shall continue in full force and effect. In the event a partial Condemnation results in the taking of a portion of the Premises, the Rent shall be reduced in proportion to the gross area of the Premises so taken.

11.3. **Condemnation Award.** In the event of a Condemnation, whether whole or partial, Landlord shall be entitled to the entirety of the condemnation award and Tenant shall have no right or interest therein.

11.4. **Date of Condemnation.** The date of Condemnation shall mean the earlier of the date (a) possession of the Premises is delivered to the condemning authority, or (b) title to the Premises is vested in the condemning authority.

12. **ASSIGNMENT.**

12.1. **Restriction on Transfers.** Tenant shall not, without the prior written consent of Landlord and the EDA, which consent may be given or withheld in the sole and absolute discretion of Landlord and the EDA, respectively, assign, hypothecate, mortgage or otherwise encumber or convey Tenant's interest in this Lease (herein, a "Transfer"); provided, however, that Tenant shall use commercially reasonable efforts to sublease and

shall have the right to sublease portions of the Premises to Subtenants pursuant to and in accordance with the provisions set forth in *Section 13* below.

12.2. **Void Transfers.** Any Transfer or attempted Transfer which has not first been approved by Landlord and the EDA shall be null and void and shall constitute a default by Tenant under this Lease.

13. **SUBLEASES; MINIMUM SUBLEASE OCCUPANCY REQUIREMENT.**

13.1. **Subleases; Form of Sublease.** Notwithstanding anything contained herein to the contrary, including, without limitation, the provisions of **Section 12** above, Tenant shall use commercially reasonable efforts, and shall have the right, to sublease portions of the Premises (herein, a "Sublease") to subtenants (each herein, a "Subtenant") who are located or reside within the general service area of the Northern Arizona Council of Governments ("NACOG"), whose use of its subleased portion of the Premises is consistent with the permitted uses described in **Section 5** above, and who has been approved as a Subtenant of the Premises by the Landlord. In connection therewith, prior to entering into a Sublease for space in the Premises to a Subtenant, Tenant shall provide written notice to Landlord, which notice shall include the identity of the Subtenant, the proposed use of the portion of the Premises to be subleased by the Subtenant, the term of the proposed Sublease and the Subrent to be paid by the Subtenant in connection therewith. The Tenant hereby acknowledges and agrees that each Sublease entered into by Tenant for any portion of the Premises shall be in the form attached hereto as Exhibit "A" unless another form of Sublease is approved by Landlord.

13.2. **Minimum Sublease Occupancy Requirement.** Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant hereby acknowledge and agree that, as a material part of the consideration to Landlord for its execution of this Lease, Tenant shall, commencing upon the first anniversary of the Commencement Date, and continuing thereafter through the duration of the Term, and each Extension Term, as applicable, maintain a minimum number of Subtenants within the Premises occupying these minimum amounts of leasable square footage for the following years: Year 1 (partial and/or full) - 25% of leasable square footage or 5,000 square feet; Year 2 - 50% of leasable square footage or 10,000 square feet; Year 3 - 75% of leasable square footage or 15,000 square feet; Year 4 and subsequent years - 80% of leasable square footage or 16,000 square feet, exclusive of any space occupied by Tenant for Tenant's offices and "common areas," including but limited to, stairways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas, area utilized by the EOC, the "Minimum Sublease Occupancy Requirement"). Except by mutual agreement otherwise between the parties, at any time after the first anniversary of the Commencement Date, if Tenant fails to satisfy the Minimum Sublease Occupancy Requirement for a period of ninety (90) consecutive days or more, Landlord shall have the right, but not the obligation, to elect to terminate or extend this Lease by written notice to Tenant. In the event that Landlord terminates the lease, all further rights, duties and obligations of the parties hereunder shall terminate, except with respect to any continuing indemnity obligations of the parties hereunder.

13.3. **Effect of Lease Termination on Subleases.** In the event that this Lease is terminated for any reason, including as a result of a default by Tenant under this Lease, such termination shall not effect a cancellation of any Subleases, but shall operate as an assignment to

Landlord of any and all such affected Subleases. So long as any Subtenant under a Sublease is not in default under the terms, covenants or conditions of its Sublease beyond any applicable notice and cure period, and attorns to and accepts Landlord as the successor sublessor to Tenant, Landlord shall honor such Sublease and shall not disturb the use of such Subtenant, except in accordance with the applicable provisions of such Sublease. Landlord will agree to recognize each such Subtenant and not disturb the possession of the Subtenant, except that Landlord shall not be:

- 13.3.1. Liable for any act or omission of (i) any prior sublessor (including Tenant) under the Sublease, or (ii) Subtenant (or its successors or permitted assigns) under the Sublease; or
- 13.3.2. Subject to any offsets or defenses which Subtenant may have against any prior sublessor (including Tenant) under the Sublease; or
- 13.3.3. Bound by any payment which Subtenant might have paid for more than one (1) month in advance to any prior sublessor (including Tenant); or
- 13.3.4. Bound by any provision set forth in the Sublease requiring Tenant to indemnify or hold Subtenant harmless; or
- 13.3.5. Liable for any security deposit unless actually delivered to Landlord; or
- 13.3.6. Responsible for representations, warranties, covenants and indemnities of Tenant except to the extent that such representations, warranties, covenants and indemnities apply to the Premises and relate to the operation of the Premises prior to assignment of the Sublease to Landlord; or
- 13.3.7. Liable for any of Tenant's obligations for alterations, demolition or other improvements or work upon the Premises subject to the Sublease.

