

## FINAL AGENDA

REGULAR COUNCIL MEETING  
TUESDAY  
JUNE 16, 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 ORAVITS
COUNCILMEMBER BREWSTER	COUNCILMEMBER OVERTON
COUNCILMEMBER EVANS	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 Work Session of March 31, 2015; Regular Meeting of May 19, 2015; and Regular Meeting of June 2, 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).*

None

**8. LIQUOR LICENSE PUBLIC HEARINGS**

- A. Consideration and Action on Liquor License Application:** Lauren Merrett, "Continental Country Club", 2380 N. Oakmont Blvd., Series 06 (bar- all spirituous liquor), Person Transfer.

**RECOMMENDED ACTION:**

Hold the Public Hearing; absent any valid concerns received from the public hearing, staff recommends the Council forward a recommendation for approval to the State.

**9. CONSENT ITEMS**

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

- A. Consideration of Appointment:** City Attorney

**RECOMMENDED ACTION:**

Reappoint Michelle D'Andrea as the City Attorney for the City of Flagstaff

- B. Consideration and Approval of Multiple Contracts:** On-Call Legal Services Contracts.

**RECOMMENDED ACTION:**

A) Award contracts, not to exceed \$250,000 annually per firm, for On-Call Legal Services to the following fourteen (14) firms:

- 1.) Jones, Skelton & Hochuli
- 2.) Gust Rosenfeld
- 3.) Struck Wieneke
- 4.) Ayers & Brown
- 5.) Ryley, Carlock & Applewhite
- 6.) Udall Law Firm
- 7.) Dickinson Wright
- 8.) Curtis, Goodwin & Sullivan
- 9.) Lee Story
- 10.) Coppersmith Brockelman
- 11.) Mangum, Wall, Stoops & Warden

- 12.) Ellen Van Riper
  - 13.) Holm, Wright, Hyde & Hays
  - 14.) Hufford, Horstman & Mongini
- B) Authorize the City Manager to execute the necessary documents

- C. **Consideration and Approval of Final Plat (PFPL2015-0002):** A request by Evergreen-Trax, LLC for The Trax - Phase 1, a subdivision of 8 lots on approximately 18.46 acres located at the southwest corner of Route 66 and Fourth Street within the Highway Commercial (HC) zone (conditional). ***(Subdivision of 18.46 acres into 8 lots located at the southwest corner of Route 66 and Fourth St.)***

**RECOMMENDED ACTION:**

Staff recommends the City Council approve the final plat with the conditions outlined in the staff summary and its attachments, and authorize the Mayor to sign both the final plat and City/Subdivider Agreement when notified by staff that all conditions have been met and documents are ready for signature and recordation.

10. **ROUTINE ITEMS**

- A. **Consideration of Authorizing the Submission and Acceptance of a Grant Application:** To the U.S. Department of Justice, FY 2015 Edward Byrne Memorial Justice Assistance Grant in the amount of \$20,749 to pay for Police Staff Overtime and Crisis Intervention Training for the Coconino County Sheriff's Department and authorizing the acceptance upon award of the grant agreement

**RECOMMENDED ACTION:**

Approve the submission of a Grant Application and authorize acceptance upon award for the U.S. Department of Justice, FY 2015 Edward Byrne Memorial Justice Assistance Grant (JAG) for an amount of \$20,749.

- B. **Consideration of Authorizing the Approval of an Intergovernmental Agreement:** Between the City of Flagstaff and Coconino County (County) for submission of a grant application and approval upon award to the U.S. Department of Justice, FY 2015 Edward Byrne Memorial Justice Assistance (JAG) Grant.

**RECOMMENDED ACTION:**

Approve the Intergovernmental Agreement with Coconino County for the FY 2015 Edward Byrne Memorial Justice Assistance Grant in an amount of \$5,735 for the County to utilize for Crisis Intervention Training to use in the field by officers.

- C. **Consideration and Adoption of Resolution Number 2015-23 and Ordinance No. 2015-13:** A resolution and ordinance of the Flagstaff City Council adopting by reference minor amendments to the City Code.

**RECOMMENDED ACTION:**

- 1) Adopt Resolution No. 2015-23
- 2) Read Ordinance No. 2015-13 by title only for the final time
- 3) City Clerk reads Ordinance No. 2015-13 by title only for the final time (if approved above)
- 4) Adopt Ordinance No. 2015-13

- D. **Consideration and Approval of Agreement:** Intergovernmental Agreement (IGA) with the Arizona Department of Revenue for Uniform Transaction Privilege (Sales) Tax Administration. ***(IGA for Uniform Sales Tax Administration)***

**RECOMMENDED ACTION:**

Approve the intergovernmental agreement between the City of Flagstaff and the Arizona Department of Revenue regarding the uniform administration, licensing, collection, and auditing of transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and rental occupancy taxes imposed by the State or cities or towns.

- E. Consideration and Approval of Contract:** Intergovernmental Agreement (IGA) with the State Office of Manufactured Housing. *(IGA for the City of Flagstaff to perform set-up inspections)*

**RECOMMENDED ACTION:**

Approve the IGA between the City and the State Office of Manufactured Housing regarding the City performing set-up inspections to help owner(s) occupy the home sooner.

**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**

- A. Public Hearing For Proposed FY 2015 – 2016 Budget and Property Tax Levy.**

**RECOMMENDED ACTION:**

1) Hold Public Hearing

2) Recess Regular Meeting and convene a Special Meeting

**SPECIAL MEETING**

**Consideration and Adoption of Resolution No. 2015-20:** A resolution of the City Council of Flagstaff, Arizona, for the adoption of the Budget for Fiscal Year 2015-16 and Public Hearing for Budget and Levy.

**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2015-20 by title only
- 2) City Clerk reads Resolution No. 2015-20 by title only (if approved above)
- 3) Adopt Resolution No. 2015-20
- 4) Adjourn Special Meeting and reconvene Regular Meeting

**15. REGULAR AGENDA**

- A. Consideration and Adoption of Ordinance No. 2015-11:** An ordinance levying upon the assessed valuation of the property within the City of Flagstaff, Arizona, subject to taxation a certain sum upon each one hundred dollars (\$100.00) of valuation sufficient to raise the amount estimated to be required in the Annual Budget, less the amount estimated to be received from other sources of revenue; providing funds for various bond redemptions, for the purpose of paying interest upon bonded indebtedness and providing funds for general municipal expenses, all for the Fiscal Year ending the 30th day of June, 2016.

*(Property Tax Levy for FY 15-16)*

**RECOMMENDED ACTION:**

Meeting of June 16, 2015

- 1) Read Ordinance No. 2015-11 by title only for the first time
- 2) City Clerk reads Ordinance No. 2015-11 by title only (if approved above)

Meeting of July 7, 2015

- 3) Read Ordinance No. 2015-11 by title only for the final time
- 4) City Clerk reads Ordinance No. 2015-11 by title only ( if approved above)
- 5) Adopt Ordinance No. 2015-11

- B. Consideration and Adoption of Resolution No. 2015-27:** A Resolution of the Council of the City of Flagstaff, Arizona, stating its support for the development of U.S. Bicycle Route 66

**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2015-27 by title only
- 2) City Clerk reads Resolution No. 2015-27 by title only (if approved above)
- 3) Adopt Resolution No. 2015-27

- C. Consideration and Adoption of Resolution No. 2015-26:** A resolution of the City Council of the City of Flagstaff, Coconino County, Arizona, calling a Special Election for November 3, 2015, and approving the ballot language for said election

**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2015-26 by title only
- 2) City Clerk reads Resolution No. 2015-26 by title only (if approved above)
- 3) Adopt Resolution No. 2015-26

- D. Consideration of Suggested Change to Rules of Procedure for Possible Future Agenda Items**

**RECOMMENDED ACTION:**

Adopt the Rules of Procedure dated June 16, 2015, to: 1) rename the Possible Future Agenda Items (PFAI) to Future Agenda Item Requests (FAIR); and 2) allow for public participation during the FAIR section of the agenda.

**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.*

- A. Request by Councilmember Putzova to place on a future agenda item the discussion of the Board/Commission/Committee appointment process.

**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:** 06/12/2015  
**Meeting Date:** 06/16/2015



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**TITLE**

**Consideration and Approval of Minutes:** City Council Work Session of March 31, 2015; Regular Meeting of May 19, 2015; and Regular Meeting of June 2, 2015.

**RECOMMENDED ACTION:**

Amend/approve the minutes of the City Council Work Session of March 31, 2015; Regular Meeting of May 19, 2015; and Regular Meeting of June 2, 2015.

**EXECUTIVE SUMMARY:**

Minutes of City Council meetings are a requirement of Arizona Revised Statutes and, additionally, provide a method of informing the public of discussions and actions being taken by the City Council.

**INFORMATION:**

***COUNCIL GOAL***

8. Improve effectiveness of notification, communication, and engagement with residents, neighborhoods and businesses and about City services, programs, policies, projects and development

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**Attachments:** [03.31.2015.CCWS.Minutes](#)  
[05.19.2015.CCRM.Minutes](#)  
[06.02.2015.CCRM.Minutes](#)

## MINUTES

1. **Call to Order**

Mayor Nabours called the Flagstaff Work Session of March 31, 2015, to order at 6:02 p.m.

2. **Pledge of Allegiance**

The Council and audience recited the Pledge of Allegiance.

3. **Roll Call**

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

PRESENT

ABSENT

MAYOR NABOURS

NONE

VICE MAYOR BAROTZ

COUNCILMEMBER BREWSTER

COUNCILMEMBER EVANS

COUNCILMEMBER ORAVITS

COUNCILMEMBER OVERTON

COUNCILMEMBER PUTZOVA

Others present: Interim City Manager Jeff Meilbeck; City Attorney Michelle D'Andrea.

4. **Preliminary Review of Draft Agenda for the 04/07/2015 City Council Meeting.** \*

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

A. **Discussion of Ordinance No. 2015-03. (Zoning Code Amendment to permit freight/trucking in RD zone)**

Comprehensive Planning and Code Administrator Roger Eastman provided a PowerPoint presentation that covered the following:

MEETING PURPOSE  
RD ZONE AMENDMENTS

**5. Public Participation**

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

Adam Shimoni addressed Council stating disappointment about SB1241 and its efforts to strike everything regarding the ban of plastic bags.

**6. Revisions to the Special Event Permit Packet and Ordinance**

Recreation Services Director Brian Grube provided a PowerPoint presentation that covered the following:

SPECIAL EVENT PERMIT PACKET REVISIONS  
HISTORY  
DIRECTION NEEDED  
MINOR REVISIONS  
HISTORICAL PRECEDENT  
HERITAGE SQUARE: PRIMARY RETAIL SALES  
HERITAGE SQUARE: SECONDARY RETAIL SALES

Councilmember Brewster asked if the primary retail sales are determined on a first come first serve basis. Mr. Grube indicated that first come first serve is the typical way however, if they have historical precedent they would be given a higher priority.

HERITAGE SQUARE: ALCOHOL SALES  
HISTORIC DISTRICT: STREET CLOSURES

Vice Mayor Barotz stated that she can see where it could be hard to define what substantially and unnecessarily is. Mr. Grube offered the example of a small fair that would like to close a street but only has a couple vendors and 100 people in attendance; that would be an example of where the discretion should apply. The suggestion is to make street closures a staff function with discussion and input by the Downtown District Manager.

FUTURE REVISIONS TO THE SPECIAL EVENT PERMIT PACKET

Councilmember Putzova asked how the street closure policies apply to downtown. Mr. Grube explained that currently any street closure would apply to the objective criteria; two way closures do not come to Council but one way street closures do regardless of location. Councilmember Putzova asked how it would be applied should the applicant not meet any of the criteria. Mr. Grube stated that it is not a cut and dry application and staff works with applicants to find alternative solutions.

INPUT NEEDED FROM CITY COUNCIL

Councilmember Oravits stated that he would like to further discuss Wheeler Park and the impacts to the lawn. Mayor Nabours asked if Wheeler Park is now able to be used. Mr. Grube stated that it is able to be used but there are some restrictions this season. The intent is to not necessarily deny Wheeler Park events but come up with other solutions that benefit all. The goal is to work through the restrictions and find a balance between passive and active use.

Councilmember Overton asked if it would be up to the applicant to limit the retail sales or if the City would limit the number of retailers allowed. Mr. Grube explained that it is staff's recommendation to come up with a number limit; they would like to find a suitable number and through trial and error come to a good solution. Councilmember Overton asked if the secondary retail has to be related to the primary use. Mr. Grube stated that they do not have to be but they typically are. Councilmember Overton suggested that making the retail vendors affiliated with the event could be a way to limit the number. He expressed concern about it being difficult to pick and chose who is in or out and it really should be up to the primary applicant to determine who to bring in for retail.

Vice Mayor Barotz asked how the Council came to review this document as it seems to tread the line between administrative and policy. Mr. Grube explained that technically taking street closures and the event packet to Council is not supported by code but it seems to have become an accepted practice that was started some time ago. If it does not work with staff control it can always be brought back to Council.

Councilmember Putzova asked if any commissions are involved with approving special events. Mr. Grube stated that the Parks and Recreation Commission is probably the closest but they do not weigh in on or approve events. They will be involved with input and suggestions of the changes in the permit packet.

Councilmember Brewster stated that she is glad that staff has involved the personnel from the downtown district in this process.

Terry Madeksza addressed Council on behalf of the Flagstaff Downtown Business Improvement and Revitalization District stating that they are in support of the special event process that is being proposed. She indicated that they were given an opportunity to review the document and provide input prior to this meeting. Mayor Nabours asked if the group is satisfied with how the policy is written now. Ms. Madeksza stated that they feel that the City is moving in the right direction and staff has been very supportive of input and comments from the District. Vice Mayor Barotz asked if the District has any specific thoughts about the recommendations and staff being able to make changes to the packet for Council to review annually. Ms. Madeksza stated that she feels comfortable with the dialogue so far and comfortable with the added language of having the District involved in the process.

Debbi Grogan addressed Council with concerns about the wording in the packet. She stated that she and other event producers were not included in the process. She expressed concern about Wheeler Park and the lack of specific wording for new events. Councilmember Oravits asked about the challenges at Wheeler Park. Ms. Grogan stated that taking the City Council out of the process completely is concerning; while the staff is great now she is concerned about what happens when new people come in.

Matt Ziegler addressed Council with concerns about not being included in the process. He expressed concern about all the authority going to the Public Works Director. He also has concerns with events being worked around the three day watering schedule and feels that bounce houses should be permitted for more than one day. Councilmember Oravits asked how long Hullabaloo has been held at Wheeler Park. Mr. Ziegler stated that the event has been held there for the past five years. They will only be doing a one day event this year due to the park conditions but they are looking forward to next year knowing they can do a two

day event.

Councilmember Evans asked who was contacted regarding the changes in the packet. Mr. Grube stated that staff began the process 18 months ago and they contacted some of the event producers. Staff has not met with event producers recently but the comments are reflective of what was gathered throughout the process. The historical precedent is a new concept. Councilmember Evans suggested that a focus group with event producers could be helpful in determining what items will be impactful for their events. She also expressed concern with all of the authority going to a single staff member and suggested a committee may be a better option than just one person. Councilmember Putzova added that she would like to see some of the City commissions involved. Mayor Nabours asked if she is suggesting that a commission have the ability to say yes or no to events. Councilmember Putzova responded that it may be worth trying it out for a season and then review the process to see how it went. Mayor Nabours asked staff to provide the Council with some pros and cons with the Parks and Recreation Commission taking on this role. Mr. Grube stated that a pro would be having additional sets of eyes looking at the events. Some of the cons would be keeping the Commission impartial on the events and since they only meet once a month it could slow the application process down.

Vice Mayor Barotz also expressed concern about vesting the authority in a single person and she would welcome a discussion on how the City could set up a structure that involves feedback and decision making without involving the Council.

Mr. Meilbeck stated that it seems that this much detail and approval seems onerous to Council but seems too much for one person; he suggested that staff can look for things in the middle that find the right balance. Councilmember Brewster suggested that a small committee that makes a recommendation on events to the City Manager may be a way to keep the process objective. Mr. Grube added that the appeal process for an event would go to the City Manager not the City Council.

Councilmember Oravits requested additional information on Wheeler Park; what events are planned for the year and how the City can accommodate the historical events.

Councilmember Putzova stated that it appears that there is great variability in the events that are seen in the community. Some of the insurance requirements seem too strict but in some cases they are not enough. She indicated that she would like to discuss the size and types of events and the type of liability the City may face. Risk Manager Dean Coughenour stated that every event will be reviewed differently and that there is a base line for insurance. There are some events that create a bigger hazard and there are various elements that could waive the requirements for insurance whereas increased risks could require additional insurance. It really depends on the event and the risks that they pose. All events must come to Risk Management for review and approval. Mayor Nabours asked if Risk Management determines how much insurance is required. Mr. Coughenour stated that he does make that determination and in most cases \$1 million general liability insurance is all that is required; more insurance is typically required for fireworks and parades. Councilmember Putzova recommended that the language be clearer that higher insurance limits may apply. Councilmember Overton stated that increased insurance requirements could make it difficult for someone to secure a policy and he is concerned about getting to a point where such high insurance limits would limit events that come to Flagstaff. Mr. Coughenour explained that at times the City has reached out to the various brokers to work together to find a good solution for both parties; they try to be as accommodating as possible.

Vice Mayor Barotz asked Mr. Grube to share with Council the concerns event producers have with the language after meeting with them. Mr. Grube agreed and stated that they will also work to clear up the insurance language. He went on to say that the process is a dynamic

one and it is important to get as much input as possible. Staff will gladly reconvene with Council to provide all of the input gathered and bring forward additional changes and clarifications.

A break was held from 7:14 p.m. through 7:26 p.m.

## **7. Parking Issues in the Vicinity of the Northern Arizona University Campus**

Community Design and Redevelopment Manager Karl Eberhard addressed Council stating that this item came out of the student housing effort. There will be more demand for parking around NAU as more housing comes in. A parking permit was brought before Council that was rejected. The major issue is students parking north and west of campus who then walk to campus or ride the bus. Students are also now parking in the lots on Phoenix, the City Hall lots, as well as Walmart and Target.

Flagstaff writes about 5,000 tickets per year and about one third are written by enforcement officers in the Southside neighborhood; there is a need for more overtime and court time for the officers.

The parking enforcement officers cost about \$55,000 per year and they are able to monitor approximately 200 to 350 spaces. There are about 750 spaces that need to be enforced so two to three officers are needed to cover the entire area. Tickets do not generate enough revenue to cover the costs of enforcement and increasing the ticket amounts does little to the return.

Staff has spoken with NAU who states they are committed to educating students and staff about options available for parking. Additionally, staff spoke with NAIPTA and they reported that they have implemented a student bus pass and they are looking at park and ride facilities and universal passes that would allow a student to ride from the east side of town to campus.

There are seven options that have been generated to possibly address the parking issues:

1. Permit parking
2. Paid on-street parking
3. Parking Management Company
4. Build more parking
5. Promote alternative transportation modes
6. Participate in park and ride
7. None of the above

Mayor Nabours stated that there is no real park and ride location other than what has happened with private properties such as the mall, Target and Walmart. Mr. Eberhard agreed stating that there are options for park and ride locations around the city.

Mayor Nabours asked if the officers needed for parking enforcement would be for continuous coverage or just various times of the day. Mr. Eberhard explained that it would be dependent on the number of officers assigned, the more officers there are the more cycles they can complete.

Councilmember Oravits asked about the revenue generated from the parking enforcement. Mr. Eberhard stated that the revenue does come close to covering the parking permit program as permits do have the ability to pay for the enforcement. On the paid parking the consultant made a recommendation of \$1 per hour and \$60 per month for a permit. He explained that parking kiosks are a more modern metering technology and it can be a physical kiosk as well as software based depending on what the community desires.

Councilmember Putzova asked what kinds of policies have been explored with NAU. Mr. Eberhard stated that while NAU is at the table they have their own directives that they are trying to accomplish with getting vehicles off campus and they have offered to help in some ways. Councilmember Putzova encouraged staff to push more in exploring policies that the institution can implement to reduce the number of cars in the neighborhood.

Mayor Nabours asked for the travel and parking options for students. Mr. Eberhard stated that students can take the bus, drive a car and park lawfully on the street or purchase a \$440 campus parking permit and park lawfully on campus.

Mayor Nabours asked if the parking could be more randomly enforced so that people never know what days or times the areas would be enforced. Mr. Eberhard stated that while that discussion can occur it is often well worth the time and money for people to just take the ticket.

Councilmember Evans stated that parking continues to be a major issue with the Southside neighborhood area, businesses along Milton, City Hall, and within the Plaza Vieja neighborhood. Flagstaff is the only city in Arizona where the residents in neighborhoods adjacent to universities do not have the protection of some kind of residential parking program. The issue is that NAU has a policy in place that they want to be a walking university; people drive and park and then walk or bike onto campus. The Phoenix parking lot was intended to be a lot that would help downtown businesses have a place for their employees to park and now students take the spaces up and park all day long. She added that some of the streets in Southside do not have sidewalks, curbs and gutters so having designated parking spots would be helpful because people are parking in what they think is a random strip of dirt but is actually how someone accesses their house. The police are unable to enforce the parking there because there are no sidewalks, curbs and gutters.

Councilmember Oravits asked if the Phoenix parking lot is available all day. Mr. Eberhard stated that it is free all day parking. He stated that if the City were to move to a two hour enforcement strategy cost would be an issue because more staff would be needed.

Councilmember Brewster added that the students are also taking up tourist spots. The reality of the issue is that when there is free parking available closer to campus there is no incentive for other alternatives.

Councilmember Putzova stated that education is necessary every year, educating students on making the choice to bring fewer cars to town and utilize other transportation methods is key.

Councilmember Overton stated that there are some things that can be done at the university level; the root problem is student overflow into the neighborhoods and it is time for the University to help solve the problem. Councilmember Evans stated that NAU has a parking problem and the City has a parking problem; while discussions can be had with NAU at some point the City needs to address the City parking issues.

Mr. Meilbeck stated that NAU has managed their parking through incentives and decentives. Incentives are free bus service and decentives are high parking prices. The City's challenge is to come up with a solution that will work and staff can continue to work on the pros and cons of each of the solutions offered earlier.

The following individuals addressed Council in support of a parking program:

- Maury Herman

- Charlotte Welch

The following comments were received:

- Please keep in mind the Regional Plan when considering parking solutions.
- Businesses are expending considerable resources trying to address parking on their private lots.
- Any permit policy that is implemented will be a precedent for others.
- As long as students can park for free they will.
- There will need to be a lot of community pressure and legislative pressure to get NAU to convert some of their land to parking.
- Suggest following the Tucson model and let districts expand block by block.

Mayor Nabours asked that staff look further into the solutions already given and look further at Tucson's model as well as other areas with universities. Councilmember Oravits also requested cost estimates on what the solution will cost and where the funding will come from.

**8. Consideration of Proposals: Remodel/Expansion of Municipal Court Building**

Court Administrator Don Jacobson provided a PowerPoint presentation that covered the following:

FLAGSTAFF MUNICIPAL COURT  
HISTORY  
REDUCING THE COST  
PROPOSAL  
PROPOSED SITE LAYOUT PLAN  
PROPOSED OUTSIDE RENDERING  
PROPOSED CROSS SECTION RENDERING  
FIRST FLOOR FLOORPLAN CONCEPT

Vice Mayor Barotz asked if there would be a separate accessible entrance due to the raised first floor. Mr. Jacobson stated that there would be ramp similar to what is currently at City Hall.

Councilmember Putzova asked if Mr. Jacobson could speak to the type of building this would be from an energy perspective. Mr. Jacobson explained that the building would be a minimum of LEED silver certified.

Councilmember Oravits asked if there is a holding cell planned for prisoners being transported to the courthouse. Mr. Jacobson stated that one is included in the design.

Mr. Jacobson continued the presentation.

SECOND FLOOR FLOORPLAN CONCEPT  
COSTS

Councilmember Oravits asked for the previous cost estimate, the current square footage, and if the building addresses the future needs of the Court. Mr. Jacobson stated that the previous estimate was \$23 million and the current square footage is 10,000 square feet. With regards to the future needs of the Court, Mr. Jacobson explained that if space were available today the court would operate four courtrooms; the new concept allows for six courtrooms. The exact number of years it would last is difficult to determine, his best guess is that it would take the court through 20 years before they start to feel the pinch again.

Councilmember Oravits asked how the new design will impact parking. Mr. Jacobson stated that there is no change planned for the parking and the current parking would be maintained. Councilmember Oravits asked how many spaces are available now. Mr. Jacobson stated that there are 20 or 23 spaces at the south lot and staff parking to the north which would become separate and internal to the new structure. Councilmember Oravits asked if there is opportunity to have parking elsewhere. Mr. Jacobson explained that a parking garage has been proposed but there is no money in the proposal for a parking garage but should there be funding and opportunity a parking garage can be added.

Councilmember Overton stated that he is willing to see the project go through the site planning and zoning process but he is concerned with adding that much more building with no additional parking. He suggested looking for a joint venture with some of the neighboring properties that are in redevelopment mode for a parking solution. Vice Mayor Barotz also expressed concern about adequate parking and asked if the current parking lot is monitored. Mr. Jacobson stated that the parking lot is posted for two hour parking and it is patrolled.

Mayor Nabours stated that the Cherry Building was considered as an option as well and he asked if that building would be more suitable for a remodel with better parking. Mr. Jacobson stated that they did look at the Cherry Building. It is smaller than the current court building and it would have to take a larger expansion to get to the same level of proposal and it would chew through the parking lot that is there and while the parking is better now it probably would not be once it was complete.

Councilmember Oravits asked if it is possible to use the spaces underneath to increase parking and then offer offsite parking at the Cherry Building lot. Mr. Jacobson stated that they will be looking at that and other possibilities with the study. They are very aware of the parking limitations and know that they will not get through site plan approval without adequate parking.

Mr. Jacobson continued the presentation.

#### FUNDING CURRENTLY AVAILABLE CURRENT FUNDING GAP CLOSING THE GAP OPTIONS

Councilmember Oravits asked if it would be possible to phase the project out over time. Mr. Jacobson stated that it is possible but would require some changes to the design. Councilmember Oravits asked for phasing the project to be included as an option when brought back to Council.

Mr. Jacobson continued the presentation.

#### DOES THE COUNCIL SUPPORT THE CURRENT DEVELOPMENT PROCESS OPTIONS

Councilmember Overton stated that he would like to see staff get through the site plan review process before moving forward with the request for proposals and design work.

Mayor Nabours asked if there is any benefit to selling the current courthouse and set aside the proceeds for a joint venture with the County. Mr. Jacobson explained that selling the property could generate some funding but any new property costs more. By recycling the existing property the project is much more cost effective. While having a new building from the ground up is preferred it has become an issue of doing it at a lower cost or not doing it at all.

There was consensus from the Council for staff to move forward with the site plan review

process and report back.

**9. ~~US 180 Winter Congestion Report~~ (REMOVED FROM AGENDA)**

**10. ~~Discussion of Procurement Preferences Regarding Carbon Footprint and Disadvantaged Businesses~~ (REMOVED FROM AGENDA)**

**11. Review of Draft Agenda Items for the 04/07/2015 City Council Meeting.\***

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

None

**12. Public Participation**

None

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

Councilmember Brewster reported that NAU won the game.

Councilmember Putzova stated that she is worried about the bills that are going through the House and Senate lately and what the Governor has been signing; she expressed concern about the state of the State.

Councilmember Evans requested a possible future agenda item concerning Senate Bill 1241 which is the State blocking the ban of plastic bags. She stated that she would like to have a discussion about what the City Council can do as the bill seems to be overreaching.

She also requested a possible future agenda item on air bed and breakfasts. It is her understanding the people do not have to pay BBB taxes on these and she would like to explore if the City is able to regulate that and how.

Councilmember Overton wished everyone a happy Easter.

Vice Mayor Barotz requested a CCR on the City's plans for a major train derailment in downtown. She would like to understand if a plan is required from the State or the Railroad as well.

Councilmember Oravits thanked Assistant to the City Manager for Communication Kim Ott and the Streets Section for the weekly updates on what work is currently being done and what is coming up.

Councilmember Oravits requested CCRs on the following:

- The parking of campers and trailers in residential neighborhoods on a side lot; he would like to know what the code prohibits and if there is a need for it to be updated.
- The winter parking ordinance; he would like to know the history on the ordinance, what it entails and how it is enforced. He is interested in looking at if the ordinance should be changed to be more based around snow events.
- An update on the streaming of Board and Commission meetings and when it is anticipated that they will be online.
- Information on any requirement there might be for buildings being pushed to the

sidewalks; he would like to know if that is in the City code or if that is a staff discretion item. He would like the history and reasoning behind the requirement and where it applies.

He also requested a future work session item from Code Enforcement and Solid Waste regarding people piling stuff up around town. He would like to understand what the current process is for identifying these areas and what is being done to address them. He would like to know if there has been any direction from Council to prioritize code activities or if that would be helpful. He would like to know more about the bulky trash pick schedule and how it was determined to eliminate February. He would like for Council to discuss possible priorities on code enforcement activities. Councilmember Evans added that she would also like to know what resources are available to them and how it all works with only three employees.

Mr. Meilbeck reminded Council about the Pave the Way event Wednesday, April 1, 2015 at 11:00 a.m.

Mayor Nabours reported that he spent the day in Phoenix to participate in an emergency response seminar. Flagstaff was used as the example; the seminar focused on fire and flooding and the potential catastrophic results in and around Flagstaff and how State agencies would come to be involved with the events. Deputy City Manager Josh Copley and Fire Chief Gaillard were also in attendance. It did not answer every question but it developed a lot of connections that was helpful in finding out what other agencies do in regards to emergency response.

He also reported that he was invited to the House of Representatives for a Resolution in memoriam of Tyler Stewart. He was on the floor of the House with the Stewart family and representatives from the Flagstaff Police Department. The Stewart family received a standing ovation; it was a very moving and thoughtful reception.

#### **14. Adjournment**

The Flagstaff City Council Work Session of March 31, 2015, adjourned at 9:08 p.m.

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MAYOR

ATTEST:

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CITY CLERK

## **4:00 P.M.**

### **1. CALL TO ORDER**

Mayor Nabours called the meeting of May 19, 2015, to order at 4:00 p.m.

### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

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

### **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 ORAVITS  
COUNCILMEMBER OVERTON  
COUNCILMEMBER PUTZOVA

COUNCILMEMBER EVANS (excused)

Others present: Jeff Meilbeck, Interim City Manager; Michelle D'Andrea, City Attorney.

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

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

### **MISSION STATEMENT**

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

### **4. APPROVAL OF MINUTES FROM PREVIOUS MEETINGS**

None

**5. PUBLIC PARTICIPATION**

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

None

**6. PROCLAMATIONS AND RECOGNITIONS**

None

**7. APPOINTMENTS**

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

None

**8. LIQUOR LICENSE PUBLIC HEARINGS**

Mayor Nabours opened the Public Hearing on all four applications; there being no public input Mayor Nabours closed the Public Hearing.

**Moved by** Councilmember Jeff Oravits, **seconded by** Councilmember Karla Brewster to forward all four liquor license applications to the State with a recommendation for approval.

**Vote:** 6 - 0 - Unanimously

- A. Consideration and Action on Liquor License Application:** Roger Burton, "Giant Store #067", 1050 S. Milton Ave., Series 09 (liquor store - all spirituous liquor), Person Transfer.
- B. Consideration and Action on Liquor License Application:** Roger Burton, "Giant Store #066", 101 E. Butler, Series 09 (liquor store - all spirituous liquor), Person Transfer.
- C. Consideration and Action on Liquor License Application:** Roger Burton, "Giant Store #045", 2300 E. Butler Ave., Series 10 (beer and wine store), New License.
- D. Consideration and Action on Liquor License Application:** Roger Burton, "Giant Store #006", 1205 S. Milton, Series 10 (beer and wine store), New License.

**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** Vice Mayor Celia Barotz, **seconded by** Councilmember Eva Putzova to approve Consent Items 9-A, B, C, E, F, G, and H.

**Vote:** 6 - 0 - Unanimously

- A. Consideration and Approval of Cooperative Contract:** Cinder Lake Landfill Excavation and Grading for Paper Millings Storage Cell (**Approve contract with SDB, Inc. in the amount of \$405,874.16**).

Approve the contract with SDB, Inc. utilizing the Mohave Educational Services Cooperative Job Order Contract (Contract #14G-SDB-0903) for \$405,874.16.

- B. Consideration and Approval of Purchase:** Cinder Lake Landfill-GPS Unit for Heavy Equipment (**Approve proposal submitted by RDO Integrated Controls in the amount of \$66,657.11**).

Approve the proposal from RDO Integrated Controls for \$66,657.11 as a sole source procurement.

- C. Consideration and Approval of Cooperative Contract:** Purchase of one (1) D8 Dozer with a trash application on a National IPA cooperative purchase agreement with the City of Tucson--- Bid #12077 (**Approve purchase of D8 Dozer from Empire Machinery in the amount of \$724,025.86**) .

Approve the purchase of one (1) D8 Dozer with a trash application from Empire Machinery through a National IPA cooperative purchase agreement with the City of Tucson, AZ. for the amount of \$724,025.86 (tax and freight included).

- D. Consideration and Approval of Contract:** Purchase 17 gasoline powered trucks to replace diesel trucks through a City of Flagstaff Invitation for Bids, bid number 2015-66 (**Approve contract with Tate's Auto Center in the amount of \$625,820 for the purchase of 17 trucks**).

Councilmember Oravits asked for a review of what is being purchased and what is being replaced. Previous Fleet Manager Richard McGaugh stated that in 2008 the City purchased 18 Ford Diesel trucks believing them to be more durable and long lasting. There have been frequent failures with these vehicles and at this point, with over half their life gone, staff feels that moving back to gasoline powered vehicles would be more cost effective with less maintenance and repair costs. He explained that the intent is to stick with gasoline powered vehicles in town until the diesel technology changes. Mayor Nabours asked if the plan is to get rid of all of the diesel vehicles. Mr. McGaugh explained that the heavy equipment and other diesel vehicles will remain but getting away from the diesel powered pickup trucks would be a much better option.

**Moved by** Vice Mayor Celia Barotz, **seconded by** Councilmember Eva Putzova to approve the purchase of 17 gasoline powered light duty trucks from Tate's Auto Center Holbrook, Arizona in the amount of \$625,820 plus all applicable tax.

**Vote:** 5 - 1

NAY: Councilmember Jeff Oravits

- E. Consideration and Approval of Contracts:** Purchase water and wastewater treatment chemicals through a City of Flagstaff Invitation for Bids, Bid number 2015-27 (**Approve contracts with five (5) vendors for water and wastewater treatment chemicals**).

Approve and award three (3) year initial term contracts, with options to extend for two (2) one year renewals, with five (5) national companies for the purchase of bulk water and wastewater treatment chemicals that will ensure guaranteed prices under our procurement process. The vendors' not to exceed annual costs are as follows:

- 1) Chemtrade Chemicals US, LLC. of Parsippany, New Jersey agrees to provide liquid aluminum sulfate for a not to exceed annual cost of \$177,100.
- 2) DPC Enterprises, L.P. of Glendale, Arizona agrees to provide gaseous chlorine for a not to exceed annual cost of \$79,410.
- 3) Hills Brothers Chemical Company of Phoenix, Arizona agrees to provide liquid chlorine for a not to exceed annual cost of \$45,220.
- 4) Thatcher Company of Arizona, Inc. of Salt Lake City, Utah agrees to provide sulfur dioxide and liquid polymer for a not to exceed annual cost of \$81,117.
- 5) Univar USA Inc. of Phoenix, Arizona agrees to provide liquid caustic soda for a not to exceed annual cost of \$139,750.

- F. Consideration and Approval of Contract:** Siler Homes Roof Replacement due to Hail Damage (**Approve contract with Sky Construction & Engineering, Inc. in the amount of \$506,749.00**)

- 1) Approve the construction contract with Sky Construction & Engineering, Inc. in the amount of \$506,749.00 and a contract time of 90 calendar days;
- 2) Authorize the City Manager to execute the necessary documents.

- G. Consideration and Approval of Contract:** Bonito Street Water and Sewer Improvement Project. (**Approve contract with Standard Construction Company, Inc. in the amount of \$1,444,149.75**).

- 1) Approve the construction contract with Standard Construction Company Inc. from Avondale, AZ in the amount of \$1,444,149.75 (includes a 5% contract allowance in the amount of \$60,000) and a contract time of 150 calendar days;
- 2) Approve Change Order Authority to the City Manager in the amount of \$138,415.00 (10% of the contract amount, less allowance);
- 3) Authorize the City Manager to execute the documents.

- H. Consideration and Approval of Joint Funding Request:** Monitoring the C Aquifer of the Middle and Lower Little Colorado River Basins.

Approve the Agreement with the U.S. Geological Survey to contribute \$10,000 per year for up to three (3) years.

**10. ROUTINE ITEMS****A. Consideration and Approval of Street Closure(s): Great Race**

Recreation Supervisor Glorice Pavey stated that she is before Council with a proposed street closure for the Great Race scheduled for June 25th. She also stated that the event producer is located in Tennessee and is available by phone should the Council have any questions for him.

Mayor Nabours asked if staff has talked with the downtown merchants and if they have any thoughts or concerns about the street closure. Ms. Pavey explained that Terry Madeksza of the Flagstaff Downtown Business Improvement and Revitalization District has been in direct contact with the event producer in working out specific details to make the event successful for all.

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Karla Brewster to approve the street closure at Aspen Avenue (between San Francisco Street and Beaver Street) on Thursday, June 25, 2015 from 2:00 p.m. - 8:00 p.m.

**Vote:** 6 - 0 - Unanimously

**B. Consideration and Adoption of Ordinance No. 2015-06: An ordinance of the City Council of the City of Flagstaff, amending the Flagstaff City Code, Title 3, Business Regulations, Chapter 3-10, User Fees, Section 3-10-001-0006, City Clerk, by increasing the Liquor License fee from \$560.00 to \$815.00; Providing for penalties, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing an effective date. *(Increasing the Liquor License application fee.)***

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Jeff Oravits to read Ordinance No. 2015-06 for the final time by title only.

**Vote:** 6 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF CITY CODE, TITLE 3, BUSINESS REGULATIONS, CHAPTER 3-10, USER FEES, SECTION 3-10-001-0006, CITY CLERK, BY INCREASING THE LIQUOR LICENSE FEE FROM \$560.00 TO \$815.00; PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Councilmember Jeff Oravits, **seconded by** Mayor Jerry Nabours to adopt Ordinance No. 2015-06.

**Vote:** 6 - 0 - Unanimously

**C. Consideration / Adoption of Resolution No. 2015-15 and Ordinance No. 2015-05 : A resolution of the City Council of the City of Flagstaff, Arizona declaring that certain document known as the "2015 City Tax Code Amendments" as a Public Record, and providing for an effective date; and an ordinance of the City Council of the City of Flagstaff, Arizona, amending the Flagstaff City Code, Title 3, Business Regulations, Chapter 3-05, *Privilege and Excise Taxes*, by adopting "2015 City Tax Code Amendments" as set forth in that public record on file with the City Clerk; providing for penalties, repeal of conflicting ordinances, severability, authority for clerical corrections, and establishing effective dates. *(2015 City Tax Code Amendments)***

**Moved by** Councilmember Scott Overton, **seconded by** Councilmember Karla Brewster to adopt Resolution No. 2015-15.

**Vote:** 6 - 0 - Unanimously

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Scott Overton to read Ordinance No. 2015-05 by title only for the final time.

**Vote:** 6 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, TITLE 3, BUSINESS REGULATIONS, BY ADOPTING "THE 2015 CITY TAX CODE AMENDMENTS" AS SET FORTH IN THAT PUBLIC RECORD ON FILE WITH THE CITY CLERK RELATING TO TRANSFER OF LOCAL TRANSACTION PRIVILEGE AND USE TAX ADMINISTRATION AND COLLECTION TO THE ARIZONA DEPARTMENT OF REVENUE; PROVIDING FOR PENALTIES, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Councilmember Jeff Oravits, **seconded by** Vice Mayor Celia Barotz to adopt Ordinance No. 2015-05.

**Vote:** 6 - 0 - Unanimously

- D. Consideration and Approval of Grant Agreement:** A grant agreement between City of Flagstaff and the U.S. Department of Transportation, Federal Aviation Administration and Arizona Department of Transportation Aeronautics Division for Design of mill and overlay of asphalt on Flagstaff Airport Runway 3/21 project. **(Approve asphalt overlay on airport runway).**

**Moved by** Councilmember Scott Overton, **seconded by** Councilmember Karla Brewster to approve the Grant Agreement with the U.S. Department of Transportation, Federal Aviation Administration (FAA) in the amount of \$293,500 for the design of Runway 3/21 Mill and Overlay Reconstruction Project.

**Vote:** 6 - 0 - Unanimously

- E. Consideration and Approval of Contract:** Supplemental Agreement No. 3, Pulliam Airport Runway 3-21 Mill and Overlay Project, design services for the overlay project. (Supplemental agreement to facilitate grant for asphalt overlay at airport).

**Moved by** Councilmember Scott Overton, **seconded by** Mayor Jerry Nabours to approve Supplemental Agreement Number 3 with Kimley-Horn and Associates, Inc. in the amount of \$ 263,826.68 subject to acceptance of a grant from the Federal Aviation Administration and the Arizona Department of Transportation, Multimodal Planning Division, Aeronautics and authorize the City Manager to execute the necessary documents.

**Vote:** 6 - 0 - Unanimously

**F. Consideration and Approval: 2015 FAA Passenger Facility Charge (PFC) Application. (Approval per-passenger charge)**

Airport Director Barney Helmick addressed Council stating that there is no increase in the Passenger Facility Charge (PFC). There are two mechanisms under federal programs to provide monies to airport capital programs nationwide. The first is the Airport Capital Improvement Program and the second is the PFC. PFCs are airport specific and allow Flagstaff to collect \$4.50 per airline ticket; these monies are tied to specific grant programs that allow for reimbursement to the City contributions. Mr. Helmick further explained that PFCs have to be approved every three years which is why this item is before Council. He also stated that while the fee is not going up there has been some work in Congress to raise the PFC rate to \$8.00 but it is uncertain if that will gain any traction.

Councilmember Overton expressed some concern about implementing other fees with PFCs in place. He asked if there would be any limitations to charging for parking if a parking structure was built at the airport. Mr. Helmick explained that the City would not be subject to limitation in that regard.

Mayor Nabours asked if the City can use the PFCs for matching grant funds for the overlay project. Mr. Helmick explained that they can because the overlay project is named in this PFC program as a reimbursable item.

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Scott Overton to approve the 2015 FAA Passenger Facility Charge (PFC) Application and authorize the City Manager to make non-substantive adjustments as necessary to address FAA requests.

**Vote:** 6 - 0 - Unanimously

**G. Consideration and Approval of Contract: Approve the renewal of our Workers' Compensation contract with Copperpoint Mutual Insurance at an estimated annual cost of \$725,000. (Workers Compensation Insurance Contract).**

Risk Manager Dean Coughenour addressed Council stating that the Workers Compensation premiums have gone down to less than what was paid 10 years ago. It is the same coverage of more employees. The reason the premium has been reduced is because employee injuries are down 50% and employee serious injuries are down over 70%. Those two elements combined have allowed the City to secure the lower renewal. This will likely be the last year that the City sees substantial savings and it is likely that next year the City would see a modest increase.

In the General Liability premiums there is a 30% reduction; it is about \$350,000 less than 2013-2014 and the carrier and coverage is the same. The property insurance carrier has changed and by changing the City has reduced the premium and enhanced the coverage. Like the Workers' Compensation coverage the City will likely see a modest increase next year.

Mr. Coughenour explained that some of the reasons the City is able to see this savings is by having 800 risk managers in Flagstaff. Through his work with employees in the field he has found them to be the ones making the difference in Flagstaff. Additionally, staff has changed how incidents are reported and there has been improved communication flow back to departments and employees. There are new training programs that are going back to employees. Additionally, the types of negotiations that staff has done and the relationships that staff has built with carriers in the industry have also had an effect on the premiums.

Mayor Nabours stated that he has heard that for many of these insurance carriers that the reason for the reduction is Mr. Coughenour and he thanked him for his efforts. The Mayor asked him about the position he holds with the National Risk Management Association. Mr. Coughenour stated that the National Trade Magazine for Public Risk Managers for the United States came out this week and he is on the cover because he will be taking office as the President of the Public Risk Managers of the United States in June. There is an article that went with that and he encouraged the Council to take a look at it when they have a chance.

**Moved by** Councilmember Jeff Oravits, **seconded by** Vice Mayor Celia Barotz to approve the renewal of the Workers' Compensation contract with Copperpoint Mutual Insurance at an estimated annual cost of \$725,000.

**Vote:** 6 - 0 - Unanimously

- H. **Consideration and Approval of Contract:** Approve the renewal of our Casualty insurance with Travelers Insurance and our Property coverage with AIG insurance at a total estimated annual cost of \$875,000. (Renewal of Property and Casualty Insurance Contracts). This renewal is \$30,000 less than last fiscal period and \$350,000 less than budgeted for the 2013-2014 fiscal period. There is no change in deductible and no changes in carriers or coverage from last fiscal period.

**Moved by** Councilmember Jeff Oravits, **seconded by** Vice Mayor Celia Barotz to approve the renewal of our Casualty insurance with Travelers Insurance and our Property coverage with AIG insurance at a total estimated annual cost of \$875,000.

**Vote:** 6 - 0 - Unanimously

### **RECESS**

The Regular Meeting of the Flagstaff City Council held May 19, 2015, recessed at 4:30 p.m.

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

### **RECONVENE**

The Regular Meeting of the Flagstaff City Council held May 19, 2015, reconvened at 6:00 p.m.

### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

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

**11. ROLL CALL**

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

Present:

Absent:

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

Others present: Jeff Meilbeck, Interim City Manager; Michelle D'Andrea, City Attorney.

**12. PUBLIC PARTICIPATION**

Gabor Kovacs addressed Council in regards to the need of unity in the City and the Nation.

Joe Ray addressed Council urging them to thank John Viktora for the thinning work he did on the McCallister property.

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

None

**14. PUBLIC HEARING ITEMS**

None

**15. REGULAR AGENDA**

- A. Consideration and Adoption of Ordinance No. 2015-08:** An ordinance of the Flagstaff City Council amending Title VI, *Police Regulations*, of the Flagstaff City Code by amending Section 6-08-001-0005, *Large Parties, Gatherings or Events*, thereof; providing for severability and authority for clerical corrections, and establishing an effective date. ***(Amending, revising and supplementing Section 6-08-001-0005, Large Nuisance Parties, Gatherings or Events, of the Flagstaff City Code)***

Mayor Nabours stated that there are some questions that have come up since the last meeting. He asked for clarification on how the gathering number of five was established. He also asked for more information on how the police will separate innocent persons that may be in attendance but not contributing to the nuisance. Assistant City Attorney for Prosecution Marianne Sullivan stated that staff drew from existing statutes and ordinances throughout the state in determining the number of people that constitutes a gathering. Additionally, most of the language contained in the ordinance was taken from an ordinance in Rhode Island that was recently challenged and did go to the District Court. Five seemed to be a number that can be easily determined by responding officers upon arrival of a situation.

In regards to the innocent persons in attendance, the definition section defines responsible person as one who engaged in the conduct causing the gathering to be a nuisance party. They actually have to engage in the conduct that is causing the disturbance. When the

officers arrive they are assessing the situation and determining those who are causing the problems versus those who are just in attendance.

Vice Mayor Barotz asked for Ms. Sullivan to explain how this ordinance is different than what is currently included in City Code. Ms. Sullivan stated that this ordinance is different because it is civilly based instead of criminally based. The focus is to address the behaviors that are causing the nuisance in a way that is not as harsh as a criminal penalty. It is possible for someone to also be cited for disorderly conduct and criminal violations but the idea is to have a civil penalty so there is a deterrent effect, but not as harsh a punishment as a criminal violation unless that is needed. Vice Mayor Barotz clarified that the ordinance does not criminalize any behavior but rather it gives law enforcement the opportunity to utilize another tool to help curb nuisance behavior.

Ms. Sullivan also pointed out that staff changed the language in the title to simply state Nuisance Party which is further defined within the ordinance to be clearer. There were some concerns about freedoms of association and gathering and that being misunderstood to constitute a nuisance. Referring back to the case out of Rhode Island, the court there found that there is no constitutional right to socializing; the constitutional right protects politically motivated gatherings. Again, the purpose and focus with this ordinance is on the behavior, not the gathering, and giving law enforcement additional tools that are less harsh than criminal penalties when dealing with nuisance parties. When behavior rises to a certain level that disrupts the quiet enjoyment of neighbors that is when police action is needed.

Vice Mayor Barotz asked for Ms. Sullivan to explain how the language in the ordinance in the definition of nuisance party where the language states "such disturbances may include but are not limited to excessive noise, traffic, etc." is not overly broad. Ms. Sullivan stated that the language was also included in the ordinance that was challenged in Rhode Island and what was found is that it is an example of the instances that may rise to the level of a disturbance. The reason this ordinance states "including but not limited to" is because there are instances that cause disturbances but are not included on the list. The definition of nuisance party specifically spells out the behavior required for the threshold to rise to nuisance. The lists of what the disturbances might be are definitions of what is already included in the City's criminal code. and are examples of things that might rise to the level of disturbance.

Councilmember Brewster asked if the ordinance will be enforced on a complaint basis. Ms. Sullivan explained that in order to prove that there is a violation there has to be an element of disturbance or nuisance and in order to prove that there has to be a person who is reporting that their quiet and enjoyment has been disturbed.

Councilmember Oravits stated that he has concerns on page two, section C-3 with the intent of the law and what the law actually says. He stated that the ordinance says "any gathering of five or more on private property that is causing a disturbance of the quiet enjoyment of private or public property by any person or persons. Such disturbances may include, but are not limited to..." if someone really wants to press this it could be applied to a five year old birthday party with kids running around and being loud and a neighbor who does not particularly like it. The question raised here is if the Police Department picks and chooses which disturbances constitute action or if they adhere to the letter of the law. He stated that he is concerned with the discretion. Ms. Sullivan stated that discretion is what officers use each and every day. Under the current law, without this ordinance, the police can get a disorderly conduct call in which they would respond and make an assessment.

Councilmember Oravits asked what prevents officers from addressing the nuisance issue now. Police Chief Kevin Treadway stated that the Flagstaff Police Department has developed a culture of restraint and discretion that is a part of every law enforcement role. The current party ordinance results in a great amount of discretion in the application; the vast

majority of the individuals involved in these parties are identified to make sure there is no underage drinking and then asked to leave, that is the only enforcement action taken. He feels that the proposed ordinance will not vastly change the approach at which officers respond to these types of calls. Ms. Sullivan added that it gives officers another tool to impose a less harsh penalty than what is called for in the standing ordinance.

Councilmember Putzova asked what constitutes excessive noise. Ms. Sullivan stated that it is determined on a case by case basis. Examples may be that it can be heard outside the residence, it is an unusual noise, if it is an unreasonable noise that is prolonged or it is something that is heard down the street, etc. Councilmember Putzova asked how the ordinance would apply in a case where the noise being complained about is coming from a business establishment. Ms. Sullivan stated that those can be looked at it in conjunction with the noise ordinance but it is important to keep in mind that people choose to live in an area that is near these types of establishments. Chief Treadway added that he did not believe that this ordinance would be an appropriate application for a situation like this.

Vice Mayor Barotz presented a hypothetical situation in which there is a large party at an apartment complex with at least 40 people there; she asked what is available under the laws today to manage the behavior. Ms. Sullivan stated that under the current laws they could be charged for disorderly conduct or other misdemeanor charges. What is available today is either criminal charges or notifications with fees. The proposed ordinance would allow the police department to make an assessment and give out civil citations.

Councilmember Oravits asked if the current ordinance is being repealed. Ms. Sullivan stated that this ordinance would amend the current ordinance allowing there to be civil penalties and/or criminal penalties.

Councilmember Oravits stated that on page 4 of the ordinance under notification there are three options listed and he would recommend that notification be certified because just posting on the door may not get notice to the intended person. Ms. Sullivan stated that there are sometimes situations where officers arrive at a scene and people will not answer the door. Posting a notice on the door would allow notification of the party notification and the certified notification would be for the owner of the property.

Josh Collier addressed Council on behalf of Flagstaff Liberty Alliance in opposition of the ordinance due to it being overreaching and vague.

Written comment cards in opposition of the proposed ordinance were received from the following individuals:

- Cynthia Dorfsmith
- John Kistler
- Joanna Estes
- Elisha Dorfsmith

Mayor Nabours stated that the ordinance primarily deals with the liability of the landlord or property owner which is one of the primary issues that the police department has been struggling with. One of the issues is that there is no recourse against a property owner to control their property. This ordinance would give the City a tool for the owner to take notice and do something. He offered thanks to the staff for their research on the ordinance and what other cities have done.

Councilmember Overton stated that he is comfortable with the ordinance and is confident that the Police Department will do a good job of taking the Council intent and using it in a just manner within the community.

Councilmember Brewster stated that she, too, is comfortable with the ordinance and feels that it is a good middle ground for enforcement.

Councilmember Evans stated that by bringing in the property owners the ordinance will be more effective.

Ms. D'Andrea clarified that the changes to the title will be to replace the word large with nuisance and remove gathering or events.

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Scott Overton to read Ordinance No. 2015-08 by title only for the final time.

**Vote:** 6 - 1

NAY: Councilmember Jeff Oravits

*AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AMENDING TITLE VI, POLICE REGULATIONS, OF THE FLAGSTAFF CITY CODE BY AMENDING SECTION 6-08-001-0005, NUSIANCE PARTIES, THEREOF; PROVIDING FOR SEVERABILITY AND AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE AS AMENDED*

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Karla Brewster to adopt Ordinance No. 2015-08.

**Vote:** 6 - 1

NAY: Councilmember Jeff Oravits

- B. Consideration and Adoption of Resolution No. 2015-16:** A resolution of the Council of the City of Flagstaff, Arizona, memorializing direction for staff to bring an ordinance for consideration providing eight acres of land on McMillan Mesa to the Arizona Department of Veterans' Services (AZDVS) for use as a skilled nursing facility to serve veterans.

Mr. Meilbeck stated this project has engaged a lot of interest. There is interest in the City doing what it can for the Veterans and there is interest in protecting the values of McMillan Mesa. The challenge before staff is how to do both.

Vice Mayor Barotz stated that she heard from the public that the Zoning Code reflects the values of the community as a whole and the idea that it would not apply it in a certain case is problematic.

Assistant to the City Manager for Real Estate David McIntire provided a PowerPoint presentation that covered the following:

RESOLUTION 2015-16: MEMORIALIZING DIRECTION TO CONSIDER PROVIDING  
LAND ON MCMILLAN MESA TO STATE FOR VETERAN FACILITY  
REVIEW FEEDBACK RECEIVED

Councilmember Putzova asked for clarification on who is applying for the grant that will fund the building and construction. Mr. McIntire stated that the land is deeded to the Arizona Department of Veteran Services; they are in charge of the project and would be moving it forward. They have a formal relationship with the Department of Veterans' Affairs of the United States federal government and they receive grant funding for roughly two thirds of the project from the Veterans' Administration and must conform to their guidelines. While the

Department of Veterans' Services is a state agency that control the project and own the land they are done with strict guidelines associated with the grant funding. Councilmember Putzova asked if staff has seen the guidelines and can tell the Council what they are. Mr. McIntire explained that staff does not have a detailed analysis of grant guidelines.

Mayor Nabours stated that there is a building code in place with regard to structural safety issues. Mr. McIntire stated that the City would have approval rights with life and safety issues; this would include the structural integrity, fire safety within the facility, potentially traffic access points, and connections to the City's rights of way. The City building codes are in effect, it is the design and zoning guidelines that are not relevant to the State as a solvent entity in which they are currently expressing their unwillingness to accept because it would impact the Veterans' Administration willingness to provide the grant funding.

Vice Mayor Barotz asked for the implications of a project being built that does not have to comply with the City's stormwater requirements and asked if that creates issues with property values for those properties adjacent or downstream to the development. Community Development Director Mark Landsiedel addressed Council stating that when it comes to the review of State or school district projects the State has been very clear that cities cannot impose landscaping and building designs standards. The City stance has been life safety issues, structural integrity of the building, fire suppression system within the building, and ingress/egress into the building are things are clearly under City purview; stormwater is under our prevue, they are required to submit a stormwater plan to show that they are not flooding the neighbors or exacerbating existing flooding conditions. The last big thing is that these are the City's rights of way and roads so the City permits the access points.

Mr. McIntire continued the presentation.

#### PROPOSED FLAGSTAFF VETERAN FACILITY – KEY CONSIDERATIONS

Mr. Meilbeck continued the presentation.

#### DIRECTION ON RESOLUTION

Councilmember Brewster asked if the building would be LEED certified. Mr. McIntire stated that the building would be a minimum of LEED Silver. Councilmember Brewster added that LEED certification also has its own code which is quite rigid. She asked if there are other communities in northern Arizona that are competing for a facility like this. Mr. McIntire stated that in some of the conversations with the State it was mentioned that there are a couple of other communities that might also be interested such as Kingman. Councilmember Brewster stated that she wants everyone to be aware that Flagstaff is not the only city competing for this facility. Mayor Nabours added that Flagstaff is competing with other cities throughout the country. Mr. McIntire explained that there is a prioritization list and by contributing land and getting a commitment from the State for their contribution that puts Flagstaff on the list for federal funding.

Vice Mayor Barotz asked for clarification on what being LEED certified ensures and what standards are governed. Mr. Landsiedel stated that LEED certification is more about materials inside of the building and it does not affect the character of the exterior of the building.

Councilmember Evans stated that there is a misunderstanding that the State is driving the process and they want a facility here; the City is at this point because the community wants a veterans' home. The City asked for information on how it can get a veteran's home in Flagstaff or northern Arizona. The process and project are being driven by the community. The State came to look at proposed properties and offered feedback on the land that

provided the greatest opportunity for success. One of the things is that the City needs to be clear about is the deed; if the building is not built in a certain amount of time the land comes back to the City, additionally, the land would be deeded to Veteran's Affairs not the State of Arizona.

The following individuals addressed the Council in support of Option A:

- Stuart McDaniel on behalf of the Flagstaff Chamber
- Gabor Kovacs
- Joe Ray
- Andrew Griffin
- Stephen Hirst on behalf of the Open Space Commission

The comments received are as follows:

- Having to travel to other areas far away hinders the help that these men and women deserve.
- The land is available and the Veteran's home is important to the community.
- The zoning code and design standards should not cause problems with the process moving forward.
- The veterans deserve this facility and if this is what it takes to get there then so be it.
- This would be a federal building; the City does not have any stricter rules on building than the federal government.
- This building will put Flagstaff on the map.
- There are too many other sites that are competing for this facility, the City needs to act now.
- McMillan Mesa is a gem and it is a place that the community cherishes; the veterans deserve to be on the mesa.
- The State has demonstrated that they can build a home that the communities can be proud of as is true in Phoenix and Tucson.
- Because of the diversity that Flagstaff offers, once the City allocates the land the State will move quickly to allocate the funds necessary to get this done.
- There is no reason for the City to believe that the State has some kind of rules that would dictate an undesirable building.
- Outside this project, the remaining land on McMillan Mesa should be protected as open space.

The following individuals addressed the Council in support of Option B:

- Kathy Marron
- Marilyn Weissman
- Nat White
- Moran Henn

The comments received are as follows:

- There is concern with the State not agreeing to adhere to the City codes.
- Another site could be suggested.
- The Council should ask for adherence to City codes.
- The State and Federal government should follow City rules and not pick and chose what is acceptable to follow.
- The City wants quality projects that follow their design and zoning standards.
- Concerned with the environment of McMillan Mesa, it is a very exposed area in Flagstaff.
- The City needs to consider what is best for the people working and living there.
- Would like additional information on how the public will be engaged in the design of the building.

Written comment cards in support of Option B were submitted from the following:

- Nat White
- Sean Hickey
- Darlene Ryan
- Mary Mei Ling Chun
- Lori Boettcher
- Mary Ellen Arndorfer

A break was held from 7:15 p.m. through 7:26 p.m.

Councilmember Oravits asked how McMillan Mesa was chosen and whether or not there are any other viable options. Mr. McIntire stated that he toured a few parcels with the State and the McMillan Mesa property was the only one that they felt met the needs and requirements of the project. Councilmember Evans added that the Koch Field property is too far away from medical services, the current public works yard had issues with how the language of the bond was written and there were issues with all of the other properties.

Councilmember Oravits asked what other organizations do not have to follow the City's zoning code. Mr. McIntire stated that Flagstaff Unified School District and charter schools are exempt along with State buildings on State land, Northern Arizona University, and Coconino County on County land.

Councilmember Putzova stated that the land is estimated to be valued at around \$4 million; she asked for the estimated value of the project as a whole. Mr. McIntire explained that there is not a clear figure on the value as a whole because there has been no design work done yet. Councilmember Putzova asked for the value of the land in the existing facilities in Tucson and Phoenix and the value of the asset on top of it. Mr. McIntire stated that staff did ask the Department of Veteran's Services if they could provide a cost or value estimate for the land they received in Tucson and Phoenix; there was no appraisal done, the communities passed along those parcels without a value determined. The Department of Veterans' Services did not know and were not concerned with the value of the land. Councilmember Putzova asked if there was a way to get an estimate on those parcels to understand how much the community is contributing. Mr. McIntire explained that a Real Estate Broker can provide an appraisal but only if under contract. The City could hire an appraiser should that be the will of the Council but it could be costly and time consuming. Councilmember Evans added that Flagstaff's cost of living and cost of land will drive the value of the property higher than those in the valley. Other cities donated land without appraisal because they were looking at the project as a whole. There are some things that a dollar amount cannot be put on. The Mesa is valuable and important and when the Council tries to put a dollar figure on it the wrong message is being sent. She urged the Council to look at it in terms of people instead of dollars.

Councilmember Putzova stated that the enactment section of the resolution is missing some crucial things; there is no reference to a 60 bed facility and the wording should reflect a minimum 60 bed facility. Additionally, there needs to be wording that ensures that once the City deeds the property to the State the State cannot turn around and sell the property. The resolution need to ensure that the land is used for veterans in perpetuity and that there would be no additional operational cost for this facility if leased by another entity.

**Moved by** Councilmember Coral Evans; **seconded by** Councilmember Jeff Oravits to read Resolution No. 2015-16 Option A by title only.

**Moved by** Councilmember Eva Putzova, **seconded by** Vice Mayor Celia Barotz to amend the resolution Section 1 to add operating a minimum of 60 beds and add section 3 that would require the State to use the land and the facility for veterans home in perpetuity and not sell it to a third party.

**Vote:** 4 - 3

NAY: Mayor Jerry Nabours  
Councilmember Karla Brewster  
Councilmember Scott Overton

Mayor Nabours called for a vote on the motion to read the Resolution as amended made by Councilmember Evans.

**Moved by** Councilmember Coral Evans, **seconded by** Councilmember Jeff Oravits to read Resolution No. 2015-16 as amended.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, MEMORIALIZING DIRECTION FOR STAFF TO BRING AN ORDINANCE FOR CONSIDERATION PROVIDING APPROXIMATELY EIGHT ACRES OF LAND ON MCMILLAN MESA TO THE ARIZONA DEPARTMENT OF VETERANS' SERVICES (AZDVS) FOR USE AS A SKILLED NURSING FACILITY TO SERVE VETERANS AS AMENDED*

**Moved by** Councilmember Coral Evans, **seconded by** Councilmember Jeff Oravits to adopt Resolution No. 2015-16 as amended.

**Vote:** 7 - 0 - Unanimously

Councilmember Evans left the meeting at 8:20 p.m.

A break was held from 8:20 p.m. through 8:24 p.m.

- C. Consideration and Adoption of Ordinance No. 2015-10 :** An ordinance of the Flagstaff City Council authorizing the City of Flagstaff to accept specific deeds of real property and easements and providing for the repeal of conflicting ordinances, severability, and authority for clerical corrections, and establishing an effective date (***Adopt ordinance authorizing acceptance of real property deeds and easements***).

Mr. McIntire stated that the ordinance is for approval of easements and right of ways that have been acquired through the development process.

**Moved by** Vice Mayor Celia Barotz, **seconded by** Councilmember Jeff Oravits to read Ordinance No. 2015-10 by title only for the first time.

**Vote:** 6 - 0 - Unanimously

*AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AUTHORIZING THE CITY OF FLAGSTAFF TO ACCEPT SPECIFIC DEEDS OF REAL PROPERTY AND EASEMENTS AND PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

- D. Consideration and Adoption of Resolution No. 2015-19 and Ordinance No. 2015-09:** A resolution and ordinance of the Flagstaff City Council adopting by reference revised sewer discharge limitations. **(Updates and revisions to local limits for industrial sewer discharge)**

Mayor Nabours stated that at the Work Session last week the Council went through this item in great detail to understand why limits are needed and how it affects the City treatment plants. Vice Mayor Barotz thanked the staff for doing such a great job explaining the item.

**Moved by** Vice Mayor Celia Barotz, **seconded by** Councilmember Karla Brewster to read Resolution No. 2015-19 by title only.

**Vote:** 6 - 0 - Unanimously

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK ENTITLED THE "REVISED DISCHARGE LIMITATIONS FOR INDUSTRIAL USERS" AND DECLARING AN EFFECTIVE DATE*

**Moved by** Councilmember Jeff Oravits, **seconded by** Mayor Jerry Nabours to read Ordinance No. 2015-09 by title only for the first time.

**Vote:** 6 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, CHAPTER 7-02, WASTEWATER REGULATIONS, BY ADOPTING THE "REVISED DISCHARGE LIMITATIONS FOR INDUSTRIAL USERS" AS SET FORTH IN THAT PUBLIC RECORD ON FILE WITH THE CITY CLERK RELATING TO THE STANDARDS AND LOCAL LIMITS FOR INDUSTRIAL SEWER DISCHARGE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

- E. Consideration and Adoption of Resolution 2015-17 and Ordinance No. 2015-07:** A resolution of the Flagstaff City Council declaring the Revised Stormwater Utility Credit Manual a public record and an ordinance adopting the Revised Stormwater Utility Credit Manual by reference. **(Updates and revisions to Stormwater Utility Credit Manual)**

**Moved by** Councilmember Scott Overton, **seconded by** Councilmember Karla Brewster to read Resolution No. 2015-17 by title only.

**Vote:** 6 - 0 - Unanimously

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK ENTITLED THE "REVISED STORMWATER UTILITY CREDIT MANUAL" AND DECLARING AN EFFECTIVE DATE*

**Moved by** Councilmember Scott Overton, **seconded by** Councilmember Karla Brewster to read Ordinance No. 2015-07 by title only for the first time.

**Vote:** 6 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, CHAPTER 12-02, STORMWATER MANAGEMENT UTILITY, BY ADOPTING THE "REVISED STORMWATER UTILITY CREDIT MANUAL" AS SET FORTH IN THAT PUBLIC RECORD ON FILE WITH THE CITY CLERK RELATING TO THE PROVISION OF STORMWATER UTILITY CREDITS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

**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**

Mr. Meilbeck reported that as of that moment all of the special election questions passed at the ballot except number six, so the City Council will continue to appoint the City Treasurer.

**19. ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held May 19, 2015, adjourned at 8:33 p.m.

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MAYOR

ATTEST:

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CITY CLERK

CERTIFICATION

STATE OF ARIZONA,        )  
  )  SS.  
Coconino County.         )

I, ELIZABETH A. BURKE, do hereby certify that I am the City Clerk of the City of Flagstaff, County of Coconino, State of Arizona, and that the above Minutes are a true and correct summary of the Meeting of the Council of the City of Flagstaff held on May 19, 2015. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 16th day of June, 2015.

\_\_\_\_\_  
CITY CLERK

**4:00 P.M. MEETING**

**1. CALL TO ORDER**

Mayor Nabours called the meeting of June 2, 2015, to order at 4:00 p.m.

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

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

**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 EVANS  
COUNCILMEMBER ORAVITS  
COUNCILMEMBER OVERTON  
COUNCILMEMBER PUTZOVA

COUNCILMEMBER BREWSTER

Others present: Interim City Manager Jeff Meilbeck and City Attorney Michelle D'Andrea.

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

**A. Opening Flag Ceremony by Boy Scout Troop 7036**

Members of the Boy Scout Troop 7036 posted the colors and led the audience and Council in the Pledge of Allegiance. Mayor Nabours then read the Mission Statement of the City of Flagstaff.

**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 Special Meeting (Executive Session) of March 31, 2015; Regular Meeting of May 5, 2015; and Special Meeting (Executive Session) of May 26, 2015.

**Moved by** Councilmember Scott Overton, **seconded by** Councilmember Jeff Oravits to approve the minutes of the City Council Special Meeting (Executive Session) of March 31, 2015; Regular Meeting of May 5, 2015; and Special Meeting (Executive Session) of May 26, 2015.

**Vote:** 6 - 0 - Unanimously

**5. PUBLIC PARTICIPATION**

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

None

**6. PROCLAMATIONS AND RECOGNITIONS**

None

**7. APPOINTMENTS**

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

None

**8. LIQUOR LICENSE PUBLIC HEARINGS****A. Consideration and Action on Liquor License Application: Andrea Lewkowitz, "Drury Inn & Suites - Flagstaff", 300 S. Milton, Series 11 (Hotel/Motel), New License.State.**

Mayor Nabours stated that Community Development, Sales Tax and the Police Department all recommended approval of this license as there were no outstanding issues. He then opened the Public Hearing. There being no public input, the Public Hearing was closed.

**Moved by** Councilmember Jeff Oravits, **seconded by** Councilmember Scott Overton to recommend to the State the approval of the application from Andrea Lewkowitz, agent for "Drury Inn & Suites - Flagstaff", 300 S. Milton, Series 11 (Hotel/Motel), New License.

**Vote:** 6 - 0 - Unanimously

**9. CONSENT ITEMS**

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

**Moved by** Councilmember Scott Overton, **seconded by** Councilmember Jeff Oravits to approve Consent Items 9-A through 9-D.

**Vote:** 6 - 0 - Unanimously

**A. Consideration and Approval of (Confirming) Payment: Reimbursement payment to W.L. Gore and Associates for oversizing of new public waterline. (**Waterline reimbursement as agreed in pre-annexation agreement with W.L. Gore and Associates**).**

Approve reimbursement payment to WL Gore and Associates in the amount of \$356,440.53.

**B. Consideration and Approval of Contract: Consideration and Approval of Contract: Construction Manager at Risk Construction Contract for Street Maintenance Program 2015 - Phase 2 with C and E Paving and Grading, LLC in the amount of \$2,904,883.71 (**Street Maintenance Program 2015**).**

1) Approve the Construction Manager at Risk Construction Contract with C and E Paving and Grading, LLC in an amount not to exceed \$2,904,883.71 for Guaranteed Maximum Price (GMP).

2) Authorize Change Order Authority of 5% for GMP3 in the amount of \$ 145,244.19, 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 Contract:** Contract with Southwest Tank and Steel, Inc. in the amount of \$249,178.00 (***Cheshire Water Tank Rehabilitation***) .
- 1) Approve construction contract with Southwest Tank and Steel, Inc. in the amount of \$249,178 (includes a \$10,000 contingency allowance) and a contract time of 90 calendar days.
  - 2) Approve Contract Change Authority to the City Manager in the amount of \$24,917.80 (10% of the contract amount, less allowance).
  - 3) Authorize the City Manager to execute the necessary documents
- D. **Consideration and Approval of Cooperative Contract:** Purchase of one (1) 906H2 Compact Wheel Loader on a National IPA cooperative purchase agreement with the City of Tucson-Bid#12077 (***Approve purchase of 906H2 Compact Wheel Loader from Empire Machinery in the amount of \$86,106.25***).
- Approve the purchase of one (1) 906H2 Compact Wheel Loader from Empire Machinery through a National IPA cooperative purchase agreement with the City of Tucson, AZ for the amount of \$86,106.25 (tax and freight included).

10. **ROUTINE ITEMS**

- A. **Consideration and Approval of Contract:** Construction contract with TSG Constructors, LLC in the amount of \$1,540,765.00 (***Bushmaster Park Improvement Project***)

Public Works Section Head Mike O'Connor reviewed the site plan for the proposed improvements at Bushmaster Park and recognized Steve Zimmerman who has put a lot of time into the project and will also serve as the Project Manager. Councilmember Overton thanked him for the presentation. He said that this was a long time coming and it is a good expenditure.

Mr. O'Connor said that as soon as the project is approved, they will work with Purchasing to get the contracts signed, and hopefully start the middle of this month.

**Moved by** Councilmember Scott Overton, **seconded by** Councilmember Eva Putzova to approve the construction contract with TSG Constructors, LLC in the amount of \$1,540,765.00 (which includes a \$59,265 contract allowance) and a contract time of 120 calendar days; approve Change Order Authority to the City Manager in the amount of \$122,160.00 (8% of the contract amount); and authorize the City Manager to execute the necessary documents.

**Vote:** 6 - 0 - Unanimously

- B. **Consideration and Adoption of Ordinance No. 2015-10:** An ordinance of the Flagstaff City Council authorizing the City of Flagstaff to accept specific deeds of real property and easements and providing for the repeal of conflicting ordinances, severability, and authority for clerical corrections, and establishing an effective date (***Adopt ordinance authorizing acceptance of real property deeds and easements***).

**Moved by** Vice Mayor Celia Barotz, **seconded by** Councilmember Jeff Oravits to read Ordinance No. 2015-10 by title only for the final time.

**Vote:** 6 - 0 - Unanimously

*AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AUTHORIZING THE CITY OF FLAGSTAFF TO ACCEPT SPECIFIC DEEDS OF REAL PROPERTY AND EASEMENTS AND PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY AND AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Vice Mayor Celia Barotz, **seconded by** Councilmember Jeff Oravits to adopt Ordinance No. 2015-10.

**Vote:** 6 - 0 - Unanimously

- C. **Consideration and Adoption of Resolution 2015-17 and Ordinance No. 2015-07:** A resolution of the Flagstaff City Council declaring the Revised Stormwater Utility Credit Manual a public record and an ordinance adopting the Revised Stormwater Utility Credit Manual by reference. (***Updates and revisions to Stormwater Utility Credit Manual***)

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Eva Putzova to adopt Resolution No. 2015-17.

**Vote:** 6 - 0 - Unanimously

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Eva Putzova to read Ordinance No. 2015-07 by title only for the final time.

**Vote:** 6 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, CHAPTER 12-02, STORMWATER MANAGEMENT UTILITY, BY ADOPTING THE "REVISED STORMWATER UTILITY CREDIT MANUAL" AS SET FORTH IN THAT PUBLIC RECORD ON FILE WITH THE CITY CLERK RELATING TO THE PROVISION OF STORMWATER UTILITY CREDITS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Eva Putzova to adopt Ordinance No. 2015-07.

**Vote:** 6 - 0 - Unanimously

- D. Consideration and Adoption of Resolution No. 2015-18 and Ordinance No. 2015-09:** A resolution and ordinance of the Flagstaff City Council adopting by reference revised sewer discharge limitations. (**Updates and revisions to local limits for industrial sewer discharge**)

**Moved by** Vice Mayor Celia Barotz, **seconded by** Mayor Jerry Nabours to adopt Resolution No. 2015-18.

**Vote:** 6 - 0 - Unanimously

**Moved by** Vice Mayor Celia Barotz, **seconded by** Mayor Jerry Nabours to read Ordinance No. 2015-09 by title only for the final time.

**Vote:** 6 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE, CHAPTER 7-02, WASTEWATER REGULATIONS, BY ADOPTING THE "REVISED DISCHARGE LIMITATIONS FOR INDUSTRIAL USERS" AS SET FORTH IN THAT PUBLIC RECORD ON FILE WITH THE CITY CLERK RELATING TO THE STANDARDS AND LOCAL LIMITS FOR INDUSTRIAL SEWER DISCHARGE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Scott Overton to adopt Ordinance No. 2015-09.

**Vote:** 6 - 0 - Unanimously

- E. Consideration and Adoption of Resolution No. 2015-21:** A resolution of the City Council of the City of Flagstaff, Coconino County, Arizona, declaring official and adopting the results of the Special Election held on May 19, 2015. (**Results for Election on Changes to City Charter**)

**Moved by** Councilmember Jeff Oravits, **seconded by** Councilmember Scott Overton to read Resolution No. 2015-21 by title only.

**Vote:** 6 - 0 - Unanimously

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, DECLARING OFFICIAL AND ADOPTING THE RESULTS OF THE SPECIAL ELECTION HELD ON MAY 19, 2015*

**Moved by** Councilmember Jeff Oravits, **seconded by** Mayor Jerry Nabours to adopt Resolution No. 2015-21.

**Vote:** 6 - 0 - Unanimously

- F. Consideration and Approval of Intergovernmental Agreement:** Intergovernmental Agreement/Joint Project Agreement (IGA/JPA) 11-085 between the State of Arizona and the City of Flagstaff acting for and on behalf of the Flagstaff Metropolitan Planning Organization, Amendment 4 for Fiscal Year 2016 (**Annual Update of FMPO IGA/JPA**)

Councilmember Putzova asked staff if there were any changes to the agreement. FMPO Manager David Wessel replied that there were no changes. Community Development Director Landsiedel added that it allows the City to take money from the state to continue FMPO operations.

**Moved by** Councilmember Scott Overton, **seconded by** Councilmember Coral Evans to approve IGA/JPA 11-085 Amendment 4.

**Vote:** 6 - 0 - Unanimously

- G. Consideration and Adoption of Resolution Number 2015-23 and Ordinance No. 2015-13:** A resolution and ordinance of the Flagstaff City Council adopting by reference minor amendments to the City Code.

**Moved by** Vice Mayor Celia Barotz, **seconded by** Councilmember Eva Putzova to read Resolution No. 2015-23 by title only.

**Vote:** 6 - 0 - Unanimously

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK ENTITLED THE "2015 MINOR AMENDMENTS TO THE FLAGSTAFF CITY CODE" AND DECLARING AN EFFECTIVE DATE*

**Moved by** Vice Mayor Celia Barotz, **seconded by** Councilmember Eva Putzova to read Ordinance No. 2015-13 by title only for the first time.

**Vote:** 6 - 0 - Unanimously

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE: TITLE ELEVEN: GENERAL PLANS AND SUBDIVISIONS; TITLE NINE, TRAFFIC; TITLE EIGHT, PUBLIC WAYS AND PROPERTY; TITLE SIX, POLICE REGULATIONS; AND TITLE ONE, ADMINISTRATIVE; BY ADOPTING THE "2015 MINOR AMENDMENTS TO THE FLAGSTAFF CITY CODE" AS SET FORTH IN THAT PUBLIC RECORD ON FILE WITH THE CITY CLERK RELATING TO PROVIDING FOR CORRECTIONS TO THE REGIONAL PLAN, REPEALING REGULATIONS OF THE LAKE MARY AREA, REPEALING REGULATIONS REGARDING DAMAGE TO PUBLIC WAYS, PROVIDING A PENALTY FOR UNLAWFUL PARKING, AND ALLOWING THE CLERK TO MAKE FORMATTING AND TECHNICAL CORRECTIONS TO CITY ORDINANCES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE*

- H. **Consideration and Adoption of Resolution No. 2015-24:** A resolution of the City Council of the City of Flagstaff, Arizona, repealing Resolution No. 2013-19, *Procurement Code Manual*, and adopting a new *Procurement Code Manual* to incorporate a new Article (Article 31) relating to procurement from Arizona certified nonprofit agencies that serve or employ individuals with disabilities. (***Amending Procurement Code Manual***)

Purchasing Director Rick Compau said that they previously talked with Council about this proposed change, along with considering carbon footprints, but at that time they recommended not moving forward with the carbon footprint. This proposed wording is recommended to incorporate language to give a procurement preference to Arizona-certified nonprofit organizations as allowed by state statutes.

Mr. Compau said this would allow the City to either purchase goods or services from an Arizona-certified nonprofit organization that employed or served disabled individuals without competition as allowed by statute, or they could give a percentage of the City's business throughout a fiscal year to those types of agencies. He said that the recommended language provides flexibility in which direction to go.

**Moved by** Councilmember Eva Putzova, **seconded by** Vice Mayor Celia Barotz to read Resolution No. 2015-24 by title only.

**Vote:** 6 - 0 - Unanimously

*A RESOLUTION OF THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA REPEALING RESOLUTION NO. 2013-19, PROCUREMENT CODE MANUAL, AND ADOPTING A NEW PROCUREMENT CODE MANUAL TO ADD A PROVISION REGARDING ARIZONA CERTIFIED NONPROFIT BUSINESSES THAT SERVE OR EMPLOY INDIVIDUALS WITH DISABILITIES*

**Moved by** Councilmember Eva Putzova, **seconded by** Vice Mayor Celia Barotz to adopt Resolution No. 2015-24.

**Vote:** 6 - 0 - Unanimously

- I. **Reconsideration of Resolution No. 2015-16** -- Regarding a Veteran's Facility on McMillan Mesa -- **MOVED TO ITEM 15-B UNDER REGULAR AGENDA\***

- J. **Consideration and Approval of Grant:** Arizona Department of Transportation Intergovernmental Agreement for light-emitting diode (LED) Street Lighting Procurement for Research. (***IGA with ADOT re LED lighting***)

**Moved by** Councilmember Scott Overton, **seconded by** Councilmember Jeff Oravits to approve the Intergovernmental Agreement (IGA/JPA 15-0005287-1) between the City of Flagstaff and the Arizona Department of Transportation (ADOT) for Surface Transportation Program (STP) funds in the amount of \$199,000.00, City matching funds in the amount of \$12,029.00 and City payment of ADOT Project Management & Design Review (PMDR) in the amount of \$10,000.00 for procurement of LED street lights associated with the Flagstaff Metropolitan Planning Organization's (FMPO) - Street Lighting for Enhancing Dark Skies (SLEDs) research project.

Vice Mayor Barotz asked Mr. Bauman if it had officially been determined that they were moving from LPS to LED lighting, or if the research will show them how to get there. Mr. Bauman said that they expect LPS is about at the end of its life. They have been working with Jeff Hall and the Observatory. They are having trouble fixing LPS lights; the question is the type of LED. They do not know where the right solution is right now and into the future. Vice Mayor Barotz asked if this was a grant with ADOT to gather information and once it was gathered she asked if

it would be an administrative decision, or if the research would come back to Council.

Mr. Bauman said that the first part is the research project. This is the IGA for \$199,000 to support the research project. They are expecting proposals in July 15. Eventually it will be a change in the engineering standards, but they are not sure that they have that process figured out yet. He clarified that these would be lights on roads of regional significance, both state and City, that are arterial or collector routes. He added that the working group that Jeff Hall is involved with is directed mostly at the zoning code. These are different codes, but they know about each other and it involves the same people.

**Vote:** 6 - 0 - Unanimously

### **RECESS**

The regular meeting of June 2, 2015, recessed at 4:38 p.m.

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

### **RECONVENE**

The regular meeting of June 2, 2015, reconvened at 6:05 p.m.

### **NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this regular meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)Y3*

## **11. 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 (telephonically)  
COUNCILMEMBER EVANS  
COUNCILMEMBER ORAVITS  
COUNCILMEMBER OVERTON  
COUNCILMEMBER PUTZOVA

ABSENT:

NONE

Others present: Interim City Manager Jeff Meilbeck and City Attorney Michelle D'Andrea.

## **12. PUBLIC PARTICIPATION**

None

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

None

## **14. PUBLIC HEARING ITEMS**

None

## **15. REGULAR AGENDA**

- A. Consideration and Adoption of Resolution No. 2015-22:** A resolution of the City Council of the City of Flagstaff renaming the Flagstaff Recreation Center located at 2403 North Izabel Street to the "Hal Jensen Recreation Center" (***Renaming of Flagstaff Recreation Center***).

Recreation Supervisor Danny Neal briefly reviewed the process for naming City facilities and then turned the meeting over to Erv Boren and Ricky Roberts, both with the Marine League Charities, to give some history of Hal Jensen.

Mr. Boren said that Mr. Jensen was a retired Major in the Marines with 26 years of active duty. When they started the League in Flagstaff in 1995, Mr. Jensen had a real passion for Toys for Tots. He said that through Mr. Jensen's leadership for over 20 years they raised over \$1 million which has primarily gone to the Marine League Charities and the Toys for Tots program.

Mr. Roberts said that Mr. Jensen worked with the Recreation Center itself on fundraising events for years and he then asked everyone present at the meeting for this item to stand. He said that Mr. Jensen had encouraged him to come to the City and meeting with Mr. Burke to defend the center when there was talk of it going away. He said that it was appropriate for the center to be named in his memory.

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Scott Overton to read Resolution No. 2015-22 by title only.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, RENAMING THE FLAGSTAFF RECREATION CENTER TO THE "HAL JENSEN RECREATION CENTER" AND ESTABLISHING AN EFFECTIVE DATE*

**Moved by** Mayor Jerry Nabours, **seconded by** Councilmember Coral Evans to adopt Resolution No. 2015-22.

**Vote:** 7 - 0 - Unanimously

**B. Reconsideration of Resolution No. 2015-16 :** Regarding a Veteran's Facility on McMillan Mesa **\*MOVED FROM ROUTINE AGENDA**

**Moved by** Councilmember Jeff Oravits, **seconded by** Councilmember Coral Evans to reconsider Resolution No. 2015-16.

Councilmember Putzova said that they adopted this resolution two weeks ago with the understanding that staff was directed to move forward with negotiations, and they may come back later with different terms. Ms. D'Andrea said that was correct. If they were unable to negotiate the terms, they would either come back to you and ask for changes or they could continue negotiations and bring a final document and ask if it was acceptable.

Councilmember Overton said that he needed a better understanding of why reconsideration was necessary, instead of waiting until the June 16 meeting. Councilmember Oravits said that he fully supports this project and wants to be sure they get the home built as quickly as possible. Several things in the version adopted were not acceptable to the Arizona Department of Veteran Services (ADVS) and he would be presenting amendments to the existing resolution that mirrors what Option A was previously.

**Vote:** 5 - 2

NAY: Vice Mayor Celia Barotz  
Councilmember Eva Putzova

**Moved by** Councilmember Jeff Oravits, **seconded by** Mayor Jerry Nabours to amend Resolution No. 2015-16 as follows: 1) Section 1 – strike minimum 60 bed and add DEED WILL INCLUDE A LEGAL DESCRIPTION FOR THE SPECIFIC EIGHT ACRES THAT WILL BE CONVEYED; 2) Section 2 – strike entire section and replace with THE CITY OF FLAGSTAFF WILL REQUIRE ADVS TO COMPLY WITH CITY OF FLAGSTAFF OUTDOOR LIGHTING STANDARDS; 3) Section 3 – strike entire section and replace with THE CITY OF FLAGSTAFF WILL REQUIRE ADVS TO LIMIT THE HEIGHT OF THE VETERANS FACILITY BUILDINGS TO TWO STORIES; AND 4) Sections 4, 5 and 6 – completely strike, and read the amended resolution by title only.

**Moved by** Councilmember Putzova and **seconded by** Vice Mayor Barotz to amend the motion to add sections to read THE ARIZONA DEPARTMENT OF VETERAN SERVICES AGREES TO COMPLY TO THE GENERAL REQUIREMENTS FOR ALL STATE HOME FACILITIES AS ARTICULATED IN 38 CFR PARAGRAPH 59-130 and SHOULD THE STATE DECIDE TO SELL, TRANSFER OR LEASE THE LAND OR OPERATION, THE CITY WOULD RECAPTURE THE LAND.

Vice Mayor Barotz read portions of 38 CFR which includes, "the state home must meet all federal, state and local requirements...if the state or local requirements are different, compliance with the most stringent provisions is required."

Councilmember Overton said that he does not know what the conversation has been between the adoption and today, other than what he has read in the paper, but he wants to get it built and timeliness is always of concern. He asked if there were things approved two weeks ago that were not acceptable that compromised the deadline.

Mr. McIntire replied that after the adoption of the amended resolution, the next day he sent it to the ADVS. They

were okay with the 60-bed requirement; however, there were concerns with the recapture provision for after they built the facility, if they chose to lease its operation. Additionally, he said that they would verbally commit to go through a public process; however, the language in Section 6 puts the City in charge of the process.

Mr. McIntire continued, noting that at this date this is not yet considered a project so there is not a specific deadline. There is the idea of working to put a request into the State budget.

Councilmember Putzova said that she wanted the public to understand that when this land becomes State land, the State will go and apply for a federal grant. As part of that grant application the State has to agree to recapture provisions should the facility cease to be a home. The State would get 65% of the Veterans Home but if they later decided it is no longer something they want to do, the federal government will receive back a reimbursement for that 65% of the project. The federal government will get their money back and the citizens of Flagstaff will get nothing for the value of the land.

Councilmember Oravits said that his goal is to make the resolution as simple as possible. Anything they do will have to come back as an ordinance; he figured this was a good compromise. The more they muddy it up, the harder it becomes to get this through. There may not be a deadline, but the quicker they can get this settled the better because there are other communities trying to get this facility as well. Councilmember Brewster agreed, adding that both Prescott and Kingman and trying to get it.

Councilmember Evans said that if they are going to have to follow the federal regulations, there is no need for it to be included in the resolution. She said that they previously discussed having the restrictions put in the deed.

Vice Mayor Barotz said that she has given this a lot of thought. She has found the process to be extremely difficult. She felt that if she asks a question she is viewed as anti-veterans, and she is not. She has done some independent research and has found some of the answers, but not all. She still does not believe they have the kind of information they should have and feels that it has become a partisan issue.

Ms. D'Andrea said that the City Attorney's office is not expressing any opinion tonight with regard to the CFR. She said that they are aware of it and will keep the Council informed as they move forward regarding that regulation.

John Viktora, Flagstaff, said that he has contacted the Deputy Director of ADVS and was told they had no problems with restrictions, but they were not actively pursuing negotiations at this time. He also left a message with Victor Daniels, Construction Director for Veteran Services, but has not heard back. He is going to be in Phoenix next Monday and is going to meet with Bob Barnes.

Joe Ray, Flagstaff, said that if this project fails because of the lack of action from the Council he promises that he will be the first one down to draw a resolution for the City to build the complex and maintain it. He said that the City is not going to push the federal and state government around; they do not have that authority.

Written comments in support of the Veterans Home were received from Joan and Steven Harris.

Vote: 2 - 5 Failed (to amend the motion)

NAY: Mayor Jerry Nabours  
Councilmember Karla Brewster  
Councilmember Coral Evans  
Councilmember Jeff Oravits  
Councilmember Scott Overton

(Motion to amend the resolution)

**Vote:** 5 - 2

NAY: Vice Mayor Celia Barotz  
Councilmember Eva Putzova

**Moved by** Councilmember Jeff Oravits, **seconded by** Councilmember Coral Evans to adopt Resolution No. 2015-16 as amended.

**Vote:** 5 - 2

NAY: Vice Mayor Celia Barotz  
Councilmember Eva Putzova

Councilmember Overton said that he sincerely hoped that staff and the leadership team can continue to work with the State and after further discussions that the dissenting councilmembers could join them. He said that he would like to have this a unanimous action in the future.

- C. Discussion and Possible Action** : Options related to joining the Flagstaff Living Wage Coalition's legal action challenging the constitutionality of ARS 23-204, which preempts local authority to regulate compensation and benefits contrary to voter adopted Proposition 202. **(PREVIOUSLY AGENDA ITEM 15-B)**

Mayor Nabours said that there were members of the public present on both sides of the issue and he asked that everyone be respectful of one another and keep to the three minute time limit.

Councilmember Putzova said that the question is if the City should join the Flagstaff Living Wage Coalition's lawsuit against the state. In 2006 the voters passed Prop. 202 that gave cities/towns the ability to legislate for benefits and compensation. In 2014 the Legislature, by majority vote, adopted ARS 23-204 that now preempts the City's ability to do so. She said that in Arizona they have the Voter Protection Act and the argument is that the legislators acted illegally and their actions should be declared unconstitutional.

The following individuals then addressed the Council in opposition to joining the lawsuit:

- Kathy Knapp
- Michael Dugan
- Ruben Abeyta
- Robin Prema
- Joy Stavely
- Joan Harris (on behalf of Trudy Wieber)
- Sophia Katz
- Leslie D. White, Deputy State Director for Americans for Prosperity
- Ashley Heerding
- Karen MacKean, Field Director for Americans for Prosperity
- Dan Edel
- LaVelle McCoy
- Merle Henderson
- Gabor Kovacs
- Terry O'Neal
- Stuart McDaniels, representing the Greater Flagstaff Chamber of Commerce
- John Kistler

Comments received included:

- First job was at Dairy Queen and it taught her certain things and motivated her to do other things.
- She and her husband own a small business in Flagstaff.
- At the core of this is whether the City will be advocating the right to tell local employers what they had to pay employees.
- We just went through a recession; if you mandate what they have to pay employees, they will mandate the inability to hire other employees
- After he started working a minimum wage job, he learned to learn more, progress and make himself more valuable to his employer
- How much will this lawsuit cost the City?
- How is "livable wage" determined?
- Are there any minimum performance requirements that go along with minimum wage?
- After Los Angeles approved the \$15/hour regulations, both unions and restaurants are trying to figure out a way to back themselves out of the agreement
- Is representing a few of the hotel owners as well as the hotel he operates
- Joining this lawsuit is opening up a Pandora's box
- It is going forward with a lawsuit with a group that does not have all of the same thoughts and reflections that other people do
- The Coalition has one agenda—raise minimum wage
- Even if there is no cost to the City there are incidental costs associated with joining the lawsuit
- Joining the lawsuit would be a frivolous waste of taxpayers money
- Most of us pay more than minimum wage, depending on performance
- Cost of housing/rent may go up, and possibly food
- Those pushing this are paid for by the state or federal government; it is easy for them
- For us, it is hard as it is
- Cited various statistics on the impact of raised minimum wages. One progressive business owner said it would cost him \$80,000 a year, an amount that would put him out of business.
- McDonalds plans to open robot-run restaurants due to declining earnings and those demanding \$15/hour.
- Some businesses going from \$9/hour to \$15/hour – that is 66% and will have real world consequences.
- There is already a law in place.
- Owns a small business; starts them at \$10/hour and in 60 days they review their progress and gives a raise to those that deserve it.
- If a \$15/hour minim wage is imposed, some jobs and new hires would be in jeopardy
- Has lived here more than 20 years; please do not spoil it.
- We have to keep our City unique
- She has friends in California that make more money than here, but they would gladly live here
- Should not overburden people that are making business
- Americans for Prosperity have about two million activists; 80,000 in Arizona and are about limited government and encroachment in their lives
- Higher wages make it more expensive to be able to hire more employees
- Encourages businesses to pay their workers more

- Believe we should discuss further, but joining the lawsuit is not the answer
- Americans for Prosperity just opened their office in Flagstaff today on Aspen
- Unions want to give businesses the freedom to negotiate their own pay, but only if they're paying union dues and if businesses are using union workers
- Asked that Councilmember Putzova recuse herself from voting on issue; it is a clear conflict of interest
- If Councilmember Putzova does not recuse herself from voting, asked the Council to stop and take a vote
- Minimum wage and living wage are two different things
- Understands the merits of the lawsuit
- Minimum wage jobs were never meant to be career jobs
- There are only two motivating forces behind this recent movement for minimum wages—1) formed out of ignorance and 2) introduction of socialistic engineering
- Understands Councilmember Putzova's statement, but her participation in the discussion and vote is a gross violation of ethics; may not be unlawful but it sure looks unethical
- This is a precursor to more control by the City on its people. If the City does believe this is the right thing, then put a plan in place to track the unintended consequences of what is going to take place.
- Joining the lawsuit sends the wrong message to businesses interested in moving into the area
- Questions whether this would be an issue if the state was talking about something else, such as gun control
- There is an agenda of minimum wage on the part of some Council
- This lawsuit is moving forward regardless of whether the City joins

The following individuals spoke in support of joining the lawsuit:

- Jane O'Donnell
- Jason Perkinson
- Moran Henn, representing Friends for Flagstaff's Future
- Caitlin Fader
- Paul Deasy
- David McCain
- Frankie Beesley
- Michael Caulkins
- Jeff Nickell
- Ben Murphy, All-Star Tours
- Maria B. Tipton

Comments received included:

- With the State Constitution and Voter Protect Act, the Legislature cannot repeal actions like they did
- If anyone votes against joining the lawsuit it would show a lack of desire to uphold to law, the will of Arizona citizens, and desire for local control
- Issue is not about living wage but the City having the freedom to decide
- Asked that if they vote against joining, that they state why
- Pleaded with those on the Council that are Libertarian—This is one of the hardest places to live. He realizes if the living wage goes up too high people can lose their jobs. He feels both sides of the argument, but that is not what they are talking about—they are talking about local control.
- Request that the Council join the living wage lawsuit and defend the Constitution
- It was the will of the voters in 2006
- Is it not the City's role to respect and defend the minimum wage workers
- Grew up here; unique community
- City should not be tied to the rest of the state
- Local control for minimum wage
- Join the Coalition; fight for local rights
- Statistics do not support claims with modest increases
- "Thanks" to Americans for Property and Koch Brothers for coming into Flagstaff
- Loves the discussion – democracy in action
- The people spoke in 2006 and the Legislature overruled
- The City should join the lawsuit and support democracy
- He is a business owner; when he started in the business everyone was paid minimum wage. He pays more than minimum wage
- They are talking about constitutional rights
- This is big business coming into the State of Arizona influencing our politicians and keep the wages down
- What are the consequences if they do not stand up to the State

Councilmember Putzova clarified that the attorneys representing the Coalition have offered to represent the City at no cost.

Councilmember Putzova asked Ms. Stavely if she believed that the City had the authority to legislate living wage. Ms. Stavely said that she did not believe it was government's place to legislate that, and believes this effort (to join the lawsuit) is disingenuous in that the real agenda is to raise the minimum wage.

Councilmember Evans asked Ms. White what she thought about state government overturning something that the voters approved. Ms. White said that she was talking about minimum wage.

Councilmember Evans asked Ms. MacKean how she felt about voters' rights and if the state or federal government should be able to violate them. Ms. MacKean said that she was not an attorney; she was speaking on the effects.

Councilmember Putzova read a statement on why she does not have a conflict of interest and can serve as the Chairman of the Flagstaff Living Wage Coalition. She said that if she was incorrect they had a City Attorney that will ensure they do not overstep their authority.

Councilmember Putzova asked Mr. McCoy if he supported the City joining the lawsuit if he understood the merit of the lawsuit. Mr. McCoy said that they make a compelling case that the Legislature should be challenged on their action, but it does open up the door for the discussions of minimum wage. His recommendation was to not pursue the legal action, recognizing there is a legal point.

Councilmember Putzova asked Mr. McCoy if he felt that the City had the authority to adopt an ordinance in which they would legislate minimum wage. Mr. McCoy said that he did not because he supports free enterprise. He said that based on what the voters said in 2006, joining the lawsuit is a point of consideration for the Council.

Councilmember Putzova asked Mr. McDaniels if he thought the Council or citizens had the authority to pass an ordinance to legislate minimum wage. Mr. McDaniels said he believed they could not.

Vice Mayor Barotz said, with regard to the comment about having an agenda, that she ran her campaign on an agenda. She does think the City should join the lawsuit as she does not agree with what the Legislature did.

Councilmember Putzova said that if gun control was in the City's jurisdiction and the State wanted to take away that right, she would hope the City would join the lawsuit. She would love to legislate on gun control.

Councilmember Evans said that every time the State has overstepped their control she has been pretty consistent in suggesting the City sue them.

Councilmember Brewster said that she totally understands why the State needs to be sued over the preemption of the will of the people, but whether they join this or not it is going forward. She supports the Coalition to carry the torch and does not support the City joining the effort. After the dust settles, this will be about raising minimum wage. There continues to be talk about the democratic process; there is nothing more democratic than businesses being able to decide their wages. As long as they meet the federal minimum the City should stay out of that.

Written comments opposed to joining the lawsuit were received from:

- SanJay Patel
- Vipul Patel
- Chad Patel
- Chirag Patel
- Maipal Patel
- Steven & Joan Harris
- Karen MacKean
- Paul Keshau
- David A. Skopes
- Mihir Patel
- Abhay Ithape
- B. Majmueler
- Dr. M. H. Pandit
- Ashok Patel
- Arun Pandit
- Tetesh Patel
- Mitul Patel

Written comments supporting the joining of the lawsuit were received from:

- Dr. Nora Timmerman
- Brandon VanBibber
- Lucas Klein
- Michael Chizhov
- Madison Ledgerwood
- Caitlin Felder
- Nick Kowall
- Corey O'Donnell
- Emily Davalos

**Moved by** Councilmember Karla Brewster, **seconded by** Councilmember Jeff Oravits to take no action in the lawsuit.

**Vote:** 4 - 3

NAY: Vice Mayor Celia Barotz

Councilmember Coral Evans  
Councilmember Eva Putzova

Councilmember Evans said that regardless of where anyone stands on the issue, everyone should be concerned about constitutional violations.

Mayor Nabours said that he did not know if it was clear that the State's action was unconstitutional, he has not looked into the pros and cons. They may win or lose, but he would not be interested in getting involved in litigation where he is not interested in the ultimate result. He is not interested in the City have control over minimum wage.

Councilmember Putzova said that when they started their careers they held minimum wage jobs, but today the minimum wage is not what minimum wage was 30 years ago. There is an interest in the community because minimum wage did not keep up with inflation.