14. **MAINTENANCE AND UTILITIES.**

- 14.1. **Obligations of the Landlord.** The Landlord will be responsible to set up and pay the utilities including electric, gas, water, wastewater/sewer, storm water, environmental management fee, natural gas, electricity, power, telephone, public internet access which includes equipment and Internet Service (EOC/conference room, policy room and collaborative space), trash removal, recyclables and all other services or utilities used within or about the Premises by the Tenant or any Subtenant. The Landlord will monitor above mentioned utility costs and reserves the right to amend the terms. The Landlord will provide janitorial services, including supplies and pest control as agreed upon through the Landlord's service contracts. Any enhanced janitorial services requested by NACET and/or the Tenant(s) is NACET or the Tenant(s) responsibility. The Landlord will be responsible for any structural maintenance. Tenants will be responsible to pay for any and all excessive or careless damages outside of normal wear and tear. The Landlord will provide weekly cleaning service for common areas, and the Tenants shall furnish and clean their own leased areas. The Landlord will be responsible for maintenance of the exterior landscaping and shall be responsible for snow removal from the sidewalks and parking areas.

14.2. **Obligations of Tenant and Subtenants.** Tenant and the Subtenants agree to:

- 14.2.1. Furnish their own office equipment, lab materials, manufacturing equipment, office supplies, etc. in their own area areas.
- 14.2.2. Provide for individual blue recyclable bins in each utilized space.
- 14.2.3. Provide for collection on a regular basis of individual blue bins and group bins in breakroom and cardboard collection in copy room, for distribution to outside dumpster recycle bin and glass container.
- 14.2.4. Provide for pick-up of recyclables including at a minimum of paper, corrugated cardboard, glass, plastics and metal from the outside dumpster enclosure by solid waste on a contract basis.
- 14.2.5. Provide for onsite cleaning of the walk-off mats at the entry doors each week, and offsite cleaning of the same mats, at a minimum on quarterly basis.
- 14.2.6. Provide shower facilities to the occupants of Innovation Mesa (which are already located in the Business Incubator), for those who elect to bike to work. A total of two shower facilities shall be made available.
- 14.2.7. Provide the building utility usage data to the United States Green Building Council (USGBC) upon request.
- 14.2.8. Cooperate with Leadership in Energy and Environmental Design (LEED) survey taker to periodically provide information about comfort, energy use patterns, etc.

15. **SURRENDER OF PREMISES.** Tenant shall, upon the expiration or prior termination of this Lease for any reason, quit and peaceably surrender the Premises, to Landlord in good order, condition, repair (reasonable wear and tear excepted), free of refuse in a broom-clean state and in accordance with this *Section 15*. At least thirty (30) days prior to the expiration or termination of this Lease as to the Premises, Tenant shall provide Landlord with written notice of the specific date upon which Tenant will surrender the Premises. Tenant shall deliver all keys for the Premises to Landlord at the address at which Tenant makes rent payments and shall inform Landlord in writing of the combinations of all safes, locks and vaults, if any, in the Premises. Landlord's acceptance of surrender of the Premises by Tenant shall only arise from, and must be evidenced by, written acknowledgment of acceptance of surrender signed by Landlord. No other act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be an acceptance by Landlord of the surrender of the Premises by Tenant prior to the expiration of the Term as may be extended.

16. **ENTRY AND INSPECTION.** Upon reasonable prior notice, which notice may be given in writing, verbally or telephonically (provided, however, that no notice shall be required in the event of an actual or perceived emergency), Landlord and its agents shall be entitled to enter upon the Premises at any time for the purpose of conducting inspections, to show the Premises to any prospective purchaser, tenant, lender or insurer, and to take necessary action in the event of an emergency. No such entry shall entitle Tenant to terminate this Lease, to reduce or abate rent or other amounts due hereunder or to any claims for damages. Landlord shall be entitled to use

any reasonable means to enter the Premises in the event of emergency and shall not be liable for any damages resulting therefrom.

17. **ESTOPPEL CERTIFICATE.** Upon receipt of a request from either Landlord or Tenant, the other party shall within thirty (30) days after receipt of such request, execute, acknowledge and deliver to the requesting party a written statement (a) certifying that this Lease is unmodified (or, if modified, stating the nature of such modification) and in full force and effect and the dates to which rent and other charges are paid in advance, (b) acknowledging that there are no uncured defaults by the requesting party, or specifying any claimed defaults, and (c) certifying or acknowledging any other matters that the requesting party may reasonably request. Any such statements may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Premises, or of Tenant's interest in the leasehold established by this Lease. Tenant's failure to timely deliver such statement to Landlord shall be conclusive against Tenant that (i) this Lease is in full force and effect, without modification, except as represented by Landlord in the request, (ii) there are no uncured defaults by Landlord, and (iii) Rent has not been paid more than one (1) year in advance.
18. **QUIET ENJOYMENT.** Aside from any noise or other disruptions resulting from the presence of the EOC in plain view and consequential conditions caused by the same, included but not limited to, typical noise/disruptions caused by the EOC's activation and operation, provided Tenant is not in default hereunder, Landlord will do nothing to prevent Tenant from peaceably and quietly enjoying and occupying the Premises during the Term of this Lease, as may be extended. This covenant shall not extend to, and Landlord shall not be liable for, any disturbance, act or condition brought about by anyone not otherwise claiming by or through Landlord, or to any action required or permitted to be taken by or on behalf of Landlord under this Lease. This Lease conveys no interest to Tenant in light, air or view and Landlord shall not be liable to Tenant for interference with or diminution of the light, air or view.
19. **DEFAULT; REMEDIES.**
 - 19.1. **Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:
 - 19.1.1. Tenant's abandoning or vacating the Premises;
 - 19.1.2. Tenant's failure to make any payment of Rent or other sum due under this Lease, as and when due, together with Default Interest thereon, where such failure continues for a period of fifteen (15) days after the date such payment is due;
 - 19.1.3. Tenant's failure to observe or perform any of Tenant's obligations under this Lease (except as described in *Sections 19.1.2*, including without limitation, failing to observe the restrictions on the use of the Premises as set forth in the Grant, where such failure continues for a period of thirty (30) days after written notice from Landlord;
 - 19.1.4. Any Transfer of Tenant's interest in this Lease contrary to *Section 12* or any Sublease contrary to *Section 13*;
 - 19.1.5. To the extent not prohibited by law, (i) the making by Tenant of any general assignment or general arrangement for the benefit of creditors; (ii) the filing by

or against Tenant of a proceeding under state or federal insolvency and/or bankruptcy laws (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets at the Premises or of Tenant's interest in this Leases where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets at the Premises or of Tenant's interest in this Lease;

19.1.6. Tenant's failure to maintain its status as a nonprofit corporation; or

19.1.7. Tenant defaults under or breaches any provision of the Agreement for Services, if such agreement is still in effect.

19.2. **Remedies.** In the event of any such default or breach, Landlord shall be entitled to exercise the following rights and remedies at any time thereafter, with or without notice or demand:

19.2.1. To terminate this Lease effective immediately upon delivery of notice to Tenant and Tenant shall immediately surrender possession of the Premises upon receipt of such notice. Notwithstanding such termination, Tenant shall remain liable for any and all damages incurred by Landlord as a result of Tenant's breach.

19.2.2. To immediately reenter and remove all persons and property from the Premises, without liability for damages sustained by reason of such reentry and removal. Such property may be stored in a public warehouse or elsewhere at Tenant's expense. If Landlord elects to reenter or take possession pursuant to legal proceedings or any notice provided by law, Landlord shall have the right to terminate this Lease (as provided in **Section 19.2.1.** above), or without terminating this Lease, to relet the Premises or any part thereof for such term (which may be for a term in excess of the Term) and upon such conditions as Landlord, in its sole discretion, may deem advisable (which may include concessions of free rent, alterations or repairs). If Landlord elects to relet the Premises, the rents received thereafter shall be applied first to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, employees expenses, alteration, remodeling and repair costs and expenses of preparing for such reletting; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied to payment of future rent as the same becomes due. If the rent to be received from such reletting will be less than the total of all rental and other payments that Tenant would have been obligated to make during the balance of the Term, Tenant shall immediately pay any such deficiency in full to Landlord. No such reentry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless termination is decreed by a court. Notwithstanding any such reletting without termination, Landlord may, at any time thereafter, elect to terminate this Lease for such previous breach, upon delivery of notice to Tenant.

- 19.2.3. To seek or pursue any other remedies which may be available at law or in equity.
- 19.3. **Remedies Cumulative.** No remedy or option of Landlord shall be considered exclusive of any other remedy, but the same shall be cumulative and in addition to every other remedy or option given hereunder, or now or hereafter existing at law, in equity or by statute, including, without limitation an action to recover amounts due hereunder. Landlord may exercise its rights and remedies at any time, in any order, to any extent, and as often as Landlord deems advisable.
- 19.4. **Landlord's Right to Act.** If Tenant fails to perform any of its obligations, Landlord shall have the right, without any passage of time or declaring Tenant in default, to perform such obligation on Tenant's behalf and to charge to Tenant all costs and expenses (including an administration fee equal to ten percent (10%) of such costs and expenses) incurred in connection therewith.
- 19.5. **Rent Defined.** Rent and all other sums payable by Tenant hereunder shall be deemed to be rent payable for use of the Premises for all purposes, including, without limitation, for purposes of Section 502(b)(6) of the Bankruptcy Code, whether or not such sums are designated as rent hereunder.
- 19.6. **Late Charges.** The late payment by Tenant of any sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any encumbrance covering the Premises. Accordingly, if amounts payable by Tenant are not received by Landlord within five (5) days after the due date of such payment, Tenant shall immediately pay to Landlord a late charge equal to five percent (5%) of such payment. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of Tenant's late payment, and shall be in addition to the payment of Default Interest.
- 19.7. **Interest on Past-Due Obligations.** Any amount owed Landlord that is not paid when due shall bear interest from the date due until paid at a rate equal to the lesser of (a) 18% per annum, or (b) a variable rate per annum equal to five (5) percentage points in excess of the Prime Rate designated as such in the Wall Street Journal from time to time during the period such amount is owed to Landlord ("Default Interest"). If the Wall Street Journal is no longer in publication or ceases to publish or designate a Prime Rate, Landlord shall, in its reasonable judgment, substitute another means of determining the annual interest rate charged by major commercial banks on 90-day unsecured commercial loans to their most creditworthy borrowers, and such interest rate as so determined shall thereafter be the Prime Rate. Payment of such interest shall not excuse or cure any default by Tenant.
- 19.8. **Attorneys' Fees; Waiver of Jury Trial and Counterclaims.** In any dispute between the parties, the prevailing party shall be entitled to recover from the other party immediately upon demand all costs and attorneys' fees, expert witness fees, costs of tests and analysis, travel and accommodation expenses, deposition and trial transcript copies, court costs and other similar costs and fees incurred in enforcing its rights and remedies under this Lease, regardless of whether legal proceedings are actually commenced. The parties waive trial by jury in any action, proceeding or counterclaim brought by either of the

parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises and/or any claim of injury or damage. If Landlord commences any proceedings for nonpayment of rent, Tenant shall not interpose any counterclaim of whatever nature or description in any such proceedings, other than compulsory counterclaims. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in any separate action or action brought by Tenant.

19.9. **Accord and Satisfaction.** Payment by Tenant or receipt by Landlord of a lesser amount than the rent or other charges due hereunder shall be deemed to be on account of the earliest due stipulated rent or other charges, and no endorsement or statement on any check or any letter accompanying any check or payment shall be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or other charges or pursue any other remedy in this Lease.

20. **LANDLORD'S LIABILITY**

20.1. **Default by Landlord.** Landlord shall not be considered in default or breach of this Lease for the nonperformance of any obligation imposed herein unless such nonperformance shall continue for a period of at least thirty (30) days after notice from Tenant; provided, however, if the nature of the nonperformance is such that it cannot be reasonably cured within thirty (30) days, Landlord shall not be deemed to be in default if Landlord commences to cure such nonperformance within such 30-day period and thereafter pursues such cure to completion in the exercise of reasonable diligence.