She also commented, in response to Mr. McDaniels' earlier statement about businesses interested in coming to the City, asking what message it sends to them that the business community supports poverty wages and they are okay with taxpayers subsidizing minimum wages.

A break was taken from 8:45 p.m. to 8:53 p.m.

- D. Consideration and Adoption of Resolution No. 2015-19** A resolution of the Council of the City of Flagstaff, Arizona adopting the tentative estimates of the amounts required for the public expense for the City of Flagstaff for Fiscal Year 2015-2016; adopting a Tentative Budget; setting forth the receipts and expenditures; the amount proposed to be raised by direct property taxation; giving notice of the time for hearing taxpayers, for adopting of Budget and for fixing the tax levies **Adopt Tentative Budget for City FY 15-16) PREVIOUSLY AGENDA ITEM 15-C**

Rick Tadder, Finance Director, gave a brief PowerPoint on the tentative budget which addressed:

- TODAY – TENTATIVE BUDGET
- QUICK OVERVIEW - \$241M budget - \$3.5M over last year 1.5% increase from last year
- BUDGET HIGHLIGHTS
  - Focus on Council goals and budget priorities
  - Police officer market based pay
  - 2% employee market increase
  - Snow operator stipends
  - SWAT fire pay
  - Dispatch shift differential
  - Road repair and street safety projects
  - Fanning Wash Improvements
- APPROPRIATIONS since April Budget Retreat
  - Increased by \$78M since April
  - Council adds - \$550K
  - \$100K/yr paramedic pay – bring to market – 2 years
  - \$ 75K dispatch pay - increase \$1/hour
  - \$ 50K dispatch recruitment
  - \$250K heart monitors purchase
  - \$ 40K heart monitor debt service
  - \$ 35K pay increase - recruitment of City Manager over last year
- APPROPRIATIONS
  - Additional capital carryover - \$69.1M
  - Rio de flag, core services facility, courthouse, FWPP, bushmaster, 4<sup>th</sup> St. Corridor water/wastewater projects, fleet purchases, FUTS
  - Grant carryovers - \$2.7M
  - CDBG/Home, FMPO, New Airline, EDA Revolving Loan
  - Library Reserves Carryover - \$1.6M
  - Operational Carryovers - \$3.2M
  - Land acquisition, various studies and contracts
- Contingency Carryovers - \$475K
- CITY OF FLAGSTAFF PROPERTY TAX
- TOTAL PROPOSED PRIMARY TAX LEVY: \$5,627,083
  - Based on flat levy plus new constructions
  - Assessed values increased than 2.2% average
  - New construction revenue totals \$65,343
  - Proposed tax rate of \$0.8234 per \$100/AV (decreased)
  - Maximum Allowable Primary Tax Levy: \$6,019,109
- TOTAL PROPOSED SECONDARY TAX LEVY: \$5,728,437
- CITY OF FLAGSTAFF FY2016 BUDGET

Councilmember Overton said that staff did an excellent job this year. He said that going through the new line of

percent change year over year the Public Works Transportation Fund caught his attention at 47,000%. He also asked if they could get an FTE (full-time equivalent) sheet with a similar comparison for 15/16 and 14/15.

Vice Mayor Barotz thanked everyone involved in the process. She appreciated the way the process unfolded and hoped they could continue the process in the future; Councilmember Oravits agreed.

**Moved by** Councilmember Scott Overton, **seconded by** Councilmember Jeff Oravits to read Resolution No. 2015-19 by title only.

**Vote:** 7 - 0 - Unanimously

*A RESOLUTION OF THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA ADOPTING THE TENTATIVE ESTIMATES OF THE AMOUNTS REQUIRED FOR THE PUBLIC EXPENSE FOR THE CITY OF FLAGSTAFF FOR THE FISCAL YEAR 2015-2016; ADOPTING A TENTATIVE BUDGET; SETTING FORTH THE RECEIPTS AND EXPENDITURES; THE AMOUNT PROPOSED TO BE RAISED BY DIRECT PROPERTY TAXATION; GIVING NOTICE OF THE TIME FOR HEARING TAXPAYERS, FOR ADOPTING OF BUDGET AND FOR FIXING THE TAX LEVIES*

**Moved by** Councilmember Scott Overton, **seconded by** Councilmember Jeff Oravits to adopt Resolution No. 2015-19.

**Vote:** 7 - 0 - Unanimously

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.*

A. **Possible Future Agenda Item:** Request by Mayor Nabours re Status on Efforts to Address Aggressive Solicitation

Mayor Nabours said that he had requested this item to have the Police Department, or perhaps Legal, tell the Council and the public where they are in regard to panhandling and aggressive solicitation, along with the Better Bucks program.

Councilmembers agreed and also asked that they address: 1) if there are altercations between one person and another trying to stand in the same location; 2) if the Police Department is getting trespassing complaints from businesses and any action being taken; 3) statistics representing the population and relation to veterans; 4) services provided with regard to mental health and homelessness; and 5) information on what happened with the prior law, the lawsuit, and the new law, providing some historical context.

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

Councilmember Evans reported that the City now has a low-wattage radio station, Radio Sunside KSZN, and she invited everyone to tune in and listen to a local community radio station that covers the entire Flagstaff area.

Councilmember Oravits asked for a possible future agenda item, for some time in the fall, on a status report with regard to the Low Impact Development.

19. **ADJOURNMENT**

The Regular Meeting of the Flagstaff City Council held June 2, 2015, adjourned at 9:14 p.m.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

CERTIFICATION

STATE OF ARIZONA            )  
  )  ss.  
Coconino County            )

I, ELIZABETH A. BURKE, do hereby certify that I am the City Clerk of the City of Flagstaff, County of Coconino, State of Arizona, and that the above Minutes are a true and correct summary of the Meeting of the Council of the City of Flagstaff held on June 2, 2015. I further certify that the Meeting was duly called and held and that a quorum was present.

DATED this 16th day of June, 2015.

\_\_\_\_\_  
CITY CLERK

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Stacy Saltzburg, Deputy City Clerk  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



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**TITLE:**

**Consideration and Action on Liquor License Application:** Lauren Merrett, "Continental Country Club", 2380 N. Oakmont Blvd., Series 06 (bar- all spirituous liquor), Person Transfer.

**RECOMMENDED ACTION:**

Hold the Public Hearing; absent any valid concerns received from the public hearing, staff recommends the Council forward a recommendation for approval to the State.

**Executive Summary:**

The liquor license process begins at the State level and applications are then forwarded to the respective municipality for posting of the property and holding a public hearing, after which the Council recommendation is forwarded back to the State. Series 06 (bar- all spirituous liquor) licenses are obtained through the person and/or location transfer of an existing license from another business. The transfer is from John Gates for Jakes on the Green (the restaurant previously at this location) to Lauren Merrett for The Oakmont.

The property has been posted as required, and the Police, Community Development, and Sales Tax divisions have reviewed the application with no concerns noted.

**Financial Impact:**

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

**Connection to Council Goal and/or Regional Plan:**

Effective governance - regulatory action.

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

Not applicable.

**Options and Alternatives:**

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

**Background/History:**

An application for a person transfer Series 06 liquor license was received from Lauren Merrett for Continental Country Club at 2380 N. Oakmont Blvd. The transfer is from John Gates for Jakes on the Green (the restaurant previously at this location) to Lauren Merrett for The Oakmont.

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

A background investigation performed by Tom Boughner, Code Compliance Manager, resulted in no active code violations being reported.

Sales tax and licensing information is currently being reviewed by Ranbir Cheema, Tax, Licensing & Revenue Manager, who stated that the business is in compliance with the tax and licensing requirements of the City.

**Key Considerations:**

Because the application is for a person transfer, consideration may only be given to the applicant's personal qualifications.

A Series 06 (bar - all spirituous liquor) allows a bar retailer to sell and serve spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

The deadline for issuing a recommendation on this application is June 19, 2015.

**Community Benefits and Considerations:**

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

**Community Involvement:**

The application was properly posted on May 26, 2015. No written protests have been received to date.

**Expanded Options and Alternatives:**

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

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**Attachments:**     [Continental - Letter to Applicant](#)  
                          [Hearing Procedures](#)  
                          [Series 06 Description](#)  
                          [Continental - PD Memo](#)  
                          [Continental - Code Memo](#)  
                          [Continental - Tax Memo](#)

OFFICE OF THE CITY CLERK

May 21, 2015

Continental Country Club  
Attn: Lauren Merrett  
2380 N. Oakmont Blvd  
Flagstaff, AZ 86004

Dear Ms. Merrett:

Your application for a Series 06 person transfer liquor license for Continental Country Club at 2380 N. Oakmont Blvd., was posted on May 26, 2015. The City Council will consider the application at a public hearing during their regularly scheduled City Council Meeting on **Tuesday, June 16, 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 June 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 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. The presiding officer will then close the public hearing.
8. The Council will then, by motion, vote to forward the application to the State with a recommendation of approval, disapproval, or shall vote to forward with no recommendation.

## **R19-1-702. Determining Whether to Grant a License for a Certain Location**

- A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:
1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
  2. Number and types of licenses within one mile of the proposed premises;
  3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
  4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
  5. Residential and commercial population density within one mile of the proposed premises;
  6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
  7. Effect on vehicular traffic within one mile of the proposed premises;
  8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
  9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
  10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
  11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
  12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.
- B. This Section is authorized by A.R.S. § 4-201(I).

## License Types: Series 06 Bar (all spirituous liquor)

Transferable (From person to person and/or location to location within the same county only)

On & off-sale retail privileges

Note: Terms in **BOLD CAPITALS** are defined in the [glossary](#).

### PURPOSE:

Allows a bar retailer to sell and serve spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

### ADDITIONAL RIGHTS AND RESPONSIBILITIES:

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

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

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

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

A log must be kept by the licensee of all persons employed at the premises including each employee's name, date and place of birth, address and responsibilities.

Off-sale ("To Go") package sales of spirituous liquor can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the ones provided for the bar.

A hotel or motel with a Series 06 license may sell spirituous liquor in sealed containers in individual portions to its registered guests at any time by means of a minibar located in the guest rooms of registered guests. The registered guest must be at least twenty-one (21) years of age. Access to the minibar is by a key or magnetic card device and not furnished to a guest between the hours of 2:00 a.m. and 6:00 a.m. Monday through Saturday and 2:00 a.m. and 10:00 a.m. on Sundays.

Bar, beer and wine bar, and restaurant licensees must pay an annual **SURCHARGE** of \$20.00. The money collected from these licensees will be used by the Department for an auditor to review compliance by restaurants with the restaurant licensing provisions of ARS 4-205.02.

## MEMORANDUM

Memo # 15-036-01

**TO:** Chief Kevin Treadway

**FROM:** Sgt. Matt Wright

**DATE:** April 29, 2015

**RE:** LIQUOR LICENSE APPLICATION – Person to Person transfer – Series 6-  
for Continental Country Club

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On April 29, 2015, I initiated an investigation into an application for a series 6 (bar) liquor license filed by Lauren Merrett (Agent), Ryan Field, Jarred Field, Timothy Pacatte, and Brian Terpay (Controlling Persons). Lauren Merrett is the listed Agent on the license for administrative purposes only and will not be active in the day to day operations. The Continental Country Club have leased space for the owners of Oakmont F&B LLC to operate a bar and restaurant. The owners of Oakmont F&B LLC are Ryan Field, Jarred Field, Timothy Pacatte, and Brian Terpay. The restaurant is located at 2380 N. Oakmont inside the Continental Country Club on the east side of Flagstaff. This is an application for a series 6 person to person bar license #06030010 which is currently operating with an interim permit.

I conducted a query through local systems and public access on Lauren Merrett (Agent), Ryan Field, Jarred Field, Timothy Pacatte, and Brian Terpay and nothing negative was found on Jarred Field or Timothy Pacatte. Ryan Field was found to have been arrested for DUI in 2005 which was ultimately dismissed. Brian Terpay stated he was arrested in 2005 for a DUI which he plead guilty to and the charge was reduced to reckless driving. I spoke with Lauren Merrett who stated Ryan Field would be assisting in the day to day operation of the restaurant. Ryan has completed the mandatory liquor law training course and provided proof. The Oakmont has the lease from the restaurant that was previously in the location known as Jakes on the Green.

No liquor law violations could be located for The Oakmont. I did find that part owner Ryan Field is also part owner in several restaurants in Arizona and Colorado. I found Ryan has ownership of six other restaurants in Arizona, two in Colorado, and one in Kansas. Ryan listed nine liquor violations of which the businesses he was part owner in were either warned or fined. The most recent violation was dated May 2013. Ryan Field, Jarred Field, Timothy Pacatte, and Brian Terpay are all part owners of Taverna Greek Grill located in Flagstaff. I found Taverna received two liquor law violations for not having a manager's agreement on file and another for removal of spirituous liquor from license premise, both fines were paid on January 2014. No other liquor violations could be located on the other applicants.

As a result of this investigation, a recommendation to Council would be for approval.



## Planning and Development Services Memorandum

**May 1, 2015**

**TO:** Stacy Saltzburg, Deputy City Clerk

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

**FROM:** Tom Boughner, Code Compliance Mgr.

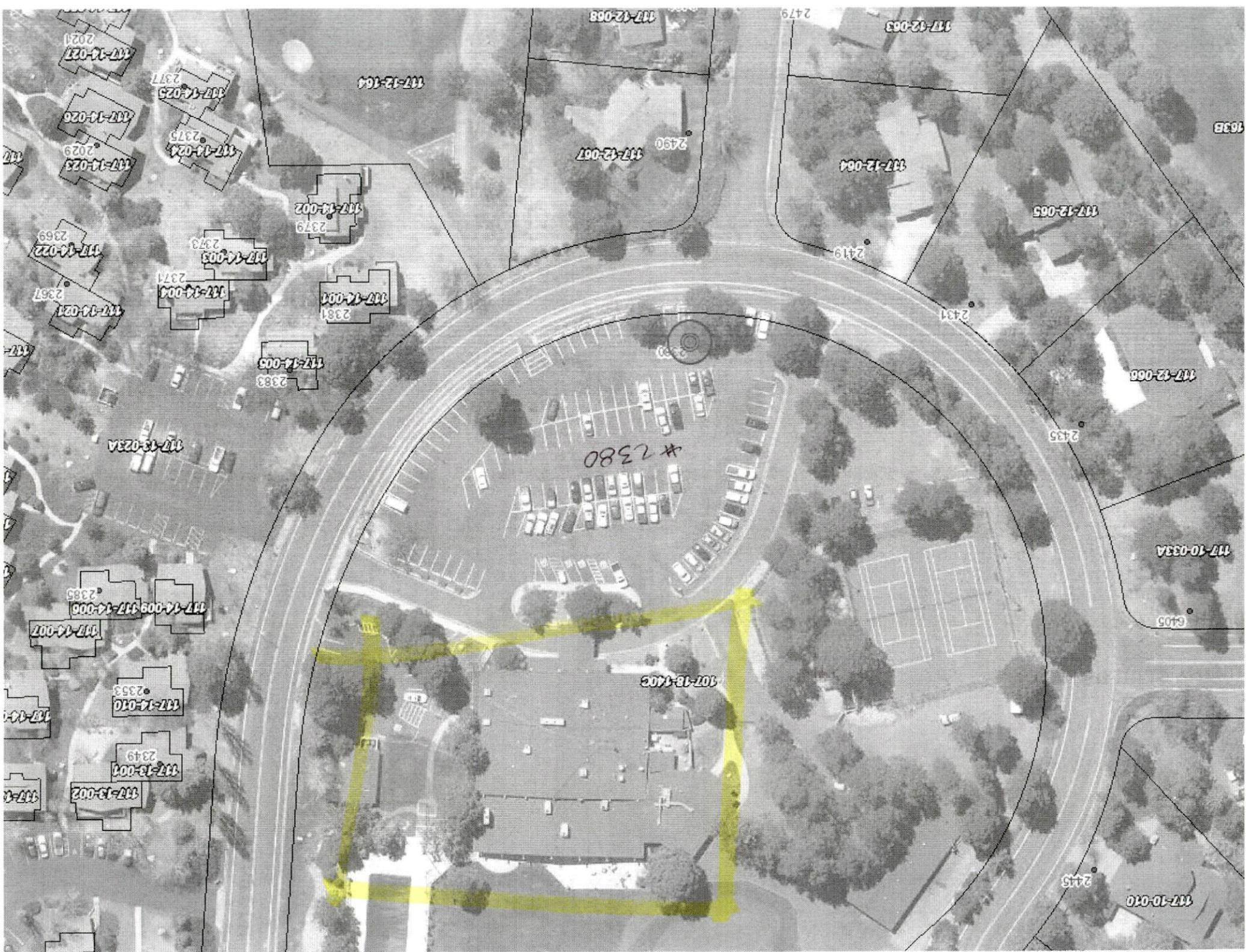
**RE:** Application for Liquor License #6030010  
2380 North Oakmont Blvd. Flagstaff, Arizona 86004  
Assessor's Parcel Number 107-18-140C  
Lauren Merrett on behalf of Continental Country Club

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This application is a request for a new, Series 6, Bar Liquor License, by Lauren Merrett on behalf of Continental Country Club. This bar is located within the High Density Residential district as part of a Golf Course facility, attached to the restaurant. It is allowed as pre-existing non-conforming.

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

This liquor license is recommended for approval.





# Memo

To: Stacy Saltzberg, Deputy City Clerk

From: Ranbir Cheema - Tax, Licensing & Revenue Manager

Date: May 07, 2015

Re: Series 06 Liquor License – Continental Country Club

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I have reviewed our records for Oakmont F&B LLC, Continental Country Club Inc. and Valterza Inc. and have no objection to approval of this liquor license.

/liquor licenses/Oakmont F&B.doc

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Shannon Anderson, Human Resources Manager  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



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**TITLE:**

**Consideration of Appointment:** City Attorney

**RECOMMENDED ACTION:**

Reappoint Michelle D'Andrea as the City Attorney for the City of Flagstaff

**Executive Summary:**

The current Employment Agreement expires on June 17, 2015, thus it is necessary to appoint a City Attorney. Michelle D'Andrea has served as the City Attorney for the past year and the City Council may reappoint Michelle D'Andrea as the City Attorney for another one year term.

**Financial Impact:**

The salary and benefits for this position are currently budgeted.

**Connection to Council Goal and/or Regional Plan:**

The City Attorney assists both City Council and City staff members in the accomplishment of the City Council goals and objectives.

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

No.

**Options and Alternatives:**

The City Council may consider other terms to be included and execute an updated agreement.

**Community Involvement:**

Inform

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**Attachments:** City Attorney Agreement

## EMPLOYMENT AGREEMENT

This Agreement for Services is made and entered into this 17th day of June 2015, by and between the City of Flagstaff, an Arizona municipal corporation in the City of Flagstaff, County of Coconino, State of Arizona (hereinafter called "The City") and Michelle D'Andrea (herein called "Employee.")

### RECITALS:

WHEREAS, in order to secure the services of the Employee, the City desires to enter into an agreement embodying the terms of such employment (the "Agreement"); and

WHEREAS, the Employee desires to accept such employment and enter into such Agreement;

NOW, THEREFORE, in consideration of the premises, the agreements and mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Employee hereby agree as follows:

1. Agreement to Employ. Upon the terms and subject to the conditions of this Agreement, the City hereby employs the Employee, and the Employee hereby accepts employment by the City.

2. Term of Employment. Position and Responsibilities.

(a) Term of Employment. The City shall employ the Employee for an initial term of one year from June 17, 2015 and ending on June 30, 2016. This Agreement shall be automatically renewed on June 30<sup>th</sup> for successive one-year terms unless the Employer provides notice in writing to the Employee that the Agreement shall not be renewed at least two weeks prior to the expiration date. In the event the agreement is not renewed, all compensation, benefits and requirements of the Agreement shall remain in effect until the expiration of the term of the Agreement unless the Employee voluntarily resigns. The period during which the Employee is employed pursuant to this Agreement shall be referred to as the "Employment Period."

(b) Position and Responsibilities. During the Employment Period, the Employee will serve as City Attorney of the City of Flagstaff. Employee shall perform the functions and duties set forth in Article IV, Section 4 of the Charter of the City of Flagstaff (Exhibit A), and shall perform consistent with federal law, state law and the City Code of Flagstaff. Employee shall perform other legally permissible and proper duties and functions as the City Council shall from time to time assign. The Employee will devote substantially all of her skill, knowledge and working time to the conscientious performance of such duties except for reasonable vacation time, absence for sickness, and authorized leaves of absence. To the extent that it does not significantly interfere with the performance of the Employee's duties hereunder, it shall not be a violation of this Agreement for the Employee to (i) serve on civic or charitable boards or committees, (ii) deliver lectures or fulfill speaking engagements at educational institutions, and (iii) provide pro-bono legal services to the Flagstaff community if

such services are covered by an outside provider of professional liability insurance. Employee shall not spend more than ten (10) hours per week in teaching, counseling or other non-Employer connected business without the prior approval of City Council. The Employee represents that she is entering into this Agreement voluntarily and that, to the best of her knowledge, her employment hereunder and compliance by her with the terms and conditions of this Agreement will not conflict with or result in the breach of any agreement to which she is a party or by which she may be bound.

3. Base Salary. As compensation for the services to be performed during the Employment Period by the Employee hereunder, the City will pay the Employee an annual base salary of not less than One Hundred Fifty-six Thousand Two Hundred Forty and 24/100 dollars (\$156,240.24). The City may review Employee's base salary at any time, and may, in its discretion, change such base salary as City deems appropriate, provided, however, that Employee's base salary under this agreement shall not be less than One Hundred Fifty-six Thousand Two Hundred Forty and 24/100 dollars (\$156,240.24). The Employee will also receive increases in pay as provided to other management employees.

4. Employee Benefits. During the Employment Period, Employee and the Employee's dependents are eligible and may participate in Employee benefit programs in accordance with the programs of the City available to employees. Such benefits may include (without limitation) medical, dental, vision, employee assistance programs, accidental death and dismemberment, individual and group life insurance, and other such benefits (sometimes referred to hereinafter as "welfare benefits"). The City may amend its welfare benefit program at any time without limitation in accordance with applicable State and Federal law. Employee shall also be entitled to participate in the Arizona State Retirement System.

5. Perquisites and Expenses.

(a) General. During the Employment Period, the Employee shall be entitled to participate in any special benefit or perquisite program generally available from time to time to employees of the City on the terms and conditions then prevailing under such programs.

(b) Automobile Expense. During the Employment Period, Employee shall receive an automobile allowance in the amount of Three Hundred Fifty and no/100 dollars (\$350.00) per month. Employee shall have the right to use a rental vehicle or her own vehicle in accordance with the City of Flagstaff Travel Policy.

(c) Business Travel, Lodging, etc. The City, subject to budget constraints, shall reimburse the Employee for reasonable travel, lodging and meal expenses incurred by her in condition with her performance of services hereunder or professional development, upon submission of evidence, satisfactory to the Employer, of the incurrence and purpose of each such expense.

(d) Professional Dues. The City agrees, subject to budgeting constraints, to budget for and to pay the professional licensing fees, dues and subscriptions of Employee.

(e) Vacation. Employee shall accrue twenty-one (21) days per year of vacation reflecting ten to fourteen (10-14) years of public service.

(f) Sick Leave. Employee shall be awarded twelve (12) days per year of sick leave and shall have six (6) days credited and available for immediate use.

(g) Deferred Compensation for Retirement. In addition to the Employer's payment into the Arizona State Retirement System, Employer agrees to pay \$5,000 annually into the Employee's chosen 457 Deferred Compensation Plan. Such payment will be paid to the Employee as compensation for purposes of determining Employee's income under the Arizona State Retirement System. Such payment will be paid each pay period on a pro-rated basis.

6. Termination of Employment.

(a) Termination for Cause. The City shall be entitled at any time to terminate Employee's employment with City for Cause. For purposes of this Agreement, the City shall have "Cause" to terminate the Employee's employment as authorized by Article IV of the City Charter. Upon the Employee's Date of Termination for Cause, the Employment Period will immediately terminate and all obligations of the City and the Employee under this Agreement will immediately cease. Upon Termination for Cause, the City shall pay to Employee the following amounts:

(i) Any accrued, unpaid portion of Base Salary through the Date of Termination shall be paid within seven (7) days after the Employee's Date of Termination or the next payday, whichever is sooner; and

(ii) Any leave or benefits accrued at the Date of Termination pursuant to the applicable policies in the Employee Handbook of Regulations in effect at the time of termination.

(b) Termination Due to Death or Disability. The City may terminate this Agreement immediately upon Employee's death or disability. "Disability," for purposes of this Agreement, means a condition that results in benefits to the Employee under any long-term disability arrangement of the City or an Affiliate, or the failure of the Employee to render and perform the services required of her under this Agreement, for a total of one hundred and eighty (180) days or more during any consecutive twelve (12) month period, because of any physical or mental incapacity. Upon the Employee's Date of Termination due to her death or disability, the Employment Period will immediately terminate and all obligations of the City and the Employee under this Agreement will immediately cease. Upon Termination due to Death or Disability, the City shall pay the Employee the following:

(i) Any accrued, unpaid portion of Base Salary through the Date of Termination. If termination is due to death, the amount shall be paid on the next applicable pay period after the Employee's Date of Termination. If termination is due to disability, the amount shall be paid within seven (7) days after the Employee's Date of Termination or the next payday, whichever is sooner; and

(ii) If termination is due to disability, an amount equal to six (6) months of Base Salary shall be paid within seven (7) days after the Employee's Date of Termination or the next payday, whichever is sooner; and

(iii) Any leave or benefits accrued at the Date of Termination pursuant to the applicable policies in the Employee Handbook of Regulations in effect at the time of termination.

(c) Termination by the City Without Cause. The City may terminate the Agreement without cause by providing Employee with forty-five (45) days written notice of its intent to terminate the Agreement. In the event Employee resigns following a request, whether formal or informal, by at least four (4) members of the City Council that she resign, Employee may at her option deem herself to be “Terminated without Cause” for purposes of this Agreement. Upon termination of Employee’s employment without Cause, the Employment Period will immediately terminate and all obligations of the City and the Employee under this Agreement will immediately cease. The City shall pay the Employee, and the Employee shall be entitled to receive, the following:

(i) Any accrued, unpaid portion of Base Salary through the Date of Termination shall be paid within seven (7) days after the Employee’s Date of Termination or the next payday, whichever is sooner; and

(ii) An amount equal to six (6) months of Base Salary shall be paid within seven (7) days after the Employee’s Date of Termination or the next payday, whichever is sooner; and

(iii) Any leave or benefits accrued at the Date of Termination pursuant to the applicable policies in the Employee Handbook of Regulations in effect at the time of termination; and

(iv) Insurance coverage for a period of six (6) months following the Employee’s Date of Termination.

(d) Voluntary Termination by the Employee. Employee may terminate this Agreement by providing forty-five (45) days written notice of her intent to terminate pursuant to this section. Upon voluntary termination by the Employee, the Employment Period will immediately terminate, and all obligations of the City under this Agreement will immediately cease. The City shall pay the Employee, upon the Employee's voluntary termination, the following:

(i) Any accrued, unpaid portion of Base Salary through the Date of Termination shall be paid on the next applicable after the Employee’s Date of Termination; and

(ii) Any leave or benefits accrued at the Date of Termination pursuant to the applicable policies in the Employee Handbook of Regulations in effect at the time of termination.

(e) Notice of Termination. Any termination of the Employee’s employment (other than by reason of death) shall be communicated by written Notice of Termination from one party hereto to the other party hereto. For purposes of this Agreement, a “Notice of Termination” shall mean a notice which shall indicate the specific termination provision of this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances

claimed to provide a basis for termination of the Employee's employment under the provision so indicated.

(f) "Date of Termination" shall mean (i) if the Employee's employment is terminated by her death, the date of her death, (ii) if the Employee's employment is terminated by the Employer for Cause, the date on which Cause is determined, (iii) if the Employee's employment is terminated by the Employer Without Cause or voluntarily by the Employee, forty-five (45) days after the date on which Notice of Termination is given, and, (iv) if the Employee's employment is terminated by her disability, the date of the Notice of Termination.

7. Performance Evaluation. The City Council shall review and evaluate Employee's performance at least annually. The City shall provide adequate opportunity for Employee to discuss her evaluation with the City Council. The City Council shall conclude Employee's review and evaluation no later than June 30th of each year. Employee's review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and Employee. The City Council and Employee shall define goals and performance objectives annually, which they determine necessary for the proper operation of the City of Flagstaff and in attainment of the City Council's written policy objectives.

8. Entire Agreement. Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and all promises, representations, understandings, arrangements and prior agreements relating to such subject matter (including those made to or with the Employee by any other person or entity) are merged herein and superseded hereby.

9. Indemnification and Bonding. The City shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the lawful performance of Employee's duties as City Attorney. The City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

10. Miscellaneous.

(a) Governing Law. This Agreement is governed by and is to be construed, administered, and enforced in accordance with the laws of the State of Arizona, without regard to Arizona conflicts of law principles, except in so far as federal laws and regulations may be applicable. If under the governing law, any portion of this Agreement is at any time deemed to be in conflict with any applicable statute, rule, regulation, ordinance, or other principle of law, such portion shall be deemed to be modified or altered to the extent necessary to conform thereto or, if that is not possible, to be omitted from this Agreement. The invalidity of any such portion shall not affect the force, effect, and validity of the remaining portion hereof.

(b) Withholding. All payments to be made to the Employee under this Agreement will be subject to required withholding of taxes and other required deductions.

(c) Amendments. No provisions of this Agreement may be modified, waived or discharged unless such modification, waiver or discharge is approved in writing by the City and the Employee. No waiver by any party hereto at any time of any breach by any other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by

such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No waiver of any provision of this Agreement shall be implied from any course of dealing between or among the parties hereto or from any failure by any party hereto to assert its rights hereunder on any occasion or series of occasions.

(d) Severability. In the event that any one or more of the provisions of this Agreement shall be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

(e) Notices. Any notice or other communication required or permitted to be delivered under this Agreement shall be (1) in writing, (2) delivered personally, by courier service or by certified or registered mail, first-class postage prepaid and return receipt requested, (3) deemed to have been received on the date of delivery or on the third business day after the mailing thereof, and (4) addressed as follows (or to such other address as the party entitled to notice shall hereafter designate:

(A) if to the City, to it at:

Human Resources Director

211 West Aspen Avenue

Flagstaff, Arizona 86001

(B) if to the Employee, to her at

211 West Aspen Avenue

Flagstaff, Arizona 86001

(f) Reimbursement of Expenses in Enforcing Rights. If any action at law or in equity, or any arbitration proceeding is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to other relief so provided.

(g) No General Waivers. The failure of any party at any time to require performance by any other party of any provision hereof or to resort to any remedy provided herein or at law or in equity shall in no way affect the right of such party to require such performance or to resort to such remedy at any time thereafter, nor shall the waiver by any party or a breach of any of the provisions hereof be deemed to be a waiver of any subsequent breach of such provisions. No such waiver shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced.

(h) Authority. The City represents and warrants that this Agreement has been authorized by all necessary action of the City and is a valid and binding agreement of the City enforceable against them in accordance with its terms.

(i) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(j) Headings. The section and other headings contained in this Agreement are for the convenience of the parties only and are not intended to be a part hereof or to affect the meaning or interpretation hereof.

IN WITNESS WHEREOF, City has duly executed this Agreement by their authorized representatives and the Employee has hereunto set her hand, in each case effective as of the date first above written.

**MICHELLE D'ANDREA**

**CITY OF FLAGSTAFF**

\_\_\_\_\_

By \_\_\_\_\_

Jerry Nabours, Mayor

ATTEST:

By \_\_\_\_\_

City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_

Gordon Lewis, Attorney

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Rick Compau, Purchasing Director  
**Co-Submitter:** Michelle D'Andrea, City Attorney  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



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**TITLE:**

**Consideration and Approval of Multiple Contracts:** On-Call Legal Services Contracts.

**RECOMMENDED ACTION:**

A) Award contracts, not to exceed \$250,000 annually per firm, for On-Call Legal Services to the following fourteen (14) firms:

- 1.) Jones, Skelton & Hochuli
- 2.) Gust Rosenfeld
- 3.) Struck Wieneke
- 4.) Ayers & Brown
- 5.) Ryley, Carlock & Applewhite
- 6.) Udall Law Firm
- 7.) Dickinson Wright
- 8.) Curtis, Goodwin & Sullivan
- 9.) Lee Story
- 10.) Coppersmith Brockelman
- 11.) Mangum, Wall, Stoops & Warden
- 12.) Ellen Van Riper
- 13.) Holm, Wright, Hyde & Hays
- 14.) Hufford, Horstman & Mongini

B) Authorize the City Manager to execute the necessary documents

**Executive Summary:**

The City, on occasion, has the need to utilize an outside law firm based on the specific areas of expertise of the selected firms and the number of anticipated situations where outside legal services will be needed. Award of these "On-Call Legal Services" contracts will allow for more timely legal services to be provided.

**Financial Impact:**

Awarding multiple Contracts based on specific areas of qualifications and experience on an as needed basis will result in increased efficiency. Award of these on-call legal services contracts does not obligate the City to utilize a particular firm's services or to assign a minimum number of cases to any of these firms.

**Connection to Council Goal and/or Regional Plan:**

All of the 11 Council goals may need outside legal counsel in the future dependent on the particular topic.

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

Yes: October 7, 2008 Council approved multiple on-call legal services contracts for an initial five (5) year contract term, with two (2) additional annual extensions. The award of multiple on-call Contracts, based on qualifications and experience in various areas of expertise, proved to be very beneficial to the City in situations where outsourcing was necessary to utilize an outside firm's expertise with regard to a particular subject matter.

**Options and Alternatives:**

- 1.) Approve the multiple Contract awards as recommended.
- 2.) Approve a smaller number of Contracts.
- 3.) Approve with a lower spending cap limit of \$150,000 maximum annually.
- 3.) Reject the on-call legal services contract format and advertise an RFP for each individual legal services Contract as needed.

**Background/History:**

The City Attorney's office handles and manages a significant number of projects, which span the spectrum of size and complexity. The selection for professional services such as this, is typically a qualifications based process that can consume significant staff time and take several months to complete. To improve efficiencies, the City Attorney's office will utilize these on-call legal services contracts for expedited selection. There is an ongoing need for legal services related to specific areas of expertise.

The City's Purchasing Section conducted a Request for Proposals (RFP) process and a total of twenty-two (22) proposals were received. An evaluation committee comprised of seven (7) members evaluated the proposal responses according to the following evaluation criteria:

- 1.) Experience, qualifications and demonstrated areas of expertise;
- 2.) References and reputation;
- 3.) Conflicts of interest and perceived conflicts of interest;
- 4.) Qualifications of staff attorneys;
- 5.) Past performance in City of Flagstaff matters; and
- 6.) Price/Fee structure

After completing the evaluation process, the evaluation committee determined that it would be in the best interest of the City to award multiple on-call Contracts. The on-call legal services Contract allows for an initial three (3) year term, with the option to extend the Contract for an additional two (2) year period upon mutual agreement from both parties. None of the awarded contracts guarantee any case or that any minimum number of cases will be assigned to that firm. The City selects firms on a case-by-case basis, based upon the needs of the City in a particular legal matter.

**Key Considerations:**

On-call legal services contracts will allow the City to react more quickly to legal issues as they arise and will save considerable time for all parties involved. The legal firms are relieved of many hours of proposal preparation and interview time, along with related expenses. The City saves the cost of multiple legal advertisements and staff time and related soft dollar costs for conducting a formal solicitation process for each separate project where outside legal services are required.

**Expanded Financial Considerations:**

None.

**Community Benefits and Considerations:**

Enhanced protection of the City's interests in various types of legal matters.

**Community Involvement:**

Not applicable

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**Attachments:**    Contract For Legal Services (On-Call)  
                          Evaluation Ranking

**CONTRACT FOR LEGAL SERVICES (On-Call)  
CITY OF FLAGSTAFF**

THIS CONTRACT is made and entered into on this \_\_\_\_\_ day of, \_\_\_\_\_ by and between the City of Flagstaff, a municipal corporation (“City”), and the law firm of (“Counsel”).

**RECITALS**

WHEREAS, City issued RFP # 2015-23 requesting proposals for legal services;

WHEREAS, Counsel submitted a proposal and is willing to provide legal services;

NOW, THEREFORE, it is agreed between the parties as follows:

**1. Scope of Service and Representation.** Counsel agrees to perform all necessary legal services, including investigation, legal research, preparation of pleadings, legal memoranda and briefs, and appearances in court, in representing the City on those specific matters as subsequently confirmed by letter between the City Attorney or designee and Counsel. This confirming letter will identify the specific Matter (“Matter”) and the scope of the representation, who will be the billing attorneys for Counsel on the Matter, and who will be the City’s contacts and Contract Administrator on the Matter, and who will be the primary contact for Counsel, either the Risk Manager in consultation with the City Attorney’s Office, or the City Attorney or designee. The legal services shall be carried out in cooperation with the City Attorney’s Office, who shall be apprised of the status of the Matter on a regular basis and at least monthly. Major decisions regarding the strategy or resolution of the legal issues or litigation shall be made in coordination and with the prior approval of the City Attorney’s Office. Copies of all correspondence and pleadings related to the Matter shall be provided to the City Attorney’s Office and, if designated in the confirming letter, the Risk Manager. Decisions related to the management of claims may be made at the discretion of the Risk Manager in coordination with the City Attorney’s Office. All offers of compromise made by opposing counsel shall be promptly transmitted to City through its City Attorney’s Office, together with Counsel’s recommendations. City will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter-offer. No appeals will be taken from judgments in any litigation without prior approval of City, acting through its City Attorney’s Office.

The attorney(s) who will have primary responsibility for overseeing all Matters is/are. However, Counsel may utilize other attorneys, paralegals, or other employees when appropriate upon approval of the City Attorney in the confirming letter for a Matter and pursuant to the generalized fee schedule in Section 3 below. Staffing decisions will be made with the objective of providing the best possible professional services for the City in an efficient and cost-effective manner.

2. **Advice and Status Reporting.** Counsel shall provide City with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as Counsel considers appropriate. Counsel shall provide copies of all pleadings and other documents prepared by Counsel, including research memoranda prepared by Counsel, unless they have been otherwise provided to the City Attorney's Office.

3. **Compensation.** CITY agrees to pay COUNSEL for services rendered under this Contract, up to a maximum of \$250,000 per year or as further limited in the confirming letter for a MATTER, as follows:

3.1 \$\_\_\_\_\_per hour for Partners and "Of Counsel" attorneys.

3.2 \$\_\_\_\_\_per hour for Associate Attorneys.

3.3 \$\_\_\_\_\_per hour for Paralegals.

3.4 \$0 per hour for "process servers" or "runners". (However costs of service are reimbursable).

3.5 Travel time shall be billed at no more than 50% of the hourly rates set forth above.

4. **Term.** The initial term of this Contract shall be for a three (3) year period, and may be renewed by mutual agreement of the parties for an additional two year term.

5. **Price Adjustment.** Counsel may offer to reduce its prices at any time to CITY. Counsel may request a price increase for the following fiscal year (effective July 1), provided that such request is received prior to March 1 annually. City is unable to consider requests for price increases which are untimely.

5.1 Any increased rate shall be based upon mutual consent of Counsel and the City and processed as an amendment to this Contract and as an amendment to the retention letter for a specific Matter; however, the Contract Administrator shall evaluate Counsel's performance, services and records documentation to determine the appropriateness of the increase requested, including the rates Counsel charges to other governmental clients.

5.2 Any increased rate greater than five percent (5%) must be approved by the Flagstaff City Council; an increased rate of less than 5% may be approved by the City Attorney.

6. **Travel.** Approval for travel shall be obtained through the City Attorney's Office or Risk Manager prior to departure. Travel time may be billed to City at no more than 50% of the attorney's hourly rate. "Reasonable expenses" means expenses not exceeding one hundred eighty five dollars (\$185.00) per night for hotel rooms, seventy-five dollars

(\$75.00) per person per day for meals including gratuity, and for the rental charges of the most economical type of rental car available. When possible, Counsel, consultants, experts, and subcontractors shall stay at hotels that charge a government rate. When traveling by airplane, whenever possible, reduced fare tickets shall be purchased. Gasoline shall not be billed to City except when a rental car is used out-of-state.

**7. Reimbursement for Expenses.** All costs and other disbursements for outside services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. All copying charges shall be billed at no more than fifteen cents (\$.15) per page. To the extent practical, large photocopying tasks will be sent out to an outside copy service in an effort to further reduce photocopying costs. City will not reimburse Counsel for outgoing faxes, online legal research services (such as Westlaw, Lexis, or other similar services), or document management platforms (such as Relativity, Summation, CaseCentral, etc.).

**8. Billing Procedures.** Counsel shall follow these billing procedures:

- 8.1 “Itemized billing” is required. Counsel shall bill for actual time spent on a task, and each task shall be itemized (e.g. tel. to opposing counsel re. time extension (1.); tel. to Mr. Smith re. events witnessed (2.); prepare motion to continue (3.); legal research re. statutes of limitation. “Block billing” is not permissible.
- 8.2 Secretarial, word processing or other overtime shall not be billed (e.g., preparation of documents which are computerized or on a form, such as subpoenas, notices of deposition, independent medical examinations, medical authorizations, trial notices, uniform interrogatories, and requests to produce); only the actual time spent by the attorney reviewing, revising or drafting such documents shall be billed.
- 8.3 Whenever possible, attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation to City. Internal conferences are billable only by one of the participants. Work on this matter billed by attorneys not listed in the confirming letter must be approved by the Contract Administrator in advance.
- 8.4 All consultants, experts and subcontractors engaged to provide services to Counsel in the performance of this Contract, and the use and extent of those services, shall be approved by the City in advance. Payment of their expenses will be subject to the same terms as paragraphs 4 and 5 above.
- 8.5 Counsel shall submit monthly billings for services rendered and expenses incurred, which shall be paid by the City.
- 8.6 Each bill shall contain information to enable City to easily identify its ongoing costs related to each specific Matter, including the following:

- 8.6.1 Fees and costs incurred in the preceding month for each specific Matter (the invoiced amount);
  - 8.6.2 Fees and costs incurred since inception for each specific Matter (the accruing expense of the Matter), even if the Matter has been ongoing for a considerable length of time; and
  - 8.6.3 Total amount invoiced during the City's current fiscal year (July 1 to June 30).
- 8.7 Counsel will use its best efforts to inform the City eight weeks prior to Counsel billing the final fees and costs authorized under this contract. City will pay no fees incurred over and above the contract amount or specified in the confirming letter without prior authorization from City.

**9. Maintenance of Records.** City may audit all services performed by Counsel with reasonable notice to Counsel. Counsel shall maintain all books, documents, papers, accounting records, and other evidence pertaining to time billed and to costs incurred on a Matter for a time period consistent with the City's record retention policy, which shall be four years from conclusion of the final payment on a specific Matter. Upon reasonable notice by the City, Counsel shall make such materials available for review at their offices and, if requested, copies thereof shall be furnished or provided to City at City's expense.

**10. Conflict of Interest.** Counsel warrants and covenants that Counsel presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable local, state, or federal law or ethical standard, including the Arizona Rules of Professional Conduct. It shall be Counsel's responsibility to check for the existence of conflicts of interest. In the event that any conflict of interest should nevertheless hereinafter arise, Counsel shall promptly notify City of the existence of such conflict of interest, so that City may determine whether to terminate this Contract. The City Attorney is authorized to grant customary conflicts waivers to Counsel on behalf of the City.

**11. Reporting Requirements.** Within sixty (60) days following the issuance of a confirmation letter for a Matter, or at the time disclosure statements are first filed, whichever is sooner, Counsel shall provide City with an initial written evaluation containing the following:

- 11.1 A summary of the Matter's facts and issues;
- 11.2 An evaluation of the potential exposure to City;
- 11.3 An outline of the course of action Counsel intends to pursue in the matter (e.g., names and/or categories of witnesses to be interviewed or deposed; experts to be retained; motions to be filed; etc.);

- 11.4 An estimate of the cost (budget) to represent City through resolution of the Matter;
- 11.5 A cost/benefit analysis, including recommendations as to early settlement or offers of judgment; and,
- 11.6 The name of the attorney who will be primarily responsible for handling the Matter, the names of others who will assist that person, and their hourly rates consistent with this Contract.

**12. Additional Investigation.** Whenever additional investigation is deemed desirable by Counsel and can be provided by use of non-attorney investigators, Counsel shall notify City of such need, and City may elect, at its option, to conduct such investigation. In this event, City shall be solely responsible for the accuracy of the facts or other information developed in response to such requests.

**13. Termination.** City may terminate this Contract in whole or part with or without cause upon giving ten (10) days written notice. In the event of termination for cause, City shall not be liable to Counsel for any amount, and Counsel shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination. Any notice of cancellation shall specify the particular matter to which it applies, and any matter not particularly specified shall continue to be handled by Counsel and, as to those, this Contract will continue in effect; provided, however, the right is retained by City to terminate services at any time by notifying Counsel in writing.

**14. Relocation of Assigned Attorney.** If an attorney assigned to a Matter leaves the employment of Counsel, Counsel will immediately notify City. City may, in its sole discretion, request transfer of that Matter to a new firm or work with another attorney employed by Counsel.

**15. Notices.** When notice or correspondence is required to be sent to City, it shall be sent to the following:

City Attorney City of Flagstaff 211 West Aspen Avenue Flagstaff, Arizona 86001	and to:	Risk Manager City of Flagstaff 211 West Aspen Avenue Flagstaff, AZ 86001
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Should the above notification information change, City will notify Counsel in writing.

When notice or correspondence is required to be sent to Counsel, it shall be sent to:  
**Michelle D'Andrea, City Attorney, 211 West Aspen Avenue, Flagstaff, Arizona 86001**

**16. Indemnification For Liability and Professional Liability.** To the fullest extent permitted by law Counsel, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any negligent, or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Counsel relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Counsel's and Subcontractor's employees.

16.1 Insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

**17. Insurance Representations and Requirements**

17.1 Counsel agrees to comply with all applicable City Ordinances and state and federal laws and regulations.

17.2 Without limiting any obligations or liabilities of Counsel, Counsel shall purchase and maintain, at its own expense, the minimum insurance required by this Contract with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City. Failure to maintain insurance as specified may result in termination of this Contract at City's option.

17.3 No Representation of Coverage Adequacy: By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Counsel. City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve Counsel from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

17.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under

the terms of subject contract is satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Contract.

- 17.5 Claims Made: In the event any insurance policies required by this Contract are written on a “claims made” basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.
- 17.6 Use of Subcontractors: Counsel shall not use subcontractors to perform work under this Contract, unless specifically authorized by the City.
- 17.7 Evidence of Insurance: Prior to commencing any work or services under this Contract, Counsel shall furnish City with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Counsel’s insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the cited policies expire during the life of this Contract, it shall be Counsel’s responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions.
- 17.8 Required Coverage:
- 17.8.1 Professional Liability: Counsel shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Counsel, or anyone employed by Counsel, or anyone for whose acts, mistakes, errors and omissions Counsel is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a “claims made” basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and Counsel shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.
- 17.8.2 Vehicle Liability: Counsel shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident on Counsel’s owned, hired, and non-owned vehicles assigned to or

used in the performance of the Counsel's work or services under this Contract.

17.8.3 Workers' Compensation Insurance: Counsel shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Counsel's employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

17.9 Additional Insurance Requirements:

17.9.1 City, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies: a) Business Automobile Liability.

17.9.2 Counsel's insurance shall be primary insurance as respects performance of this Contract.

17.9.3 All policies, except Professional Liability insurance, waive rights of recovery (subrogation) against City, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Counsel under this contract.

**18. Choice of Law.** This Contract shall be governed and interpreted according to the laws of the State of Arizona.

**19. Whole Agreement.** This Contract constitutes the entire understanding of the parties, and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

**20. Amendments.** Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract. Should there be a change in the Contract Administrator, however, CITY shall only need to notify Counsel in writing.

**21. Non-Assignment.** Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the City.

**22. Cancellation.** In accordance with A.R.S. § 38-511, the City may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity, or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation

shall be effective when written notice from City is received by all other parties to the contract, unless the notice specifies a later time.

**23. Independent Contractor Status.** The services Counsel provides under the terms of this Contract to CITY are that of an independent contractor, not an employee. CITY shall report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099. Withholding of income tax is not deducted from contractual payments. As a result of this, Counsel may be subject to I.R.S. provisions for payment of estimated income tax. Consult the local I.R.S. office for current information on estimated tax requirements. Failure to comply may subject Counsel to a penalty.

**24. Attorney's Fees in Contract Dispute.** In the event any action at law or in equity is instituted between the parties in connection with this Contract, the prevailing party in the action shall be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

**25. Severability.** Should any part of this Contract be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Contract, which shall continue in full force and effect, provided that the remainder of this Contract, absent the excised portion, can be reasonably interpreted to give effect to the intentions of the parties.

**26. Compliance with Federal Immigration Laws and Regulations.** Counsel warrants that it complies with all Federal Immigration laws and regulations that relate to their employees and complies with A.R.S. § 23-214.A. COUNSEL acknowledges that pursuant to A.R.S. § 41-4401, a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the City retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

**27. Licenses.** Counsel shall maintain current and in good standing all Federal, State, and local licenses and permits required for performance of services.

**28. Nonexclusive.** City may enter into other contracts for legal services with any firm of its choosing. This Contract is non-exclusive.

**City of Flagstaff**

**Law Firm**

\_\_\_\_\_  
Gerald W. Nabours  
Mayor

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:  
  
\_\_\_\_\_

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City Clerk

Approved as to form:

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City Attorney

	Jones, Skelton & Hochuli	Gust Rosenfeld	Struck Wieneke	Ayers & Brown	Ryley Carlock & Applewhite	Udall Law Firm	Dickinson Wright	Curtis, Goodwin & Sullivan	Lee Story	Coppersmith Brockelman	Mangum, Wall, Stroops & Ward	Ellen Van Riper	Holm, Wright, Hyde & Hays	Hufford, Horstman & Mongini	Law Office of Diane Miller	Kutak Rock	Ballard Spahr	Hinshaw & Culbertson	Fisher & Phillips	Haralson, Miller Pitt, Feldman	Poli & Ball, PLC	Osborn Maledon	
	<b>RANKING OF EACH LAW FIRM ACCORDING TO SCORING RESULTS:</b>																						
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	
	Total Aggregate Score:	3245	3110	3075	3070	3035	2985	2970	2920	2885	2850	2715	2700	2690	2648	2595	2495	2470	2455	2405	2340	2240	2180

 Represents the recommended law firms to be awarded a contract

 Represents those law firms not being recommended for award of a contract

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Elaine Averitt, Planning Development Manager  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



---

**TITLE:**

**Consideration and Approval of Final Plat (PFPL2015-0002):** A request by Evergreen-Trax, LLC for The Trax - Phase 1, a subdivision of 8 lots on approximately 18.46 acres located at the southwest corner of Route 66 and Fourth Street within the Highway Commercial (HC) zone (conditional). ***(Subdivision of 18.46 acres into 8 lots located at the southwest corner of Route 66 and Fourth St.)***

**RECOMMENDED ACTION:**

Staff recommends the City Council approve the final plat with the conditions outlined in the staff summary and its attachments, and authorize the Mayor to sign both the final plat and City/Subdivider Agreement when notified by staff that all conditions have been met and documents are ready for signature and recordation.