20.2. **Sale of Landlord's Interest.** Upon any sale or conveyance of Landlord's interest in this Lease, and the assumption by the transferee of Landlord's obligations arising under this Lease, Landlord shall be entirely relieved of all liability for Landlord's obligations under this Lease accruing thereafter, and the assignee or purchaser shall be deemed without any further agreement between the parties or their successors in interest to have assumed all of Landlord's obligations accruing after such conveyance.

20.3. **Nonrecourse Liability.** If Landlord fails to perform any of its obligations under this Lease and, as a consequence of such nonperformance, Tenant recovers a money judgment against Landlord, such judgment shall be satisfied only out of Landlord's interest in the Premises. Landlord shall have no liability whatsoever for any deficiency, and no other assets of Landlord shall be subject to levy, execution or other enforcement procedures as a result of such judgment. None of Landlord's obligations under this Lease shall be subject to specific performance or injunctive remedies, and Tenant waives all rights with respect to such remedies. No officer, official, employee, agent or representative of Landlord, including, without limitation, any City Council member, shall be liable to Tenant or any Subtenant or successor-in-interest in the event of a default or breach by Landlord under this Lease.

21. **DISPUTE RESOLUTION; MEDIATION.** If a dispute arises out of or relates to this Lease 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, 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. 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 section does not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

- 22. **FORCE MAJEURE**. If either party is delayed or prevented from the performance of any act by reason of acts of God, strikes, lockouts, labor troubles, failure or refusal of governmental authorities to timely issue permits or approvals or conduct reviews or inspections, civil disorder, abnormally inclement weather (i.e., not typical of the normal weather for the City of Flagstaff during the relevant season), inability to procure materials, restrictive governmental laws or regulations, or other causes beyond the control of the party obligated (financial inability of Tenant excepted), performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing herein shall excuse Tenant from the prompt payment of rent or any other sum.
- 23. **BROKERS**. Tenant represents and warrants that Tenant has not retained a broker and there are no claims for brokerage commissions or finder's fees in connection with this Lease, and Tenant shall indemnify, defend and hold harmless Landlord for, from and against any claim by any party claiming through Tenant for a brokerage commission or finder's fee in connection with this Lease.
- 24. **NOTICES**. No notice, consent, approval or other communication given in connection herewith shall be validly given, made, delivered or served unless in writing and delivered in person or sent by registered or certified United States mail, postage prepaid, to the parties at the following addresses:

To Landlord:	City of Flagstaff 211 West Aspen Avenue Flagstaff, Arizona 86001 Attn: City Manager
With a Copy to:	City of Flagstaff 211 West Aspen Avenue Flagstaff, Arizona 86001 Attn: City Attorney
With a Copy to:	City of Flagstaff 211 West Aspen Avenue Flagstaff, Arizona 86001 Attn: Economic Vitality Director
To Tenant:	NACET 2400 N. Gemini Dr. Flagstaff, Arizona 86004

Attn: President/CEO

Notices, consents, approval or communications shall be deemed given or received upon delivery, if delivered in person, or upon thirty-six (36) hours after deposit in the mail, if delivered by mail.

25. **GENERAL.**

- 25.1. **Arizona Law; Venue.** This Lease shall be construed in accordance with the laws of the State of Arizona. The parties agree that Coconino County, Arizona shall be the venue for any litigation relating to this Lease.
- 25.2. **No Partnership.** Nothing contained in this Lease shall be deemed to create any relationship other than that of landlord and tenant.
- 25.3. **Amendments.** No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties.
- 25.4. **No Waiver.** No delay or omission of Landlord to exercise any right or power shall impair any such right or powers or shall be construed to be a waiver of any nonperformance by Tenant or an acquiescence therein. No waiver of any nonperformance shall be effective unless it is in writing. No written waiver by Landlord shall be deemed to be a waiver of any other Lease provision, or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act by Tenant shall not be deemed to render unnecessary the procurement of Landlord's consent to or approval of any subsequent act of Tenant, whether or not similar to the act so consented to or approved.
- 25.5. **Exhibits.** All exhibits and addenda attached hereto shall by this reference be deemed a part of this Lease as if set forth in full herein.
- 25.6. **Partial Invalidity.** If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, that provision may be modified to the minimum extent necessary and the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 25.7. **Captions.** The various headings and numbers herein and the grouping of the provisions of this Lease into separate articles and sections are for the purpose of convenience only and shall not control or affect the meaning or construction of any of the provisions.
- 25.8. **Time.** Time is of the essence. If any time period provided for herein expires on a Saturday, Sunday or legal holiday, such time period shall be extended to the next succeeding day that is not a Saturday, Sunday or legal holiday.
- 25.9. **No Third-Party Rights.** Except as expressly provided herein, no Term of this Lease is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder.
- 25.10. **Joint and Several Obligations.** If Tenant is constituted of two or more persons, corporations or other entities, all agreements, covenants, representations and warranties of Tenant herein are the joint and several obligations of the entities constituting Tenant. If Tenant is husband and wife, the obligations hereunder shall extend individually to the

sole and separate property of each as well as to their community property. Notice given to any one of the entities constituting Tenant shall be deemed as having been given to all such entities.

- 25.11. **Authority to Execute.** Any individual executing this Lease on behalf of or as representative for a corporation or other person, partnership or entity represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of such party, and that this Lease is binding upon such party in accordance with its terms. If Tenant is a corporation or a partnership, Tenant shall deliver to Landlord within ten (10) days after the execution of this Lease a certified copy of a resolution of the board of directors or of all partners, as the case may be, authorizing or ratifying the actions of the individual(s) executing and delivering this Lease.
- 25.12. **Binding on Successors and Assigns.** Each of the provisions of this Lease shall bind, extend to, and inure to the benefit of the respective heirs, legal representatives, and successors and assigns of both Landlord and Tenant; provided however, that this clause shall not permit any assignment contrary to the provisions of *Section 12* or Sublease contrary to the provisions of *Section 13*.
- 25.13. **Impartial Interpretation.** This Lease is the result of negotiations between Landlord and Tenant and, therefore, the language contained in this Lease shall be construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant.
- 25.14. **Plurals.** The words "Landlord" and "Tenant," as herein used, shall include the plural as well as the singular. The neuter gender shall include the masculine and feminine genders.
- 25.15. **Not Binding Until Signed.** Submission of this instrument to Tenant for examination shall not bind Landlord in any manner, until this instrument is executed and delivered by both Landlord and Tenant.
- 25.16. **Notice of Cancellation.** Notice is hereby given that this Lease is subject to cancellation in accordance with the provisions of A.R.S. §38-511.
26. **LANDLORD'S USE OF CONFERENCE ROOM.** The Landlord and Tenant hereby acknowledge and agree that, during the Term of this Lease, as may be extended, the Landlord shall have the right to utilize the main conference room within the Premises, together with all equipment and facilities contained therein, at no cost or charge to Landlord; provided, however, that (a) Landlord's use of such conference room and facilities shall be limited to economic development purposes, (b) Landlord shall provide at least forty-eight (48) hours prior notice to Tenant of its desire to use such conference room, and (c) Landlord shall coordinate such use with the use of Tenant and any Subtenants within the Premises who shall have priority in scheduling the use of such conference room.
27. **GRANT REQUIREMENTS.** Landlord and Tenant hereby acknowledge that this Lease has been approved by EDA as being consistent and in accordance with the terms and purposes of the Grant and each of Landlord and Tenant shall, during the term of this Lease, observe and perform their respective duties and obligations under this Lease such that the Premises shall be operated in a manner which provides adequate employment and economic benefits for the greater northern Arizona business community in accordance with the terms, covenants, restrictions and limitations of the Grant.

28. **FEDERAL COMPLIANCE.**

- 28.1. **Civil Rights.** The Lessee shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, religion, sex, age or physical or mental disability.
- 28.2. **Audits and Inspections.** At any time during normal business hours, and as frequently as is deemed necessary, the Lessee shall make available to the Lessor and the Economic Development Administration (EDA) or EDA's authorized agents, for their examination, all of its records pertaining to matters covered by this Agreement and only matters relating to the Agreement.
- 28.3. **Retention of Records.** All records in the possession of the Lessee pertaining to this Agreement shall be retained for a period of three (3) years after the expiration of the Agreement or any extensions thereof. All records shall be retained beyond the three (3) year period if audit findings have not been resolved within that period or if other disputes have not been resolved.
- 28.4. **Assignment and Subletting.** Assignment and subletting are not permitted under this Agreement without prior written approval of the Economic Development Administration.
- 28.5. **Environmental Compliance.**
- 28.5.1. Lessor warrants and represents to the Lessee that it has no knowledge of the presence or of the release, now or in the past, of any hazardous substance or material on the Premises. Lessor agrees to hold Lessee free, harmless and indemnified from any penalty, fine, liability, cost or charge whatsoever related to any damage or condition that might be caused by any existing environmental condition that currently exists on the Premises.
- 28.5.2. Lessee covenants and agrees that throughout the Term its use and occupancy of the Premises will at all times be in strict compliance with all governmental regulations, be they federal, state or local, that pertain to the use and storage of hazardous materials and substances, and Lessee shall save and hold Lessor free, harmless and indemnified from any penalty, fine, liability, cost or charge whatsoever which Lessor may incur by reason of Lessee's failure to comply with this **Section 28.5**. Such covenants, however, shall not apply to any condition that existed at the time Lessee first took possession of any part of the Premises, or which is caused or results from acts of others, including Lessor.
- 28.5.3. Lessee's obligations under this **Section 28.5** shall automatically terminate and expire one (1) year after Lessee no longer occupies the Premises unless an action has been filed in some judicial tribunal of competent jurisdiction prior to that time which related to a period during which Lessee in fact did occupy any part of the Premises.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have duly executed this Master Lease as of the date first above written.

"LANDLORD"

CITY OF FLAGSTAFF, an Arizona municipal corporation

By _____
Name: _____
Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

"TENANT"

NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC., dba NACET an Arizona nonprofit corporation

By _____
Name _____
Title _____

EXHIBIT "A"

NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC. dba NACET

INNOVATION MESA BUSINESS ACCELERATOR

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (hereinafter referred to as this "Sublease") is made and entered into as of this ____ day of _____, 20____, by and between NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC., dba NACET an Arizona nonprofit corporation (hereinafter referred to "Sublessor"), whose address for rents and notices is _____, and _____, a _____ (hereinafter referred to as "Sublessee"), whose address for notices is _____.