**Executive Summary:**

Since the relocation of the railroad tracks in 2006 to enable construction of the Fourth Street bridge over the tracks, the City has anticipated that the two parcels abutting to Route 66 should be redeveloped as a commercial use. Evergreen-Trax, LLC processed a Regional Plan amendment and Zoning Map amendment in early 2014, and purchased the subject property from the City of Flagstaff in October 2014. Evergreen-Trax, LLC intends to subdivide the two parcels into 18 commercial lots to be constructed in three phases. This action approves the Final Plat for Unit 1 only, the first phase.

**Financial Impact:**

No financial liabilities are anticipated by the approval of this final plat. All of the City's financial obligations were addressed in the Development Agreement or the Purchase and Sale Agreement.

**Connection to Council Goal and/or Regional Plan:**

**COUNCIL GOALS:**

- 3) Provide sustainable and equitable public facilities, services, and infrastructure systems in an efficient and effective manner to serve all population areas and demographics
- 9) Foster relationships and maintain economic development commitment to partners

**REGIONAL PLAN:**

- Goal ED.9. Promote redevelopment and infill as a well-established means to accomplish a variety of community economic, planning, and environmental goals.
- Goal T.1 Improve mobility and access throughout the region.

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

June 17, 2014: City Council approved a Regional Plan amendment (Resolution No. 2014-26).

July 15, 2014: City Council approved a Development Agreement (Resolution No. 2014-25), a Zoning Map amendment (Ordinance No. 2014-14); and the City of Flagstaff and Evergreen Devco, Inc. entered into the Second Amendment of the Purchase and Sale Agreement.

August 25, 2014: City Council approved the Third Amendment and the Fourth Amendment of Purchase and Sale Agreement between the City of Flagstaff and Evergreen-TRAX, LLC.

March 3, 2015: City Council approved a Preliminary Plat (PPPL2014-0006).

### **Options and Alternatives:**

1) Approve the final plat as recommended by staff subject to the following conditions:

A) Civil construction plans received with ADOT approval to be routed for City signatures; and minor corrections to the plan set including street lighting plans are required.

B) Developer shall provide revised assurances.

2) Approve the final plat subject to no conditions or modified conditions.

3) Deny the final plat subject based on non-compliance with the approved preliminary plat, the Zoning Code, the Subdivision Code, and/or the Engineering Design Standards and Specifications for New Infrastructure.

### **Background/History:**

In May of 2014, the Planning Commission reviewed and approved a Regional Plan amendment, under the 2001 *Regional Land Use and Transportation Plan* to change the land use designation of 33.6 acres of property, located at Route 66 and Fourth Street and Huntington Drive and Fourth Street, from Office/Business Park/Light Industrial and Light/Medium Industrial to Community/Regional Commercial. A concurrent Zoning Map Amendment (rezoning) request to amend 33.6 acres from Light Industrial (LI) and Light Industrial-Open (LI-O) to Highway Commercial (HC) zone was reviewed and approved by the Planning and Zoning Commission. In July 2014, City Council approved requests for the Regional Plan amendment and rezoning. In October 2014, Evergreen purchased the 33.6 acres of property from the City of Flagstaff and immediately sold Area D (the 6.54-acre parcel located at the northwest corner of Huntington Dr. and Fourth St.) to a private developer; thus Area D is not part of the plat. A preliminary plat application consisting of 27.2 gross acres of land and proposing 18 lots was approved by the Inter-Division Staff (IDS) with conditions on December 19, 2014. On January 28, 2015, the Planning and Zoning Commission approved the preliminary plat with conditions. IDS approved the final plat with conditions on May 29, 2015.

### **Community Benefits and Considerations:**

- The proposed infill commercial development anticipates uses that include restaurants, hotels, shopping, convenience stores, and gas stations, which will compliment nearby employment centers and add to the vitality of adjacent neighborhoods and the region.
- The development will include completion of urban services and infrastructure, and high pedestrian, bicycle and transit connectivity.
- A Flagstaff Urban Trail System trail will be constructed along the rear portion of the shopping center adjacent to the railway, compatible with the Flagstaff Urban Trail System plan. The developer will be required to complete the pedestrian sidewalk system along Route 66 and Fourth Street (at new driveway locations), and complete street lighting.

### **Community Involvement:**

**Inform.** The existing zoning of the subject property allows for the proposed subdivision. No public hearings or public outreach are required as part of the subdivision plat review.

---

**Attachments:**    Final Plat Application  
                          City Subdivider Agreement  
                          COREA  
                          Phase 1 Final Plat

Final Plat

MAY 07 2015  
RESUBMITTAL



# City of Flagstaff Community Development Division

211 W. Aspen Ave P: (928) 213-2618  
Flagstaff, AZ 86001 F: (928) 213-2609  
www.flagstaff.az.gov

**SUBD**

Completeness

Date Received APR 07 2015	<b>Application for Subdivision Review</b>		File Number DEV13-040
Property Owner(s) Evergreen-Trax, LLC	Phone 602.808.8600		
Mailing Address 2390 E. Camelback #40	City, State, Zip Phoenix, AZ 85018	Email khayes@cygre.com	
Applicant(s) Same as above	Phone		
Mailing Address	City, State, Zip	Email	
Project Representative Kelly Hayes	Phone		
Mailing Address Same as above	City, State, Zip	Email	
Requested Review:	<input type="checkbox"/> Development Master Plan <input type="checkbox"/> Conceptual Plat <input type="checkbox"/> Preliminary Plat P&Z and Council <input type="checkbox"/> Modified Subdivision <input type="checkbox"/> Preliminary Plat <input checked="" type="checkbox"/> Final Plat- Council		

Project Name: The Trax	Site Address 4th St. & R. 66	Parcel Number 107-13-010
Proposed Use Commercial development	Existing Use Vacant	Subdivision, Tract & Lot Number
Zoning District HC	Regional Plan Category	Flood Zone
		Size of Site (Sq. ft. or Acres) 18,46 ac
Property Information:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Located in an existing Local/National Historic District? (Name: _____) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Existing structures are over 50 years old at the time of application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Subject property is undeveloped land?	
Surrounding Uses	North Comm	South Train
(Res, Com, Ind)	East Comm.	West Comm.

Proposed Use:	Number of Lots	Number of Units	Number of acres per use	Building Square Feet
Comm.	8			

Please complete a "Subdivision Review Application" and provide an initialed "Application and Information Checklist" form along with the required number of plans and information as appropriate for a Development Master Plan, Conceptual, Preliminary or Final Plat. **Incomplete submittals will not be scheduled.**

Property Owner Signature: (required) <i>[Signature]</i>	Date: 3-23-15	Applicant Signature: <i>[Signature]</i>	Date: 3-23-15
--	------------------	--	------------------

For City Use					
Date Filed:	4-7-15	Case Number (s)	PSPR20150016		
P & Z Hearing Date:	N/A for Final Plat		Publication and Posting Date:		
Council Hearing Date:			Publication and Posting Date:		
Fee Receipt Number:	15-0041133	Amount:	\$1,244.00	Date:	4-7-2015
Action by Planning and Zoning Commission:			Action By City Council:		
<input type="checkbox"/> Approved			<input type="checkbox"/> Approved		
<input type="checkbox"/> Denied			<input type="checkbox"/> Denied		
<input type="checkbox"/> Continued			<input type="checkbox"/> Continued		
Staff Assignments	Planning Diane	Engineering Amy	Fire Kent	Public Works/Utilities Jim	Stormwater M. DeCola

CITY / SUBDIVIDER AGREEMENT  
CITY OF FLAGSTAFF, ARIZONA

This Agreement is entered into by and between the CITY OF FLAGSTAFF, a municipal corporation duly created and existing under the laws of the State Arizona, hereinafter referred to as CITY; and Evergreen-Trax, LLC Subdivider, hereinafter referred to as SUBDIVIDER.

WITNESSETH

WHEREAS, Evergreen-Trax, LLC (Subdivider) desires to subdivide property within the City of Flagstaff, Arizona known as The Trax; and

WHEREAS, CITY is agreeable to accepting said subdivision as proposed; providing that the subdivider constructs the subdivision in accordance with City standards and as set forth in the approved preliminary plat, and while fulfilling the obligations set forth below, which the subdivider hereby assumes; and

WHEREAS, building permit(s) is (are) required and will be issued following execution of this agreement;

NOW, THEREFORE, in consideration of the subdivision and the mutual covenants of the parties hereinafter expressed, the parties hereto agree as follows:

1. SUBDIVIDER agrees to construct all improvements in conformance with the CITY'S Subdivision Regulations and the "General Construction, Standards and Specifications" of the CITY, and to employ a responsible supervisor.
2. SUBDIVIDER further agrees to dedicate all streets and rights-of-way to the CITY for public use and to offer all public improvements to the CITY for acceptance into the CITY system.
3. The CITY agrees to accept the Subdivision as platted and to accept ownership of public improvements upon their completion and approval by the CITY.
4. In the event that the CITY should be required to institute any action for the enforcement of this agreement, SUBDIVIDER, shall be required to pay a reasonable attorney's fee in addition to all other costs assessed in any such action.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on their own behalf and by the duly authorized officials and officers on the day and year herein written.

(Signed):

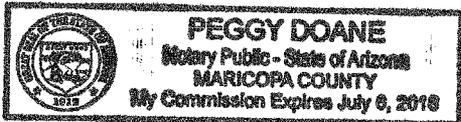
*[Signature]*  
Subdivider/Title Authorized Agent

\_\_\_\_\_  
Subdivider/Title

STATE OF ARIZONA )  
                                  )        SS  
County of Maricopa )  
                                  ) ~~Coconino~~

SUBSCRIBED AND SWORN to before me this 6<sup>th</sup> day of April, 2015  
by Laura Ortiz.

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



*Peggy Doane*  
Notary Public

My Commission expires: July 6, 2018

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ in Flagstaff,  
Coconino County, Arizona.

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

When Recorded, Return to:

Evergreen-Trax, LLC  
2390 East Camelback Road  
Suite 410  
Phoenix, Arizona 85016  
Attn: Laura Ortiz  
Managing Principal

COMMON OPERATION  
AND RECIPROCAL EASEMENT AGREEMENT

(The Trax Phase I: SWC Route 66 & 4<sup>th</sup> Street, Flagstaff, Arizona)

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COMMON OPERATION AND  
RECIPROCAL EASEMENT AGREEMENT

THIS COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT (“Agreement”), dated for identification only as of October 3, 2014, is made by EVERGREEN-TRAX LLC, an Arizona limited liability company (“ETLLC”).

RECITALS

A. Declarant is the Owner and developer of real property in Flagstaff, Coconino County, Arizona, described on *Exhibit A* hereto (the “Development”). Declarant intends to cause the Development to be developed as an integrated commercial development as set forth herein. The current Site Plan for the Development is *Exhibit B* hereto.

B. Some or all of the Development will be conveyed or leased by Declarant. Prior thereto Declarant desires to: (i) subject the Development to the easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and development standards herein set forth; (ii) provide for the use and maintenance of the Development as an integrated commercial development; and (iii) enhance and protect the value and desirability of the Development by encouraging attractive Improvements at appropriate locations, preventing haphazard or inharmonious development, assuring adequate pedestrian and vehicular ingress, egress and circulation through the Development and to and from adjacent public rights-of-way, providing for on-site parking, loading and drainage facilities, assuring attractive landscaping and lighting, and otherwise regulating the development, use and operation of the Development.

*NOW, THEREFORE*, Declarant declares, on behalf of all present and future Owners, that the Development is and from and after the recording hereof will be held, conveyed, encumbered, leased, used, occupied and improved subject to the following easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and standards, which are in furtherance of a plan for the mutual and reciprocal benefit and enjoyment of all of the Development and to enhance and protect its value as a whole:

ARTICLE 1 - DEFINITIONS

When used at any place in this Agreement the capitalized term:

1.1 “Approved Final Plans” has the meaning provided by Section 4.5.

1.2 “Approved Preliminary Plans” has the meaning provided by Section 4.5.

1.3 “Association” has the meaning provided by Section 14.4.

1.4 “Benefited Parcel” has the meaning provided by Section 11.4.

1.5 “Building” means, at any time, a building or other structure intended for occupancy and then constructed or placed and located on a Parcel.

1.6 “Building Envelope” means the area of a Parcel within which one or more Buildings are permitted to be located, as shown on the Site Plan or a Supplement.

1.7 “Circulation Drives” means driveway corridors designated as Circulation Drives on the Site Plan, including asphalt, curb, gutter and similar improvements. Circulation Drives will be paved and used for vehicular ingress and egress. Declarant reserves the right from time to time to designate portions of the Development as Circulation Drives, or withdraw any of a Circulation Drive previously so designated, as to any of the Development then owned by Declarant. Protected Drives are not Circulation Drives.

1.8 “Circulation Drive Lights” means lights, including poles and standards, on or in the vicinity of and primarily intended to illuminate Circulation Drives, as determined from time to time by Declarant.

1.9 “City” means the City of Flagstaff, including its duly authorized departments and agencies.

1.10 “Common Areas” means, at any time, those portions of the Development outside exterior walls of Buildings then available under this Agreement for the nonexclusive use and enjoyment of all Owners and Permittees, including Circulation Drives and portions intended for use as parking areas (subject to Section 2.1(c)), landscaped areas, sidewalks, walkways, roadways, City-mandated pedestrian plaza or FUTS or public seating areas, and ingress and egress to and from public rights-of-way. Common Areas do not include loading, docking, delivery, service, drive-up or drive-through access, lanes or facilities, exterior areas for dispensing fuel beneath canopies, secured exterior areas of public-storage facilities, fenced exterior play areas of educational or child-care facilities, patio seating or similar outside dining areas, Trash Facilities, or any of a Parcel expressly excluded from Common Areas on the Site Plan or in a Supplement.

1.11 “Common Elements” has the meaning provided by Section 4.10.

1.12 “Common Elements Plans” has the meaning provided by Section 4.10.

1.13 “Common Expenses” has the meaning provided by Section 6.2.

1.14 “COREA” has the meaning provided by Section 18.1(b).

1.15 “County” means Coconino County, Arizona, including its duly authorized departments and agencies.

1.16 “Declarant” means, at any time, ETLLC as the initial holder of rights, privileges and easements granted to or reserved by Declarant in this Agreement, or ETLLC’s then duly-authorized successor as Declarant under this Agreement. Any such right, privilege or easement also runs in favor of the agents, employees and contractors of and designated by Declarant.

1.17 “Design Guidelines” means, at any time, any design and development guidelines and standards then promulgated, and as then supplemented or modified, by Declarant for the development and construction of Improvements. On reasonable request, a copy of the Design Guidelines including any approved color and material palette, as they may then be supplemented or

modified in Declarant's discretion, will be available for inspection in an office of Declarant. In approving any plans under Article 4, Declarant may impose design standards and requirements in addition to or that vary from those set forth in the Design Guidelines.

1.18 "Development" means the real property described on *Exhibit A* hereto, subject to Declarant's right to annex or deannex as provided in Section 14.5.

1.19 "Development Agreement" has the meaning provided by Section 18.22.

1.20 "Drainage Pipe" means portions of the Development in the approximate location designated as Drainage Pipe on the Site Plan or in Supplements, used or intended to convey storm water runoff to the Wash Area or otherwise through, over and/or off the Development. The Drainage Pipe does not include any detention, filtering or other treatment facilities for such water prior to its introduction to the Drainage Pipe, which shall be the responsibility of each Parcel Owner. Declarant reserves the right from time to time to designate which portions of any Parcel owned by Declarant constitute portions of the Drainage Pipe.

1.21 "Employee Parking" has the meaning provided by Section 3.4(b).

1.22 "Evergreen" means ETLIC only, and not its successors or assigns in the absence of an assignment and assumption complying with Article 14 of the rights reserved to Evergreen in this Agreement.

1.23 "Final Plans" has the meaning provided by Section 4.5.

1.24 "Force Majeure Delay" has the meaning provided by Section 18.12.

1.25 "FUTS" means the Flagstaff Urban Trails System path through the Development which will be subject to a non-exclusive easement in favor of the City.

1.26 "Hazardous Materials" has the meaning provided by Section 11.3(b).

1.27 "Hazardous Materials Laws" has the meaning provided by Section 11.3(b).

1.28 "Improvements" means Buildings, parking areas, loading areas, refuse, storage and collection areas, fences, walls, paving, sidewalks, landscaping, light poles and bases, lighting, signs, utility installations, bridges and other structures or improvements constructed or placed and located on a Parcel.

1.29 "Including" has the meaning provided by Section 18.14.

1.30 "Manager" means the Person responsible for maintenance under Article 6. Declarant is the Manager until Declarant assigns its rights and obligations as Manager to another Person pursuant to Section 14.1, or resigns as Manager pursuant to Section 14.2.

1.31 "Minor Modifications" has the meaning provided by Section 4.6.

1.32 "Mortgage" has the meaning provided by Section 18.21.

1.33 "Mortgagee" has the meaning provided by Section 18.21.

1.34 “Non-Retail Uses” has the meaning provided by Section 14.1(f).

1.35 “Notice” has the meaning provided by Section 18.1(a).

1.36 “Notifying Owner” has the meaning provided by Section 9.2(c).

1.37 “Owner” means, at any time, the then holder of fee simple title to any relevant Parcel. “Owner” does not include the holder of any lien or encumbrance on or other occupant of a Parcel or Building thereon who does not hold fee title. A Non-Retail Association may be the Owner of a Parcel used for Non-Retail Uses as provided in Section 14.1(f). Subject to any express exception herein, Declarant is an Owner for all purposes of all Parcels owned in fee by Declarant.

1.38 “Owner Maintained Wash Area” has the meaning provided by Section 1.58.

1.39 “Owner’s Quorum” has the meaning provided by Section 14.2.

1.40 “Parcel” means a portion of the Development designated as such by this Agreement, in a Supplement, by a Recorded Plat, or by conveyance of part of the Development from Declarant to another Person; *provided that*, once a Parcel is established, that Parcel may not be further subdivided or aggregated with any other Parcel without the prior consent of Declarant. Upon dedication by an Owner to a government authority of fee title to any part of such Owner’s Parcel for a public purpose, such part will no longer be part of the Parcel, but will be excluded from the operation and effect of this Agreement as though such portion were not included in the description of the Parcel originally subjected to this Agreement.

1.41 “Permanent Landscaping” means landscape plantings, trees, shrubs, irrigation systems and other landscaping-related improvements within any area designated as “Permanent Landscaping” on the Site Plan, and may also include landscaping and related Improvements in public rights-of-way (including medians) in or adjacent to the Development to any extent a government entity is not responsible for maintaining such landscaping and related Improvements.

1.42 “Permittees” means the tenants or other lawful occupants of a Parcel (other than its Owner), and the employees, agents, contractors, customers, invitees and licensees of: (a) the Owner of the Parcel; and (b) any such tenants or other occupants.

1.43 “Person” means an individual, corporation, partnership, limited liability company, association, trust, government entity, other legal entity, or combination of any of them.

1.44 “Plat” has the meaning provided by Article 15.

1.45 “Preliminary Plans” has the meaning provided by Section 4.4.

1.46 “Private Water and Sewer Mains” means water or sewer mains, lines and appurtenant facilities installed in the Development and serving one or more Owners, as designated by Declarant from time to time.

1.47 “Property Management” has the meaning provided by Section 6.6

1.48 “Property Management Company” has the meaning provided by Section 6.6.

1.49 “Protected Drives” has the meaning provided by Section 4.10.

1.50 “Recorded” means recorded in the official public records of the County.

1.51 “Restricted Use” has the meaning provided by Section 11.4.

1.52 “Retail Uses” has the meaning provided by Section 14.1(f).

1.53 “Shared Sign” means each free-standing sign labeled as such and located or to be located as shown on the Site Plan. Each Shared Sign may be shared by one or more Owners, as determined by Declarant and designated in Supplements. Except as may be otherwise expressly permitted by Declarant, Shared Signs may only be used to identify businesses operated in the Development as provided in Sections 2.1(i) and 9.2.

1.54 “Site Plan” means, at any time, the conceptual site plan for the Development attached as *Exhibit B*, as then supplemented or modified in accordance with this Agreement. Declarant reserves the right from time to time to revise the Site Plan as to any permitted annexation or deannexation, as to the number and location of Shared Signs, and as to any portion of the Development then owned in fee by Declarant, all subject to any express limitations in this Agreement or any Supplement.

1.55 “Supplement” means a writing signed and Recorded by Declarant with respect to a Parcel then owned by Declarant, or by Declarant and the Owner of a Parcel, which supplements this Agreement and may include easements, covenants, conditions or restrictions in addition to or in place of those in this Agreement. Supplements are subordinate to this Agreement. If there is a conflict between this Agreement and a Supplement, the writing containing the more stringent requirement governs, unless otherwise stated in the Supplement. Supplements may be amended as provided therein or Article 17. The term of any Supplement may not exceed the term of this Agreement. If this Agreement is terminated for any reason all Supplements will simultaneously terminate without further action by any party.

1.56 “Transfer” has the meaning provided by Section 13.2.

1.57 “Trash Facilities” has the meaning provided by Section 5.7.

1.58 “Wash Area” means the approximate portion of the Development designated as Wash Area on the Site Plan, with any associated tanks, ponds, basins, slopes, landscaping and related facilities, whether above or below ground. The Wash Area may be used by Owners and Permittees solely for water drainage, open space, landscaping and ancillary purposes determined by Declarant from time to time in its sole discretion. Any Wash Area designated on the Site Plan as “Owner-Maintained Wash Area” must be maintained by the Owner of the Parcel on which such Owner-Maintained Wash Area is situated.

## ARTICLE 2 - EASEMENTS

2.1 Grant of Easements. Intending to benefit and burden each present and future Parcel and burden the Development, Declarant grants and reserves:

(a) Easements in favor of Declarant, the Manager, the Owners and their Permittees for driveway purposes and the reasonable passage of pedestrians and motor vehicles (including trucks and delivery vehicles) over and across the Circulation Drives.

(b) Easements in favor of Declarant, the Manager, the Owners and their Permittees for reasonable access, ingress and egress over all driveways, roadways, walkways and sidewalks then surfaced with pavement, concrete, pavers, bricks or similar materials, and constituting part of the Common Areas, so as to provide for the passage of motor vehicles and pedestrians through and between all portions of the Common Areas intended for such purposes, and to and from all abutting public streets or rights of way furnishing access to the Development;

(c) An easement for reasonable parking of motor vehicles by Declarant, the Manager, the Owners and their Permittees in parking stalls or spaces in the Common Areas intended for such purposes; *provided that* this easement does not permit cross-parking by employees of an Owner or its Permittees on another Owner's Parcel, and each Owner shall take reasonable steps to limit to its Parcel parking by such employees, unless otherwise agreed pursuant to Section 3.4(b). Unless otherwise approved by Declarant and the City the Development as a whole must satisfy the minimum and maximum City code parking requirements for its uses. However, if the City and Declarant permit a reduced number of parking spaces on a Parcel or on a combination of Parcels under common ownership, the reduced number satisfies the foregoing minimum requirement. Notwithstanding the foregoing, each Parcel shall additionally satisfy the following minimum parking ratios: (i) Restaurants – one space per 100 square feet of Building area (not including patio area); and (ii) Retail/Other – one space per 300 square feet of Building area. As to any Parcel owned by Declarant, Declarant may in a Supplement terminate the cross-parking easement herein as between the Parcel and balance of the Development, whereupon each Owner shall use reasonable efforts to enforce the prohibition against cross-parking between the Parcel and balance of the Development.

(d) (i) Easements in favor of Declarant, the Manager, and such Owners or other Persons who will use or be served by the easements in each specific instance as Declarant may designate in separate easements or Supplements on, over, under, above and across the Development for the construction, use, operation, maintenance, removal and replacement of Private Water and Sewer Mains, water (domestic, irrigation and fire), gas, electric, telephone, sewer (storm and sanitary), fiber optic and cable television lines, conduits or systems, and similar reasonable and appropriate utilities or services, with rights of ingress and egress thereto; *provided that* all such lines, conduit and systems installed or constructed on another Owner's Parcel must be below the ground or surface of that Parcel (except as provided below); *and provided further that* the approval of the Owner of the burdened Parcel of the location of any such easement must first be obtained. Such approval may not be unreasonably delayed or withheld as long as such easement is at least ten feet from any existing or contemplated Building on the burdened Parcel (including loading or drive-through areas appurtenant to the Building), or if the burdened Parcel is then owned by Declarant as long as such easement is within a Circulation Drive or within ten feet of a right-of-way line of Route 66 or 4<sup>th</sup> Street. Any such lines, conduits and systems required or requested to be placed above ground on another Owner's Parcel are subject to the prior approval of that Owner, such approval not to be unreasonably delayed or withheld with respect to transformers, utility cabinets or panels, and risers that do not materially obstruct access or visibility or reduce the parking spaces on such Owner's Parcel. Each Owner shall at the request of Declarant execute, acknowledge and deliver in recordable

form acceptable to Declarant a specific easement in favor of Declarant, the Manager, any Owner or other Person designated by Declarant who is served by the easement, and/or any relevant utility provider or government or quasi-governmental authority.

(ii) From time to time the Owner of a Parcel may relocate on its Parcel any utility line or facility installed pursuant to an easement granted in this Section 2.1(d) and located on such Owner's Parcel, *provided that* such relocation: (1) may be performed only after the Owner proposing such relocation gives at least 30 days' prior Notice to the Owner of each Parcel served by the line or facility; (2) may not unreasonably interfere with or diminish service to any Parcels served by the line or facility; (3) may not reduce or unreasonably impair the usefulness or function of the utility line or facility; (4) must be performed without cost to the Owner of any other Parcel; (5) must be performed with due diligence so as to minimize any disruption; and (6) must include restoration of the surface of all affected areas to a condition equal to or better than the condition that existed prior to such relocation. The Owner performing such relocation shall provide within 30 days following the completion of such relocation as-built plans for such relocated lines and facilities to all Owners of Parcels served by such lines and facilities. Upon completion of such relocation, any specific easement Recorded under this Section 2.1(d) shall be amended by the necessary parties to conform to the relocated lines and facilities.

(iii) Except in an emergency, the right of Declarant, the Manager or any Owner to enter on another Owner's Parcel pursuant to any easement granted in this Section 2.1(d), or of any Owner to prosecute work on such Owner's own Parcel if the work interferes with easements to or in favor of another Owner's Parcel, may be undertaken only after giving the Owner of the adversely affected Parcel at least 30 days' prior Notice of the scope, nature and duration of the work and the area in which the work is to be performed, and obtaining the approval of the Owner of the adversely affected Parcel to the work; *provided that* Declarant or the Manager, acting reasonably, is exempted from giving Notice to or obtaining consent from another Owner. The Owner of the adversely affected Parcel may not withhold or delay such approval if reasonable arrangements are made to perform work required in a manner and at times calculated to cause minimal disruption to the use and occupancy of that Parcel, and no direct monetary obligation is imposed on that Owner. The Owner undertaking such work shall repair with due diligence at its own cost any damage caused by such work and restore the affected portion of the Parcel where the work was performed to a condition equal to or better than the condition prior to such work. All such work must be performed in a good and workmanlike manner, free and clear of liens. Except as may be otherwise provided herein, the Owner undertaking such work shall pay all costs associated therewith and indemnify, defend and hold harmless Declarant, the Manager, all other Owners and their respective Permittees for, from and against all damages, losses, liens or claims (including reasonable attorneys' fees and costs) attributable to the performance of such work.

(iv) In addition to the foregoing provisions of this Section 2.1(d), each Owner shall cooperate in the granting of appropriate easements within the Common Areas of such Owner's Parcel to any government or quasi-governmental entity or utility company for underground utilities to serve other portions of the Development.

(e) Easements in favor of Owners for footings, screen walls, retaining walls, curbing, and light pole bases or standards which encroach no more than one foot into, on or under the Common Areas of other Owners' Parcels, excluding Circulation Drives; *provided that* the Owner

of a Parcel on which an Improvement encroaches but for this easement may require by prompt Notice to the encroaching Owner that in case of damage, destruction, demolition, exterior renovation or remodeling, or other removal of any significant portion of the encroaching Improvement, that Improvement must be removed in its entirety from the notifying Owner's Parcel at the encroaching Owner's expense.

(f) An easement in favor of Owners for the construction, use, operation, maintenance, removal and replacement of landscape planters, light poles, bases and standards, curbing, sidewalks and drive aisles that encroach into, on or under Common Areas of an adjoining Parcel, excluding Circulation Drives, in locations approved by Declarant, subject to approval by the Owner of the burdened Parcel as to the location of the easement, which approval may not be unreasonably delayed or withheld as long as the location does not unreasonably impair the use and enjoyment of the Common Areas of the burdened Parcel or adversely affect the business thereon.

(g) A temporary easement in favor of Declarant, the Manager and Owners on, over, under, above and across the Common Areas of the Parcels to construct, maintain, repair, or reconstruct with due diligence Improvements on other Parcels that may most advantageously be constructed, maintained, repaired or reconstructed from Parcels of other Owners, including construction and installation of Improvements, subject to the approval of the Owner of each burdened Parcel as to the nature, extent and duration of any proposed use of the easement, which approval may not be unreasonably delayed or withheld as long as the use of the easement does not unreasonably impair the use, enjoyment and operation of the Common Areas of the burdened Parcel or the conduct of business thereon; *provided that* an Owner may withhold approval of the use of developed portions of its Parcel for construction staging or parking of construction vehicles. Without limiting the foregoing, this easement is also for the maintenance, repair and service of any of the Common Areas that the Manager or any Owner is obligated or permitted to perform, subject to the provisions hereof. Use of this easement shall be minimized to the extent reasonably practicable.

(h) An easement in favor of Declarant, the Manager and Owners to enter on a Parcel pursuant to the self-help provisions of Section 12.2 to perform an obligation the Owner of the Parcel is required to perform under this Agreement but fails to perform within the applicable time period provided in Section 12.2.

(i) An easement in favor of Declarant and the Manager on, over, under, above and across the Common Areas of a Parcel on which a Shared Sign is located or permitted, for the construction, use, operation, lighting, maintenance, removal and replacement of the Shared Sign, including related utilities, and in favor of each Owner permitted by Declarant to place sign panels thereon for the maintenance, removal and replacement of such panels as provided in Article 9.

(j) Easements in favor of Declarant, the Manager and Owners on, over, under, above and across the Common Areas for the diversion of storm water runoff consistent with drainage plans approved by Declarant. Except as otherwise provided in Sections 2.1(k) and 2.1(l), any retention or detention of runoff from one Parcel onto another is permitted only with the prior consent of the Owner of the burdened Parcel.

(k) An easement in favor of Declarant and the Manager and, on Declarant's approval of drainage plans under Article 4, the Owners of Parcels served by the facilities that are the subject of such plans, on, over, under, through, above and across the Drainage Pipe and Common Areas to convey on the surface or within storm drain pipes storm water runoff for which the Development is responsible, whether arising on- or off-site, including runoff from the Circulation Drives and adjacent public rights-of-way, with the right to construct, operate, maintain, repair, remove and replace pipes, mains, slopes and swales approved by Declarant, and reasonable rights of ingress and egress with respect thereto. Each Owner agrees at the request of Declarant to execute, acknowledge and deliver in form acceptable to Declarant an easement in favor of Declarant, the Manager and any Owner designated by Declarant served by the easement, as to specific improvements installed pursuant to the easement. Following completion of initial construction of improvements to the Drainage Pipe on a Parcel, no change to such Drainage Pipe that adversely affects another Parcel may be made without the consent of the Owner of the affected Parcel, not to be unreasonably withheld or delayed as long as comparable replacement Improvements are provided.

(l) A temporary easement in favor of each Owner of a Parcel on, over, under, above and across the Common Areas of an undeveloped adjacent Parcel in a location and consistent with plans approved by Declarant, for the installation, use, operation, maintenance, repair, removal and replacement of a temporary storm water retention basin constructed on the adjacent Parcel. As a condition to an Owner's right to use this easement, the Owner's Parcel must be so designed as to have sufficient storm water retention capacity within the boundaries of the Owner's Parcel to accommodate all storm water applicable to the Owner's Parcel, without any additional capacity of the retention basin extension permitted by this easement unless the Owner of the adjacent Parcel agrees otherwise pursuant to Section 2.1(j). At any time following commencement of development of the adjacent Parcel, its Owner may terminate this easement in whole or part by modifying or removing any of the retention basin extension constructed on such adjacent Owner's Parcel.

(m) An easement in favor of Declarant, the Manager and Owners served by the easement in a specific instance as Declarant may designate, under the Circulation Drives and on, over, under, above and across portions of the Common Areas which are within ten feet of the Circulation Drives, and within any landscaped areas along public right-of-way frontage of the Development, to install, use, operate, maintain, repair, remove and replace in locations originally approved by Declarant: (i) the Circulation Drive Lights and associated utilities, for illumination of Circulation Drives; (ii) electrical panels and transformers, utility meters, landscape sprinkler controls and similar facilities determined to be necessary or desirable by Declarant to serve any of the Development; and (iii) Private Water and Sewer Mains.

(n) Easements in favor of Declarant, the Manager and any Owners responsible for initial construction and installation of Common Elements in a specific instance as Declarant may designate on, over, under, above and across the Common Areas and exterior portions of the Development on or adjacent to the Circulation Drives, of Circulation Drive Lights, Private Water and Sewer Mains, Permanent Landscaping, the Drainage Pipe, and Shared Signs for the initial construction and installation thereof and the operation, illumination, maintenance, repair, replacement, reconstruction or removal thereof in accordance with Article 6.

2.2 Use of Easements.

(a) Each Owner and its Permittees may only use the easements granted in or pursuant to Section 2.1 so as not to unreasonably interfere with the conduct and operations of the business of any other Owner or its Permittees on its Parcel, including access to and from said business and the receipt or delivery of merchandise. Each Owner undertaking work on a Parcel of another Owner pursuant to an easement shall with due diligence repair in a good and workmanlike manner at its own cost any damage caused by such work and restore any affected portion of the Parcel on which such work is performed to a condition equal to or better than the condition that existed prior to such work.

(b) The easements granted in or pursuant to Section 2.1: (i) are nonexclusive, and each Owner may use and occupy Common Areas of such Owner's Parcel for any use or purpose not inconsistent with such easements and this Agreement or any Supplement; and (ii) are subject to the applicable indemnity and liability insurance provisions of Article 8.

2.3 Easements Perpetual. Except as otherwise provided herein, all easements granted in this Agreement are perpetual in duration.

2.4 Implied Easements. Nothing in this Agreement creates any implied easements not expressly granted herein or pursuant hereto.

ARTICLE 3 - COMMON AREAS

3.1 Use and Configuration. Common Areas may only be used for ingress, egress and vehicular and pedestrian access and circulation among the Parcels and adjacent public rights-of-way, vehicular parking, loading and unloading of commercial and other vehicles and servicing and supplying of businesses in the Development, the comfort and convenience of Owners and their Permittees, and any other uses expressly permitted by this Agreement or in Supplements or required by any government authority with jurisdiction over the Development. Except as otherwise provided in this Agreement or in Supplements, the size, configuration and arrangement of the Common Areas and all Improvements and facilities constructed thereon, including and with Circulation Drives, Circulation Drive Lights, the FUTS, parking areas and spaces, patterns of traffic flow, entrances and exits, City-mandated pedestrian plazas or public seating, and location of trash enclosures, are subject to the prior approval of Declarant as to the initial construction or any rearrangement or remodeling thereof.

3.2 Obstructions. Except as otherwise shown on the Site Plan or approved by Declarant as to the initial construction or any rearrangement or remodeling thereof, no bumper guard, curb, lighting standard, landscape planter, sidewalk, fence, wall, rail, division or other permanent improvement that could constitute a barrier may be constructed or placed by an Owner in the Common Area of its Parcel or along any common boundary lines thereof, if it interferes with the Circulation Drives or otherwise materially adversely affects the parking configuration, vehicular and pedestrian circulation, or access in and through the Common Areas of the Development. Temporary structures and barricades may be installed in connection with construction of permanent Improvements or the maintenance or repair of Circulation Drives, subject to the prior consent of Declarant which may not be unreasonably delayed or withheld *provided that* such structures and barricades do not unreasonably interfere with the use of the

Common Areas or interfere with, obstruct or delay the conduct of the business of any Owner or its Permittees on its Parcel. Temporary barricades and structures must be maintained in a safe, neat and clean condition by the Owner installing them.

3.3 Possession. Declarant, the Manager, Owners and their Permittees may jointly use and enjoy the Common Areas under and subject to this Agreement. Declarant may from time to time remove, exclude or restrain by appropriate means any Person who is using or occupying the Common Areas in a manner contrary to this Agreement or applicable law, as determined in good faith by Declarant. If unauthorized use is by an Owner or its Permittees, such Owner shall immediately cease and cause its Permittees to cease such use upon Notice from Declarant. Declarant also reserves the right to restrict access to Common Areas not intended for use by Owners and their Permittees, including washes and natural open spaces.

### 3.4 Parking.

(a) Motor vehicles of Owners and Permittees must be parked in Common Areas in parking spaces and within lines and stripes intended for parking purposes. Except as required by applicable government authority, no charge or other validation for parking in the Common Areas may be made unless agreed by all Owners and permitted by law. No parking facility in the Common Area of a Parcel may be designated as reserved by its Owner without the prior consent of Declarant, excluding parking reserved for the handicapped, and up to 10% of parking spaces on a Parcel designated by its Owner for carpool, electric vehicle, time-restricted, customer loading, carry-out/pick-up, pregnant women, elderly or similar special privilege parking or uses, all subject to and as may be required and/or restricted by applicable law. This Section 3.4(a) does not prohibit valet parking conducted by an Owner solely on its own Parcel, *provided that* the prior consent of Declarant is obtained.

(b) As provided in Section 2.1(c), each Owner shall use reasonable efforts to restrict to its Parcel parking by employees of such Owner and its Permittees. Notwithstanding the foregoing, specific area(s) within the Common Areas of the Development to be used for parking by employees of Owners and their Permittees ("Employee Parking") may be designated from time to time by Declarant while it is an Owner and thereafter by unanimous consent of all Owners. If Employee Parking is so designated, employees of Owners and their Permittees must use only those portions of the Common Areas designated for Employee Parking purposes.

(c) The authority granted in this Section 3.4 to any Owner to designate reserved parking, with the consent of Declarant if required under Section 3.4(a), and of Declarant or all Owners to designate Employee Parking, may not be exercised to discriminate against any Owner or business in the Development.

(d) Overnight parking of semi-trucks or trailers in the Development without Declarant's prior consent is prohibited.

3.5 Waste or Nuisance. No rubbish or debris of any kind may be placed or permitted to accumulate on the Development for any unreasonable time, and no obnoxious or offensive odor is permitted to arise from the Development. No nuisance is permitted in the Development. Without limiting the foregoing, no horn, whistle, bell, speaker, sound system or other exterior sound device may be located, used or placed on, or audible from, exterior portions of the

Development other than: (a) those used to broadcast music commonly used in the operation of an Owner's business (e.g., Muzak or similar commercial music service), *provided that* such music is not played in a loud or offensive manner or in a manner that adversely affects the business of another Owner or its Permittees as reasonably determined by such other Owner; (b) security devices or fire alarms used only for such purposes; (c) exterior speakers and sound systems for outdoor dining areas and drive-up or drive-through facilities; (d) exterior bells, paging or sound systems normal and customary for an educational facility; or (e) other exterior sound systems or devices expressly permitted by Supplements.

3.6 Rules and Regulations. Declarant may from time to time by Notice to all Owners establish and thereafter supplement or modify nondiscriminatory rules and regulations for the Common Areas, which must be complied with by all Owners and Permittees, and which may include the temporary closure of portions of the Common Areas as may be legally necessary, in the opinion of Declarant or its counsel, to prevent a dedication of any Common Areas or accrual of any prescriptive rights therein to any Person or the public, but may not otherwise adversely affect parking, ingress or egress. Declarant is also granted the right during the prosecution of construction on a Parcel to require that the Owner and its contractors restrict materials and equipment storage, construction-related deliveries, and construction traffic and parking to times and areas designated by Declarant.

3.7 Commercial Use Restricted. Except as permitted by Supplements or with Declarant's prior consent, no sale, lease or display of merchandise may be made, conducted or permitted in the Common Areas or otherwise outside the exterior walls of any Building, no such area may be used for other commercial purposes except as may be specifically permitted by this Agreement, and no traveling carnivals, fairs, rides, auctions, shows, performances, kiosks, booths or lots for the sale of fireworks or Christmas trees, sales by transient merchants from vehicles or booths, fund-raisers or other charitable events are permitted in the Common Areas. No Owner may cause, permit or undertake any posting of advertisements on vehicles or Buildings other than advertisements placed by an Owner or its Permittees on the Buildings located on its Parcel related to the business conducted thereon and in compliance with this Agreement and applicable law. No political demonstration or rally, promotions outside of Buildings, sidewalk sales or similar activities are permitted in the Development without the prior consent of Declarant. Shopping carts may only be stored in Common Areas within locations, and no exterior overnight storage of shopping carts is permitted except within corrals, approved by Declarant and the City.

3.8 Vending Machines. Except as may be permitted by Supplements, no vending machines, ATM/banking facilities or other retail fixtures or equipment of any kind may be located in the Common Areas or on any sidewalk in the Development (whether a part of a Building Envelope or Common Area), without the prior consent of Declarant.

#### ARTICLE 4 - DEVELOPMENT CONTROL

4.1 Building Envelopes. Buildings may only be constructed or placed on Parcels within Building Envelopes. Construction within Building Envelopes must conform to this Agreement and applicable law. This Section 4.1 does not prohibit construction by an Owner within a Building Envelope of Improvements normally found in Common Areas, in which case such areas will be Common Areas for purposes of this Agreement as long as such Improvements are located therein. Canopies, canopy support columns and associated subsurface installations

may encroach from the Building Area of a Parcel into the Common Areas of the Parcel (as long as the normal use of the Common Areas is not impaired), in which case such Improvements will be part of the Buildings to which they are attached and not the Common Areas.

4.2 Coverage and Height. Notwithstanding the size of any Building Envelope indicated on the Site Plan, the total square footage of floor area and maximum height (measured from finished floor level) of all Buildings constructed within that Building Envelope may not exceed any maximum limitations shown on the Site Plan or otherwise set forth in this Agreement or in Supplements. Subsurface installations on a Parcel for a tire or automotive service or repair facility are excluded from the calculation of Building Area of the Parcel.

4.3 Review and Approval of Plans. To achieve and maintain a harmonious and uniform quality of development within the Development, Declarant reserves the right to review and approve construction and development plans in advance of construction on any Parcel.

4.4 Preliminary Plans. Prior to construction or placement of any Building or other Improvement on a Parcel, including exterior alterations or additions to existing Buildings or reconstruction following casualty, the Owner shall submit to Declarant for approval, prior to or concurrently with a similar submission to the City, preliminary plans for proposed Improvements to such Owner's Parcel, including two full sets of the following: (a) a site plan (including the Building footprint, parking, exterior lighting and other proposed Improvements in Common Areas); (b) a grading and drainage plan; (c) Building elevations, including a color and material sample board and a colored rendering of all sides of all Buildings; (d) landscape plans; and (e) a signage plan. The foregoing are "Preliminary Plans." If required by Declarant, submission of Preliminary Plans must be accompanied by a \$1,500.00 architectural review and processing fee to defray the cost of review. Preliminary Plans for Improvements must at a minimum conform to the requirements of this Agreement and any Supplement and Design Guidelines, but Declarant reserves the right to impose design standards in addition to or that vary from any Design Guidelines. Improvements constructed on the Parcels must be of first-quality construction and architecturally designed so the exterior elevations of Buildings (including color, materials, texture and signage) and Common Area Improvements are architecturally compatible and harmonious with other Improvements constructed or to be constructed in the Development, as determined by Declarant in its sole discretion.

4.5 Final Plans. If, within 30 days following Declarant's receipt from an Owner of a submission of Preliminary Plans pursuant to Section 4.4, Declarant does not object to or make a proposal that would add to or modify the Preliminary Plans, the submitting Owner shall give Notice to Declarant making reference to this Section 4.5 and advising Declarant that Declarant's failure to respond within an additional ten days will result in the Preliminary Plans being approved by Declarant. If Declarant does not object to or make a proposal that would add to or modify the Preliminary Plans within such additional ten day period, the Preliminary Plans will be approved for further development, provided they otherwise comply with this Agreement and any Supplement and the Design Guidelines ("Approved Preliminary Plans"). If Declarant timely objects to or make a proposal that would add to or modify the Preliminary Plans, the submitting Owner shall modify the Preliminary Plans accordingly and resubmit them until they are approved. Two sets of final working drawings, plans and specifications ("Final Plans") must be completed and submitted to Declarant prior to commencement of construction and conform to the Approved Preliminary Plans. Final Plans are subject to Declarant's review and approval on

the same basis as set forth in this Section 4.5 with respect to Preliminary Plans. Final Plans as approved are "Approved Final Plans." In no event will Declarant's approval of any drawings, plans, specifications, calculations or work constitute an implication, representation or certification of any kind by Declarant that said items are in compliance with any law, and Declarant is not liable for any defect in any Improvement constructed in accordance therewith, whether or not in accordance with Approved Final Plans. The Owner assumes all risk and responsibility with respect to the plans and other drawings and specifications submitted to Declarant and shall indemnify, defend and hold harmless Declarant for, from and against any and all losses, claims, damages, obligations or liabilities (including attorneys' fees and costs) arising therefrom or related thereto.

4.6 No Alterations. Once there are Approved Final Plans for Improvements on a Parcel, such Improvements must be constructed in accordance therewith and any further modification requires the approval of Declarant; *provided that* the foregoing does not require approval of Minor Modifications. "Minor Modifications" are modifications to Approved Final Plans that do not: (a) affect the exterior appearance of the Improvements; (b) result in an increase or decrease in construction cost of more than \$25,000.00; (c) result in Approved Final Plans as modified no longer being in substantial conformance with the Final Plans originally approved by Declarant; and (d) result in the Approved Final Plans as modified not being in conformance with the Design Guidelines. Once constructed, any alteration, addition, repainting, remodeling or reconstruction to or of any existing Building that changes the exterior appearance thereof, and any material alteration of Common Areas including the layout of driveways or parking spaces, requires the prior consent of Declarant. No changes to Circulation Drives or Circulation Drive Lights as originally designated by Declarant and constructed on any Parcel not then owned by Declarant may be made without the consent of those Persons necessary to effect an amendment of this Agreement under Article 17.

4.7 Sprinklers/Fire Rating. Unless otherwise approved by Declarant, each Building must be either: (a) equipped with automatic sprinkler systems meeting all requirements of the Fire Insurance Rating Authority or similar organization having jurisdiction; or (b) constructed, maintained and used so as to be fire-rated as a separate and distinct unit from every other Building in the Development.

4.8 Party Walls. No party walls (in which Owners of Buildings share a common wall along a common boundary of their Parcels) are permitted except with the consent of Declarant and the Owners of the affected Parcels. Agreements between Owners regarding party walls may be contained in Supplements.

4.9 City Review. Compliance with this Article 4 is in addition to, and not in lieu of, compliance with the requirements of the City, including any site plan or design review process, which are the responsibility of each Owner. If any requirements of the City conflict with those of this Agreement, the more restrictive requirements are controlling.

4.10 Common Elements Plans. Notwithstanding any conflicting provision in this Agreement, Declarant reserves the right by Notice to an Owner at any time and from time to time prior to the commencement of construction of any Building on such Owner's Parcel, to require the Owner to construct at such Owner's cost Permanent Landscaping and/or "Protected Drives" including associated curbs, gutters and related Improvements designated by Declarant and on or

adjacent to such Owner's Parcel ("Common Elements"). With reasonable diligence and in any event within 60 days following such Notice, the Owner shall cause to be prepared and submitted to Declarant for approval plans and specifications for those Common Elements, including to the extent relevant paving sections, curbs, a striping plan, grading and drainage plans, landscaping plans, lighting specifications and the like, to the extent applicable ("Common Elements Plans"). The Common Elements Plans must conform to the Design Guidelines and any other paving section, curb, striping, drainage, landscaping, lighting and other specifications established by Declarant or the City at the time such plans are submitted for approval. As long as all timetables for completion of construction in Article 5 are met, Common Elements Plans may be submitted as a part of Preliminary Plans under Section 4.4 or separately but subject to approval in the same manner as Preliminary Plans are approved under Section 4.5. Once completed all or any part of a Protected Drive may be relocated only with the prior consent of Declarant and the Owners of the Parcels which reasonably utilize such Protected Drive. The requirements of this Section 4.10 are separate from and in addition to any other requirements in this Agreement.

#### ARTICLE 5 - PARCEL CONSTRUCTION

5.1 Initial Construction of Buildings. Except as otherwise provided in Section 5.2 or agreed by Declarant, once construction is commenced of any Building and other Improvements on a Parcel, the Owner of the Parcel shall construct or cause to be constructed such Building and other Improvements with reasonable diligence, at such Owner's sole cost, in a good and workmanlike manner, in accordance with Approved Final Plans and free and clear of any mechanics lien or similar encumbrance. Such construction shall not unreasonably interfere with use of any Common Areas by any other Owner or Permittee. All such construction must be completed within twelve months following commencement, unless otherwise agreed by Declarant.

5.2 Initial Construction of Common Elements.

(a) Following approval by Declarant of any Common Elements Plans, the Owner obligated to prepare such plans shall construct or cause to be constructed the Common Elements designated by Declarant with reasonable diligence, at such Owner's sole cost, in a good and workmanlike manner, in accordance with approved Common Elements Plans, and free and clear of any liens or encumbrances. All such construction must be completed within four months following approval by Declarant of the Common Elements Plans, unless otherwise agreed by Declarant.

(b) If required by Declarant to obtain economies of scale and/or consistency of design and construction, and to the extent construction timetables may be reasonably coordinated, an Owner obligated to construct Common Elements shall cooperate with any adjoining Owner (including Declarant) also constructing Common Elements (such as where each Owner is constructing part of a Protected Drive) to use a contractor acceptable to Declarant to concurrently construct portions of Common Elements on their respective Parcels, and to pay such contractor in proportion to the Common Elements on each Parcel.