RECITALS

- A. Sublessor is the Tenant under that Master Lease (the "Master Lease") dated as of _____, 2014, entered into by Sublessor and the City of Flagstaff, an Arizona municipal corporation (the "Master Lessor"). Pursuant to the Master Lease, Sublessor leased from Master Lessor those premises consisting of a separate conference room and approximately 25,000 rentable square feet and commonly known as the "Innovation Mesa Business Accelerator Facility" (the "Premises").
- B. Sublessee has expressed an interest in subleasing from Sublessor that portion of the Premises known as _____ together with all existing fixtures therein (the "Subleased Premises"), on the terms and conditions set forth herein. Sublessor has agreed to sublease the Premises to Sublessee subject to the matters set forth in this Sublease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

SUBLEASE

- 1. ACKNOWLEDGEMENT OF MASTER LEASE. It is hereby expressly understood, acknowledged and agreed by Sublessor and Sublessee that this Sublease is subject to the terms, covenants, provisions and conditions of the Master Lease. Sublessee agrees to observe, and comply with, all obligations of Sublessor as the tenant under the Master Lease as applicable to the use and occupancy of the Subleased Premises, including, without limitation, limiting its use of the Subleased Premises to those uses which are permitted under the terms of the Master Lease and the Grant provided by the United States Department of Commerce, Economic Development Administration (the "EDA"), provided by the EDA in connection with the development and construction of the Premises. Sublessee shall not commit or permit to be committed on the Subleased Premises any act or omission which shall violate any term or condition of the Master Lease or any term or condition of the Grant. Sublessee hereby agrees that, in the event that Sublessor's rights with respect to the Subleased Premises expire or are terminated for any reason, whether as a result of the termination of the Master Lease by the Master Lessor in accordance

with the Master Lessor's rights under the Master Lease or otherwise, then this Sublease and all of the rights and obligations of Sublessee hereunder shall continue in full force and effect; provided, however, that Sublessee shall attorn to and perform all of its obligations under this Sublease to and for the benefit of the Master Lessor pursuant to the terms of the Master Lease. A copy of the Master Lease and the Grant provided by the EDA to Master Lessor shall be made available from time to time by Sublessor to Sublessee for Sublessee's review.

2. LEASE OF SUBLEASED PREMISES. In consideration of the rents to be paid and the covenants to be performed by Sublessee hereunder, Sublessor does hereby lease to Sublessee, and Sublessee does hereby lease from Sublessor, upon the terms and conditions hereinafter set forth, the Subleased Premises.
3. TERM. The Term of this Sublease shall be for _____ (____) months, commencing on _____, 20__ ("Commencement Date"), and continuing through _____, 20__ ("Termination Date").
4. RENTAL. The Sublessee shall pay monthly rent in an amount equal to \$_____, plus current rental tax of 2.051% (\$_____), for a total rental of \$_____ per month payable on or before the first day of each month during the Term hereof. Rental for any partial month of occupancy shall be prorated.
5. SECURITY DEPOSIT. Upon execution of this Sublease, Sublessee has deposited with Sublessor the sum of \$_____, as security for the full and faithful performance of each and every term, condition, covenant and provision of this Sublease on Sublessee's part to be performed. In the event that Sublessee fails to pay any installment of monthly rent required to be paid under this Sublease as and when due, then Sublessor shall have the right to apply the security deposit to the obligations of Sublessee, whereupon Sublessee shall immediately upon demand of Sublessor replenish the security deposit to the amount described herein. If, upon the expiration or termination of this Sublease, Sublessee returns the Subleased Premises, including all furnishings and fixtures therein, to Sublessor in the condition in which the Subleased Premises was delivered to Sublessee, ordinary wear and tear excepted, then within fourteen (14) days after the expiration or termination of this Sublease, the security deposit shall be returned by Sublessor to Sublessee.
6. PURPOSE AND USE OF THE SUBLEASED PREMISES. The Subleased Premises are to be used only for the following purpose and for no other purpose without the prior written consent of Sublessor and the Master Lessor pursuant to the terms of the Master Lease, which consent may be withheld in the sole and absolute discretion of Sublessor and the Master Lessor, respectively:
_____.
7. CONDITION OF SUBLEASED PREMISES; ALTERATIONS. Sublessee hereby acknowledges and agrees that it shall accept the Subleased Premises on the Commencement Date in their existing "as is" condition, and neither Sublessor nor Master Lessor shall have any obligation for the construction or installation of any improvements within the Subleased Premises other than the existing improvements. If Sublessee desires to make any alterations or improvements to the Subleased Premises, then prior to commencing any such alterations or improvements, it must obtain the prior written consent of the Sublessor and the Master Lessor pursuant to the terms of the Master Lease and, if such approvals are provided, then all construction, alterations or improvements within the Subleased Premises by Sublessee must be performed in accordance with the terms and conditions of the Master Lease applicable thereto.

8. REPAIRS AND MAINTENANCE. Except for damage caused by the negligent or intentional acts of Sublessee, its agents, employees or invitees, and except for any areas including laboratory, office, manufacturing or other areas within the Subleased Premises which are secured work areas (with respect to which Sublessee shall clean, maintain and repair at its expense), the parties hereto acknowledge that the Master Lessor shall keep, maintain and repair the Premises, including the Subleased Premises, in good, safe and sanitary order, condition and repair and, as a result thereof, Sublessor shall have no responsibility in connection therewith, except to provide notice to Master Lessor of the need for any maintenance or repairs within the Subleased Premises after receipt of notice of the need therefor from Sublessee. Sublessee shall, upon the expiration or sooner termination of the term of this Sublease, surrender the Subleased Premises to Sublessor, including all furnishings and fixtures therein, in the same condition as received, ordinary wear and tear excepted.
9. SERVICES AND UTILITIES. The parties hereby acknowledge that utilities and services to the Subleased Premises shall be provided by Master Lessor under the terms of the Master Lease. The Master Lessor will monitor the above mentioned utility costs and reserves the right to amend the terms to require the Sublessee to pay Sublessor all or a portion of anything that is in excess of a reasonable amount for typical utility usage, which excess amounts Sublessor will in turn pay to Master Lessor.
10. ASSIGNMENT AND SUBLETTING. Sublessee shall not assign, transfer, mortgage, pledge, hypothecate or encumber this Sublease, or any interest therein, nor further sublet the Subleased Premises or any part thereof, or any right or privilege appurtenant thereto, or permit any other person (the agents and servants of Sublessee excepted) to occupy or use the Subleased Premises or any part thereof, and any such assignment, transfer, mortgage, pledge, hypothecation or encumbrance of this Sublease or any interest therein, or any attempt to effect any of the foregoing, shall be deemed to be an immediate and incurable default under this Sublease by Sublessee.
11. INDEMNIFICATION OF SUBLESSOR AND MASTER LESSOR. Sublessee agrees to indemnify, defend and hold harmless Sublessor and the Master Lessor for, from and against any and all penalties, costs, expenses (including attorneys' fees), claims, demands and causes of action arising out of or in connection with any accident or other occurrence in or on the common areas (including without limiting the generality of the term "common areas," and "common areas," including but limited to, stairways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas, area utilized by the EOC), the use of which Sublessee may have in conjunction with other tenants and occupants of the Premises, when such injury or damage shall be caused in part or in whole by the act, neglect, fault or omission of any duty with respect to the same by Sublessee, its agents, servants, employees, invitees, visitors, permittees, customers, clients, guests or tenants.
12. INSURANCE.
 - 12.1 Insurance. Sublessee shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Sublessee, Sublessee's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Master Lessor and Sublessor do not represent or warrant that the minimum limits set forth herein are sufficient to protect Sublessee from liabilities that

might arise out of this Lease, and Sublessee is free to purchase such additional insurance as Sublessee may determine is necessary.

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

12.2.1. Commercial General Liability - Occurrence Form

(Form CG 0001, ed. 10/93 or any replacement thereof)

General Aggregate -- \$2,000,000

Personal and Advertising Injury -- \$1,000,000

Each Occurrence -- \$1,000,000

Fire Damage (any one fire) -- \$50,000

Medical Expense (any one person) -- Optional

12.2.2. 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

12.2.3. Self-Insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by Master Lessor and Sublessor.

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

12.2.4.1. Commercial General Liability and Automobile Liability Coverages.

12.2.4.1.1. Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Lease and activities performed by or on behalf of Sublessee, including products and completed operations of Sublessee; and automobiles owned, leased, hired or borrowed by Sublessee.

12.2.4.1.2. Sublessee's insurance shall contain broad form contractual liability coverage.

12.2.4.1.3. Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers shall be named as additional insureds to the full limits of liability purchased by Sublessee even if those limits of liability are in excess of those required by this Lease.

12.2.4.1.4. Sublessee's insurance coverage shall be primary insurance with respect to Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers. Any

insurance or self-insurance maintained by Master Lessor and Sublessor, its officers, officials, agents, employees or volunteers, shall be in excess to the coverage of Sublessee's insurance and shall not contribute to it.

12.2.4.1.5. Sublessee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

12.2.4.1.6. Coverage provided by Sublessee shall not be limited to the liability assumed under the indemnification provisions of this Lease.

12.2.4.1.7. The policies shall contain a waiver of subrogation against Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers for losses arising from Sublessee's operations, occupancy and use of the Premises subject to this Lease.

12.2.4.2. Workers' Compensation and Employee's Liability Coverage. The insurer agrees to waive all rights of subrogation against Master Lessor and Sublessor, its officials, officers, agents, employees and volunteers for losses arising from Sublessee's operations, occupancy and use of the Premises subject to this Lease.

12.2.5. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Master Lessor and Sublessor.

12.2.6. Acceptability of Insurers. Sublessee shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Master Lessor and Sublessor does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.

12.2.7. Verification of Coverage. Sublessee shall furnish Master Lessor and Sublessor with certificates of insurance (*ACORD form*) as required by this Lease. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

12.2.8. Policy Review and Adjustment. Such policies of insurance shall be subject to review and adjustment on the fifth (5th) anniversary of the Commencement Date of this Lease and on each subsequent fifth (5th) anniversary during the Term hereof, as may be extended, in order to determine the adequacy of the insurance amounts in light of the then existing circumstances.

12.2.9. Failure to Maintain Insurance. If Sublessee fails or refuses to provide copies of the renewal insurance policies, together with evidence of payment of premiums

therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Master Lessor and Sublessor shall have the right, at Master Lessor and Sublessor's election, and upon five (5) days' notice to Lessee, to procure and maintain such insurance. Any premiums paid by Master Lessor and Sublessor hereunder shall be due and payable by Sublessee to Master Lessor and Sublessor on the first day of the month following the date on which the premiums were paid. Master Lessor and Sublessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s).

- 12.3. Liability Insurance. Sublessee agrees to procure and maintain at its own cost and expense, during the entire term of this Sublease and any extensions thereof, comprehensive public liability insurance covering the Subleased Premises, which insurance shall also name Sublessor and Master Lessor as additional named insureds. The liability coverage under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury, illness or death to persons or damage to property in any one incident. Prior to, and as a condition of, taking possession of the Subleased Premises, Sublessee will provide Sublessor with certificates of such insurance, satisfactory to Sublessor, evidencing Sublessee's compliance with the requirements of this **Section 12.3**.
- 12.4. Personal Property. Sublessee hereby acknowledges that Sublessor's insurance will not cover Sublessee's specialized equipment or any other fixtures, furniture or personal property owned by Sublessee. Neither Master Lessor nor Sublessor shall be liable to Sublessee, or to any other person, for any damages on account of loss, damage, fire or theft to any personal or business property, and Sublessee shall be solely responsible for obtaining and maintaining any property loss insurance in connection therewith.
13. PERSONAL PROPERTY TAXES. Sublessee agrees to pay or cause to be paid before delinquent any and all taxes levied or assessed and which become payable during the term of this Sublease and any renewal thereof upon all equipment, furniture, fixtures and other personal property owned by Sublessee and located in the Subleased Premises, except that which may be owned by Master Lessor.
14. RULES AND REGULATIONS. Sublessor has established Building Rules and Regulations which are annexed as **Exhibit "B"** to this Sublease. Sublessor may from time to time make such modifications, additions and deletions in the building Rules and Regulations as are reasonably necessary or convenient for the management and operation of the Premises on reasonable notice to tenants.
15. HOLDING OVER. If Sublessee remains on the Subleased Premises after the expiration of the term hereof, Sublessee shall become, at Sublessor's election, a tenant on a month-to-month basis at a rent equal to one hundred twenty-five percent (125%) of the rent payable for the last month of the term hereof. Such holdover rent shall be payable by Sublessee in advance on the first day of such holdover period and on the first day of each month thereafter until Sublessee vacates the Subleased Premises. Such tenancy shall be subject to all of the other provisions of this Sublease.
16. ENTRY BY SUBLESSOR AND MASTER LESSOR. Sublessor and Master Lessor shall each have the right to enter the Subleased Premises at any time to inspect the same or to cure any default (including a breach of the Building Rules and Regulations), to supply any service to be provided by Sublessor and/or Master Lessor hereunder, to submit the Subleased Premises to