5.3 Right of Declarant to Complete.

(a) If an Owner fails to complete construction of Buildings and other Improvements within the time required by Section 5.1, then on 30 days' Notice to such Owner, Declarant may at its option enter on such Owner's Parcel and cause the completion of any such construction in accordance with Approved Final Plans, at such Owner's sole cost.

(b) If an Owner fails to complete construction of Common Elements for which it is obligated within the time required by Section 5.2, then on ten days' Notice to such Owner, Declarant may at its option enter on such Owner's Parcel and cause the completion of any such construction in accordance with approved Common Elements Plans (or in the absence thereof, such plans and specifications as Declarant approves) at such Owner's sole cost.

5.4 Initial Construction of Common Areas. Notwithstanding the foregoing provisions of this Agreement, to achieve architectural harmony, uniformity of appearance and coordination of the initial construction of improvements to Common Areas in connection with the initial construction of any Buildings and other Improvements (including Common Elements) on a Parcel by an Owner, Declarant may undertake the responsibility for the construction of any Common Area Improvements for the Parcel on such terms as Declarant and such Owner mutually agree.

5.5 General Provisions Regarding Construction. All construction, alteration or repair work by an Owner must be accomplished expeditiously, in accordance with law, and in a good and workmanlike manner using first-class materials, free and clear of any mechanics lien or similar encumbrance. Construction work shall be accomplished so as to minimize any damage or adverse effect caused by such work to any other Owner or its Permittees.

5.6 Covenant to Maintain.

(a) Each Owner shall, at its cost, maintain all unimproved portions of such Owner's Parcel in a clean and neat condition, control grass, weeds, blowing dust, dirt, sand, litter and debris, and maintain such portions in compliance with applicable law.

(b) Subject only to Section 6.1, each Owner shall operate, maintain, repair and replace, at its sole cost, all Improvements, Common Areas and Owner-Maintained Wash Area on its Parcel, in good order, condition and repair, in a manner consistent with first-class retail developments in metropolitan Flagstaff, Arizona. Those Owner's obligations include, with respect to Improvements in the Common Areas of such Owner's Parcel: (i) maintaining, repairing and keeping illuminated lighting as provided in Section 5.6(c), including Circulation Drive Lights; (ii) maintaining, repairing and replacing parking lots, drive lanes, drive-up or drive-through facilities, and other paved areas (by replacement of base, skin patch, sealing, resealing, resurfacing, restriping and replacement, as applicable), curbs, gutters and sidewalks, storm drains, sewers and other utility lines and facilities not dedicated to the public, landscaping (including Permanent Landscaping), signage (including directional, stop and handicapped parking signs), sidewalks and planters contiguous to Buildings, retaining walls, Drainage Pipe, any City-mandated pedestrian plaza or public seating and the FUTS; (iii) keeping clearly marked fire lanes, loading zones and pedestrian crosswalks; and (iv) removing all papers, debris, filth and refuse and sweeping Common Areas as reasonably necessary to keep them in a clean and orderly

condition. For purposes hereof, the Common Areas of a Parcel include any neighboring property or Improvements contiguous to the Parcel or in the public rights-of-way adjacent to the Parcel that are required by any government authority to be maintained by the Owner of the Parcel. Each Owner shall also, at its sole cost and subject to Section 2.2, construct, operate, maintain, repair and replace in good order and condition, all private utility lines, systems and facilities, including Private Water and Sewer Mains, serving the Parcel of such Owner but located on the Parcel of another Owner.

(c) Circulation Drive Lights on a Parcel may initially be connected to a "house panel" for the benefit of the Development, in which event associated utility charges will be assessed among all Owners under Article 6. Except as otherwise provided in this Agreement or in Supplements, as each Parcel is developed its Owner shall at its cost promptly cause any Circulation Drive Lights on its Parcel to be appropriately recircuited, or if not then existing to be originally constructed, as necessary to connect the Circulation Drive Lights to metering on such Owner's Parcel, after which the associated utility charges will be the obligation of such Owner. Circulation Drive Lights must be illuminated during nighttime hours until 11:00 p.m. or such later or earlier times as the City requires; *provided that*, at the request of one or more Owners all or portions of the Circulation Drive Lights may be illuminated beyond such normal hours subject to payment by any Owners requesting such after-hours lighting of the additional utility charges associated therewith. All other lighting in the Common Areas must be illuminated during such hours as Declarant requires in rules and regulations established under Section 3.6. Subject to the foregoing, exterior lighting on a Parcel (including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers) shall be maintained, repaired and illuminated by the Owner of the Parcel as required herein and separately metered to the Parcel, and the Owner of the Parcel shall cause to be supplied and timely pay all utility charges relating thereto.

(d) Landscaping sprinkler and irrigation systems in the Development relating to Permanent Landscaping may initially be connected to an irrigation system, including associated water timers and meters, operated and maintained by the Manager for the benefit of the Development, in which case the costs thereof, including associated utility charges, will be assessed among all Owners under Article 6. Except as otherwise provided in this Agreement or in Supplements, as each Parcel is developed the Owner thereof shall at its cost promptly cause any such sprinkler and irrigation systems relating to Permanent Landscaping on or immediately adjacent to its Parcel to be appropriately reconnected and/or recircuited, or if not then existing, to be originally constructed, as necessary to connect such systems to water timers and meters on such Owner's Parcel, after which the associated utility charges will be the obligation of such Owner. Subject to the foregoing, landscaping sprinkler and irrigation systems on a Parcel must be separately metered to the Parcel and the Owner of the Parcel shall maintain and repair such systems and cause power to be supplied and pay utility charges relating thereto.

(e) Each Owner shall regularly inspect any Improvements on its Parcel for the presence of graffiti and promptly, and in any event not later than two business days after Notice from Declarant or the City, remove any graffiti from its Improvements. If an Owner fails to remove graffiti from its Improvements within such two day period, and such failure is not cured within two business days after a second Notice from the Declarant or the City, Declarant may at its option remove such graffiti at the expense and for the account of such Owner.

(f) If a business operated on a Parcel involves a restaurant or other food service operation, the Owner of the Parcel must cause to be installed and periodically inspected and cleaned (not less often than once every six months) grease traps as reasonably necessary to accommodate the requirements of the business and prevent the emanation of noxious odors from the Parcel. That Owner shall promptly on request furnish Declarant copies of reports and invoices evidencing such periodic inspection and cleaning.

(g) If an Owner fails to perform any reconnection or recircuiting of Circulation Drive Lights or landscaping sprinkler and irrigation systems relating to Permanent Landscaping, or any operation, maintenance, repair, replacement or illumination of any Improvements or Common Areas, for which such Owner is responsible, Declarant may at its option give the Owner Notice of such failure. If such Owner fails to commence the required performance within 20 days from the date of such Notice or thereafter fails to diligently prosecute such performance to completion, or if such Owner fails to complete the required performance within 30 days from the date of the Notice (*provided that*, if the nature of the performance is such that it cannot reasonably be completed within 30 days, *and further provided that* the Owner has commenced within such 30-day period the performance and diligently pursues such performance to completion without interruption, then such Owner will have a reasonable time within which to complete such performance), Declarant may at its option enter the Parcel during reasonable hours and perform such reconnection, recircuiting, operation, maintenance, repair, replacement or illumination at such Owner's sole cost. Notwithstanding the foregoing, if such Owner's failure to maintain Improvements presents an immediate risk of damage to property, injury to persons, or loss or obstruction of access, the Notice requirements of this Section 5.6(g) will not apply and Declarant may at its option take immediate steps to minimize or eliminate such risk at the cost of such Owner. In such case, Notice of such action will be given to such Owner as soon as reasonably practicable.

5.7 Trash Facilities. Each Owner shall construct within the Common Areas of its Parcel trash facilities and receptacles ("Trash Facilities") for the exclusive use and benefit of the Parcel and containment of garbage, trash and rubbish generated by the business conducted on the Parcel. The location of the Trash Facilities on each Parcel must be approved by Declarant, situated so as to comply with any applicable laws, and not obstruct or unreasonably interfere with the use and enjoyment of any neighboring Parcels. In no event may the concrete apron of any Trash Facilities be located in a Circulation Drive unless approved by Declarant. All Trash Facilities must be completely screened with a masonry screen wall (or other material) approved by Declarant pursuant to Article 4. Each Owner is responsible for periodically emptying (not less often than weekly), and all maintenance and clean-up of, such Owner's Trash Facilities, and paying all costs for refuse service. Trash Facilities must be maintained in a safe, clean and operating condition at all times, and all rubbish, trash and garbage must be regularly removed and not be allowed to accumulate. All rubbish, trash and garbage must be kept in rodent-proof containers. Rubbish, trash and garbage that emits odor must be kept in air-tight containers. If an Owner defaults in its use or operation of its Trash Facilities, Declarant may at its option with ten days' prior Notice take such steps as are appropriate to properly maintain such Trash Facilities at the sole cost of that Owner.

5.8 Damage or Destruction of Buildings. If all or a portion of a Building on a Parcel is damaged or destroyed, the Owner of the Parcel shall with due diligence and at its sole cost either: (a) repair, restore and rebuild such Building to its condition prior to such damage or

destruction, or with alterations or additions complying with Article 4; or (b) tear down and remove such Building and any related Improvements, including debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level and clean condition. If any Owner fails to repair, restore or rebuild the Building or tear down and remove the Building as set forth above, Declarant may at its option give the Owner Notice of such failure. If such Owner fails to commence the required performance within 30 days after such Notice or thereafter fails to diligently prosecute such performance to completion within twelve months after such Notice, Declarant may at its option enter on the Parcel during reasonable hours and perform such repair, restoration, rebuilding or removal at such Owner's sole cost.

5.9 Damage or Destruction of Common Areas. If any Improvements in the Common Areas of a Parcel are damaged or destroyed, the Owner of the Parcel shall with due diligence at its sole cost restore, repair and rebuild those Improvements substantially in accordance with the original plans therefor or with alterations or additions complying with Article 4. If any Owner fails to do so, Declarant may give the Owner Notice of such failure. If such Owner fails to commence the required performance within ten days after such Notice or thereafter fails to diligently prosecute such performance to completion within 30 days after such Notice (or such longer period not to exceed 90 days as is reasonably necessary to complete such performance), Declarant may at its option enter on the Parcel and perform such repair, restoration or rebuilding at such Owner's sole cost.

5.10 Reimbursement. Reasonable costs incurred by Declarant in connection with any reconnection, recircuiting, operation, maintenance, repair, replacement, restoration, rebuilding, removal or illumination on or of an Owner's Parcel undertaken by Declarant, and reasonable costs incurred by Declarant in connection with completion of construction pursuant to Section 5.3, following an Owner's failure of performance under Article 4 or this Article 5 (which failure is not cured within the time frames provided), plus an administrative fee for overhead and supervision equal to 20% of such costs, are due and payable by such Owner on demand of Declarant and are an assessment in favor of Declarant with respect to which Declarant has the rights and remedies in Article 7.

## ARTICLE 6 - MANAGEMENT

6.1 Maintenance Obligations of Manager. Except as otherwise provided herein, the Manager, at the cost of Owners as provided in this Article 6, will perform or cause to be performed for the Development in a manner consistent with first-class neighborhood retail developments in metropolitan Flagstaff, Arizona, the following:

(a) Circulation Drives. Maintenance, cleaning, repair and replacement of the Circulation Drives.

(b) Circulation Drive Lights. Maintenance, cleaning, repair and replacement of Circulation Drive Lights that have not become the responsibility of Owners other than Declarant pursuant to Section 5.6(c).

(c) Permanent Landscaping. Maintenance and replacement of Permanent Landscaping, including related irrigation systems, that have not become the responsibility of Owners other than Declarant pursuant to Section 5.6(d).

(d) Wash Area. Reasonable and necessary periodic landscaping, maintenance, repair and replacement of the Wash Area (excluding any Owner-Maintained Wash Area), including cleaning and replacement of sediment filters in catch basins, if any.

(e) Snow Removal. Seasonal snow removal as reasonably required for paved portions of Common Areas and the FUTS.

(f) Shared Signs. Reasonable and necessary illumination and periodic maintenance, repair and replacement of Shared Signs, including utility lines and connections necessary to supply electrical current for their proper operation, with the right to reasonably prune landscaping in the vicinity of Shared Signs to assure visibility of sign panels installed thereon; *provided that* the fabrication, installation, repair and maintenance of the panels on Shared Signs are the responsibility of the Owners permitted to maintain such panels thereon as provided in Article 9.

(g) Off-site Areas. Payment of any fees and charges for and the maintenance, cleaning, repair, replacement, landscaping, irrigation and illumination of or relating to areas adjacent to or in the vicinity of the Development (but not Permanent Landscaping, or landscaping in the right-of-way immediately adjacent to a Parcel, for which Parcel Owners are responsible), to the extent such payment or maintenance is required by a government authority as a condition to the use and operation of any of the Development.

(h) Utilities. Payment of charges for electricity, water and other utilities used in connection with items maintained by the Manager pursuant to this Agreement.

6.2 Common Expenses. All reasonable costs incurred by the Manager for the benefit of the Development under this Agreement and not otherwise allocated specifically to one or more Owners, including under Sections 6.1 and 8.5, are "Common Expenses." Common Expenses also include reasonable and customary reserves, miscellaneous expenses for checks, bank charges, bookkeeping and accounting, reasonable legal fees, sales taxes, and similar administrative costs paid to third parties and directly related to duties performed by the Manager under this Article 6, plus a reasonable management fee (whether payable to the Manager and/or to a third party designated by the Manager) for supervision and overhead not exceeding 15% of the total such costs or such greater amount as is normally and customarily paid for similar services to third-party property managers of similar retail centers in the Flagstaff area. The Manager may hire companies affiliated with it to perform any duties hereunder, but only if the rates charged are competitive with those of other companies furnishing similar services in the Flagstaff area.

6.3 Assessments. Common Expenses are a continuing lien and assessment against the Parcels governed by Article 7, and will be assessed against each Owner and its Parcel in the same proportion as the gross square footage of land area (excluding the Wash Area) of such Owner's Parcel bears to the total gross square footage of land area (excluding the Wash Area) of all Parcels in the Development (excluding assessments for Shared Signs assessed under Section 9.2(a)). Notwithstanding the foregoing, Common Expenses (excluding assessments for Shared Signs on which an Owner has placed sign panels), may not be assessed against an Owner or its Parcel under this Section 6.3 until the earlier to occur of: (a) substantial completion of a Building on such Owner's Parcel, as conclusively evidenced by issuance of a temporary or

permanent certificate of occupancy; or (b) the expiration of six months after conveyance of the Parcel by Declarant to an unrelated Person; *provided that*, if Declarant reacquires a Parcel pursuant to the exercise of a repurchase option in a Supplement, no assessments for Common Expenses (except for Shared Signs on which Declarant has placed sign panels) may be made against the Parcel under this Section 6.3 until the condition in either clause (a) or (b) of this sentence is satisfied. In calculating assessments payable by Owners, the Manager may appropriately exclude the land area of any Owner excused from the payment of such assessments pursuant to the immediately preceding sentence. In addition, with respect to any particular component of such assessments, the Manager may also exclude the land area of any Parcel or portion thereof the Owner or Permittee of which, with the consent of the Manager, self-maintains with respect to such component, to assure that 100% of each assessment is allocated among the remaining Owners. Notwithstanding the foregoing, the Manager may, on such basis as the Manager reasonably determines to be equitable, allocate specific Common Expenses to specific Owners where such costs can be shown to: (a) be directly attributable to the acts or omissions of such Owners or their Permittees and would not otherwise have been incurred in the absence of such acts or omissions; or (b) principally benefit the Parcels of such Owners. Allocations of Common Expenses consistent with this Section 6.3 may be included in Supplements.

6.4 Payment Obligation. The Manager may, at its option but not more often than monthly, reasonably estimate the amount of each Owner's assessment next due and collect and impound in advance from each Owner the amount thereof, or collect in arrears from each Owner the actual amount of such Owner's assessment, as shown in a statement sent by the Manager to each Owner. Each Owner shall pay to the Manager the amount shown as due on such statement (such statement to show the total assessment and Manager's calculation of each Owner's share) within 30 days after such Owner's receipt thereof. If estimated impounds are collected, the Manager will within 90 days after the end of each calendar year provide each Owner with a statement setting forth a reconciliation of such Owner's impound account. If such statement discloses that the amount in any Owner's impound account is insufficient to satisfy such Owner's assessment under this Article 6 for the previous year, such Owner shall pay to the Manager the deficiency within 30 days after receipt of the statement. Any excess in an Owner's impound account that is not necessary in the Manager's judgment for reasonable and customary reserves will be returned to such Owner or applied against the next succeeding impounds hereunder.

6.5 Record Keeping/Dispute Resolution.

(a) The Manager will keep accurate books and records relating to the costs incurred by the Manager in performing its obligations under this Article 6, which will be available at the Manager's office for inspection and copying by any Owner at its expense during reasonable business hours. Any Owner may, within 90 days after receipt of any statement described in Section 6.4, dispute the amount or propriety of any item thereon by Notice to the Manager, and if such Owner and the Manager do not agree as to the item within 30 days thereafter, the dispute will be resolved by arbitration under Section 6.5(b). Failure by any Owner to notify the Manager of a dispute as to any item within such 90-day period will conclusively establish that the item is correct as shown on the statement and the Owner will have no further right to dispute such item. Notwithstanding dispute of any item, the Owner shall promptly pay to the Manager all amounts shown to be due in any statement, subject to reimbursement if the arbitration favors such Owner.

(b) If a dispute under Section 6.5(a) continues unresolved for 30 days, either the Manager or Owner may notify the other of its desire to arbitrate the dispute, in which event the dispute will be settled by arbitration pursuant to this Section 6.5(b). The arbitration will be conducted by one independent arbitrator with at least ten years' experience in the management of commercial properties. If the parties do not agree on an arbitrator, one will be appointed by the governing official of the local American Arbitration Association. The arbitration will be governed by the Rules of Commercial Arbitration of the American Arbitration Association then prevailing, subject to the limitations herein. Judgment upon the award rendered by the arbitrator may be entered in a court of competent jurisdiction. The arbitrator's decision must include findings of fact and be rendered within 60 days following a hearing. The arbitrator has no power to modify this Agreement, and his or her jurisdiction is limited accordingly. The arbitrator has the power to award interest on any disputed sum. Costs of the arbitration will be borne by the non-prevailing party, or if neither party is clearly the non-prevailing party, as apportioned by the arbitrator.

6.6 Delegation of Rights and Obligations. The Manager may at any time by Notice to the Owners assign and delegate its rights and obligations under this Article 6 (collectively "Property Management") to an Owner who accepts and assumes such rights and obligations in writing, or to a recognized and licensed property management company (a "Property Management Company"). The Manager will provide each Owner Notice of the delegation which sets forth the name and address of the Person to whom Property Management has been delegated, and a counterpart will be Recorded. The delegation will include any obligation to maintain insurance pursuant to Section 8.5, the obligation to maintain and illuminate Shared Signs pursuant to Section 9.2, and the right to exercise rights and remedies for delinquent assessments in Article 7. Upon delegation of Property Management to another Owner, the delegating Manager will be relieved of all rights and obligations relating to Property Management thereafter arising, and the Manager to whom Property Management has been delegated and transferred shall thereafter perform Property Management pursuant to this Agreement. Upon delegation and transfer of Property Management to a Property Management Company, the Manager will remain responsible for the performance of such obligations by the Property Management Company. If Declarant assigns all rights and obligations as Declarant to a successor under Article 14, the rights and obligations of Declarant's successor will include the rights and obligations of the Manager (to the extent not previously assigned). The Manager may resign and withdraw upon 90 days' Notice to all Owners. Any Manager (other than Evergreen) then serving may be removed, or a new Manager designated to fill a vacancy, by the Owners in the manner set forth in Section 14.2 for the designation or removal of Declarant's successor.

## ARTICLE 7 - ASSESSMENTS

7.1 Covenant to Pay. Each Owner by acceptance of a deed (or otherwise acquiring title) to a Parcel (whether or not such obligation is specifically expressed therein) shall pay Declarant all sums due and owing to Declarant pursuant to this Agreement, and agrees to and shall pay to the Manager all sums due and owing to the Manager pursuant to this Agreement, which obligations are assessments for purposes hereof whether or not specifically so characterized elsewhere in this Agreement.

7.2 Continuing Lien. Each assessment established by this Agreement in favor of Declarant or the Manager, together with interest, costs and reasonable attorneys' fees, is and will

be a continuing lien on the Parcel against which, or against the Owner of which, such assessment is made, until paid, and will also be the personal obligation of the Owner of the Parcel at the time the assessment is made. No such personal obligation will pass to an Owner's successors in interest unless expressly assumed by them, but the Owner of the Parcel at the time the assessment is made will continue to be personally liable for such assessment.

7.3 Delinquent Assessment. Failure to pay an assessment within the period provided for such payment, which failure continues for ten days after Notice from Declarant or the Manager to the Owner, constitutes a default by the Owner of the Parcel to which the assessment relates. Declarant or the Manager is then authorized and empowered to proceed to collect such assessment, with interest at the rate of 16% per annum from the date such assessment is due until it is paid, and with costs and reasonable attorneys' fees. In addition to any other remedies permitted at law or in equity, Declarant or the Manager may enforce payment of the delinquent amount due against the Owner and/or its Parcel by taking either or both of the following actions, concurrently or separately (and exercise of either of those remedies will not prejudice its right to exercise the other remedy or any other right or remedy): (a) bring an action at law against the Owner personally obligated to pay the assessment or other sum of money; and/or (b) foreclose the lien against such Owner's Parcel under and subject to then-prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency). In addition to any other remedies available at law or in equity, Declarant or the Manager may include in Common Expenses any delinquent assessment or other amount due from a defaulting Owner, together with costs of collection including attorney's fees and court costs, to be allocated among and paid by the non-defaulting Owners, subject to a *pro rata* reimbursement of any net amounts subsequently collected.

7.4 Liability for Assessments. No Owner may waive or otherwise escape liability for assessments provided for herein by nonuse or abandonment of its Parcel. The assessment lien provided for in this Article 7 is superior to all liens and encumbrances other than liens for *ad valorem* property taxes and any other public charges which by applicable law are expressly made superior. Sale or transfer of a Parcel does not affect the assessment lien provided in this Article 7.

7.5 Recordation. If any assessment or portion thereof becomes delinquent, a Notice of lien against the Parcel to which such assessment relates for the unpaid amount with interest and costs described above may be Recorded by Declarant or the Manager. The Notice will be signed and acknowledged by Declarant or the Manager and contain the following: (a) an itemized statement of amounts due and payable; (b) a description of the Parcel to which the Notice relates; (c) the name of the Owner or reputed Owner of the Parcel; and (d) the name and address of the Person causing the Notice to be Recorded. Such Notice is additional evidence of the assessment lien against the Parcel described in such Notice. Upon the curing of any default for which a Notice of lien was Recorded by Declarant or the Manager, a release of such Notice will be Recorded on payment by the defaulting Owner of a reasonable fee determined by Declarant or the Manager to cover the costs of preparing and recording such release with the payment of such other costs, including legal fees and court costs, interest or charges, as have accrued or Declarant or the Manager has incurred.

## ARTICLE 8 - INDEMNIFICATION AND INSURANCE

### 8.1 Indemnification.

(a) Each Owner shall indemnify, defend and hold harmless Declarant, including Declarant's agents, employees, directors, members, managers and contractors, the Manager and all other Owners within the Development, and their respective Permittees, for, from and against any claims and all costs and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceeding brought thereon, arising from or as a result of any accident, injury, death, loss or damage to any Person or property of any Person, and caused by the acts or omissions of such Owner or its Permittees and occurring on such Owner's Parcel, except to the extent caused by the negligence or intentional misconduct of an indemnified party.

(b) Each Owner having rights with respect to an easement granted hereunder shall indemnify, defend and hold harmless Declarant, including Declarant's agents, employees, directors, members, managers and contractors, the Manager and the Owner whose Parcel is subject to the easement, for, from and against any claims and all costs and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceeding brought thereon, arising from or as a result of any accident, injury, death, loss or damage to any Person or property of any Person, and caused by the acts or omissions of the indemnifying Owner or its Permittees in the use of such easement, except to the extent caused by the negligence or intentional misconduct of the indemnified party whose Parcel is subject to the easement or its Permittees.

(c) Declarant, the Manager and their respective agents, employees, directors, officers, partners, members, managers or contractors are not liable to any Owner or such Owner's Permittees for, and shall be indemnified against any claims, costs and liabilities arising from, any mistake or error in judgment or for any other act or omission under this Agreement if it is not fraudulent, grossly negligent or in bad faith, and each Owner waives and relinquishes any claims against Declarant, the Manager and their respective agents, employees, directors, officers, partners, members, managers and contractors on account thereof.

8.2 Insurance by Owners. Each Owner shall provide and maintain, or cause its Permittees to provide and maintain, such policies of property insurance (written on a "Special Form" or equivalent basis) on Improvements located on such Owner's Parcel (in an amount not less than 80%, or such other percentage set forth in any relevant Supplement, of the full replacement value thereof), and commercial general liability insurance insuring against claims for personal injury, death or property damage (including contractual liability under Section 8.1), occurring on or about such Owner's Parcel and the easement areas subject to use and enjoyment by such Owner and its Permittees, with combined single limit coverage of not less than \$5,000,000.00 (or such other amount set forth in any relevant Supplement) per occurrence, or such higher amount as the Manager may from time to time reasonably designate (without obligation to do so) based on coverage carried by reasonable and prudent owners of like property in metropolitan Flagstaff, Arizona. Each policy of commercial general liability insurance procured and maintained by an Owner or its Permittees must be primary and not contributing with any policy or policies of insurance maintained by Declarant, the Manager or any other Owner or its Permittees, and must name Declarant, any person designated in writing by

Declarant, the Manager (if other than Declarant) and all other Owners as additional insureds (using ISO Endorsement CG 20 26, or its equivalent), *provided that* the Owner obtaining such insurance has been supplied with the names of the other Owners in the event of a change therein. Any insurance required by this Agreement may be provided within a blanket or master policy of insurance, *provided that* such blanket or master policy contains a “per location aggregate” or organizational endorsement preventing coverages required by this Agreement from being reduced or diminished by reason of the use of such policy. All insurance must be issued by insurance companies authorized to do business in the State of Arizona rated with a Financial Strength Rating of not less than A- (Excellent) and a Financial Size Category of not less than IX by A. M. Best Company, written on an occurrence basis and include coverage for contractual liability and broad form property damage.

8.3 Self-Insurance. Any Owner (or Permittee of such Owner responsible for carrying insurance) having a tangible net worth calculated in accordance with generally accepted accounting principles consistently applied in excess of \$250,000,000.00 and net current assets in excess of \$50,000,000.00 may in a Notice to Declarant elect to self-insure. By self-insuring, an Owner (or Permittee of such Owner responsible for carrying insurance) shall have agreed to make payment in the event of loss at such times, in such amounts, and to such persons as would an insurance company authorized to do business in the State of Arizona having the minimum Financial Strength Rating and Financial Size Category described in Section 8.2, it being the intention in permitting self-insurance hereunder that such self-insurance be equivalent to the third-party insurance coverage otherwise required under this Article 8. In no event, however, may the scope of any self-insurance be greater than the scope of the third-party insurance coverage otherwise required under this Article 8. The election by an Owner (or Permittee of such Owner responsible for carrying insurance) to self-insure does not reduce or diminish the indemnification or waiver of subrogation to which any Owner would otherwise be entitled under this Agreement.

8.4 Evidence of Insurance. Upon the request of any Owner or Declarant or the Manager, an Owner shall furnish to the requesting party certificates of insurance and, with respect to the additional insured obligations referenced in this Article 8, a copy of ISO Endorsement CG 20 26 (or its equivalent), and other reasonable evidence indicating insurance meeting the requirements hereof has been obtained and is in effect. In case of self-insurance, reasonable evidence substantiating the tangible net worth and net current assets requirements in Section 8.3 above must be provided (*e.g.*, audited financial statements prepared by a reputable national accounting firm, but if such Owner or Permittee is publicly traded on a national securities exchange, substantiation of net worth need not be made, as such information is a matter of public record).

8.5 Insurance by Manager. The Manager shall maintain property insurance coverage (to the extent reasonably insurable) for all Wash Area being maintained by the Manager under Section 6.1 and for all Shared Signs (exclusive of sign panels). Such insurance must be written on a “Special Form” (or equivalent) basis and may include such endorsements and additional coverages as the Manager determines based on insurance coverages carried by reasonable and prudent owners of like property in metropolitan Flagstaff, Arizona. Such insurance shall be maintained by the Manager in at least 80% of the replacement value (to the extent reasonably insurable) thereof, with a deductible in such amount as the Manager reasonably determines. The proceeds of the property insurance maintained by the Manager payable in the event of a loss will

be payable to the Manager and used solely to restore, replace, reconstruct and rebuild the insured property to the condition existing immediately prior to the occurrence of the loss. The Manager must also procure and maintain commercial general liability insurance insuring against claims for personal injury, death or property damage, occurring on or about the Wash Area, with combined single limit coverage of not less than such amount as the Manager determines to be reasonable based on insurance coverage carried by reasonable and prudent owners of like property in metropolitan Flagstaff, Arizona. Such policy of liability insurance will name each Owner as an additional insured, provided that the Manager has been supplied with the name of an Owner in the event of a change therein, but will be secondary to and excess coverage in respect of any insurance maintained by an Owner under any other provision of this Article 8. The Manager will, on request from any Owner, furnish to the Owner evidence meeting the requirements of Section 8.4 as to the insurance maintained by the Manager under this Section 8.5. The costs incurred by the Manager in connection with the insurance described herein will be assessed against the Owners and their Parcels as Common Expenses under Article 6.

8.6 Mutual Waiver. Each Owner, for itself and to the extent legally permissible on behalf of its Permittees and insurance carriers, waives the right of recovery against Declarant, the Manager and any other Owner for any: (a) loss or damage to property of the waiving Owner in the Development; (b) loss or damage to Improvements in the Development or the contents thereof; and (c) other direct or indirect loss or damage caused by fire or other risks, which loss or damage is or would be covered by the property insurance (including self-insurance) required by this Article 8. Each Owner agrees to obtain for the benefit of Declarant, the Manager and each other Owner a waiver of any right of subrogation that the insurance carriers of the waiving Owner may acquire against Declarant, the Manager or any other Owner by virtue of the payment of any such loss covered by such property insurance.

## ARTICLE 9 - SIGNS

9.1 General. No exterior sign may be installed or maintained by an Owner on its Parcel without first obtaining: (a) the approval of such sign by Declarant under Article 4, including its design and location; and (b) any necessary approvals and permits from the City.

### 9.2 Shared Signs.

(a) Subject to the requirements of government authorities, and except to any extent delegated to one or more other Owners in a Supplement, Declarant will cause to be constructed all Shared Signs for the Development in the approximate locations shown or to be shown on the Site Plan. The location, design, type, size, method of illumination, color, dimensions and total available sign area of Shared Signs will be determined by Declarant subject to conformance with applicable law. Subject to government authority, Declarant may grant any Owner the right to place sign panels on Shared Signs, which grant may be contained in this Agreement or in a Supplement. Following completion of initial construction of a Shared Sign, modifications thereto (excluding sign panels), including increase or decrease in the total available sign area, require the consent of the Manager and all Owners granted rights to place panels on such Shared Sign. Each Owner will be assessed the reasonable costs and expenses of maintenance, repair and lighting of a Shared Sign in the same proportion that the square footage of such Owner's panels bears to the total square footage of all panels (excluding any blank panels) on such Shared Sign. No Owner of a Parcel on which a Shared Sign is located may install any landscaping or other

obstruction on its Parcel that interferes with the reasonable visibility of all sign panels on the Shared Sign from the adjacent public rights-of-way, and the Manager may, at the expense of such Owner, thin, prune and trim any landscaping that interferes with such visibility.

(b) Each Shared Sign will be illuminated from dusk until dawn or such fewer hours as are unanimously approved by the Manager and all Owners having panels on such Shared Sign, subject to applicable law.

(c) The design of each Owner's sign panels must be approved by the Manager. Each Owner (or such Owner's designee) granted rights to maintain sign panels on Shared Signs is solely responsible for the costs of fabrication, installation, maintenance and repair in good operating condition of its panels in accordance with the Design Guidelines and applicable law. If any Owner fails to properly maintain or repair its Shared Sign panels (including leaving a Shared Sign exposed to the elements during sign panel fabrication), the Manager, the Owner of any other Parcel with a panel on the Shared Sign, or the Owner of the Parcel on which the Shared Sign is located (the "Notifying Owner") may at its option give the non-performing Owner Notice of such failure. If such Owner fails to commence the required performance within five days from the date of such Notice or thereafter fails to diligently prosecute such performance to completion, or if such Owner fails to complete the required performance within 30 days after the date of such Notice, the Manager or Notifying Owner may at its option perform such maintenance and repair at the defaulting Owner's sole cost.

(d) If the business of any Owner (including such Owner's Permittees) identified on a Shared Sign or a Building permanently closes, on 30 days' Notice from the Manager or a Notifying Owner, the Owner whose business has closed shall replace all panels on the Shared Sign identifying such business with blank panels of a color approved by the Manager, and remove its Building signage and repair the Building fascia, failing which the Manager or Notifying Owner may at its option do so at the cost of the Owner whose business has closed.

(e) Costs and expenses incurred by the Manager pursuant to Section 9.2(c) or 9.2(d) will be assessed to and paid by the defaulting Owner under Section 5.10, and costs and expenses so incurred by a Notifying Owner may be recovered under Article 12.

9.3 Government Regulations. All signs within the Development must conform with all applicable laws, including all necessary approvals and permits from the City and any comprehensive sign plan for the Development.

#### ARTICLE 10 - CONDEMNATION

If any of the Development is taken by eminent domain, condemnation or similar process by a duly constituted authority, the entire award for the value of the land and Improvements so taken belongs only to the Owner of the Parcel so taken (and to such Owner's mortgagees and tenants, as their interests may appear), and no other Owner has a right to claim any of the award by virtue of any interest created by this Agreement. Any Owner of a Parcel that is not the subject of such taking (and such Owner's mortgagees and tenants, as their interests may appear) may, however, file a separate claim with the condemning authority (but not against the Owner of the Parcel so taken) for the loss of easement or other rights to the extent of any damage resulting from the severance of the land or Improvements so taken. In the event of a partial taking, the

Owner of the portion of the Development so taken shall restore the Improvements on the Common Areas of such Owner's Parcel as nearly as possible to the condition existing prior to the taking to assure the continued ingress and egress to, from and between all areas of the Development to the extent reasonably feasible, without contribution from any other Owner.

## ARTICLE 11 - RESTRICTIONS

11.1 General Limitation on Uses. All Parcels within the Development may only be used for lawful purposes in conformance with all restrictions imposed by applicable law. No Owner may use or permit the use of any of such Owner's Parcel for any of the following businesses or purposes: (a) discotheque or dance hall (but this restriction does not prohibit dancing by patrons of a restaurant not otherwise prohibited); (b) amusement arcade (not including video games, *etc.*, incidental to a primary use that is not otherwise prohibited hereunder); (c) adult book store, adult theatre, adult amusement facility or similar shop selling or displaying sexually explicit or pornographic materials (but these "adult" restrictions are not applicable to a drugstore, to a full-line bookstore, or to a full-line video store); (d) pawn shop or flea market; (e) massage parlor (except for the provision of massages by licensed massage therapists in conjunction with a beauty salon, nail salon, day spa or any medical use); (f) junk yard; (g) mortuary or funeral parlor; or (h) bar, lounge or night club, *provided that* the foregoing does not prohibit a restaurant complying with liquor licensing and other applicable laws whose primary business is the preparation and retail sale of food and alcoholic and non-alcoholic beverages for on-site consumption.

11.2 Drive-Through Facilities. Any facilities constructed on a Parcel for vehicular drive-up or drive-through in which the stopping or standing of motor vehicles in line at a location for drop-off or pickup is intended (as, for example, at a restaurant, bank or pharmacy), must be designed, constructed, used and operated in such a manner that motor vehicles in line at such facility do not stop or stand in or across a Circulation Drive, or onto any portion of another Parcel (including parking areas of another Parcel), or otherwise interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across the Parcels.

### 11.3 Environmental Restrictions and Covenants.

(a) Each Owner agrees that such Owner's Parcel and any facilities located or operations conducted thereon will not be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process hazardous, toxic or regulated substances or solid wastes of any kind, except in compliance with all applicable laws. Each Owner agrees to indemnify, defend and hold harmless Declarant, the Manager, and each other Owner for, from and against any actions, claims, liabilities, damages, costs and losses of any nature (including reasonable attorneys' fees), arising from a breach by the indemnifying Owner of this covenant.

(b) The Owner of any Parcel used to store and/or dispense motor fuels shall comply with all present and future laws, ordinances, requirements, orders, directives, guidelines, rules and regulations of government authorities having or claiming jurisdiction over any of its Parcel and of all insurance companies writing policies covering any of its Parcel (collectively "Hazardous Materials Laws"), pertaining to the generation, manufacture, refinement, transport, treatment, storing, handling, disposal, transfer, production or processing of any hazardous, toxic or regulated substances or solid wastes (collectively "Hazardous Materials"). Each such Owner

shall procure every permit, license, certificate and other authorization required for the lawful and proper use of its Parcel for the retail sale of motor fuels so long as the Parcel is used for such purposes. Each such Owner shall, at its cost, remediate any Hazardous Materials that originate and migrate from its Parcel onto or under any other Parcel in the Development, and indemnify, defend and hold harmless each and every other Owner for, from and against any costs, claims, demands and actions of any nature (including reasonable attorneys' fees) in favor of third parties for damages or injuries arising from a breach of the first sentence of this Section 11.3(b). Notwithstanding the foregoing, if any Owner initiates an action based on contamination, the burden of proof for liability will be upon the Owner initiating the action.

11.4 Additional Restrictions. To promote a diversity of uses in the Development, in connection with the development of any Parcel for a particular use (a "Benefited Parcel"), Declarant may impose future additional use restrictions on all or any part of the remainder of the Development to prohibit the same or similar uses (each a "Restricted Use"); *provided that*:

(a) If after the imposition of any Restricted Use in favor of a Benefited Parcel, the Benefited Parcel is not used and operated for the Restricted Use for 18 consecutive months for any reason other than (i) strike, lockout or other labor difficulty, fire or casualty, condemnation, war, riot, insurrection, act of God, or other temporary closure beyond the reasonable control of the Owner of the Benefited Parcel, (ii) temporary closure due to restoration, reconstruction, expansion, alteration or remodeling of Improvements on the Benefited Parcel, or (iii) government restrictions, then the future additional use restrictions imposed for the benefit of the Benefited Parcel will thereafter be void and of no further effect. Notwithstanding the foregoing, Declarant may in Supplements modify the application of this Section 11.4(a) with respect to specific Restricted Uses (by tolling, delaying the commencement of, lengthening or shortening the 18-month period, reinstating expired Restricted Uses, or otherwise).

(b) No future Restricted Use may be imposed on a Parcel at a time when the Parcel is being used for a purpose that would be prohibited thereby.

(c) Restricted Uses imposed pursuant to this Section 11.4 may be perpetual, or limited to fixed periods of time (after which such Restricted Uses will expire and be of no further effect), as determined by Declarant and set forth in the instruments pursuant to which the Restricted Uses are imposed, as described in Section 11.4(d).

(d) Restricted Uses imposed by Declarant will be effective as against all (or any part, if expressly so limited), of the Development other than the Benefited Parcel when one or more supplements to this Agreement (whether or not Supplements) setting forth such Restricted Uses are Recorded by Declarant.

## ARTICLE 12 - ENFORCEMENT

12.1 Remedies. If an Owner or its Permittee breaches or threatens to breach this Agreement, Declarant, the Manager, and any of the other Owners will be entitled to any or all remedies available at law or in equity, including the rights to collect damages, enjoin such breach or threatened breach, and obtain specific performance.

12.2 Self-Help. In addition to all other remedies, a defaulting Owner fails to cure a breach of this Agreement by such Owner or its Permittee within 30 days following Notice of such default from Declarant, the Manager or another Owner (unless, with respect to any such breach which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such period and thereafter diligently prosecutes such cure to completion), Declarant, the Manager or any nondefaulting Owner may at its option cure such default on behalf of such defaulting Owner and be reimbursed by such defaulting Owner on demand for the reasonable costs thereof (including attorneys' fees and court costs), with interest at the rate of 16% per annum from the date such costs are incurred until paid.

12.3 Lien Rights. Any right to damages or reimbursement, including interest, costs and attorneys' fees, Declarant, the Manager or any Owner under this Article 12 may be assessed against the defaulting Owner in favor of the prevailing party and constitutes a lien (an "Assessment Lien") against the Parcel of the defaulting Owner until paid, effective when a Notice of lien with respect thereto is Recorded; *provided that* any such Assessment Lien will be subject and subordinate to: (i) liens for taxes and public charges which by law are expressly made superior; (ii) liens Recorded prior to the recordation of said Notice of lien; (iii) any lien for assessments under Article 7; (iv) *bona fide* easements; and (v) *bona fide* leases with third parties (regardless of whether Recorded) entered into prior to when the Notice of lien is Recorded. An Assessment Lien may be foreclosed under then-prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency). Declarant and the Manager may, in lieu of exercising any lien rights arising under this Section 12.3, proceed under Article 7 as if the amount owing to Declarant or the Manager hereunder were a delinquent assessment described therein.

12.4 Remedies Cumulative. The remedies specified herein are cumulative and in addition to all other remedies permitted at law or in equity.

12.5 No Cancellation. Notwithstanding anything to the contrary herein, no breach of this Agreement will entitle Declarant, the Manager or any of the Owners to cancel, rescind or otherwise terminate this Agreement, but such limitation does not affect any other rights or remedies that Declarant, the Manager or any Owner may have by reason of a breach of this Agreement.

### ARTICLE 13 - TRANSFER

13.1 No Transfer. The rights, powers and obligations conferred on each Owner under this Agreement (excluding Declarant or the Manager) may not be transferred or assigned by such Owner except through a transfer of its Parcel complying with Section 13.2. The foregoing sentence will not prohibit an Owner from delegating or passing through any such rights, powers or obligations to a Permittee occupying such Owner's Parcel, which is permitted but will not release such Owner from liability by reason thereof.

13.2 Sale by Owner. Upon the conveyance or other act or occurrence which results in an Owner (other than Declarant) no longer owning fee title to such Owner's Parcel (a "Transfer"), the following apply:

(a) The Owner shall give Notice of the Transfer to the Manager on or before the date the Transfer is Recorded or otherwise becomes effective.

(b) On or before the effective date of the Transfer, the new Owner (the “Transferee”) shall execute and deliver to the Manager a statement containing the name and address of the Transferee and its signed agreement to be bound by this Agreement and perform all obligations hereof applicable to the Parcel. Failure to deliver such written statement will not affect any easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and development standards contained herein running with the land, nor will such failure negate or otherwise affect the liability of any Owner or Transferee pursuant to this Agreement, but such failure shall constitute a default of this Agreement by the Transferee.

(c) The transferring Owner will be released from obligations under this Agreement arising from acts, omissions and occurrences after the effective date of the Transfer of its entire interest in the Development to an unaffiliated solvent Person and the receipt by the Manager of the statement of the Transferee described in Section 13.2(b), *provided that* the transferring Owner is not then in default in the performance of this Agreement. However, nothing in this Section 13.2 will affect the priority, validity or enforceability of any lien placed on the transferred Parcel under Article 7 or Article 12.

13.3 Fractionalized Interests. If any Owner Transfers an interest in its Parcel in a manner which vests ownership of fractionalized interests in more than one Person, then the several owners of such interests must designate one of their number to act on behalf of all such owners in the performance of this Agreement, which designation the Manager may rely on until Notice of a new designation by such owners or an order of a court of competent jurisdiction is received by the Manager to the contrary; *provided that*, all such owners will be jointly and severally liable under this Agreement. This Section 13.3 does not apply to subdivisions of a Parcel, which are governed by the definition of “Parcel” set forth in Section 1.17.

#### ARTICLE 14 - DECLARANT’S RIGHTS

##### 14.1 Declarant’s Rights and Obligations.

(a) Declarant may assign, in whole or in part, to one or more Persons, any rights and obligations of Declarant under this Agreement (including for purposes of this Article 14 any rights and obligations of the Manager), whereupon such Person(s) will succeed to the rights and obligations assigned. Such assignment must be in writing, expressly refer to this Section 14.1(a), specify the rights and obligations being assigned, contain an assumption by such Person(s) of the rights and obligations assigned, and be executed by Declarant and its assignee and Recorded. Promptly after such assignment is Recorded, the assignee will provide a copy of such assignment to each Owner. Any such assignee of Declarant may similarly further assign such rights and obligations. The term “Declarant” or “Manager” (as applicable) as used herein includes all such assignees as to the rights and obligations assigned. Declarant may engage agents, employees and contractors to exercise and perform any rights and obligations of Declarant under this Agreement, but none of them will be an assignee of Declarant’s rights or obligations in the absence of a Recorded assignment. In addition to or combination with an assignment described above, Declarant may assign to an Owners Quorum (defined in Section 14.2) any of Declarant’s rights in this Agreement (but not Declarant’s obligations) by an assignment executed by

Declarant and Recorded, whereupon the Owners Quorum will succeed to the rights assigned without the necessity of an assumption of such rights.

(b) Declarant (including for purposes of this Section 14.1(b) any successors or assigns) may at any time to resign and withdraw as to any of its rights and obligations as Declarant under this Agreement by executing and causing to be Recorded a Notice thereof referring to this Section 14.1(b). A copy of such Notice will be given to all Owners; *provided that* such resignation will be effective when Recorded as provided above, and receipt by all Owners of such Notice is not a condition of effectiveness.

(c) Notwithstanding anything to the contrary in this Agreement, and regardless of any transfer by Declarant of any of the Development, Declarant retains in gross all rights and obligations of Declarant in this Agreement with respect to which Declarant has neither made an assignment under Section 14.1(a) nor a resignation and withdrawal under Section 14.1(b). Declarant is released from further obligation or liability under this Agreement as to rights and obligations of Declarant thereafter accruing with respect to which an assignment under Section 14.1(a) or resignation and withdrawal under Section 14.1(b) is applicable. At such time as a full assignment, resignation or withdrawal as to all rights and obligations of Declarant under this Agreement has occurred, Declarant will thereafter have no further right, power or authority to act, and no further obligation or liability thereafter accruing, as Declarant under this Agreement.

(d) All rights of Declarant set forth in this Agreement may be exercised by Declarant in its sole discretion, and no exercise by Declarant of any such right may be challenged or set aside as being arbitrary, capricious, unreasonable or in bad faith. However, in the absence of specific language to the contrary in the assignment from Declarant, any successor or assignee of Declarant (but not Evergreen) is obligated to exercise the rights so assigned reasonably and in good faith.

(e) Declarant may include in Supplements such waivers of the provisions of this Agreement with respect to an individual Parcel or Owner as Declarant deems appropriate, so long as any such waiver, in the sole discretion of Declarant: (i) does not result in an unsafe, unsanitary or aesthetically displeasing condition; (ii) does not result in a substantial departure from the common plan of development contemplated by this Agreement; and (iii) has no adverse effect on the easement rights or any Restricted Use in favor of any Owner or its Parcel otherwise contained herein. No such waiver will automatically entitle any Parcel or Owner to the same or any subsequent or additional waiver, as each such waiver will be considered on its own merits.

(f) Notwithstanding anything to the contrary in this Agreement, Declarant reserves the right to modify the provisions of this Agreement in Supplements as they generally apply between portions of the Development used for retail purposes ("Retail Uses") and any portions of the Development used for lodging, office or other non-retail purposes ("Non-Retail Uses"), as reasonably appropriate, in Declarant's good faith judgment, to facilitate Non-Retail Uses. Such modifications may include restricting or prohibiting cross-parking between Retail Uses and Non-Retail Uses and requiring Owners to use reasonable efforts to enforce any such restriction or prohibition against their Permittees; permitting condominium plats or condominium covenants, conditions or restrictions not inconsistent with this Agreement to be Recorded against Parcel(s) used for Non-Retail Uses; permitting the establishment of associations applicable to Non-Retail Uses (a "Non-Retail Association"); providing that a Non-Retail Association may be treated as the

Owner of Parcel(s) used for Non-Retail Uses under this Agreement for purposes of maintenance, payment of assessments, granting approvals on behalf of members of the Non-Retail Association, or otherwise; permitting a Non-Retail Association or the Owner of a Parcel used for Non-Retail Uses to construct and charge its Permittees for reserved (including covered parking); extending minimum time periods for construction or phased construction of Improvements on Parcel(s) to be used for Non-Retail Uses; and/or limiting the definition of "Common Areas" as it pertains to Parcel(s) used for Non-Retail Uses, and other modifications. However, except as expressly enumerated in this Section 14.1(f) or as contemplated under Article 11, modifications under this Section 14.1(f) may not include new restrictions on portions of the Development then used for Retail Uses.

14.2 Designation of Persons to Assume Declarant's Rights or Obligations. As to any rights or obligations of Declarant under this Agreement with respect to which Declarant has resigned and withdrawn without making an assignment to one or more successors, including rights and obligations of the Manager, the Owners of 51% or more of the total square feet of land area in the Development (excluding the Wash Area) (an "Owners Quorum") may at any time and from time to time designate a Person or Persons to succeed to any such rights or obligations. Likewise, an Owners Quorum may at any time remove a Person (other than Evergreen) then exercising any rights or obligations of Declarant and designate a Person or Persons to succeed to such rights and obligations. Any such designation must be in writing, refer to this Section 14.2, specify the rights and obligations being assigned and Person(s) succeeding to such rights and obligations, contain an assumption by such Person(s) of such rights and obligations, and be executed by the requisite Owners and Recorded. During any time no Person is entitled to exercise specific rights or obligations of Declarant, without otherwise affecting the validity and enforceability of the remainder of this Agreement: (a) no Owner has the right to exercise or enforce any such unassigned rights or obligations; (b) if rights of consent or approval by Declarant are unassigned, any action by an Owner otherwise requiring such consent or approval may be taken without obtaining such consent or approval; and (c) if at any time no Manager is serving, each Owner is responsible for maintaining and insuring at its expense all Common Areas and Improvements on its Parcel (excluding Shared Signs, which will be jointly and proportionately maintained and insured by Owners entitled to representation thereon, and Private Water and Sewer Mains, which will be jointly maintained in equal shares by those Owners served thereby).

14.3 Declarant's Exculpation. Notwithstanding anything to the contrary in this Agreement, no Declarant will have any liability for mistakes or errors in judgment or for any acts performed or omitted under this Agreement in the absence of actual fraud, gross negligence or bad faith on the part of such Declarant, and each Owner waives and relinquishes any claims against Declarant on account thereof.

14.4 Property Owner's Association. So long as Declarant owns any interest in the Development, Declarant may at its option and the cost of the Owners form a property owners' association (the "Association") for the benefit of the Development. The Association must be a nonprofit Arizona corporation having articles of incorporation, bylaws, a board of directors and other rights and attributes customary for developer-controlled commercial property owners' associations in retail developments in metropolitan Flagstaff, Arizona, as reasonably determined by Declarant's legal counsel. Membership by all Owners in any Association will be mandatory. Declarant may assign to the Association any rights and obligations of Declarant set forth in this

Agreement. Declarant will retain effective control of the Association until Declarant no longer owns any interest in the Development, when control of the Association will be transferred to the Owners in the same proportions as the gross land area of each Owner's Parcel bears to the total gross square footage of land area of all Parcels in the Development (excluding any Wash Area). If an Association has not been formed at such time as no Person is entitled to exercise any rights or obligations of Declarant, the Owners Quorum may exercise the rights of Declarant in this Section 14.4.

#### 14.5 Annexation and Deannexation.

(a) Declarant may from time to time annex any adjacent real property, any portion of which is included on *Exhibit C* hereto, into the Development and subject such property to this Agreement by causing to be Recorded a supplement to such effect signed by Declarant and any different Owner of the annexed property.

(b) Declarant reserves the right to deannex and remove from the Development and the effect and operation of this Agreement real property then owned by Declarant in fee (but not then subject to a lease unless the tenant joins therein); *provided that*, as a condition to any such deannexation and removal any then-existing (i) use restrictions imposed against the property to be removed, whether under Article 11, Supplements or otherwise, and (ii) easements on, over, above, under or across the property to be removed that are necessary for the reasonable use and benefit of another Parcel, must be preserved in a manner that will not permit the termination or amendment of such restrictions or easements except by such action as is necessary to amend this Agreement. Easements on property to be removed for cross-parking or vehicular or pedestrian access, ingress and egress over Common Areas that are not Circulation Drives are not necessary for the reasonable use and benefit of other Parcels.

### ARTICLE 15 - PLATTING

Declarant reserves the right to obtain the approval of the City to the recordation of one or more subdivision plats for any of the Development, including any amendments thereto (collectively with any such plats previously recorded a "Plat"). In connection with recordation of and future Plat, each Owner shall: (a) cooperate with Declarant in accomplishing the recordation of the Plat as long as such Owner incurs no material third-party expense in connection therewith, and no rights or benefits under this Agreement in favor of such Owner are materially and adversely affected thereby; (b) reasonably consent to a change in the record legal description of such Owner's Parcel, as long as the description on the Plat is the legal equivalent of the description in the original conveyance from Declarant to such Owner (less any portions previously dedicated or to be dedicated to a government authority); and (c) reasonably consent to the dedication of any of the Circulation Drives, additional public right-of-way outside of Building Envelopes if required by the City or Arizona Department of Transportation, or public utility and other normal and customary easements shown on the Plat, as long as they are otherwise consistent with this Agreement. Each Owner agrees to execute the Plat within 15 days following request by Declarant, failing which Declarant is irrevocably designated as such Owner's authorized agent, coupled with an interest, to execute the Plat for such Owner.

ARTICLE 16 - TERM

This Agreement and the easements, covenants, conditions and restrictions herein will be effective when this Agreement is Recorded and continue in perpetuity except to any extent this Agreement is modified, canceled, terminated or rescinded in whole or in part under Article 17.

ARTICLE 17 - AMENDMENT

This Agreement may not be amended, canceled, terminated or rescinded in whole or in part, except by a writing executed and acknowledged by Declarant, the Owners of 75% or more of the total land area in the Development (excluding any Wash Area), and Recorded. Notwithstanding the foregoing, the number and location of Shared Signs, and/or any of the Development then owned by Declarant and shown on the Site Plan, including Circulation Drives, parking layout, ratio and traffic flow pattern, and the location and extent of any Building Envelopes depicted thereon, may be amended from time to time by Declarant's executing and causing to be Recorded a supplement to this Agreement [whether Supplements or otherwise] amending the Site Plan (subject to restrictions or limitations with respect thereto imposed by government authority); *provided that* no such modification may materially increase an Owner's obligations or liabilities without such Owner's consent. Any amendment, cancellation, termination, rescission or supplementation of this Agreement in compliance with this Article 17 by Declarant and/or the requisite Owners will be binding and effective immediately, any custom or law to the contrary notwithstanding.

ARTICLE 18 - MISCELLANEOUS

18.1 Notices.

(a) Any notice, request demand, approval, consent or other communication made or given under or pursuant to this Agreement (each a "Notice") must be given in writing and hand-delivered, sent by reputable nationwide overnight courier (*e.g.*, Federal Express), or sent by certified or registered United States mail, postage prepaid, return receipt requested, at the addresses indicated below, unless the party giving such Notice has been given notice of a change of address, or Recorded pursuant to this Agreement:

Declarant: Evergreen-Trax, L.L.C.  
2828 North Central Avenue, Suite 1110  
Phoenix, Arizona 85004  
Attn: Robert M. Karber

With a copy to: Evergreen Devco, Inc.  
2390 East Camelback Road, Suite 410  
Phoenix, Arizona 85016  
Attn: Laura Ortiz

Other Owners: Unless designated in a Supplement to this Agreement, or otherwise advised to the contrary by Notice in accordance herewith, to the address for mailing tax

bills set forth in the County's latest real property tax rolls available

Any Notice is effective on the date delivered if hand-delivered on the next-succeeding business day after deposit with an overnight courier for next-day delivery, or if Notice is sent through the United States mail, on the date of actual delivery as shown by the addressee's receipt or three mail service days after mailing, whichever first occurs. Any Recorded Notice is effective when Recorded.

(b) Each Owner shall give a copy to its Mortgagee of any default Notice given to the Owner, *provided that* the Mortgagee has previously requested the right to receive any such Notices by submitting an address to which the Notice shall be delivered and giving all Owners and the Manager the following certification:

The undersigned, whose address is 2390 E. Camelback Rd, #410 Phoenix AZ 85016 certifies that it is the holder of a first lien on the real property described on Exhibit A hereto which is a Parcel in The Trax I retail center in Flagstaff, Arizona. If any default Notice is to the Owner on whose Parcel this lien applies, a copy thereof must be delivered to the undersigned, who will have all rights of the Owner to cure the default pursuant to the Common Operation and Reciprocal Easement Agreement ("COREA"). Failure to deliver such a copy in no way affects the validity of the default Notice with respect to such Owner, but tolls any time period for cure by the undersigned or the taking by the undersigned of any other action required under the COREA, until such Notice is delivered to the undersigned.

Any Notice to an Owner's Mortgagee must be given in the same manner as provided in Section 18.1(a). The Mortgagee will have the same right, to be exercised if at all concurrently with such defaulting Owner, to cure such default. Giving any default Notice or the failure to deliver a copy to any Mortgagee will not create any liability on the part of Declarant, the Manager or any Owner so declaring a default.

18.2 Attorneys' Fees. If Declarant, the Manager or any Owner institutes a legal action or proceeding for the enforcement of any right or obligation in this Agreement, the prevailing party in such action or proceeding is entitled to recover its costs and reasonable attorneys' fees incurred in the action or proceeding.

18.3 Consents. Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval may not be unreasonably delayed or withheld.

18.4 No Waiver. No waiver of any default by an Owner may be implied from any omission by Declarant, the Manager, or another Owner to take any action with respect to such default. Notwithstanding the foregoing, Declarant may waive on behalf of all Owners the enforcement of any provision in this Agreement, upon a determination that such waiver is in the best interests of the Development as a whole.

18.5 No Agency. Nothing in this Agreement creates the relationship of principal and agent or of partners or joint venturers or of any other association among any Owners.

18.6 Covenants to Run with Land. All easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and development standards herein will run with the land and create equitable servitudes with respect to the relevant servient tenements in favor of the entire Development, bind (except as otherwise expressly stated) every Person having any fee, leasehold, lien or other interest therein and inure to the benefit of Declarant, the Manager and the Owners and their respective successors and assigns. All agreements herein are covenants regardless of whether expressly so designated.

18.7 Grantee's Acceptance. The grantee of any Parcel or portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Declarant or from a subsequent Owner of the Parcel, accepts such deed or contract on and subject to all easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and development standards herein. By such acceptance, any such grantee will consent and agree to and with Declarant, the Manager and the other Owners, to comply with and perform the obligations and agreements in this Agreement with respect to the property acquired by such grantee.

18.8 Lenders. The charges and burdens of this Agreement are and will be prior and superior to the lien or charge of any mortgage or deed of trust affecting any Parcel or part thereof or Improvements now or hereafter placed thereon; *provided that*, a breach of this Agreement or the enforcement of lien rights herein granted will not defeat or render invalid any such lien or charge given in good faith and for value by any institutional lender.

18.9 No Rights in Public. Nothing in this Agreement creates any rights in the general public or dedicates for public use any of the Development.

18.10 Taxes and Assessments. Each Owner shall pay all taxes, assessments and charges of any type levied or made by any government authority or agency with respect to its Parcel. If an Owner fails to pay any such taxes, assessments or charges prior to delinquency, and such failure continues for 15 days after Notice by the Manager to such Owner, the Manager may at its option pay said taxes, assessments and/or charges, and the cost thereof, with interest thereon at the rate 16% per annum until paid, will be a charge and continuing lien on the Parcel until paid, subject to foreclosure by the Manager pursuant to Article 7.

18.11 Severability. Each provision of this Agreement is declared to be independent of and severable from the remainder of this Agreement. If any provision herein is held to be invalid or unenforceable or not run with the land, such holding does not affect the remainder of this Agreement. If the validity or enforceability of any provision of this Agreement is held to be dependent on the existence of a specific legal description, the Manager will promptly cause such legal description to be prepared, at the cost of the Owners.

18.12 Time of Essence/Force Majeure. Time is of the essence of this Agreement. However, no Person is liable for any failure or delay in performance under this Agreement (other than for the payment of money) to the extent such failure or delay is caused by an event that: (a) is not reasonably foreseeable; (b) is beyond the reasonable control of the Person; and (c) occurs without the fault or negligence of the Person (each a "Force Majeure Delay"). Upon the

occurrence of a Force Majeure Delay, the time for performance will be extended for a period equal to the duration of the Force Majeure Delay.

18.13 Entire Agreement. This Agreement (including all Exhibits hereto), with any Supplement, contains the complete declaration, understanding and agreement of Declarant with respect to all matters referred to herein.

18.14 Construction. Underlined captions preceding the Sections and Articles herein, are for convenience of reference only, and may not be used as an aid to the construction or interpretation of this Agreement. Whenever applicable, the singular form includes the plural, and the masculine gender includes the feminine and neuter, and *vice versa*. "Including" means by way of example and not limitation.

18.15 Disclaimer. Declarant makes no warranty or representation that any plans envisioned for the Development at the time this Agreement is Recorded can or will be carried out, or that the Development will be committed to or developed for any particular use, or that if the Development or any portion thereof is once used for a particular use, such use will continue. Declarant makes no representation or warranty that the use of any of the Development will not change in the future.

18.16 Ownership of Development. The validity and binding effect of this Agreement is not affected or impaired by reason of the ownership of the entire Development by the same Person.

18.17 Prescriptive Easements/Adverse Possession. No title, easement or use pertaining to any of the Development may be established by prescription or adverse possession, the statute of limitations and/or laches for such purposes being expressly hereby waived.

18.18 Perpetuities. Declarant intends that any interest in real or personal property created under this Agreement that violates the rule against perpetuities be minimally reformed to cure the violation, rather than terminated. In this regard, if a court determines that an interest created under this Agreement violates the rule, upon the petition of any interested Person, the court shall reform the interest to either vest, if at all, or terminate, 21 years after the death of the last survivor of all lineal descendants (including by adoption) of the 40th President of the United States, Ronald Wilson Reagan, living when this Agreement is Recorded.

18.19 Neighboring Property. Declarant reserves the right to enter into separate agreements with owners of real property in the vicinity of the Development (but not a part thereof) to grant or obtain vehicular and/or pedestrian cross access rights or easements over such adjacent real property or the Common Areas intended for such purposes, or to grant or obtain other reasonable easements, on such terms and conditions as Declarant determines in its discretion. Contributions, if any, by such adjacent owners toward the costs of maintenance of the Common Areas will be credited in reduction of Common Expenses otherwise payable by the Owners under Article 6.

18.20 Estoppel Certificate. The Manager and each Owner will issue within 20 days following receipt of a request (made not more than three times during any year) from any other Owner or the Manager, to the requesting Person or its existing or prospective lender, an estoppel

certificate stating to the issuer's actual knowledge as of such date, whether: (a) it knows of any default under this Agreement and if there are known defaults, specifying the nature thereof; (b) this Agreement has been assigned or amended in any way by it and if so, the nature thereof; (c) any sums are currently due and payable under this Agreement from or to the requesting Person; and (d) this Agreement is in effect. Such statement constitutes a waiver of any claim by the issuer to the extent such claim is based on facts contrary to those asserted in the statement and to the extent the claim is asserted against a *bona fide* lender or purchaser/assignee for value without knowledge of facts to the contrary of those in the statement and who has acted in reasonable reliance on the statement.

18.21 Consent to Assignment and Obligations of Declarant's Mortgagee. Each Owner consents to any assignment by Declarant to any mortgagee ("Mortgagee") holding a lien granted by Declarant pursuant to any mortgage or deed of trust ("Mortgage") on any of the Declarant's interest in the Development of Declarant's rights and obligations as "Declarant" under this Agreement, subject to this Section 18.21. If a Mortgagee succeeds to the rights of Declarant pursuant to an exercise of its rights under any Mortgage, the Mortgagee will be bound by the terms of this Agreement and the Owners will have the same rights and remedies against the Mortgagee for a breach of this Agreement as the Owners would have against Declarant but for the assignment; *provided that* the Mortgagee will not be liable to the Owners for any act or omission of Declarant including any failure to pay amounts owing or to be paid hereunder or to perform any act or obligation required to be performed by Declarant hereunder, arising prior to the date Mortgagee succeeds to Declarant's rights and takes possession of any of the Development. The Mortgagee will assume the obligations and be liable to the Owners under this Agreement only for matters and obligations arising or to be performed from and after the date the Mortgagee succeeds to Declarant's rights hereunder and takes and holds possession of any of the Development, and any further or additional liability will terminate on the transfer by the Mortgagee of its interest in the Development; *provided that*, the Mortgagee has no personal liability for any obligations under this Agreement except to the extent of, and the Mortgagee's liability is limited to, the Mortgagee's interest in the Development.

18.22 Development Agreements. Evergreen (including any affiliate designated by Evergreen) may, before or after this Agreement is Recorded, enter into a government development agreement, economic development agreement and/or similar agreement(s) with the City or other applicable government authorities (all of which are a "Development Agreement"). If Evergreen enters into a Development Agreement, the following provisions apply:

(a) Any economic benefit under a Development Agreement will belong solely to Evergreen, free of any claim by Declarant (if other than Evergreen), the Manager, or any Owner, Permittee or other Person. Evergreen may assign any such benefit to Persons of Evergreen's choosing.

(b) Each Owner and Permittee agrees to report store sales and sales taxes to Evergreen and the City or other applicable government authority, if directed by Evergreen, to satisfy any sales tax reporting requirements under a Development Agreement.

(c) A Recorded Development Agreement is a permitted exception to title, and is prior and superior to the interests of Owners and Permittees and Persons claiming through them. Owners and Permittees are advised to familiarize themselves with any Development Agreement



EXHIBIT "A"  
DEVELOPMENT

THE HERIN DESCRIBED PARCEL BEING A PORTION OF PARCEL A, AS SET FORTH ON C.O.F. CONSOLIDATION MAP RECORDED IN 2006-3396857, OFFICIAL RECORDS OF COCONINO COUNTY ARIZONA AND MORE PARTICULARLY DESCRIBED BELOW;

**PARCEL A**

THE FOLLOWING DESCRIBES A PARCEL OF LAND, PORTIONS OF THE EXISTING BURLINGTON NORTHERN SANTA FE RAILWAY, HUNTINGTON DRIVE AS DESCRIBED IN DOCKET 861, PAGE 914 AND DOCKET 918, PAGE 574; PARCEL A, RECORDED IN BOOK 8, PAGE 57; AND THE PARCEL DESCRIBED IN DOCKET 1442, PAGE 754, COCONINO COUNTY RECORDS; LYING IN SECTIONS 13 AND 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN; FLAGSTAFF, COCONINO COUNTY, ARIZONA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST ¼ CORNER OF SECTION 14 MARKED BY A FOUND 2-1/2" BRASS CAP STAMPED "CITY OF FLAGSTAFF RLS 16544" FROM WHICH THE NORTH EAST CORNER OF SECTION 14, A FOUND 3" ADOT BRASS CAP IN HANDWELL BEARS NORTH 0°23'15" EAST, 2670.69 FEET, BASIS OF BEARINGS FOR THIS DESCRIPTION;

THENCE NORTH 89°18'14" WEST, 220.63 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF B.N.S.F. RAILROAD, FROM WHICH A FOUND 3" BNSF ALUMINUM CAP BEARS NORTH 42°06'33" EAST 874.48 FEET AND FROM WHICH A FOUND 3" BNSF ALUMINUM CAP BEARS SOUTH 42°06'33" WEST 2557.05 FEET;

THENCE SOUTH 42°06'33" WEST, 2557.05 FEET TO A FOUND 3" BNSF ALUMINUM CAP;

THENCE NORTH 47°02'26" WEST, 66.06 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON" ON THE SOUTHERLY RIGHT OF WAY OF S.R. B40 (RT 66) AND **THE TRUE POINT OF BEGINNING;**

THENCE ALONG SAID RIGHT-OF-WAY NORTH 40°46'58" EAST, 176.42 FEET TO THE BEGINING OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 2909.79 FEET AND A CENTRAL ANGLE OF 7°56'31" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 36°48'43" EAST 403.01 FEET AND A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 403.34 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTH 35°26'19" EAST, 2038.56 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTH 41°25'16" EAST, 103.26 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTH 36°40'02" EAST, 258.40 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

EXHIBIT "A"

Page 2 of 5

THENCE NORTH 44°29'34" EAST, 153.20 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON" AND THE BEGINNING OF A NONTANGENT CURVE WITH RADIAL BEARING OF SOUTH 50 17'00" EAST 3745.72 FEET;

THENCE NORTHEASTERLY A DISTANCE OF 307.88 FEET ALONG SAID CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 3745.72 FEET AND A CENTRAL ANGLE OF 4°42'34";

THENCE NORTH 76°43'07" EAST, 37.33 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE SOUTH 40°00'50" EAST, PARALLEL WITH AND 74 FEET SOUTHWESTERLY FROM THE FOURTH STREET CENTERLINE, 136.85 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE SOUTH 45°29'37" EAST, 77.52 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE SOUTH 47°25'21" EAST, 82.26 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTH 44°58'58" EAST, 2.86 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE SOUTH 42°53'04" EAST, 47.30 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE SOUTH 42°06'33" WEST, 3431.53 FEET TO A FOUND 3" BNSF ALUMINUM CAP;

THENCE NORTH 40°46'58" EAST, A DISTANCE OF 176.42 FEET TO THE **TRUE POINT OF BEGINNING**. CONTAINING 18.46 ACRES, MORE OR LESS.

**EXCEPTING THE FOLLOWING DESCRIBED PARCEL**

BEGINNING AT A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON" ON THE SOUTHERLY RIGHT OF WAY OF S.R. B40 (RT 66) AND **THE TRUE POINT OF BEGINNING**; ALSO BEING THE NORTHWEST CORNER OF PARCEL A, AS SET FORTH ON C.O.F. CONSOLIDATION MAP RECORDED IN 2006-3396857,

THENCE ALONG SAID RIGHT-OF-WAY NORTH 40°46'58" EAST, 176.42 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 2909.79 FEET AND A CENTRAL ANGLE OF 7°56'31" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 36°48'43" EAST 403.01 FEET AND A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 403.34 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

Exhibit "A"

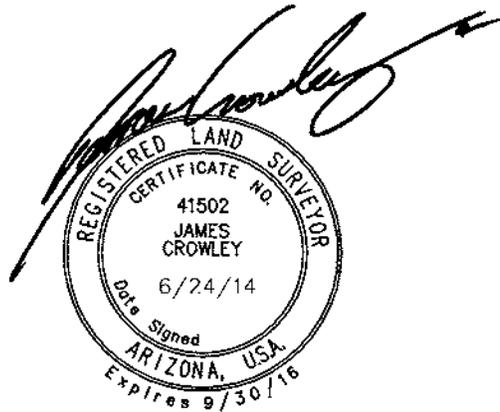
Page 3 of 5

THENCE NORTH 35°26'19" EAST, 1350.1 FEET TO A POINT FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

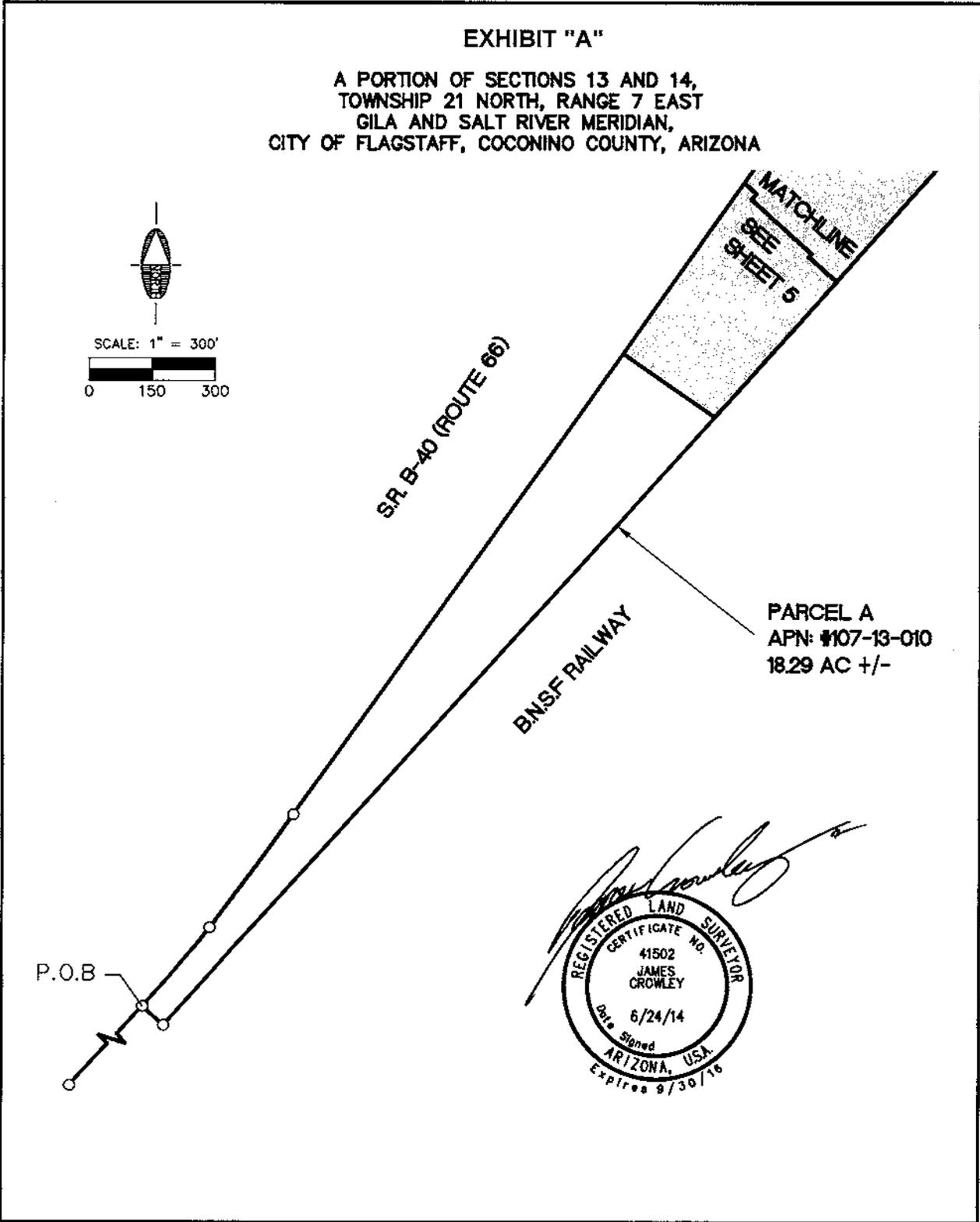
THENCE LEAVING SAID RIGHT-OF-WAY SOUTH 55°17'28"EAST, 266.40 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF B.N.S.F. RAILROAD;

THENCE SOUTH 42°06'33" WEST, 1953.94 FEET TO A FOUND 3" BNSF ALUMINUM CAP;

THENCE NORTH 40°46'58" EAST, A DISTANCE OF 176.42 FEET TO THE **TRUE POINT OF BEGINNING.** CONTAINING 6.87 ACRES, MORE OR LESS.



FILE: P:\2011\11294\Survey\Data - Internal\FROM #####(OFFICE)\2014-06-23 from Flagstaff for lease legal\Legal Descriptions\11294 Parcel-A lease parcel 2014-06-23 EXHIBIT.dwg(ARND: Jun 24, 2014-10:57am

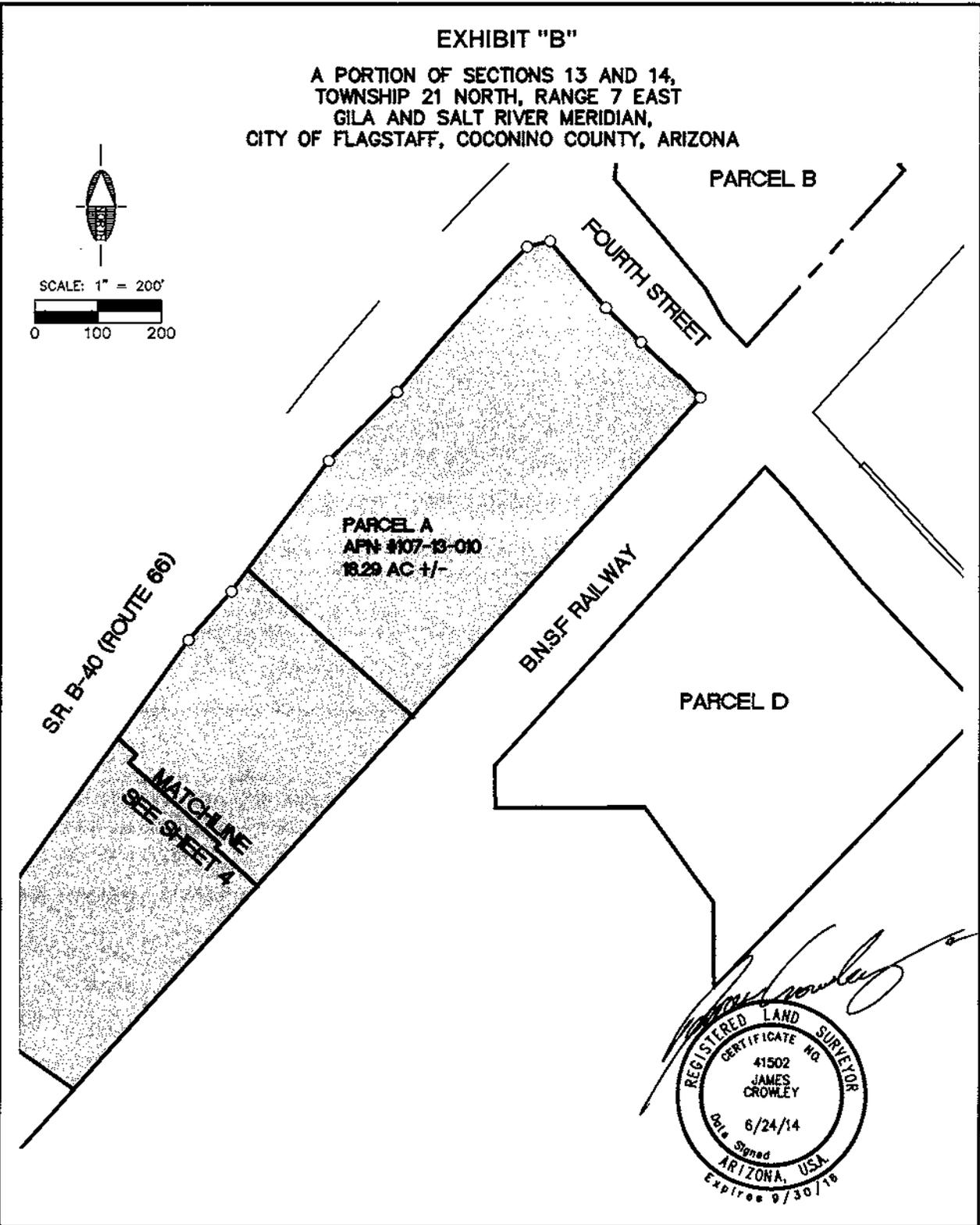


*James Crowley*

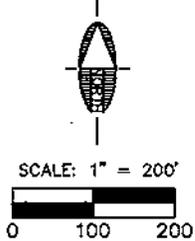
REGISTERED LAND SURVEYOR  
CERTIFICATE NO. 41502  
JAMES CROWLEY  
Date Signed 6/24/14  
ARIZONA, USA  
Expires 9/30/16

 <b>Shephard &amp; Associates, Inc.</b> www.swiaz.com	110 W. Dale Avenue Flagstaff, AZ 86007 928.773.0354 928.774.8934 fax	JOB NO. 11294 DATE MAY 14 SCALE 1" = 300' DRAWN TRL DESIGN CHECKED ADB	THE TRAX EXHIBIT "A"	FLAGSTAFF, ARIZONA	SHEET <b>4</b> OF 5
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FILE: P:\2014\11294\Survey\Data - Internal\FROM #####(OFFICE)\2014-06-23 from Flagstaff for lease legal\Legal Descriptions\11294 Parcel-A lease parcel 2014-06-23 EXHIBIT-DRAWING: Jun 24, 2014-10:58am



**EXHIBIT "B"**  
 A PORTION OF SECTIONS 13 AND 14,  
 TOWNSHIP 21 NORTH, RANGE 7 EAST  
 GILA AND SALT RIVER MERIDIAN,  
 CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA



SR. B-40 (ROUTE 66)

**PARCEL A**  
 APN: 107-13-010  
 13.29 AC +/-

**PARCEL B**

**PARCEL D**

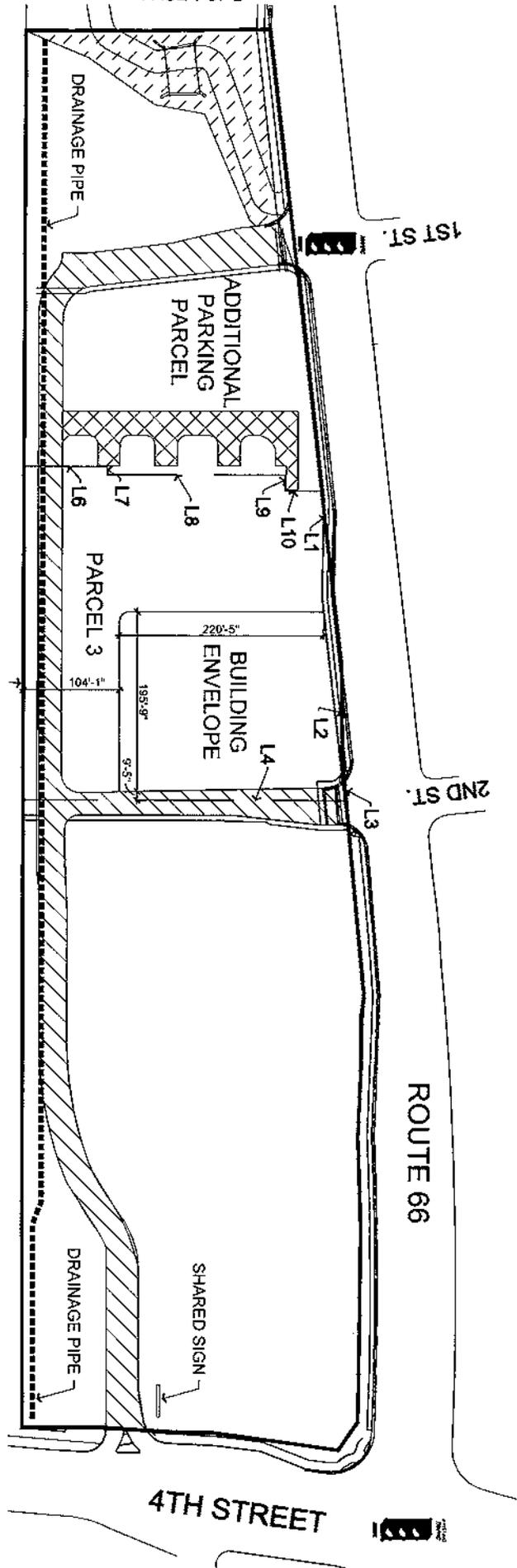
FOURTH STREET

BNSF RAILWAY

MATCHLINE  
 SEE SHEET 4



 <b>Shephard / Wesnitzer, Inc.</b> www.swiaz.com	110 W. Date Avenue Flagstaff, AZ 86001 928.773.0354 928.774.8934 fax	JOB NO. 11294 DATE MAY 14 SCALE 1" = 200' DRAWN TRL DESIGN CHECKED ADB	THE TRAX FLAGSTAFF, ARIZONA	SHEET <b>5</b> OF 5
	EXHIBIT "A"			



**EXHIBIT B**  
**SHEET 2 OF 2**

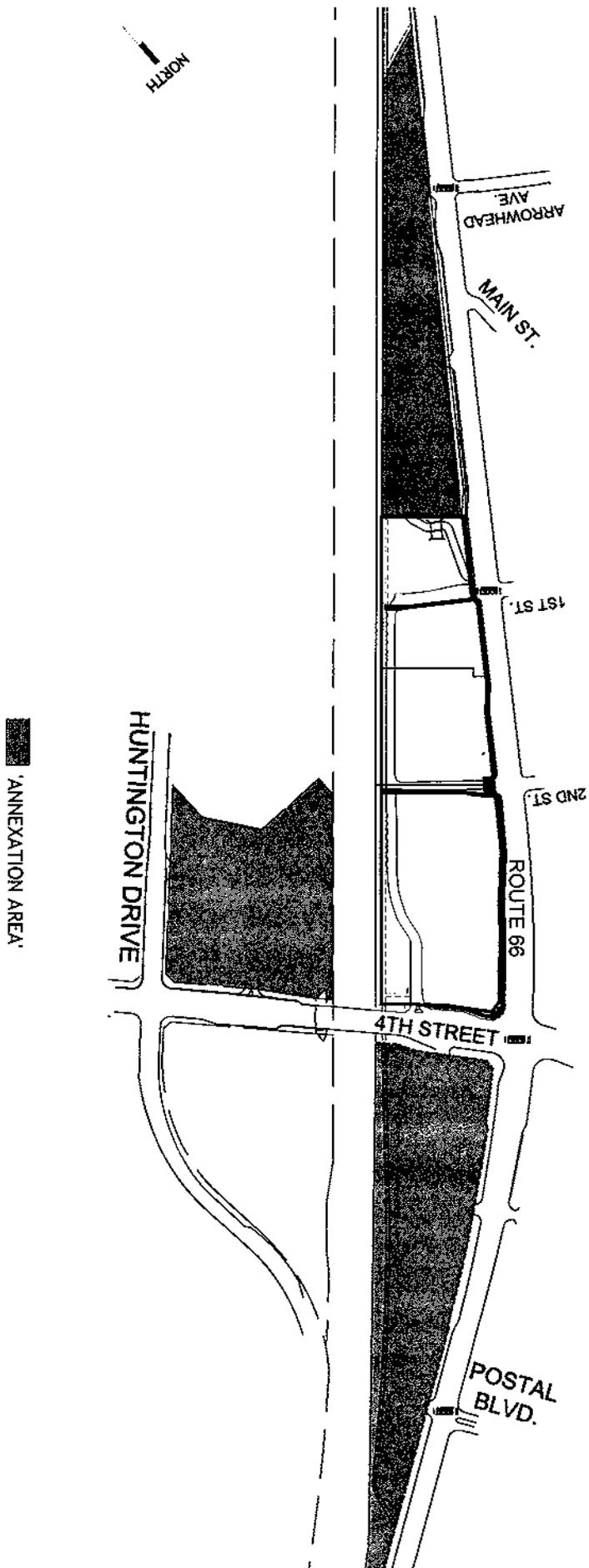
**LINE TABLE**

NUMBER	BEARING	DISTANCE
L1	N 42° 06' 33" E	1477.59'
L2	S 55° A1' 28" E	266.40'
L3	N 35° 26' 19" E	688.46'
L4	N 41° 25' 16" E	103.26'
L5	N 36° 40' 02" E	258.40'
L6	N 44° 29' 34" E	153.20'
L7	N 7° 43' 07" E	37.33'
L8	S 40° 00' 50" E	136.85'
L9	S 45° 29' 37" E	77.52'
L10	S 47° 25' 21" E	82.26'
L11	N 44° 58' 58E	02.86'
L12	S 42° 53' 04" E	47.30'

**CURVE TABLE**

NUMBER	DELTA	RADIUS	LENGTH
C1	4° 42' 34"	3745.72'	307.88

EXHIBIT 'C'



DEDICATION

STATE OF ARIZONA SS. COUNTY OF COCONINO

KNOW ALL MEN BY THESE PRESENTS: That EVERGREEN-TRAX, LLC (An Arizona Limited Liability Company), as owner, hereby publishes this plat as and for THE TRAX - PHASE I SUBDIVISION...

The Owner hereby dedicates to the City of Flagstaff: 1. an easement over, under and across that certain public drainage easement as depicted and described hereon for the purpose of protecting the public...

The Owner hereby dedicates to EVERGREE-TRAX, LLC, an Arizona limited liability company, a private drainage easement as depicted and described hereon for the purpose of future storm drain infrastructure.

IN WITNESS WHEREOF: EVERGREEN-TRAX, LLC, an Arizona limited liability company, has hereunto caused its name to be signed.

Done at Flagstaff, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_ 2015,

By: Trax Investors, LLC Its: Managing Member

By: EOP Holdings, LLC Its: Managing Member

By: \_\_\_\_\_ (owners Name) Its: Manager

ACKNOWLEDGEMENT

STATE OF ARIZONA SS. COUNTY OF COCONINO

On this \_\_\_\_\_ day of \_\_\_\_\_ 2015, before me, the undersigned personally appeared, (owners name), Manager of \_\_\_\_\_ on Arizona Corporation, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein constrained.

IN WITNESS WHEREOF I hereunto set forth my hand and official seal

NOTARY PUBLIC My Commission Expires: \_\_\_\_\_

CITY OF FLAGSTAFF APPROVALS

CITY OF FLAGSTAFF It is hereby certified that this plat has been officially approved for the record by the Council of the City of Flagstaff, Coconino County, Arizona, on the \_\_\_\_ day of \_\_\_\_\_, 2015.

BY: \_\_\_\_\_ Mayor

ATTEST: \_\_\_\_\_ City Clerk

It is hereby certified that this plat has been officially approved for the record by the City of Flagstaff Planning Director and City Engineer, on the \_\_\_\_ day of \_\_\_\_\_, 2015.

BY: \_\_\_\_\_ Planning Director BY: \_\_\_\_\_ City Engineer

LENDER:

BANKERS TRUST COMPANY, AN IOWA STATE CHARTERED BANK

BY: \_\_\_\_\_ ITS: \_\_\_\_\_

UTILITY COMPANY APPROVALS

AUSTIN PRUSAK, by letter ARIZONA PUBLIC SERVICE 11-5-14 DATE

MARTIN CONBOY, by letter UNISOURCE ENERGY SERVICES 11-24-14 DATE

RICHARD DAVIS, by letter SUDDENLINK 11-10-14 DATE

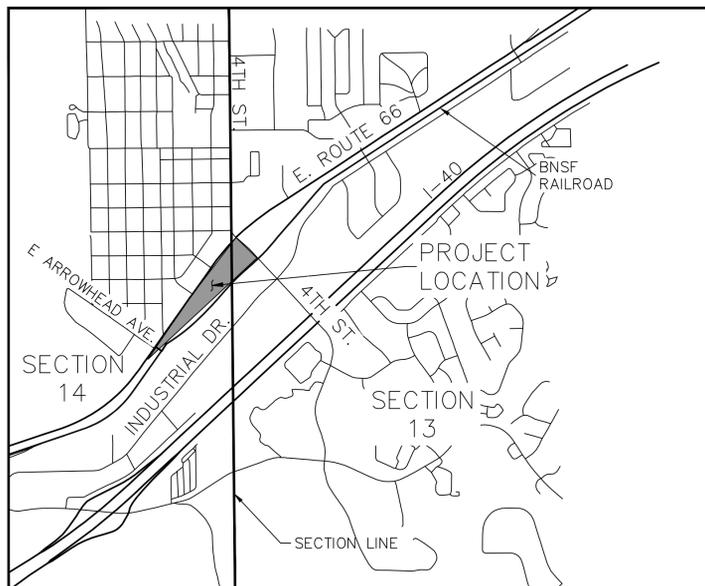
CAROLE WILSON, by letter CENTURYLINK 11-19-14 DATE

UTILITY CONFLICT

NO CONFLICTS WERE ENCOUNTERED WITH THE EXISTING UTILITIES. SEE APPROVAL LETTERS FROM APS, UNISOURCE ENERGY SERVICES, CENTURYLINK AND SUDDENLINK.

FINAL PLAT OF THE TRAX - PHASE I FLAGSTAFF, ARIZONA

LOCATED IN THE NORTHWEST QUARTER OF SECTION 13, AND THE EAST HALF OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, COCONINO COUNTY, ARIZONA



VICINITY MAP N.T.S.

PROJECT INFORMATION:

THE TRAX - PHASE I NUMBER OF LOTS: 8 GROSS AREA: 18.46 ACRES

- 1. THE PROJECT IS LOCATED WITHIN THE CITY OF FLAGSTAFF WATER SERVICE AREA AND HAS BEEN DESIGNATED AS HAVING AN ASSURED WATER SUPPLY. 2. ALL UTILITIES, INCLUDING STREET LIGHTS AND ELECTRICAL LINES INSTALLED WITH THIS PROJECT SHALL BE PLACED UNDERGROUND...

SUMMARY OF TRACTS: TRACT A: FUTURE DEVELOPMENT WEST OF UNIT 1 TRACT B: FUTURE ADOT RIGHT-OF-WAY DEDICATION TRACT C: FUTURE ADOT RIGHT-OF-WAY DEDICATION TRACT D: FOURTH STREET RIGHT-OF-WAY DEDICATION

ZONING

EXISTING ZONING: HIGHWAY COMMERCIAL (HC)

THE ENTIRE PROJECT AREA IS WITHIN THE CITY OF FLAGSTAFF ZONING "HIGHWAY COMMERCIAL (HC)" PER CITY OF FLAGSTAFF OFFICIAL ZONING MAP 9 & 10. THIS PROJECT WILL NOT INVOLVE REZONING.

CITY OF FLAGSTAFF ZONING CODE CODE SEC. 10-40.30.040 (HC)

- MAX. GROSS FAR 3.0 -MAX. BUILDING HEIGHT 60' -FRONT SET BACK 0' -SIDE INTERIOR 0' -15' ADJACENT TO RESIDENTIAL -SIDE EXTERIOR 10' -REAR 0' -15' ADJACENT TO RESIDENTIAL -MIN. LOT AREA 9,000 SF -MIN. WIDTH 60' -MIN. DEPTH 100' -STREET OR PERIPHERAL BUFFER 10' EXCEPT FOR LOT 3, WHICH THROUGH THE DEVELOPMENT AGREEMENT, PART OF BUFFER CAN BE WITHIN ROW.

FLOOD ZONE CLASSIFICATION

A PORTION OF THE SUBJECT PARCEL AFFECTED BY ZONE 'AE', WHERE THE FLOODWAY IS THE CHANNEL OF A STREAM PLUS ANY ADJACENT FLOODPLAIN AREAS THAT MUST BE KEPT FREE OF ENCROACHMENT SO THAT THE 1% ANNUAL CHANCE FLOOD CAN BE CARRIED WITHOUT SUBSTANTIAL INCREASE IN FLOOD HEIGHTS...

THE CURRENT FLOOD INSURANCE RATE MAP HAS NOT BEEN UPDATED TO SHOW RE-ALIGNMENT OF HUNTINGTON/INDUSTRIAL DR., THE BNSF RAILROAD TRACKS AND ASSOCIATED BOX CULVERTS.

CERTIFICATE OF LAND SURVEYOR

This is to certify that the survey of the property described and platted hereon was made under my direction and supervision and is accurately represented on this plat. I also certify that the plat is in substantial conformance to the approved tentative plat and that this plat is correct and accurate as shown to the best of my knowledge and belief.

Registered Land Surveyor

Date \_\_\_\_\_



Table with 3 columns: SHEET NO., DWG NO., DESCRIPTION. Rows include COVER SHEET, OVERALL BOUNDARY, LOT GEOMETRY, EASEMENTS.

Vertical sidebar containing: FLAGSTAFF ARIZONA, THE TRAX - PHASE I, COVER SHEET, JOB NO., DATE, SCALE, DRAWN, DESIGN, CHECKED, 110 W. Dale Avenue Flagstaff, AZ 86001, SWI Shephard Wesnitzer, Inc., REVISIONS table, and DRAWING NO. FPI 1 OF 5.

**COORDINATE SYSTEM DETAILS**

LINEAR UNIT: INTERNATIONAL FEET  
 GEODETIC DATUM: NAD 83 (CONUS)  
 VERTICAL DATUM: NAVD 88, REFERENCED FROM SWI CONTROL POINT "GEMINI"  
 SYSTEM: CITY OF FLAGSTAFF LOW DISTORTION PROJECTION (2005)

PROJECTION: TRANSVERSE MERCATOR  
 LATITUDE OF GRID ORIGIN: 35° 10' 00" N  
 LONGITUDE OF CENTRAL MERIDIAN: 111° 37' 00" W  
 NORTHING AT GRID ORIGIN: 0 FT  
 EASTING AT CENTRAL MERIDIAN: 70,000 FT  
 CENTRAL MERIDIAN SCALE FACTOR: 1.000333 (EXACT)

ALL MEASURED DISTANCES AND BEARINGS SHOWN HEREON ARE GRID VALUES BASED ON THE PRECEDING PROJECTION DEFINITION. THE PROJECTION WAS DEFINED SUCH THAT GRID DISTANCES ARE EQUIVALENT TO "GROUND" DISTANCES IN THE PROJECT AREA.

THE BASIS OF BEARINGS IS TRUE GEODETIC NORTH; NOTE THAT THE MEASURED GRID BEARINGS SHOWN HEREON (OR IMPLIED BY GRID COORDINATES) DO NOT EQUAL GEODETIC BEARINGS DUE TO MERIDIAN CONVERGENCE.

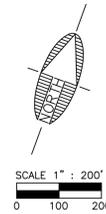
ORTHOMETRIC HEIGHTS (ELEVATIONS) WERE TRANSFERRED TO THE SITE FROM SWI CONTROL POINT "3020" USING GPS WITH NGS GEOD MODEL "GEOID03". ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE PUBLISHED ELEVATION OF THIS STATION.

THE SURVEY WAS CONDUCTED USING GPS REFERENCED TO THE NATIONAL SPATIAL REFERENCE SYSTEM. A PARTIAL LIST OF POINT COORDINATES FOR THIS SURVEY IS GIVEN BELOW (ADDITIONAL COORDINATES ARE AVAILABLE UPON REQUEST). LOCAL NETWORK ESTIMATES ARE GIVEN AT THE 95% CONFIDENCE LEVEL AND ARE BASED ON AN APPROPRIATELY CONSTRAINED LEAST-SQUARES ADJUSTMENT OF OVER-DETERMINED AND STATISTICALLY INDEPENDENT OBSERVATIONS.