prospective subtenants, purchasers or mortgagees, to post notices of nonresponsibility and to alter, improve or repair the Subleased Premises and any portion of the Subleased Premises without abatement of rent.

17. EVENTS OF DEFAULT. In addition to any events defined elsewhere in this Sublease as constituting a default of Sublessee, any of the following shall also be considered an event of default by Sublessee hereunder:
 - 17.1. If Sublessee shall fail to pay rent or any part thereof or any other sums payable pursuant to this Sublease on the date where such failure continues for ten (10) days after written notice by Sublessor to Sublessee;
 - 17.2. If Sublessee shall fail to observe or perform any of the other covenants or agreements contained in this Sublease to be observed or performed by Sublessee;
 - 17.3. If the Sublessee's interest in this Sublease shall pass to any person or entity except that named as Sublessee herein, by law or otherwise, in violation of *Section 10* above.
18. REMEDIES OF SUBLESSOR. In the event of any default by Sublessee, then Sublessor, in addition to any other rights or remedies it may have by statute or otherwise, including the right to take no action other than to sue for damages or rental in default, shall have the immediate right of reentry and may remove all persons and property from the Subleased Premises.
19. ESTOPPEL CERTIFICATES. Sublessee agrees at any time and from time to time, upon not less than ten (10) days prior request by the Sublessor, to execute, acknowledge and deliver to the Sublessor estoppel certificates in such form as may reasonably be required by Sublessor.
20. ATTORNEYS' FEES. In the event of any action or proceeding to compel compliance with, or for a breach of, the terms and conditions of this Sublease, the prevailing party shall be entitled to recover from the losing party all costs and expenses of such action or proceeding, including, but not limited to, the reasonable attorneys' fees of the prevailing party.
21. WAIVER. The waiver by Sublessor of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Sublessor shall not be deemed to be a waiver of any preceding breach by Sublessee of any term, covenant or condition of this Sublease, other than the failure of Sublessee to pay the particular rent so accepted, regardless of Sublessor's knowledge of such preceding breach at the time of acceptance of such rent.
22. CONSTRUCTION AND SEVERABILITY. This Sublease shall be governed by and construed in accordance with Arizona law. The invalidity or unenforceability of any provision of this Sublease shall not affect or impair the validity of any other provision of this Sublease.
23. NOTICES. All notices and demands which may or are required to be given by either party to the other hereunder shall be in writing. All notices and demands by the Sublessor to the Sublessee shall be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the Sublessee at the address indicated on page one hereof, or to such other place as the Sublessee may from time to time designate in a notice to the Sublessor. All notices and demands by the Sublessee to the Sublessor shall be hand delivered or sent by United States

certified or registered mail, postage prepaid, addressed to the Sublessor at the address indicated on page one hereof, or to such other person or place as the Sublessor may from time to time designate in a notice to the Sublessee. Any notice shall be deemed to have been given at the time of personal delivery or, if mailed, three (3) days after the date of mailing thereof. Each of the parties hereto hereby acknowledges, covenants and agrees that any notice or demands provided by one party to the other under the terms of this Sublease shall also be provided to Master Lessor at the following address:

City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001
Attention: City Attorney

24. TIME OF ESSENCE. Time is of the essence of this Sublease and of each provision hereof.
25. SUCCESSORS AND ASSIGNS. Subject to all limitations on assignment and subletting set forth herein, all of the terms and provisions of this Sublease shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.
26. APPROVAL OF SUBLEASE BY MASTER LESSOR. Notwithstanding anything contained in this Sublease to the contrary, the Sublessor and Sublessee hereby acknowledge that this Sublease is subject to the review and approval of the Master Lessor pursuant to the provisions set forth in the Master Lease. Promptly after the mutual execution of this Sublease by Sublessor and Sublessee, Sublessor shall submit a fully-executed copy of this Sublease to the Master Lessor for its review and approval. Upon Sublessor's receipt of approval of this Sublease by the Master Lessor, Sublessor shall deliver exclusive possession of the Subleased Premises to Sublessee. If the Master Lessor disapproves this Sublease for any reason, then immediately upon Sublessor's delivery of notice of such disapproval to Sublessee, this Sublease shall be null and void and of no further force or effect.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties have executed this Sublease Agreement as of the day and year first written above.

"SUBLESSOR"

NORTHERN ARIZONA TECHNOLOGY & BUSINESS
INCUBATOR, INC., dba NACET an Arizona nonprofit
corporation

By _____
Name _____
Title _____

"SUBLESSEE"

_____,
a _____

By _____
Name _____
Title _____

**CONSENT AND ACKNOWLEDGEMENT
OF MASTER LESSOR**

The undersigned, as the Master Lessor referred to in the foregoing Sublease, hereby consents to the Sublease of the Subleased Premises described herein on the terms and conditions contained in the Sublease. This Consent shall apply only to the foregoing Sublease and shall not be deemed to be a consent to any other sublease of any other portion of the Premises or any assignment by Sublessor of the Master Lease to any other party.

DATED: this ____ day of _____, 20__.

CITY OF FLAGSTAFF, an Arizona municipal corporation

By _____
Name _____
Title _____