**BASIS OF BEARING:** North 00°23'15" West, 2670.69' FROM PT. 3020 TO PT. 3019

POINT #3019 = FOUND 3" ADOT BRASS CAP IN HAND WELL  
 LATITUDE = 35°12'38.61391"N    NORTHING = 76726.607 FT    ESTIMATED ACCURACY  
 LONGITUDE = 111°36'48.50795"W    EASTING = 70953.940 FT    HORIZ = ±0.027 FT  
 ELLIPSOID HEIGHT = 6801.801 FT    ELEVATION = 6877.603 FT    VERT = ±0.035 FT

POINT #3020 = FOUND 2-1/2" BRASS CAP "CITY OF FLAGSTAFF RLS 16544"  
 LATITUDE = 35°12'12.20924"N    NORTHING = 74055.981 FT    ESTIMATED ACCURACY  
 LONGITUDE = 111°36'48.29133"W    EASTING = 70972.009 FT    HORIZ = FIXED  
 ELLIPSOID HEIGHT = 6301.897 FT    ELEVATION = 6838.56 FT    VERT = FIXED



**LEGEND**

- SECTION LINE
- - - CENTERLINE
- BOUNDARY-R/W LINE
- ADJOINING PARCEL LINE
- ADJOINING R/W LINE
- FOUND 1/2" REBAR W/ PLASTIC CAP "RLS 16630 WOODSON"
- ⊙ FOUND 3" BNSF ALUMINUM CAP
- ⊗ FOUND 2-1/2" BRASS CAP "CITY OF FLAGSTAFF"
- FOUND 2" ALUMINUM CAP "LS 13010 AEC"
- FOUND 1.5" ALUMINUM CAP "LS 14671 NES"
- FOUND 3" ADOT MONUMENT AS NOTED
- CALCULATED POINT
- ⊕ SET 1/2" REBAR W/ ALUMINUM CAP "RLS 48756"

**LINE TABLE**

NUMBER	BEARING (M)	DISTANCE(M)	BEARING (R)	DISTANCE(R)
L5	N45°57'31"W	60.06'	N45°59'26"W	60.06' (R1)
L6	S89°28'11"W	23.03'	S89°42'12"W	23.04' (R1)
L7	N39°58'54"W	274.91'	N40°07'56"W	275.02' (R1)
L8	N76°43'07"E	37.33'	N76°35'19"E	37.30'
L9	S40°00'50"E	136.85'	S40°09'12"E	136.09'
L10	S45°29'37"E	77.52'	S45°52'40"E	77.10'
L11	S47°25'21"E	82.26'	S47°28'57"E	81.84'
L12	N44°58'58"E	2.86'	N45°36'00"E	3.00'
L13	S42°53'04"E	47.30'	S42°59'24"E	47.26'
L14	N47°02'26"W	66.06'	N52°41'54"W	41.69'(R) N47°15'24"W 67.15' (R1)
L15	N40°46'58"E	176.42'	D=3°28'31" R=2909.789 L=176.49' (R1)	
L16	N41°25'16"E	103.26'	N41°08'46"E	103.31'
L17	N36°40'02"E	258.40'	N36°26'28"E	258.30'
L18	N44°29'34"E	153.20'	N44°14'44"E	153.19'

**CURVE TABLE**

NUMBER	DELTA(M)	RADIUS(M)	LENGTH(M)	DELTA(R)	RADIUS(R)	LENGTH(R)
C4	45°28'05"	234.00'	185.70'	45°27'16"(R1)	234.00'	185.64'(R1)
C5	2°50'14"	2019.24	99.99'	2°50'14"(R1)	2019.24	99.99'(R1)
C6	39°35'02"	486.54'	336.14'	39°34'50"(R1)	486.54'	336.11'(R1)
C7	17°06'04"	3819.72'	1140.07'	17°09'21"(R1)	3819.72'	1143.72'(R1)
C8	7°56'31"	2909.79'	403.34'			396.37'(R1)
C9	4°42'34"	3745.72'	307.88'	4°42'36"	3745.72'	307.92'
C10	27°59'44"	2864.79'	1399.77'	28°01'55"(R1)	2864.79'	1401.60'(R1)
				27°59'44"(R2)	2864.79(R2)	1399.77'(R2)

**NOTE:**

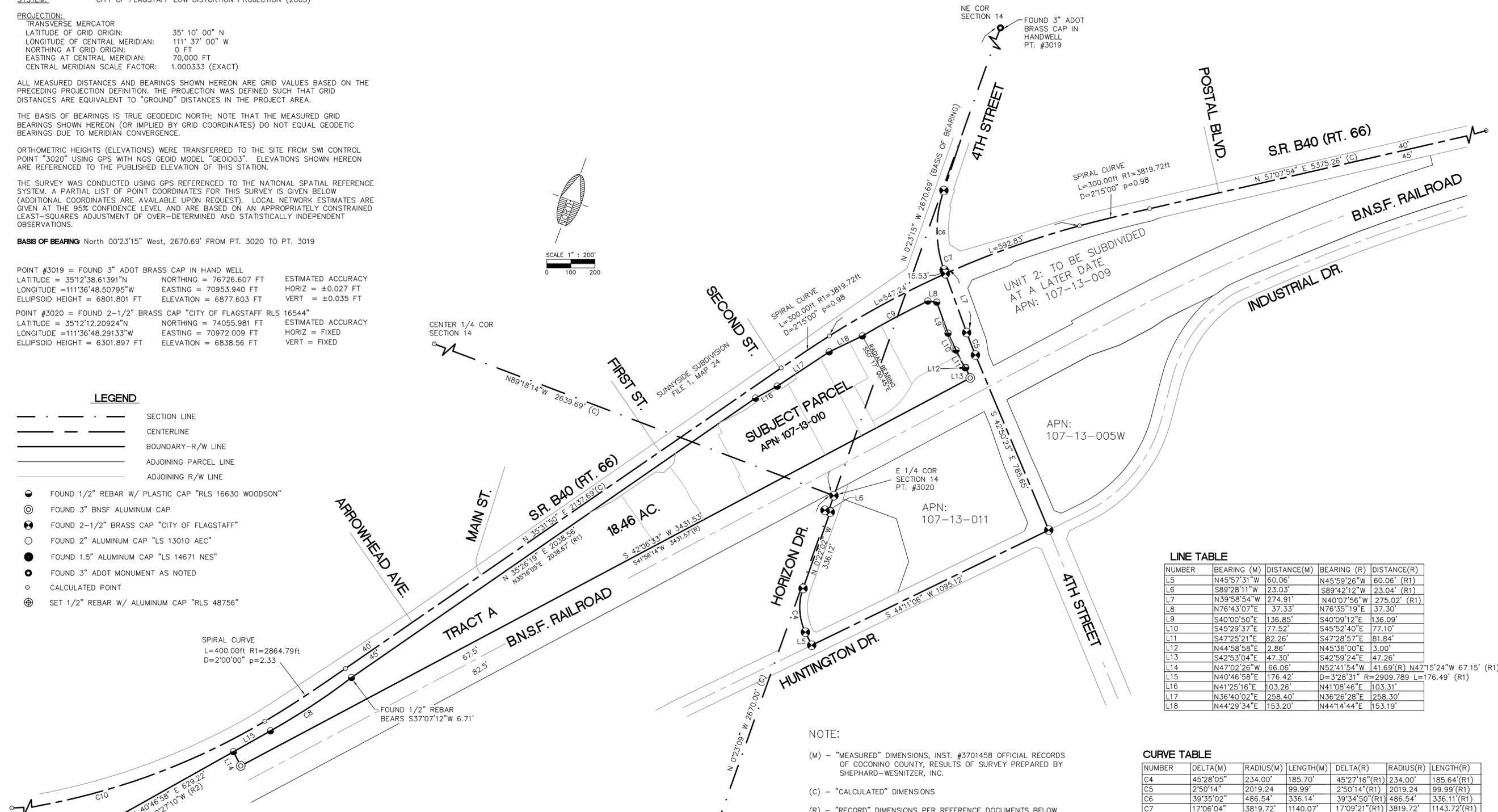
- (M) - "MEASURED" DIMENSIONS, INST. #3701458 OFFICIAL RECORDS OF COCONINO COUNTY, RESULTS OF SURVEY PREPARED BY SHEPARD-WESNITZER, INC.
  - (C) - "CALCULATED" DIMENSIONS
  - (R) - "RECORD" DIMENSIONS PER REFERENCE DOCUMENTS BELOW
- REFERENCE DOCUMENTS:
- (R) - INST #3396857 OFFICIAL RECORDS OF COCONINO COUNTY, CITY OF FLAGSTAFF CONSOLIDATION MAP PREPARED BY PLATEAU ENGINEERING
  - (R1) - INST #3491704 OFFICIAL RECORDS OF COCONINO COUNTY, ALTA SURVEY PREPARED BY WOODSON ENGINEERING AND SURVEYING, INC.
  - (R2) - ADOT RIGHT-OF-WAY PLANS, S.R. B40 M-951-6-801

**CERTIFICATE OF LAND SURVEYOR**

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 I also certify that the plat is in substantial conformance to the approved tentative plat and that this plat is correct and accurate as shown to the best of my knowledge and belief.

Registered Land Surveyor

Date \_\_\_\_\_



FLAGSTAFF ARIZONA

THE TRAX - PHASE 1

OVERALL BOUNDARY

JOB NO: 11294    DATE: MAY 15    SCALE: AS SHOWN    DRAWN: SCI    DESIGN: ADB    CHECKED: ADB

110 W. Dale Avenue  
 Flagstaff, AZ 86001  
 928.774.0304  
 928.774.8934 fax  
 www.swi-arz.com

SWI  
 Shepard Wesnitzer, Inc.

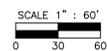
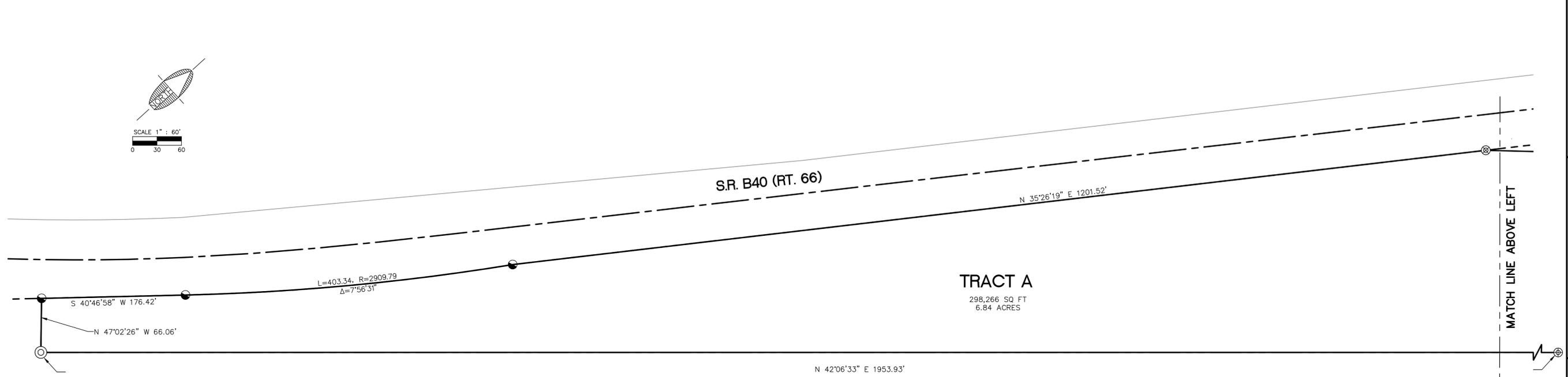
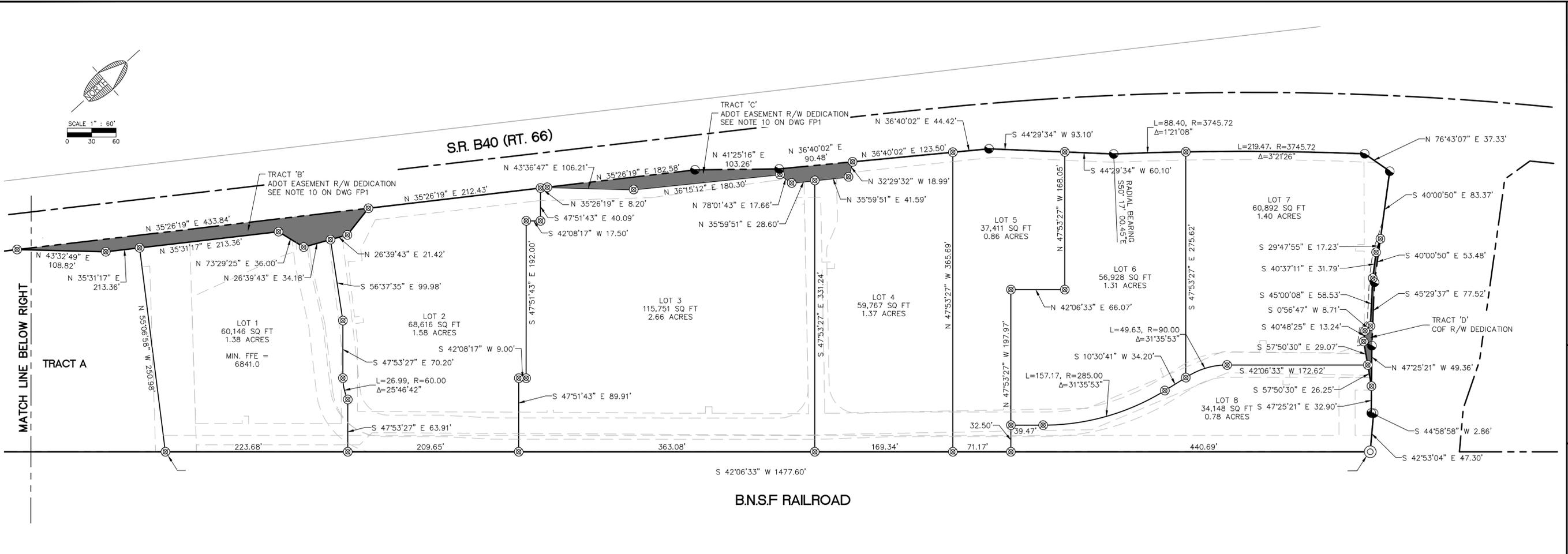
REVISIONS	DATE	BY

CALL TWO WORKING DAYS BEFORE YOU DIG  
 1-800-STAKE-IT

DRAWING NO.  
**FP2**

SHT NO. OF  
 2 OF 5

C.O.F. FILE NO: PSPR20150016

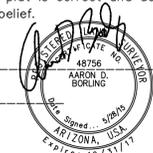


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Registered Land Surveyor

Date \_\_\_\_\_



FLAGSTAFF ARIZONA

THE TRAX - PHASE 1

LOT GEOMETRY

JOB NO.:	11294
DATE:	MAY 15
SCALE:	AS SHOWN
DRAWN:	MJR
DESIGN:	ADB
CHECKED:	ADB

110 W. Dole Avenue  
 Flagstaff, AZ 86001  
 928.774.0354  
 928.774.8934 fax  
 www.swibz.com

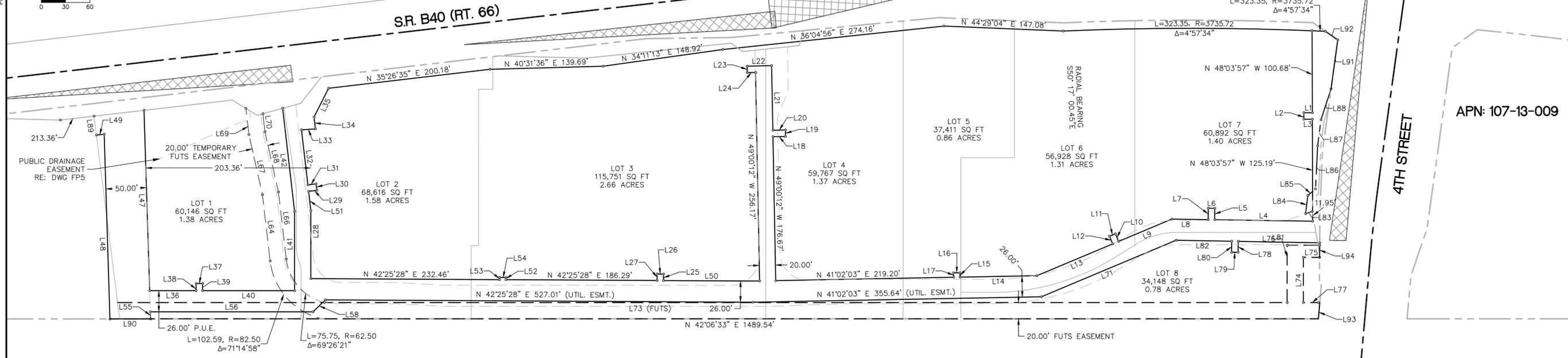
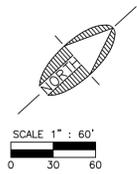


NO.	DESCRIPTION	DATE	BY



DRAWING NO.	FP3
SHT NO.	3
OF	5

PLOTTED: May 28, 2015-6:00pm



B.N.S.F. RAILROAD

APN: 107-13-009

LINE #	LENGTH	DIRECTION
L1	10.52	N 42°06'33" E
L2	8.00	N 47°57'23" W
L3	10.54	N 42°06'33" E
L4	120.75	N 42°58'10" E
L5	14.11	N 47°50'20" W
L6	8.00	N 42°06'29" E
L7	13.99	N 47°50'48" W
L8	44.85	N 42°57'31" E
L9	71.04	N 19°26'03" E
L10	10.16	N 70°33'57" W
L11	8.00	N 19°26'03" E
L12	10.16	N 70°33'57" W
L13	101.15	N 19°26'03" E
L14	94.84	N 41°02'03" E
L15	5.28	N 48°57'57" W
L16	8.00	N 42°13'10" E
L17	5.44	N 48°57'57" W
L18	15.40	N 40°59'48" E
L19	8.00	N 47°30'53" W
L20	15.61	N 40°59'48" E

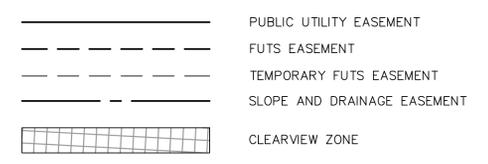
LINE #	LENGTH	DIRECTION
L21	79.31	N 49°00'12" W
L22	30.15	N 40°59'48" E
L23	8.00	N 47°53'27" W
L24	10.31	N 40°59'48" E
L25	8.00	N 47°53'30" W
L26	8.00	N 42°25'28" E
L27	8.00	N 47°53'30" W
L28	83.58	N 47°53'27" W
L29	10.25	N 35°27'37" E
L30	8.00	N 54°32'23" W
L31	10.25	N 35°27'37" E
L32	68.01	N 54°32'23" W
L33	17.25	N 38°19'14" E
L34	14.61	N 54°32'23" W
L35	39.62	N 21°04'33" W
L36	57.21	N 42°06'33" E
L37	8.00	N 42°06'33" E
L38	8.88	N 47°53'27" W
L39	8.88	N 47°53'27" W
L40	113.47	N 42°06'33" E

LINE #	LENGTH	DIRECTION
L41	97.25	N 47°53'27" W
L42	127.57	N 54°32'23" W
L47	221.59	N 49°41'31" W
L48	226.87	N 49°41'31" W
L49	9.60	N 35°28'56" E
L50	118.37	N 42°25'28" E
L51	23.77	N 54°32'23" W
L52	2.68	N 47°34'32" W
L53	2.64	N 47°34'32" W
L54	8.00	N 42°08'17" E
L55	8.62	N 49°41'31" W
L56	200.55	N 42°06'33" E
L58	21.21	N 1°51'28" W
L64	81.89	N 54°32'23" W
L66	82.95	N 54°32'23" W
L67	75.76	N 60°36'04" W
L68	75.76	N 60°36'04" W
L69	32.29	N 54°32'23" W
L70	22.26	N 54°32'23" W
L71	179.97	N 19°26'03" E

LINE #	LENGTH	DIRECTION
L73	1441.71	S 42°06'33" W
L74	55.51	N 47°53'27" W
L75	19.94	N 42°06'33" E
L76	70.51	N 47°53'27" W
L77	18.43	N 42°06'33" E
L78	13.38	N 46°53'41" W
L79	8.00	N 42°13'10" E
L80	13.50	N 46°53'41" W
L81	98.00	N 43°06'19" E
L82	68.58	N 43°07'06" E
L83	8.63	N 24°27'47" E
L84	22.25	N 40°48'25" W
L85	12.59	N 0°56'47" E
L86	52.81	N 45°00'08" W
L87	32.33	N 40°37'11" W
L88	39.87	N 29°47'55" W
L89	23.52	N 55°06'58" W
L90	50.02	N 42°06'33" E
L91	60.81	N 40°00'50" W
L92	18.51	N 76°49'58" E

LINE #	LENGTH	DIRECTION
L93	20.09	N 42°33'57" W
L94	14.93	N 47°25'21" W

**LEGEND**

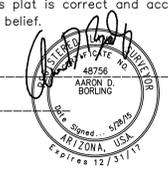


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Registered Land Surveyor

Date \_\_\_\_\_



FLAGSTAFF ARIZONA

THE TRAX - PHASE 1

PHASE 1 EASEMENTS

JOB NO: 11294  
DATE: MAY 15  
SCALE: AS SHOWN  
DRAWN: MUR  
DESIGN: ADB  
CHECKED: ADB

110 W. Dole Avenue  
Flagstaff, AZ 86001  
928.774.0354  
928.774.8934 fax  
www.swibz.com

SWI  
Shephard Wesnitzer, Inc.

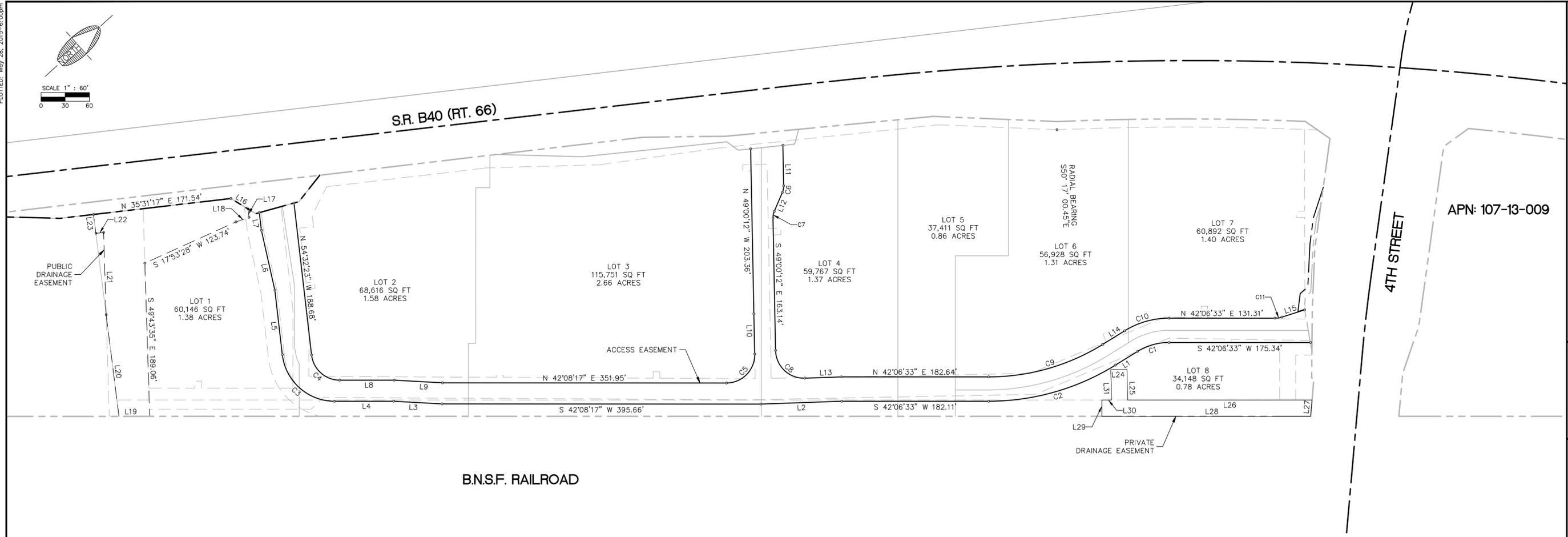
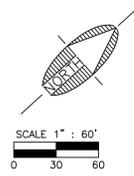
NO.	DESCRIPTION	DATE	BY

DRAWING NO. **FP4**

SHT NO. 4 OF 5

C.O.F. FILE NO: PSPR20150016

FILE: P:\2011\1294\DWG\Plot\Final Plot\FP-11294-EASEMENT.dwg SC-CSD14



LINE #	LENGTH	DIRECTION
L1	31.97	S 10°30'41" W
L2	100.06	S 40°05'34" W
L3	60.09	S 45°16'44" W
L4	73.40	S 42°06'33" W
L5	79.79	N 54°32'23" W
L6	75.76	N 60°36'04" W
L7	22.01	N 54°32'23" W
L8	67.61	N 42°06'33" E
L9	60.10	N 45°16'44" E
L10	49.67	N 49°00'12" W
L11	49.80	S 49°00'12" E
L12	25.34	S 24°39'51" E
L13	45.33	N 40°05'34" E
L14	31.97	N 10°30'41" E
L15	29.62	N 24°27'47" E
L16	25.08	S 73°29'25" W
L17	10.36	S 53°30'37" E
L18	17.20	S 23°11'26" W
L19	38.20	S 42°06'33" W
L20	126.41	N 55°06'28" W

LINE #	LENGTH	DIRECTION
L21	101.40	N 49°41'31" W
L22	9.60	N 35°28'56" E
L23	23.52	N 55°06'58" W
L24	20.00	N 40°48'41" E
L25	37.89	S 49°11'19" E
L26	228.64	N 42°06'33" E
L27	20.08	S 42°53'04" E
L28	258.91	S 42°06'33" W
L29	20.00	N 47°53'27" W
L30	12.02	N 42°06'33" E
L31	37.44	N 49°11'19" W

CURVE #	LENGTH	RADIUS	DELTA
C1	41.36	75.00	31°35'53"
C2	165.45	300.00	31°35'53"
C3	94.56	65.00	83°21'04"
C4	50.92	35.00	83°21'04"
C5	55.68	35.00	91°08'29"
C6	8.50	20.00	24°20'21"
C7	8.50	20.00	24°20'21"
C8	55.53	35.00	90°54'14"
C9	148.90	270.00	31°35'53"
C10	57.91	105.00	31°35'53"
C11	8.78	28.50	17°38'46"

**LEGEND**

-----	ACCESS EASEMENT PER RECORDED COREA (DOC #3703648)
-----	PUBLIC DRAINAGE EASEMENT
-----	PRIVATE DRAINAGE EASEMENT

**CERTIFICATE OF LAND SURVEYOR**

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Registered Land Surveyor \_\_\_\_\_  
Date \_\_\_\_\_



FLAGSTAFF ARIZONA

THE TRAX -- PHASE 1

PHASE 1 EASMENTS

APN: 107-13-009

110 W. Dole Avenue  
Flagstaff, AZ 86001  
928.774.0354  
928.774.8934 fax  
www.swibz.com

Shephard Wesnitzer, Inc.

NO.	DESCRIPTION	DATE	BY

REVISIONS

CALL TWO WORKING DAYS BEFORE YOU DIG  
1-800-STAKE-IT

DRAWING NO. **FP5**

SHT NO. **5** OF **5**

C.O.F. FILE NO: PSPR20150016

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Jennifer Brown, Special Services Supervisor  
**Co-Submitter:** Stacey Brechler-Knaggs, Grants Manager  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



---

**TITLE:**

**Consideration of Authorizing the Submission and Acceptance of a Grant Application:** To the U.S. Department of Justice, FY 2015 Edward Byrne Memorial Justice Assistance Grant in the amount of \$20,749 to pay for Police Staff Overtime and Crisis Intervention Training for the Coconino County Sheriff's Department and authorizing the acceptance upon award of the grant agreement

**RECOMMENDED ACTION:**

Approve the submission of a Grant Application and authorize acceptance upon award for the U.S. Department of Justice, FY 2015 Edward Byrne Memorial Justice Assistance Grant (JAG) for an amount of \$20,749.

**Executive Summary:**

Approval of the grant in the amount of \$20,749 will greatly assist in providing overtime funds for community policing and property crime interdiction initiatives and for Crisis Intervention Training for the Coconino County Sheriffs Department.

**Financial Impact:**

There is no significant financial impact to the Flagstaff Police Department in terms of expenditures.

**Connection to Council Goal and/or Regional Plan:**

**COUNCIL GOAL:**

**5. Develop and implement guiding principles that address public safety service levels through appropriate staffing levels**

This grant will provide additional funding for scheduled overtime for the Flagstaff Police Department for activities to prevent and control crime.

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

No

**Options and Alternatives:**

Approve grant application process Disapprove grant application process

**Background/History:**

Background/History: The U.S. Department of Justice, Office of Justice Programs (OJP) Bureau of Justice Assistance (BJA), was created in 1984 to provide federal leadership in developing the nation's capacity to prevent and control crime, administer justice, and assist crime victims. The Edward Byrne Memorial Justice Assistance Grant (JAG) Program allows states, tribes, and local governments to support a broad range of activities to prevent and control crime based on their own local needs and conditions. JAG blends the previous Byrne Formula and Local Law Enforcement Block Grant (LLEBG) Programs to provide agencies with the flexibility to prioritize and spend funds where they are most needed. The JAG formula program provides agencies with the flexibility to prioritize and place justice funds where they are needed most. The formula calculates direct allocations for local governments within each state, based on their share of the total violent crime reported with the state.

**Key Considerations:**

Key Considerations: The JAG formula program provides agencies with the flexibility to prioritize and place justice funds where they are needed most. The formula calculates direct allocations for local governments within each state, based on their share of the total violent crime reported with the state. The City has been certified as disparate and must submit a joint application for the aggregate of funds allocated. The JAG disparate jurisdictions are certified by the Director of the Bureau of Justice Assistance (BJA), based in part on input from the state's Attorney General. The disparate allocation occurs when the City is scheduled to receive one and one half times more than County, while the County bears more than 50% of the costs of prosecution of incarceration that arise for Part 1 violent crimes committed in the city. City funds will be used to supplement overtime for community policing and property crime interdiction initiatives. As our citizens request additional patrols or when we can identify an area that would benefit from additional Police presence, these funds will be a key factor in assuring that we can provide these necessary services. As part of the joint application process an IGA is required to be submitted to the funding agency indicating who will serve as applicant/fiscal agent for the joint funds. The IGA will authorize payment to the County in the amount of \$5,735 of the JAG funds

**Expanded Financial Considerations:**

Financial Implications: The FY15 JAG funds have been allocated in the amount of \$20,749 of which the City agrees to pay the County a total of \$5,735 to be used to utilize for Crisis Intervention Training to use in the field by officers. The City amount of \$13,383 will be used for Police overtime, with the remaining balance of \$1,631 to be used for allowable administrative costs for the City as the applicant/fiscal agent. This grant will fund approximately 297 person-hours of discretionary overtime for officers. As our economy continues to struggle, the financial impact of these funds cannot be minimized. Without these additional funds, the Flagstaff Police Department will be hard pressed to meet minimum manning levels and respond to emergencies without going over budget on overtime – even without manning the extra programs that the community has come to expect.

**Community Benefits and Considerations:**

These funds will assist the Flagstaff Police Department and the County Sheriff's Department to prevent and control crime, administer justice, and assist crime victims.

**Community Involvement:**

Inform the Council and public on the application of this grant and intended use of these funds.

---

**Attachments:**     [SF424 Applicaiont for Federal Assistance-JAG 2015](#)  
                              [JAG 2015-Assurances](#)

JAG 2015-Certifications

FY15 JAG Narrative 1

FY15 JAG Narrative 2

FY 15 JAG Narrative 3

FY 15 JAG Narrative 4

City County IGA

Standard Assurance County IGA

<b>APPLICATION FOR FEDERAL ASSISTANCE</b>	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION Application Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
<b>5. APPLICANT INFORMATION</b>		
Legal Name	Organizational Unit	
City of Flagstaff	Flagstaff Police Department	
Address	Name and telephone number of the person to be contacted on matters involving this application	
City Hall, 211 West Aspen Flagstaff, Arizona 86001-5359	Brechler-Knaggs, Stacey (928) 213-2227	
6. EMPLOYER IDENTIFICATION NUMBER (EIN)	7. TYPE OF APPLICANT	
86-6000244	Municipal	
8. TYPE OF APPLICATION	9. NAME OF FEDERAL AGENCY	
New	Bureau of Justice Assistance	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 16.738	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT	
CFDA TITLE: EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM	FPD is applying for \$20,749 under the purpose of: LAW ENFORCEMENT PROGRAMS. The \$15,014 will fund approximately 297 person-hours of discretionary overtime for officers. As the economy continues to struggle, budget cuts and economic crisis increase the likelihood of crimes therefore the financial impact of these funds cannot be minimized. We will be hard-pressed to meet minimum manning levels and respond to emergencies without going over budget on overtime, even without manning the extra programs that the community has come to expect. The remaining \$1,631 will be used for the allowable 7.86% administrative costs for the City as the applicant/fiscal agent.	

**12. AREAS AFFECTED BY PROJECT**

We know our strategies work – in calendar year 2014 alone we were able to focus on Part One crimes, Property crime and work in the reduction of DWI related collisions. The department's effective and consistent application of the methods and principles of CompStat and Community Policing have improved the safety and quality of life for the citizens of Flagstaff.

**13. PROPOSED PROJECT**

Start Date: October 01, 2014  
End Date: September 30, 2016

**14. CONGRESSIONAL DISTRICTS OF**

a. Applicant  
b. Project AZ01

**15. ESTIMATED FUNDING**

Federal	\$20,749
Applicant	\$0
State	\$0
Local	\$0
Other	\$0
Program Income	\$0
<b>TOTAL</b>	<b>\$20,749</b>

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

Program has not been selected by state for review

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS REQUIRED.**

Close Window



OMB APPROVAL  
NUMBER 1121-0140

EXPIRES 03/31/2016

### STANDARD ASSURANCES

The Applicant hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including OMB Circulars A-21, A-87, A-102, A-110, A-122, A-133; Ex. Order 12372 (intergovernmental review of federal programs); and 28 C.F.R. pts. 66 or 70 (administrative requirements for grants and cooperative agreements). The applicant also specifically assures and certifies that:

1. It has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.
2. It will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
3. It will give the awarding agency or the Government Accountability Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance.
4. It will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 C.F.R. pts. 18, 22, 23, 30, 35, 38, 42, 61, and 63, and the award term in 2 C.F.R. § 175.15(b).
5. It will assist the awarding agency (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Ex. Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).
6. It will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); the Education Amendments of 1972 (20 U.S.C. §§1681, 1683, 1685-86); and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); see Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).
7. If a governmental entity:
  - a. it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and
  - b. it will comply with requirements of 5 U.S.C. §§ 1501-08 and §§ 7324-28, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

Close Window

**U.S. DEPARTMENT OF JUSTICE  
OFFICE OF JUSTICE PROGRAMS  
OFFICE OF THE CHIEF FINANCIAL OFFICER**

**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER  
RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Acceptance of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying," 2 CFR Part 2867, "DOJ Implementation of OMB Guidance on Nonprocurement Debarment and Suspension," and 28 CFR Part 83, "Government-wide Debarment and Suspension," and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

Pursuant to Executive Order 12549, Debarment and Suspension, implemented at 2 CFR Part 2867, for prospective participants in primary covered transactions, as defined at 2 CFR Section 2867.20(a), and other requirements:

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Have not within a two-year period preceding this application been convicted of a felony criminal violation under any Federal law, unless such felony criminal conviction has been disclosed in writing to the Office of Justice Programs (OJP) at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov), and, after such disclosure, the applicant has

received a specific written determination from OJP that neither suspension nor debarment of the applicant is necessary to protect the interests of the Government in this case.

(d) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(e) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. FEDERAL TAXES

A. If the applicant is a corporation, the applicant certifies that either (1) the corporation has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, or (2) the corporation has provided written notice of such an unpaid tax liability (or liabilities) to OJP at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov), and, after such disclosure, the applicant has received a specific written determination from OJP that neither suspension nor debarment of the applicant is necessary to protect the interests of the Government in this case.

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 4. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 83, Subpart F, for grantees, as defined at 28 CFR Sections 83.620 and 83.650:

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN:

Control Desk, 810 7th Street, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Close Window

**EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM  
FY 2015 LOCAL SOLICITATION**

**PROGRAM NARRATIVE (Attachment 1)**

The Employer Identification Number (EIN) on the SF-424 is the City of Flagstaff Municipal Government EIN. The Flagstaff Police Department has a vendor number that is 86-6000282, please use EIN listed on the SF-424. The City of Flagstaff's DUNS number is 088302625, valid until 07/16/2015. The Coconino County's DUNS number is 838150878, valid until 01/07/2015

**Program Objectives**

**Flagstaff Police Department (FPD) –**

FPD is applying for \$20,749 under the purpose of: LAW ENFORCEMENT PROGRAMS. The \$15,014 will fund approximately 297 person-hours of discretionary overtime for officers. As the economy continues to struggle, budget cuts and economic crisis increase the likelihood of crimes therefore the financial impact of these funds cannot be minimized. We will be hard-pressed to meet minimum manning levels and respond to emergencies without going over budget on overtime, even without manning the extra programs that the community has come to expect. The remaining \$1,631 will be used for the allowable 7.86% administrative costs for the City as the applicant/fiscal agent.

**Coconino County Sheriff's Office (CCSO) –**

CCSO is applying for \$5,735 under the purpose of: LAW ENFORCEMENT PROGRAMS. Coconino County is the second largest county in the nation, with over 18,600 square miles. Our goal of this project is to utilize the funds for Crisis Intervention Training for our law enforcement officers. These methods are to help reduce recidivism and criminal disorder by the severely mentally ill.

**Organization Capabilities/Competencies**

FPD - We know our strategies work – in calendar year 2014 alone we were able to focus on Part One crimes, Property crime and work in the reduction of DWI related collisions. The department's effective and consistent application of the methods and principles of CompStat and Community Policing have improved the safety and quality of life for the citizens of Flagstaff.

The City of Flagstaff Grants Management Team (GMT) is composed of the Grants Manager, Grants Specialist, Financial Officer/Accountant, and the Project Representative. This team approach has assured the city's success in grant compliance from award to closeout. The GMT ensures all terms and conditions of the grant agreement are followed, provides the necessary financial and performance reports, monitors grant and contract performance, and that all evaluation, audit and closeout procedures are met.

The City of Flagstaff has a full time Grants Manager position which involves researching, monitoring, and applying for available municipal related grants, monitoring, implementing, evaluating, and assuring the compliance of terms and conditions, and in general, is the central coordinator for all grants, which may involve internal auditing and holding others accountable for proper grant compliance. The Grants Specialist position provides support to the Grant Manager in these functions. The Accountants assigned to the grants have a high level of technical

expertise in governmental budgeting and accounting. In addition, the Project Representatives have extensive knowledge in the targeted areas in which they are seeking funds and administering the funded programs.

The City receives numerous federal grants, which are audited yearly by an Independent Auditor on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133. The Single Audit Report, Schedule of Expenditures of Federal Awards for the past five years, have reflected no audit findings.

CCSO - We are highly capable of implementing this project. Key players have been identified to oversee this project. Our communications manager has over 30 years of experience at the Sheriff's Office and will be procuring and implementing this equipment.

### **Program Activities - Design and Implementation**

FPD – When not actively responding to citizen initiated calls for service, officers will use these funds to conduct proactive enforcement and education in neighborhoods and business areas to reduce crime and improve quality of life. These funds will pay for 297 hours of officer overtime, which will help preserve jobs and be a huge economic benefit to staff. Adding so many hours of “feet-on-the-street” for these community policing, Neighborhood Block Watch and CompStat initiatives will greatly enhance all our efforts toward our public safety mission.

Community Policing programs provide positive community relationships and excellent customer service to the community. Programs included in community policing include the following:

Neighborhood Block Watch: Neighborhood Block Watch meetings serve as a forum for officers to reach the public. Officers attend community support meetings bi-monthly to identify community concerns and crime patterns and make community policing contacts in the form of educational presentations and clean-up projects. In addition to sharing of information, officers develop problem-solving strategies which result in special enforcement projects, surveillances and “knock and talk” details.

CompStat is a multifaceted, dynamic approach to crime reduction. Data is collected, disseminated and analyzed on a regular basis so that effective strategies and tactics can be developed to prevent or solve crimes. Using these strategies, department personnel and resources are rapidly deployed. CompStat is a valuable tool for the Flagstaff Police Department and effectively reduces crime and protects property.

CCSO - We will enter into a Memorandum of Understanding (MOU) with the City of Flagstaff. Once this document has been fully executed, we will obtain approval from the County to purchase the equipment. The county will implement the training and will track the training for the deputies.

### **Project Plan - Impact/Outcomes, Evaluation, and Sustainment**

FPD - In line with our community policing philosophy, field personnel use problem-solving methods to address crime, fear of crime and quality of life issues. In addition to sharing information, officers develop problem-solving strategies which resulted in numerous special

enforcement projects, surveillances, and “knock and talks”. Many of these activities are a direct result of increased criminal activities in a specific location or neighborhood and the citizen complaints or concerns over these activities. Our various “Safe” programs - Safe Streets, Safe Nights, and Safe Neighborhoods - are examples of programs that have been welcomed by our citizens and merchants. The law abiding citizens of our community deserve and expect our streets and neighborhoods to be places where they feel safe. The numerous letters, comments and accolades we receive from citizens reinforce the need for these beneficial programs.

Officers apply CompStat process to address citizens concerns of criminal activity, fear of crime and public intoxication in high crime areas. Specific initiatives, directed patrol efforts, and undercover surveillance have proved extremely effective. Officers also worked closely with community members to improve the environmental design and security of high traffic/high crime locations.

CCSO- The county will provide and schedule the Critical Incident Training to deputies and advise City of Flagstaff the amount of training hours quarterly.

**EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM  
FY 2015 LOCAL SOLICITATION**

**BUDGET NARRATIVE (Attachment 2)**

The \$20,749 JAG funds will be divided between the disparate City of Flagstaff (\$15,014), Flagstaff Police Department (FPD) and Coconino County Sheriff’s Office (CCSO) (\$5,735). The City share is slated to be used for discretionary overtime for our Officers to carry out Community Policing programs and CompStat initiatives.

**CITY OF FLAGSTAFF –**

Overtime Cost	Approx. Hrs.	Approx. Hrly Wage (includes ERE)	Total
Police Officer	297	\$45.00	\$13,365
City Administrative Costs		7.86%	\$ 1,631

Fringe Benefits – Fringe benefits are for the personnel listed in budget category B and only for the percentage of time devoted to the project. The fringe benefits on overtime hours are only for FICA; Workman’s Compensation, Arizona Public Safety Personnel Retirement employer’s contribution, and Long Term Disability benefit. The percentages shown for these items on the Budget Detail Worksheet are the City of Flagstaff’s burden rates for police officers’ overtime hours.

The remaining \$1,631 will be applied to the associated administrative costs, bringing the City of Flagstaff’s total to \$14,996. Administrative fees include costs associated with distributing the funds, monitoring the award, submitting reports (financial & progress), procurement, and closeout.

**COCONINO COUNTY SHERIFFS OFFICE -**

Coconino County will use the \$5,735 to utilize for Crisis Intervention Training to use in the field by officers.

**EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM  
FY 2015 LOCAL SOLICITATION**

**REVIEW NARRATIVE (Attachment 3)**

The City Staff Summary Report for the FY 2015 JAG grant application and the Intergovernmental Agreement will be presented at the June 16, 2015 City Council meeting. These meetings are open to the public and posted in City Hall and on the City's website. To comment on an item that is on the agenda citizens are asked to fill out a speaker card and submit it to the recording clerk. When the item comes up on the agenda, their name will be called to address the council and provide comment. In addition, the Coconino County Board of Supervisors will address an agenda item on June 16, 2015, certifying approval of the grant application and an Intergovernmental Agreement between the disparate City of Flagstaff and Coconino County. The County Board meetings are also open to the public to comment on any agenda item.

This year's City funds will be spent to supplement overtime for officer's community policing, special task forces and CompStat initiatives. These funds will pay for approximately 297 hours of Officer Overtime which will help our efforts to prevent or reduce property crime and violence. Finally, adding so many "feet-on-the-street" for these important public safety initiatives will greatly enhance all our efforts toward our core mission.

The designated Coconino County funds will be utilized for Crisis Intervention Training to use in the field by officers.

**EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM  
FY 2015 LOCAL SOLICITATION**

**ABSTRACT (Attachment 4)**

**Applicant's Name:** City of Flagstaff, Flagstaff Police Department (FPD)

**Title of Project:** FPD & CCSO – FY 2015 JAG Program

**Goals:**

FPD - Funding to pay for approximately 297 hours of officer overtime, which will help our continued efforts to prevent or reduce crime and violence. In addition, funds to be used for allowable administrative costs for the City as the applicant/fiscal agent.

CCSO – Coconino County is the second largest county in the nation, with over 18,600 square miles. Our goal of this project is to utilize the funds for Crisis Intervention Training for our law enforcement officers. These methods are to help reduce recidivism and criminal disorder by the severely mentally ill.

**Description of Strategies:**

FPD has a proven track record of establishing and maintaining crime prevention programs that elicit cooperation between community members and law enforcement personnel to control, detect and investigate crime. Using Community Policing principles and a CompStat policing model we have achieved a multifaceted, dynamic approach to crime reduction, improving quality of life and resource allocation. Crime data is collected, disseminated and analyzed on a regular basis so that effective strategies and tactics can be developed to prevent or solve crimes. Using CompStat data, department personnel and resources are rapidly deployed to most effectively reduce crime and protect property and relentless follow-up and assessment helps ensure results are achieved.

CCSO – Our strategy aligns with the Arizona State Homeland Security Strategy of Strengthening Information Sharing and Collaboration Capabilities. This project supports the State Strategy through prevention, protection, response, and recovery from all critical hazards by bolstering the common communication capability in interoperable voice communication.

**Project Identifiers:**

The five project identifiers that meet the criteria for the Edward Byrne Memorial Justice Assistance grant are Community Policing, Community Based Programs, Policing, Crime Prevention and Overtime.

CCSO – The project activities that are associated with the FY2013 Justice Assistance Grant identifiers are 1) Communications, 2) Officer Safety, 3) Policing, 4) Crime Prevention, and 5) Community Policing.

**Major Deliverables:**

FPD – Approximately 297 hours of officer overtime, which will help our efforts to prevent or reduce crime and violence and allowable administrative costs.

CCSO – Allow for Crisis Intervention Training for deputies to use in the field by officers.

**Coordination Plans:**

FPD – Administer Officer Overtime to achieve the project goal by the end of the grant period.

CCSO – We will enter into a Memorandum of Understanding (MOU) with the City of Flagstaff. Once this document has been fully executed, we will obtain approval from the County to purchase the equipment. The county will implement the training and will track the training for the deputies.

This grant will not coordinate with any other justice-related funding and will be used solely for overtime by the City of Flagstaff and for the purchase of the rapid deployable portable repeater for Coconino County Sheriff's Office.

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**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FLAGSTAFF, AZ AND COUNTY OF COCONINO, AZ**

**EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FY 2015 LOCAL SOLICITATION / CFDA #16.738**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between COCONINO COUNTY, acting by and through its governing body, the Board of Supervisors, hereinafter referred to as COUNTY, and the CITY of FLAGSTAFF, acting by and through its governing body, the City Council, hereinafter referred to as CITY, both of Coconino County, State of Arizona:

**WHEREAS**, this Agreement is made under the authority of Arizona Revised Statutes Section 11-952 as a joint exercise of powers; and,

**WHEREAS**, both parties are required to enter into this Intergovernmental Agreement as co-applicants of a grant under Edward Byrne Memorial Justice Assistance Grant Program and to designate a fiscal agent for purposes of administering grant funds; and,

**WHEREAS**, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

**NOW THEREFORE, the COUNTY and CITY agree as follows:**

**Section 1.**

CITY agrees to serve as fiscal agent for purposes of accepting the JAG program grant award and to pay COUNTY a total of \$5,735 of JAG funds.

**Section 2.**

COUNTY agrees to use \$5,735 for the purposes outlined in the FY 2015 JAG Program award period of October 1, 2014 through September 30, 2016.

**Section 3.**

Nothing in the performance of this Agreement shall impose any liability for claims against either party other than claims for which liability may be imposed by the Federal Tort Claims Act. By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

**Section 4.**

Each party to this agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party. Neither party agrees to indemnify or hold harmless the other party.

**Section 5.**

Notwithstanding any other provision contained herein, this Agreement may be terminated if either party does not receive sufficient grant funds to carry out their purposes under the JAG program. Each party agrees to appropriate funds to continue its effort to apply for funding from the JAG program. If JAG funds are not awarded, the obligations of the parties shall terminate.

**Section 6.**

Before this Agreement can become effective and binding on either party, it must be approved by the respective governing bodies and the legal counsel of each party.

**Section 7.**

This Agreement shall remain in effect for the period of October 1, 2014, through September 30, 2016.

**Section 8.**

The County and the City, as co-applicants, agree to comply with the Standard Assurances provisions attached as Exhibit A to this Agreement.

**Section 9.**

This Agreement may be cancelled pursuant to Arizona Revised Statutes Section 38-511.

Approved by Resolution of the respective governing bodies hereto:

Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

CITY OF FLAGSTAFF, AZ

COUNTY OF COCONINO, AZ

\_\_\_\_\_  
Gerald W. Nabours, Mayor

\_\_\_\_\_  
Art Babbott, Chairman

ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM AND PROPER  
AUTHORITY:

APPROVED AS TO FORM AND PROPER  
AUTHORITY:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Deputy County Attorney



**STANDARD ASSURANCES**

The Applicant hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including OMB Circulars A-21, A-87, A-102, A-110, A-122, A-133; Ex. Order 12372 (intergovernmental review of federal programs); and 28 C.F.R. pts. 66 or 70 (administrative requirements for grants and cooperative agreements). The applicant also specifically assures and certifies that:

1. It has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.
2. It will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
3. It will give the awarding agency or the General Accounting Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance.
4. It will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 C.F.R. pts. 18, 22, 23, 30, 35, 38, 42, 61, and 63, and the award term in 2 C.F.R. § 175.15(b).
5. It will assist the awarding agency (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Ex. Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).
6. It will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. §10604(e)); The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. §7 94); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); the Education Amendments of 1972 (20 U.S.C. §§1681, 1683, 1685-86); and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); *see* Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).
7. If a governmental entity–
  - a) it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and
  - b) it will comply with requirements of 5 U.S.C. §§ 1501-08 and §§7324-28, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Jennifer Brown, Special Services Supervisor  
**Co-Submitter:** Stacey Brechler-Knaggs  
**Co-Submitter:** Stacey Brechler-Knaggs, Grants Manager  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



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**TITLE:**

**Consideration of Authorizing the Approval of an Intergovernmental Agreement:** Between the City of Flagstaff and Coconino County (County) for submission of a grant application and approval upon award to the U.S. Department of Justice, FY 2015 Edward Byrne Memorial Justice Assistance (JAG) Grant.

**RECOMMENDED ACTION:**

Approve the Intergovernmental Agreement with Coconino County for the FY 2015 Edward Byrne Memorial Justice Assistance Grant in an amount of \$5,735 for the County to utilize for Crisis Intervention Training to use in the field by officers.

**Executive Summary:**

Approval of the IGA will enable the City of Flagstaff to pass through U.S. Department of Justice funding to the Coconino County Sheriff's Department for Crisis Intervention Training.

**Financial Impact:**

There is no significant financial impact to the Flagstaff Police Department in terms of expenditures.

**Connection to Council Goal and/or Regional Plan:**

**COUNCIL GOAL:**

**5. Develop and implement guiding principles that address public safety service levels through appropriate staffing levels**

- o This grant will provide additional funding to provide discretionary overtime for our Officers to carry out Community Policing programs and CompStat initiatives.
- o This grant will provide additional funding to utilize for Crisis Intervention Training.

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

No

**Options and Alternatives:**

- o Approve the IGA between the City and County.
- o Reject the IGA between the City and County.

**Background/History:**

The U.S. Department of Justice, Office of Justice Programs (OJP) Bureau of Justice Assistance (BJA), was created in 1984 to provide federal leadership in developing the nation's capacity to prevent and control crime, administer justice, and assist crime victims. The Edward Byrne Memorial Justice Assistance Grant (JAG) Program allows states, tribes, and local governments to support a broad range of activities to prevent and control crime based on their own local needs and conditions. JAG blends the previous Byrne Formula and Local Law Enforcement Block Grant (LLEBG) Programs to provide agencies with the flexibility to prioritize and spend funds where they are most needed. The formula calculates direct allocations for local governments within each state, based on their share of the total violent crime reported with the state.

**Key Considerations:**

The JAG formula program provides agencies with the flexibility to prioritize and place justice funds where they are needed most. The formula calculates direct allocations for local governments within each state, based on their share of the total violent crime reported with the state. The City has been certified as disparate and must submit a joint application for the aggregate of funds allocated. The JAG disparate jurisdictions are certified by the Director of the Bureau of Justice Assistance (BJA), based in part on input from the state's Attorney General. The disparate allocation occurs when the City is scheduled to receive one and one half times more than County, while the County bears more than 50% of the costs of prosecution of incarceration that arise for Part 1 violent crimes committed in the city. City funds in the amount of \$15,014 (\$13,365 - direct costs/\$1,631 - indirect costs) will be used to supplement overtime for community policing and property crime interdiction initiatives. As our citizens request additional patrols or when we can identify an area that would benefit from additional Police presence, these funds will be a key factor in assuring that we can provide these necessary services. As part of the joint application process an IGA is required to be submitted to the funding agency indicating who will serve as applicant/fiscal agent for the joint funds. The IGA will authorize payment to the County in the amount of \$5,735 of the JAG funds.

**Expanded Financial Considerations:**

The FY 2015 JAG funds have been allocated in the amount of \$20,749, of which the City agrees to pass through to the County a total of \$5,735 to be utilized for Crisis Intervention Training to use in the field by officers.

**Community Benefits and Considerations:**

These funds will assist the Flagstaff Police Department and the County Sheriff's Department to prevent and control crime, administer justice, and assist crime victims.

**Community Involvement:**

Inform the Council and public on the application of this grant and intended use of these funds.



**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FLAGSTAFF, AZ AND COUNTY OF COCONINO, AZ**

**EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FY 2015 LOCAL SOLICITATION / CFDA #16.738**

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**WHEREAS**, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

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**Section 3.**

Nothing in the performance of this Agreement shall impose any liability for claims against either party other than claims for which liability may be imposed by the Federal Tort Claims Act. By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

**Section 4.**

Each party to this agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party. Neither party agrees to indemnify or hold harmless the other party.

**Section 5.**

Notwithstanding any other provision contained herein, this Agreement may be terminated if either party does not receive sufficient grant funds to carry out their purposes under the JAG program. Each party agrees to appropriate funds to continue its effort to apply for funding from the JAG program. If JAG funds are not awarded, the obligations of the parties shall terminate.

**Section 6.**

Before this Agreement can become effective and binding on either party, it must be approved by the respective governing bodies and the legal counsel of each party.

**Section 7.**

This Agreement shall remain in effect for the period of October 1, 2014, through September 30, 2016.

**Section 8.**

The County and the City, as co-applicants, agree to comply with the Standard Assurances provisions attached as Exhibit A to this Agreement.

**Section 9.**

This Agreement may be cancelled pursuant to Arizona Revised Statutes Section 38-511.

Approved by Resolution of the respective governing bodies hereto:

Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

CITY OF FLAGSTAFF, AZ

COUNTY OF COCONINO, AZ

\_\_\_\_\_  
Gerald W. Nabours, Mayor

\_\_\_\_\_  
Art Babbott, Chairman

ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM AND PROPER  
AUTHORITY:

APPROVED AS TO FORM AND PROPER  
AUTHORITY:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Deputy County Attorney



**STANDARD ASSURANCES**

The Applicant hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including OMB Circulars A-21, A-87, A-102, A-110, A-122, A-133; Ex. Order 12372 (intergovernmental review of federal programs); and 28 C.F.R. pts. 66 or 70 (administrative requirements for grants and cooperative agreements). The applicant also specifically assures and certifies that:

1. It has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.
2. It will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
3. It will give the awarding agency or the General Accounting Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance.
4. It will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 C.F.R. pts. 18, 22, 23, 30, 35, 38, 42, 61, and 63, and the award term in 2 C.F.R. § 175.15(b).
5. It will assist the awarding agency (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Ex. Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).
6. It will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. §10604(e)); The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. §7 94); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); the Education Amendments of 1972 (20 U.S.C. §§1681, 1683, 1685-86); and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); *see* Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).
7. If a governmental entity–
  - a) it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and
  - b) it will comply with requirements of 5 U.S.C. §§ 1501-08 and §§7324-28, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Michelle D'Andrea, City Attorney  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



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**TITLE:**

**Consideration and Adoption of Resolution Number 2015-23 and Ordinance No. 2015-13:** A resolution and ordinance of the Flagstaff City Council adopting by reference minor amendments to the City Code.

**RECOMMENDED ACTION:**

- 1) Adopt Resolution No. 2015-23
- 2) Read Ordinance No. 2015-13 by title only for the final time
- 3) City Clerk reads Ordinance No. 2015-13 by title only for the final time (if approved above)
- 4) Adopt Ordinance No. 2015-13

**Executive Summary:**

Council may revise the City Code to:

1. Provide an efficient process for correcting the Regional/General Plan;
2. Repeal regulations of Lake Mary because the City lacks jurisdiction;
3. Allow the Clerk to format and make technical corrections to the City Code;
4. Repeal provisions regulating damage to public ways because Arizona statutes are sufficient; and
5. Provide a penalty for unlawful parking in a municipal lot or parking contrary to signs or regulations.

**Financial Impact:**

None.

**Connection to Council Goal and/or Regional Plan:**

**COUNCIL GOALS:**

- 7) Address key issues and processes related to the implementation of the Regional Plan
- 8) Improve effectiveness of notification, communication, and engagement with residents, neighborhoods and businesses and about City services, programs, policies, projects and developments.



**RESOLUTION NO. 2015-23**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK ENTITLED THE "2015 MINOR AMENDMENTS TO THE FLAGSTAFF CITY CODE" AND DECLARING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, pursuant to A.R.S. § 9-802 a municipality may enact or amend provision of the City Code by reference to a public record, providing that the adopting ordinance is published in full.

**ENACTMENTS:**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1.

That certain document known as "*2015 Minor Amendments to the Flagstaff City Code*", attached hereto as Exhibit A, three copies of which are on file in the office of the City Clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the City Clerk.

SECTION 2.

This resolution shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 2<sup>nd</sup> day of June, 2015.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

**2015**  
**Minor Amendments**  
**to the Flagstaff City Code**

**TITLE ELEVEN: GENERAL PLANS AND  
SUBDIVISIONS**

# Chapter 11-10: General Plans

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<b>Division 11-10.10: Applicable to All Plan</b>	<b>10.10-1</b>
11-10.10.010 Purpose	10.10-1
11-10.10.020 Common Procedures	10.10-1
<b>Division 11-10.20: Comprehensive Updates, New Elements, and Major Amendments to the General Plan</b>	<b>10.20-1</b>
11-10.20.010 Comprehensive Plan Updates	10.20-1
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<b>Division 11-10.30: Specific Plans</b>	<b>10.30-1</b>
11-10.30.010 Purpose	10.30-1
11-10.30.020 Elements of a Specific Plan	10.30-1
11-10.30.030 Specific Plan Adoption/Amendment	10.30-2

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## Division 11-10.10: Applicable to All

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### Sections:

- 11-10.10.010 Purpose
- 11-10.10.020 Common Procedures

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### 11-10.10.010 Purpose

The purpose of Chapter 11-10 is to provide procedures for the adoption and amendment of the City of Flagstaff's General Plan as it relates to land within the corporate boundaries of the City.

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### 11-10.10.020 Common Procedures

#### A. Applicability

The common procedures provided in this Section apply to major and minor amendments to the General Plan, and to the adoption of or an amendment to a Specific Plan. Additional procedures and requirements specific to major plan amendments are provided in Division 11-10.20 (Comprehensive Updates, New Elements and Major Amendments to the General Plan).

#### B. Initiation of General Plan Amendments

Except for Comprehensive Plan Updates (see Section 11-10.20.010), which may be initiated solely by the Planning Agency or the Council, requests for amendment of the General Plan may be made by one or more of the following:

##### 1. Planning Agency

The Planning Section shall review the General Plan on an annual basis and may initiate amendments to the General Plan in accordance with A.R.S. § 9-461.07.

##### 2. Council or Planning Commission

The Council or the Planning Commission may initiate an amendment to the map or to the text of the General Plan.

##### 3. Property Owners

A property owner or an agent authorized in writing may apply for an amendment to the map or to the text of the General Plan governing the subject property.

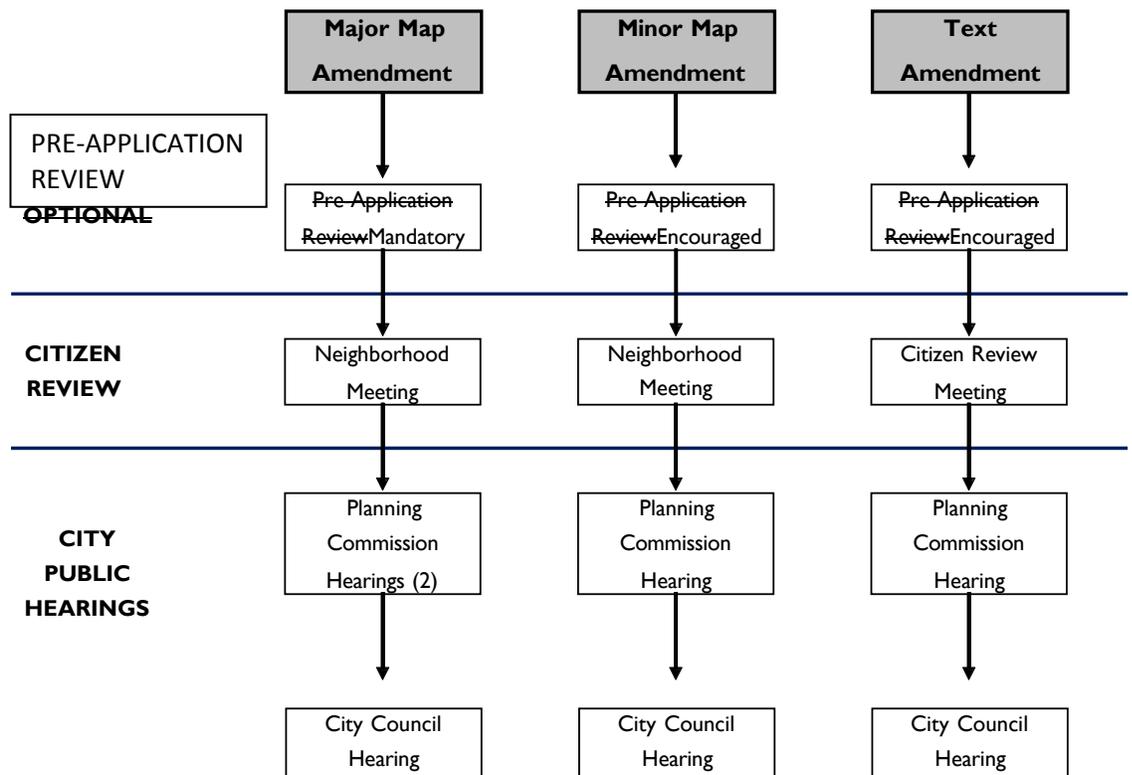
#### C. Pre-Application Review

All applicants intending to amend a map or the text of the General Plan are encouraged to participate in a pre-application review with the Director pursuant to the procedures set forth in City Code Title 10, Zoning Code, Section 10-20.30.040 (Pre-Application Review by Director).

**D. Citizen Review**

1. All applications for General Plan text or major or minor map amendments and the adoption of or an amendment to a Specific Plan, shall be subject to a citizen review process that provides effective, early, and continuous public participation ~~for major and minor amendments of the General Plan~~ from all geographic and economic areas of the City. The citizen review process includes a neighborhood meeting ~~and/or~~ a citizen review work session with the Planning Commission as set forth below and as illustrated in Figure A. Additional requirements for citizen outreach for certain new developments for which a General Plan amendment is required are provided in City Code Title 10, Zoning Code, Section 10-20.30.070 (Additional Requirements for Citizen Outreach). The Director may establish additional procedures for the citizen review process.
  
2. When processing a minor map amendment to correct the General Plan which is initiated by the Planning Agency or Council, only the procedures established in Section 11-10.10.020.D.4(Citizen Review Work Session) shall be required if:
  - a. The amendment is for map corrections, or;
  - b. The amendment is for a factual update based on a change in other policy or regulations (such as the establishment of a new State Historic District).

Figure A: Review Process for Map and Text Amendments



### 2.3. Neighborhood Meeting

The citizen review process for a major or minor map amendment, site or area specific amendment, including a Specific Plan, shall at a minimum consist of a neighborhood meeting conducted in accordance with the procedures set forth below or a citizen review meeting with the Planning Commission for a text amendment. The applicant is responsible for all costs associated with the neighborhood meeting. The Director may waive the requirement for a neighborhood meeting if it can be demonstrated that there are a limited number of property owners adjacent to the subject property and that other techniques for informing them of the application would be more effective, such as direct mailing with information on the application or one-on-one meetings with affected property owners.

- a. A plan for how the applicant intends to conduct the neighborhood meeting shall be submitted to and approved by the Director in accordance with the Review Schedule on file with Planning Section. The neighborhood meeting plan shall include the following information:
  - (1) Property owners, citizens, jurisdictions and public agencies within 300 feet of the site or area affected by the application and all residents of the subject property, or a larger area as deemed necessary to satisfy the intent of this Section by the Director;
  - (2) Proposed notification methods (e.g. mail, email, newspaper notice, posting of the subject property, etc.) for persons and organizations identified in Subsection (1) above;
  - (3) Form, structure and agenda of the meeting (e.g. town meeting, workshop, charrette or other appropriate public outreach technique);
  - (4) Opportunities for those potentially affected parties to discuss and provide input on the applicant's proposal;
  - (5) Location, date and time of the neighborhood meeting; and,
  - (6) Methods to keep the Director informed of the status and results of the neighborhood meeting.
- b. In compliance ~~accordance~~ with the Review Schedule on file with the Planning Section, the applicant shall provide notification as follows:
  - (1) Except for applications for amendments that are City-wide in nature or applications under 11-10.10.020.D.2, ~~the~~ the applicant shall notify by first-class mail all property owners of record within 300 feet of the subject property and residents of the subject property, unless the General Plan, a decision of the Director, or other applicable adopted City policy requires notification within a

larger area;

- (2) ~~¶~~ Except for applications for amendments that are City-wide in nature or applications under 11-10.10.020.D.2, the applicant shall notify by first-class mail all Homeowners Associations (HOAs) within 1,000 feet of the subject property; ~~as well as all~~
- ~~(2)(3)~~ (3) The applicant shall notify by first-class mail any ~~organizations, associations and other~~ interested persons or groups whose names are on the Registry of Interested Persons or Groups established in City Code Title 10, Zoning Code, Section 10-20.30.080. ~~That have registered their names and addresses with the City as being interested in receiving such;~~
- ~~(3)(4)~~ (4) The Director may expand the notification area if it is determined that the potential impact of the development extends beyond the required notification boundary;
- ~~(4)(5)~~ (5) The notice shall set forth the purpose and substance of the proposed application, and the time, date and place of the neighborhood meeting. A copy of the notice shall be submitted to the Director; and
- ~~(5)(6)~~ (6) Except for applications for amendments that are City-wide in nature or applications under 11-10.10.020.D.2, ~~¶~~the applicant shall install a minimum four by eight foot sign on the property in a location or locations clearly visible from a public right-of-way to adjacent residents setting forth the purpose, time, date and place of the neighborhood meeting, with an attached information tube containing copies of the meeting notice.

c. **City Staff Involvement**

City staff may attend the neighborhood meeting. The role of City staff will be limited to discussing the review process for the development and explaining the opportunities for the public to be engaged in the review process, except when the Planning Agency, City-~~or staff,~~ or Council ~~or Planning Commission~~ are the applicant.:

d. **Record of Proceedings**

The applicant shall create a written summary of the meeting, which shall be filed with the Director. This written summary will be attached to the Director's report to the Planning Commission and Council. At a minimum, the report shall include the following information:

- (1) Certification, on a form established by the Director, that the meeting was noticed and conducted in compliance with requirements of this Section;
- (2) Details of techniques the applicant used to involve the public, including:
- (a) Dates and locations of neighborhood meetings;

- (b) Content, dates mailed, and numbers of mailings, including letters, meeting notices, newsletters, and other correspondence;
  - (c) A copy of the mailing list, and a summary of where residents, property owners, and potentially affected citizens receiving notices, newsletters or other written materials were located;
  - (d) The number and names of people that participated in the process based on the sign-in sheet for the meeting; and
  - (e) A dated photograph of the sign installed in compliance with Subsection C.2.b.(5) above.
- (3) A summary of concerns, issues, and problems expressed during the neighborhood meeting, including:
- (a) The substance of the concerns, issues and problems; and
  - (b) The applicant's response to the comments received at the public meeting. The applicant's responses shall be included on the site plan, illustrative plan, other planning document and/or in an associated report. If public comments are not included in any of these documents, an explanation why they were not included must be provided.

#### 3.4. Citizen Review Work Session

- a. A citizen review session shall be held at a work session of the Planning Commission scheduled not less than five days and no more than 14 days prior to the public hearing at the Planning Commission for the consideration of any proposed map or text amendments to the General Plan or a Specific Plan. Landowners and other citizens potentially affected by the proposed text amendment shall have an opportunity to address the Planning Commission on the proposal.
- b. Notice of the citizen review session shall be given to landowners, citizens potentially affected by the proposed text amendments, and any person or group whose names are on the Registry of Interested Persons or Groups established in City Code Title 10, Zoning Code, Section 10-20.30.080. ~~Who has specifically requested notice regarding the application,~~ at least 10 days prior to the Planning Commission work session. The notice shall state the date, time and place of the citizen review session and shall include a general explanation of the proposed text or map amendment. Any form of notice used by the Director for the proposed text or map amendment shall be considered sufficient. The form of notice given may include, but is not limited to, those established in City Code Title 10, Zoning Code, Section 10-20.30.080 (Notice of Public Hearings).
- c. Prior to the Council hearing on the proposed text or map amendment, the Planning Commission shall report on the issues and concerns raised during the citizen review session.

**D.E. Application for Amendments to the General Plan**

All applications for amendments to the General Plan shall be filed in accordance with the application procedures set forth in City Code Title 10, Zoning Code, Section 10-20.30.020 (Application Process).

1. An application for a minor amendment to the General Plan and a Zoning Map amendment for the same development site/application may be submitted at the same time and reviewed together by the Planning Commission and Council.
2. If it is determined that a major amendment to the General Plan is required, then the application for a Zoning Map amendment cannot be accepted until the major plan amendment has been approved.

**E.F. Public Notice**

Public notification shall be provided in compliance with City Code Title 10, Zoning Code, Section 10-20.30.080 (Notice of Public Hearings).

**E.G. Notice to Other Jurisdictions**

Upon receipt of a complete application for an amendment to the General Plan, the Council through the Director shall consult with, advise, and provide an opportunity for official comment by the following public officials and agencies generally to secure maximum coordination of plans and to indicate properly located sites for all public purposes on the General Plan:

1. Coconino County;
2. Flagstaff Unified School District;
3. Coconino County Superintendent of Schools;
4. Northern Arizona Council of Governments;
5. Public land management agencies, such as the United States Forest Service, United States Park Service, Arizona State Land Department, and Arizona State Parks;
6. Other appropriate government jurisdictions;
7. Public utility companies;
8. Civic, educational, professional, and other organizations; and
9. Affected property owners and citizens as determined in Subparagraph D.324. (Neighborhood Meeting) above.

**E.H. General Plan Amendment Submittal Requirements**

The Director shall not schedule a General Plan amendment before the Planning Commission until a complete application with all required written materials and fees are received from the applicant. The application shall be on a form and with those submittal requirements deemed necessary by the Director to ensure a complete review of the plan amendment application. At a

minimum, an applicant is required to submit the following, but the Director may require the submittal of additional materials to assist in the review of the General Plan amendment:

1. An executive summary clearly stating the proposed amendment with a description of the section of the General Plan for which the amendment is requested. The executive summary shall include the following:
  - a. A summary of the reason(s) for the request;
  - b. Identification of supporting key points discussed in the narrative or other submitted studies;
  - c. Statement of community benefits to be accrued as through the proposed amendment; and
  - d. An introduction to the applicant's team (i.e. owner, developer, and/or representative), including contact information.
2. An analysis of the site in terms of its physical characteristics, surrounding uses within 1,000 feet of the subject property, and the existing character of the area.
3. A land use analysis providing information about the proposed development, plans for any exception parcels, and a land use compatibility analysis. Items to address include:
  - a. Overall description and need for the proposed amendment;
  - b. Existing Land Use Plan and Proposed Land Use Plan;
  - c. Proposed residential unit count, density and anticipated housing mix, if applicable;
  - d. Proposed development phasing and timing;
  - e. Existing and proposed internal and external circulation and pedestrian opportunities (include circulation plan);
  - f. Open space concept plan;
  - g. Land use buffering techniques, if applicable; and
  - h. Incompatibility issues and proposed solutions.
4. A detailed narrative that shall include at a minimum the following:
  - a. Project title and date;
  - b. Legal description of the parcel;
  - c. Site acreage;

- d. Description of the applicable section of the General Plan for which the amendment is requested;
  - e. Statement of current zoning, and proposed zoning if applicable;
  - f. An explanation of why the proposed amendment is necessary and the public benefit that will be realized by the amendment;
  - g. An explanation of how the proposed amendment(s) will affect the vision expressed in the written goals, objectives, and policies of the General Plan that are most relevant to the proposed amendment. When a proposed amendment(s) is inconsistent with General Plan goals, objectives, and policies, the proposed amendment(s) must include one of the following:
    - (1) Justification for an exception to the written goals, objectives and policies; or
    - (2) A proposal to modify or eliminate the inconsistent goals, objectives and policies.
  - h. Cumulative impact of the proposal on ~~land use categories~~ area and place types within the City based on the ~~General Plan Land Use map~~ Future Growth Illustration;
  - i. Cumulative impact of the proposal on the supply of land zoned in the ~~same~~ existing category for the property within the City;
  - j. Impact on transportation and service needs;
  - k. Impact and/or benefit to housing which may result from the proposal; and
  - l. Impact on the implementation of the General Plan goals and policies resulting from the proposal.
5. Conceptual site or development plan at a size and scale as determined by the Director to generally illustrate the development intended under the requested amendment; and
  6. A non-refundable General Plan amendment fee in accordance with Appendix 2 (Planning Fee Schedule) provided in City Code Title 10, Zoning Code.

#### **H.I. Staff Report**

The Director shall prepare and transmit a staff report to the Planning Commission. A copy of the staff report shall be made available to the public and any applicant prior to the public hearing.

#### **H.J. Planning Commission Hearing**

1. The Planning Commission shall hold at least one public hearing on any amendment to the General Plan, including Specific Plans.

2. Notice of the time and place of a public hearing(s) on the General Plan or any amendments to the General Plan shall be made by publication of a notice at least once in a newspaper of general circulation published or circulated in the City at least 15 days but not more than 30 days before the public hearing.
3. In order to ensure effective and timely participation by the citizens of Flagstaff in new development projects for which a General Plan amendment is required, the requirements for a neighborhood meeting provided in City Code Title 10, Zoning Code, Section 10-20.30.060 (Neighborhood Meeting) shall apply.
4. The Planning Commission may recommend approval, approval with conditions, or denial of the proposed amendment. If the Planning Commission fails to make a recommendation to the Council within 30 days after closing the second public hearing, the Planning Commission shall be deemed to have recommended denial and the application shall be scheduled for public hearing and action by the Council.
5. Action by the Planning Commission on the General Plan or any amendment to the General Plan shall be transmitted to the Council.

#### **J-K. Council Hearing**

1. Upon receipt of the recommendation of the Planning Commission, the Council shall conduct at least one public hearing.
2. A copy of the adopted amendments to the General Plan shall be sent to Coconino County.

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# Division 11-10.20: Additional Procedures for Comprehensive Updates, New Elements, and Major Amendments to the General Plan

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## Sections:

- 11-10.20.010 Comprehensive Plan Updates
- 11-10.20.020 Major Plan Amendments and New Elements

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## 11-10.20.010 Comprehensive Plan Updates

- A. A Comprehensive Plan Update shall be initiated by the City and includes the adoption of a new General Plan or re-adoption of the City General Plan pursuant to A.R.S. § 9-461.06.
- B. The adoption of a new General Plan or re-adoption of the General Plan shall follow the Common Procedures for General Plan amendments (Section 11-10.10.020) and the procedures for a Major Plan Amendment (Section 11-10.20.020), except that it need not be heard at a single public hearing held during the calendar year in which the application was filed.
- C. The adoption of a new General Plan or re-adoption of the General Plan shall be approved by resolution of the Council by an affirmative vote of at least two-thirds of the members of the Council, and ratified by the voters pursuant to A.R.S. § 9-461.06.
- D. Pursuant to A.R.S. § 9-461.06, a comprehensive update of the General Plan must be conducted and ratified by the citizens of Flagstaff at least once every 10 years. However, changing conditions may warrant a comprehensive update on a more frequent basis as determined by the Council.
- E. All Comprehensive Plan Updates are subject to the public participation procedures established in City Code Title 10, Zoning Code, Section 10-20.30.060 (Neighborhood Meeting).
- F. **Ratification**
  - 1. Each new or readopted General Plan shall be submitted to the voters for ratification at the next regularly scheduled municipal election or at a special election scheduled at least 120 days after the governing body adopted the General Plan pursuant to A.R.S. § 16-204. The Council shall include a general description of the General Plan and its elements in the municipal election pamphlet and shall provide copies of the proposed General Plan to the public in at least two locations that are easily accessible to the public, which may include posting on the City's official internet web site.

2. If a majority of the qualified electors voting on the proposition approves the new or readopted General Plan, it shall become effective as provided by law.
3. If a majority of the qualified electors voting on the proposition fails to approve the new or readopted General Plan, the current General Plan remains in effect until a new or readopted General Plan is approved by the voters pursuant to this section. The Council may resubmit the proposed new or readopted General Plan, or revise the new or readopted General Plan as provided by this section for subsequent submission to the voters.

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**11-10.20.020 Major Plan Amendments and New Elements**
**A. Major Plan Amendment Criteria**

- 1.—Major amendments to the General Plan are substantial alterations of the City’s land use mixture or balance as established in the City’s existing General Plan land use element and which involve changes that have an impact on large areas of the General Plan and/or can affect other issues or policies. These amendments alter the substance or intent of major General Plan policies. The criteria for determining whether a proposed change, including an annexation or a Specific Plan, will be treated as a Major Plan Amendment can be found in the General Plan.as follows:
  - a.—~~Category 1: Any increase of intensity of residential land use category of 80 acres or more;~~
  - b.—~~Category 2: A change from a residential land use classification to a non-residential land use category of 40 acres or more; and~~
  - c.—~~Category 3: Any change of non-residential land use category of 20 acres or more.~~
- 2.—~~All other amendments shall be considered minor amendments, including any change to or from parks, open space, and roadway plans.~~

~~Changes to the Redevelopment Area Plan in the General Plan and changes to goals and policies are not subject to the Major Plan Amendment process.~~

**B. Supplemental Procedures for Major Plan Amendments**

In addition to the Common Procedures provided in Section 11-10.10.020, a major amendment to the General Plan shall be adopted in the following manner:

**1. Application Deadline**

- a. All applications for Major Plan Amendments to the General Plan shall be heard by the Council at a single public hearing during the calendar year in which they are filed. In order to provide sufficient time for comprehensive review of an application for a Major Plan Amendment, the Director shall determine the application date each year for Major Plan Amendment requests. The following typical submittal dates apply:

April 1<sup>st</sup> – Pre-application meeting deadline;

May 1<sup>st</sup> – Application deadline for completeness review of the application by the Review Authority;

July 1<sup>st</sup> – Application deadline for submittal of the final application;

October – Planning Commission public hearings commence; and

December – Council public hearing.

- b. Incomplete applications or applications submitted after the July 1<sup>st</sup> deadline established in Subsection B.1 above will not be processed.

**2. Application Requirements**

In addition to the application requirements for all General Plan amendments, an application for a major amendment shall also include, at a minimum:

- a. An Infrastructure and Community Services Impact Analysis to provide the information necessary to assess the proposal’s impact on utilities, roads, parks, schools, and other community facilities and services. This includes:
- (1) Traffic analysis or traffic report that shows conformance with the ~~Transportation and Circulation Element~~ General Plan and the City’s Transportation Master Plan;
  - (2) Water/wastewater analysis that shows conformance with the ~~Water Resources Element~~ General Plan and the City’s Water and Waste Water Master Plan;
  - (3) Police and fire protection analysis that shows conformance with the General Plan ~~the Safety Element~~;
  - (4) School impact analysis, including a letter/memorandum from the appropriate school district(s) addressing the potential impact of the proposal on the school(s); and

(5) Conformance with the General Plan's goals and policies for ~~Public Services and Facilities~~ ~~goals and policies~~ Element.

- b. An Economic Development Analysis that analyzes and weighs the cumulative economic impacts of the proposed amendment, including if requested by the Director, an economic impact study conducted by an economic consultant.

### 3. **Additional Notice for New Plans, Comprehensive Updates, Elements and Major Amendments**

At least 60 days before notice of the first hearing of the Planning Commission on a new, comprehensive update, an element, or a major amendment to the General Plan, the Director shall transmit the proposal to the Planning Commission and the Council and shall submit a copy for review and further comment to ~~all government bodies and agencies listed in ARS 9.461.06.D~~ as it may be amended from time to time, and any person or entity that requests in writing to receive a review copy of the proposal. The proposal shall also be posted on the City's website and on the applicant or applicant's agent's website, if such website exists.

- ~~a. Coconino County;~~
- ~~b. The General Planning agency within which the City is located;~~
- ~~c. The Arizona Department of Commerce or any other state agency that is subsequently designated as the general planning agency for the state;~~
- ~~d. The Arizona Department of Water Resources for review and comment on the water resources element, if a water resources element is required; and~~

~~Any person or entity that requests in writing to receive a review copy of the proposal.~~

### 4. **Additional Planning Commission Hearings**

- a. The Planning Commission shall conduct at least two public hearings for major General Plan amendments. Hearings on major General Plan amendments shall be held in two separate locations in the City.
- b. Notice of the time and place of each public hearing on the General Plan or any amendments to the General Plan shall be made by publication of a notice at least once in a newspaper of general circulation published or circulated in the City at least 15 days but not more than 30 days before the public hearing.

### 5. **Public Hearing - Council**

- a. All major amendments to the General Plan shall be presented at a

single public hearing during the calendar year the application is made.

- b. Adoption or re-adoption of the General Plan or a major amendment to the General Plan shall be approved by affirmative vote of at least two-thirds of the members of the Council. Approval shall be by resolution.

**C. Supplemental Notice for New Elements of the General Plan**

In addition to following all the common procedures for amending the General Plan, the addition of a new element to the General Plan shall be noticed as set forth in Section 11-10.20.020.B.3.

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## Division 11-10.30: Specific Plans

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### Sections:

- 11-10.30.010 Purpose
- 11-10.30.020 Elements of a Specific Plan
- 11-10.30.030 Specific Plan Adoption/Amendment

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### 11-10.30.010 Purpose

The purpose of a Specific Plan is to provide a greater level of detail for a specific geographic area or element of the General Plan, and to provide ~~specific regulations and standards~~ for the systematic implementation of the General Plan.

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### 11-10.30.020 Elements of a Specific Plan

- A. Specific Plans shall be prepared based on the following factors:
  - 1. Development potential for new or expanded economic activities (including commercial areas, employment areas, corridors and mixed use districts);
  - 2. Development and/or revitalization of unique character districts;
  - 3. Special site characteristics (i.e., historic, recreational, natural resources, etc.);
  - 4. Rapid growth or economic change that warrants the need for special planning to accommodate such growth or change;
  - 5. Corridor Plan; and
  - 6. Other extenuating circumstances.
- B. A Specific Plan may, ~~in addition to recommended revisions to the Zoning Code (City Code Title 10) and the Subdivision and Land Split Regulations (Chapter 11-20)~~, include the following elements:
  - 1. ~~Regulations determining~~ Recommendations or statements of intent regarding the location of buildings and other improvements with respect to existing rights-of-way, floodplains, and public facilities;
  - 2. ~~Regulations of~~ Recommendations or statements of intent regarding the use of land, buildings and structures, the height and bulk of buildings and structures, and the open spaces around buildings and structures;
  - 3. Street and highway naming and numbering plans;

4. A plan ~~and regulations~~ and policies determining the location of infrastructure service area boundaries, consistent with the growth areas element of the General Plan, beyond which the municipality may limit or prescribe conditions on publicly financed extensions of water, sewer and street improvements that are necessary to service needs generated by new development. The plan ~~and regulations~~ and policies shall consider all elements of the General Plan, including the circulation and public facilities elements;
  5. Measures required to insure the execution of the General Plan; and
  6. Other matters which will accomplish the purposes of this section and the General Plan, including procedures for the administration of the General Plan.
- ~~6.7.~~ Any other matter permitted by law.

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**11-10.30.030 Specific Plan Adoption/Amendment**

**A. Initiation**

The preparation of a Specific Plan may be initiated by the Director, by request from the Council, or by a property owner or group of property owners and their agent.

**B. Preparation of a Specific Plan**

1. If the preparation of a Specific Plan is requested by the Council, the Director shall cause a Specific Plan to be prepared in accordance with a schedule to be determined by the City Manager.
2. If a request for the preparation of a Specific Plan is initiated by a property owner or group of owners, the plan shall be prepared by the property owner(s) for review and revision by the Director, provided that:
  - a. The proposed Specific Plan conforms to the General Plan and the elements of this Section and it includes the requirements for a Specific Plan provided in Subsection 11-10.30.030.D (Format and Contents of Specific Plan);
  - ~~b. The resulting development will be of substantially higher quality than could be achieved under existing policies or land use categories as defined in the General Plan, in terms of integration of a mix of compatible uses with the surrounding uses;~~
  - e.b. The Specific Plan will be prepared by an interdisciplinary team of qualified professionals including but not limited to urban planners, architects, landscape architects, market analysts, and engineers; and,
  - ~~d.c.~~ The minimum area of the Specific Plan is such that a range of uses can

be accommodated and well integrated.

**C. Configuration of Specific Plan**

A proposed Specific Plan shall be configured to include all land within the Specific Plan boundary.

**D. Format and Contents of Specific Plan**

An application for a Specific Plan shall be on a form prescribed by the Director and available in the Community Development Division, and shall include, at a minimum, all information required for a major amendment to the General Plan plus the following additional information, if applicable as determined by the Director:

1. A precise map showing the land to be included within the proposed Specific Plan;
2. For all Specific Plan applications initiated by a property owner(s) or their agent, the written consent of all owners of the real property within the Specific Plan and a list, by name and title, of all ownership interests in the real property;
3. A letter of authorization for an agent, if applicable;
4. A Statement of Intent of the Specific Plan. The Statement of Intent is a written statement that outlines the need or desire for a Specific Plan;
5. A Site and Area Analysis Report that shall include the following elements:
  - a. Surface hydrology and water resources;
  - b. Topography and slope analysis;
  - c. Summary of General Plan requirements;
  - d. Environmental overview and assessment, including soils and geology, type of vegetation, etc.;
  - e. Existing structures, roads, and other development;
  - f. Existing infrastructure and public services;
  - g. Existing zoning/land use information;
  - h. Traffic analysis;
  - i. Cultural resource investigation;
  - j. Synthesis and summary of analysis; and
  - k. An analysis of the current context of the area in which the Specific Plan will be applied, including the identification of existing land uses,

environmental conditions, public facilities/ infrastructure and planning area issues.

**6. Concept or Illustrative Plan**

The Concept or Illustrative Plan, a graphic illustration of potential land uses with descriptive text, shall be presented to the Director upon completion of the preliminary Site and Area Analysis Report. The Director will make a preliminary determination as to conformance with the General Plan, will determine whether a General Plan amendment is required, and will identify planning issues to be addressed in the submittal of the final Specific Plan. If it is determined that a plan amendment(s) is required, an application for General Plan Amendment shall be filed concurrently with the Specific Plan submittal.

**7. Specific Plan Proposal**

After preliminary approval of the Concept Plan, a complete Specific Plan proposal shall be submitted which includes, but may not be limited to, the following:

**a. Map Elements:**

- (1) The distribution, location, and extent of all land uses with proposed densities and building heights;
- (2) Existing and planned land uses within 300 feet of the Specific Plan boundary;
- (3) Open space, recreational facilities, parks, and trails;
- (4) Public, educational, health care, and religious facilities;
- (5) Drainage strategy;
- (6) Name and location of existing or proposed arterial and collector streets located within the area to be regulated by the Specific Plan or needed for servicing that area; and
- (7) Location and extent of existing or proposed provisions for sewage disposal, effluent use, storm-water drainage, solid waste disposal and public utilities.

**b. Text**

The text of the Specific Plan shall describe the following:

- (1) A statement of the long term direction of the Specific Plan identifying development opportunities and formulating objectives, policies, and implementation measures;
- (2) A statement(s) indicating how existing and approved elements of the General Plan will be supported by the proposed Specific Plan;

- (3) The compatibility of the Specific Plan with adjoining land uses;
  - (4) ~~Detailed regulations~~ Recommendations and programs for systematic implementation of the Specific Plan, and if applicable, ~~regulations~~ recommendations including regarding any annexation agreements and, required ordinance, or policy changes required;
  - (5) Specific development standards for the map elements as described in the Site and Area Analysis;
  - (6) Drainage strategy;
  - (7) Configuration and criteria for the phasing and maintenance of arterial and collector streets proposed for the Specific Plan area or needed for servicing the project;
  - (8) Configuration and criteria for the phasing and maintenance of sewage disposal, effluent use, storm water drainage, solid waste disposal, and public utilities;
  - (9) Criteria for the conservation, development, or utilization of natural resources, including surface water, soils, vegetation, and wildlife;
  - (10) General landscape program;
  - (11) For single-phase plans, a draft schedule for the preservation of site features established by the plan and the construction, dedication and provision of public services;
  - (12) For multi-phased plans, a draft schedule for the preservation of site features established by the plan, the development of the various planning areas of the Specific Plan, and the construction dedication and provision of public services;
  - (13) Provisions to update the Specific Plan every five years to reflect changing market conditions, governmental regulations and physical conditions; and
  - (14) Demonstration of conformance with the General Plan, or, if required by the Director, a General Plan Amendment application.
- c. A non-refundable fee in accordance with Appendix 2 (Planning Fee Schedule) provided in City Code Title 10, Zoning Code.
  - d. Incomplete submittals will not be reviewed.

**E. Review and Recommendation by the Director**

Upon completion of the Specific Plan, the Director shall review the plan and

submit it to the Planning Commission. No Specific Plan may be adopted or amended unless the proposed plan or amendment is in substantial conformance with the General Plan.

**F. Citizen Review**

All applications for Specific Plans shall be subject to a citizen review process that provides effective, early and continuous public participation in accordance with the provisions set forth in Section 11-10.10.020.D.1 (Neighborhood Meeting). The Director may establish additional procedures for the citizen review process.

**G. Planning Commission and Council Consideration**

A Specific Plan will follow the procedures applicable to major amendments to the General Plan.

# TITLE NINE: TRAFFIC

## 9-01-001-0008 MUNICIPAL PARKING LOTS

(A) The municipal parking lots now or hereafter acquired or established by the City shall be under the supervision and regulation of the Traffic Engineer, pursuant to Section 9-01-001-0007 of the Flagstaff City Code. Regulation by the Traffic Engineer of traffic and public parking at Flagstaff Pulliam Airport shall be subject to the approval of the Airport Manager and Public Works Director.

(B) The City Traffic Engineer is hereby authorized to post signs regulating the use of municipal parking lots. The signage or regulation may be reviewed by an aggrieved party pursuant to Section 9-01-001-0007 (C) of the Flagstaff City Code.

(C) It shall be unlawful to park any vehicle in any municipal parking lot in violation of this title, or to park contrary to the signs or regulation established by the City Traffic Engineer pursuant to paragraph B above.

(D) The penalty for violating Section C above shall be that prescribed in Section 9-01-001-0003 ~~(N)~~ (I) or as provided in Section 9-01-001-0006 (E), whichever is applicable. (Ord. 1564, 6/7/88)

# TITLE EIGHT: PUBLIC WAYS AND PROPERTY

## CHAPTER 8-05 REGULATIONS GOVERNING LAKE MARY

### SECTIONS:

- ~~8-05-001-0001 JURISDICTION DECLARED:~~
- ~~8-05-001-0002 PICNICKING; CAMPING NEAR UPPER LAKE MARY:~~
- ~~8-05-001-0003 CAMPING NEAR LOWER LAKE MARY:~~
- ~~8-05-001-0004 COMMERCIAL FACILITIES:~~
- ~~8-05-001-0005 FISHING, HUNTING:~~
- ~~8-05-001-0006 BOATING:~~
- ~~8-05-001-0007 LITTERING LAKE AREA:~~

### ~~8-05-001-0001 JURISDICTION DECLARED:~~

~~Whereas, by authority vested in the City by that certain Special Use Permit issued by the United States Forest Service and section 16-601, Arizona Code of 1939 (A.R.S. [9-276](#)), and amendments and supplements thereto, covering administration of and jurisdiction over the public use of those certain lakes known as Upper Lake Mary and Lower Lake Mary, and the shoreline of the same for a distance of five hundred feet (500') from the high water level of the same, said Lakes being within Sections 1 and 2, Township 19 North, Range 8 East, Section 5, 6, 7, 8, 9, 16 and 17, Township 19 North, Range 9 East; Section 17 and the NE1/4, NW1/4, SW1/4, E1/2, of Section 18 and Sections 19, 20, 21, 22, 26, 27, 28, 34, 35 and 36, Township 20 North, Range 8 East; and Section 31, Township 20 North, Range 9 East of the Gila and Salt River base and meridian, jurisdiction of the City is hereby declared to exist.~~

### ~~8-05-001-0002 PICNICKING; CAMPING NEAR UPPER LAKE MARY:~~

~~Picnicking and camping within that areas embracing Upper Lake Mary described in Section 8-5-1 above and under the jurisdiction of the City are hereby prohibited, excepting within those designated and developed recreation or camping areas as shown on the U.S. Forest Service Map and Plan on file in the office of the Clerk and in the office of the Supervisor of the Coconino National Forest in Flagstaff, Arizona.~~

### ~~8-05-001-0003 CAMPING NEAR LOWER LAKE MARY:~~

~~Camping within that area embracing Lower Lake Mary as described in Section 8-5-1 above and under the jurisdiction of the City is hereby prohibited, excepting within those designated and developed camping areas as shown on the U.S.~~

Forest Service Map and Plan on file in the office of the Clerk and in the office of the Supervisor of the Coconino National Forest in Flagstaff, Arizona.

**~~8-05-001-0004 COMMERCIAL FACILITIES:~~**

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~~Commercial facilities and business enterprises of all natures are hereby prohibited, excepting within one resort and two (2) boat landing areas as are shown and located on the U.S. Forest Service Map and Plan described in Sections 8-5-2 and 8-5-3 of this Chapter.~~

**~~8-05-001-0005 FISHING, HUNTING:~~**

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~~Fishing and hunting and all other forms of public recreation are hereby prohibited within the area of the Lake approximately three hundred (300) yards above the dam at Lower Lake Mary and within the area of the Lake approximately four hundred forty (440) yards above the dam at Upper Lake Mary, as said areas are marked and posted by the City.~~

**~~8-05-001-0006 BOATING:~~**

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~~Boating for the purposes of fishing or other forms of recreation or pleasure is hereby prohibited within the restricted areas as described in Section 8-5-5 above.~~

**~~8-05-001-0007 LITTERING LAKE AREA:~~**

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~~The throwing, placing or disposing of any paper, trash of any nature, vegetable or animal matter of any nature, human excretion or waste of any nature, or rubbish of any nature within any of the areas described in Section 8-5-1 herein, excepting within containers labeled for that purpose within the areas set forth in Section 8-5-4 of this Chapter is hereby prohibited.~~

# Title Six: Police Regulations

## ~~6-01-001-0003 DAMAGE TO PUBLIC WAYS AND PROPERTY:~~

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~~A.— Damage to Road, Street or Bridge: No person shall, in any manner, damage any road, street or bridge in the City limits by running heavy vehicles over the same, by malicious destruction or by any act that will result in damage to said road, street or bridge. (Ord. 638, 6-9-64)~~

~~B.— Damaging Public Fixtures: It shall be unlawful for any person to, in any manner, damage or attempt to damage or tamper with any pipe lines, water hydrants, street lamps or lights or the fixtures and appliances belonging upon any of the poles or other objects for use in connection with the lighting of the streets of the City; or in any manner to damage any water pipes, hydrants or any appliances pertaining to the water or sewer works; or in any manner to damage or attempt to damage or tamper with any other property of any and every character belonging to the City. (Ord. 214, 4-15-18)~~

~~C.— Deposits of Injurious Material on Thoroughfares: It shall be unlawful for any person to deposit, place or allow to remain in or upon any public thoroughfare any material or substance injurious to person or property. (Ord. 3, 6-14-1894)~~

~~D.— Injuring Fire Hydrants: The use of fire hydrants for any purpose except the extinguishment of fire is hereby prohibited; provided, that this subsection shall not operate to prevent the reasonable and moderate use of any hydrant for the practice of the Fire Department under the supervision of some duly authorized official thereof, or such use as the Superintendent of Waterworks may find expedient in the interest of the City. (Ord. 49, 2-16-1899)~~

~~E.— Injuring Sidewalks: Any person defacing, walking, riding or driving upon or over any sidewalk or street crossing composed of or containing cement, during the construction thereof, or before the same is thrown open to public use, shall be deemed guilty of a misdemeanor. (Ord. 143, 7-11-12)~~

~~F.— Lug Wheels Prohibited: It shall be unlawful for tractors and any other vehicles with wheels injurious to pavement to be permitted upon the public thoroughfares unless the operator of such vehicle shall first plank such streets.~~

# **Title One: Administrative**

## **SECTION 1-01-009-0006, SCRIVENER AND FORMATTING ERRORS:**

The City Clerk is authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary; and that the City Clerk is authorized to make those formatting changes needed for purposes of clarity and form, if required, to be consistent with Flagstaff City Code. The City Clerk is authorized to make such necessary corrections to any ordinance, before, during or following codification.

**ORDINANCE NO. 2015-13**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AMENDING THE FLAGSTAFF CITY CODE: TITLE ELEVEN: *GENERAL PLANS AND SUBDIVISIONS*; TITLE NINE, *TRAFFIC*; TITLE EIGHT, *PUBLIC WAYS AND PROPERTY*; TITLE SIX, *POLICE REGULATIONS*; AND TITLE ONE, *ADMINISTRATIVE*; BY ADOPTING THE “2015 MINOR AMENDMENTS TO THE FLAGSTAFF CITY CODE” AS SET FORTH IN THAT PUBLIC RECORD ON FILE WITH THE CITY CLERK RELATING TO PROVIDING FOR CORRECTIONS TO THE REGIONAL PLAN, REPEALING REGULATIONS OF THE LAKE MARY AREA, REPEALING REGULATIONS REGARDING DAMAGE TO PUBLIC WAYS, PROVIDING A PENALTY FOR UNLAWFUL PARKING, AND ALLOWING THE CLERK TO MAKE FORMATTING AND TECHNICAL CORRECTIONS TO CITY ORDINANCES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

**RECITALS:**

WHEREAS, from time to time the City Attorney’s Office brings to Council some proposed revisions to the City Code for the purpose of making minor technical changes; and

WHEREAS, Title Eleven of the City Code, General Plans and Subdivisions, is not consistent with the City’s General Plan, also known as the Regional Plan, regarding which amendments to the Plan are major versus minor; and

WHEREAS, Title Eleven of the City Code, General Plans and Subdivisions, does not provide a simple, expedient process for map corrections to the Regional Plan; and

WHEREAS, Title Eleven of the City Code, General Plans and Subdivisions, does not have language that encompasses the possibility of a non-regulatory specific plan; and

WHEREAS, Title Nine of the City Code, Traffic, prohibits illegal parking in City parking lots, but the reference to the penalty for the violation is incorrect; and

WHEREAS, Title Eight of the City Code, Public Ways and Property, regulating hunting, fishing and recreation at the Lake Mary area is more properly regulated by the federal government and the State; and

WHEREAS, Title Six of the City Code, Police Regulations, regulating damage to public ways and property is adequately regulated by State statutes; and

WHEREAS, Title One of the City Code, Administrative, does not give authority to the City Clerk to make technical corrections to ordinances.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. In General.

The Flagstaff City Code Titles Eleven, Nine, Eight, Six, and One are hereby amended by adoption of the amendments set forth in that document known as "2015 MINOR AMENDMENTS TO THE FLAGSTAFF CITY CODE" declared a public record by Resolution Number 2015-23 and on file with the City Clerk.

SECTION 2. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 3. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. Effective Date.

This ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 2<sup>nd</sup> day of June, 2015.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

## CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Andy Wagemaker, Revenue Director  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



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### TITLE:

**Consideration and Approval of Agreement:** Intergovernmental Agreement (IGA) with the Arizona Department of Revenue for Uniform Transaction Privilege (Sales) Tax Administration. ***(IGA for Uniform Sales Tax Administration)***

### RECOMMENDED ACTION:

Approve the intergovernmental agreement between the City of Flagstaff and the Arizona Department of Revenue regarding the uniform administration, licensing, collection, and auditing of transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and rental occupancy taxes imposed by the State or cities or towns.

### Executive Summary:

The proposed IGA is a culmination of the efforts between state and local tax administration officials to simplify tax administration and to codify state legislation. The proposed IGA is exactly the same for each of the cities and towns in Arizona. The terms of this IGA run on an annual basis from July 1, 2015 through June 30, 2016 and it renews automatically each year. The IGA is a comprehensive agreement related to local tax licensing, administration, auditing and collections. Under the IGA the ADOR must develop an electronic system/software to capture data with sufficient specificity to meet the needs of all taxing jurisdictions. If its system is not ready by September 1, 2015, the "non-program" cities including City of Flagstaff (all those cities which have self-collected local taxes in the past) will continue to handle local tax licensing and collection pursuant to the existing temporary agreement for another year (through December 31, 2016).

### Financial Impact:

The agreement itself will not result in any budgetary impact to the City of Flagstaff. However, the City will have to pay the Arizona Department of Revenue (ADOR) approximately \$160,000 for general administration and for upgrades to the existing tax administration system. Staff accounted for this cost by not budgeting a City sales tax revenue increase. These costs are expected to be taken out of the City's allocated revenue share that is received from ADOR. In addition, staff budgeted a one-time \$150,000 in contingency to cover possible revenue decreases that may result from the de-centralized ADOR collection structure.

**Connection to Council Goal and/or Regional Plan:**

All.

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

No, not on this specific IGA. However, the topic of the takeover of tax administration by the Arizona Department of Revenue has been discussed many times over the past few years. Council has approved several changes to the City Tax Code related to the takeover. Council has approved a temporary IGA with ADOR which authorizes the City to continue TPT licensing and collection through December 31, 2015.

**Options and Alternatives:**

- 1) Approve the intergovernmental agreement between the City of Flagstaff and the Arizona Department of Revenue.
- 2) Do not approve the agreement between the City of Flagstaff and the Arizona Department of Revenue. Please note: The IGA is required under State statute. If Council does not sign the IGA, the Arizona Department of Revenue will still provide the statutorily required services in the manner described in the IGA. If Council decides not to approve the agreement it might only serve to limit the City's ability to enforce its rights and authorities outlined in the IGA.

**Background/History:**

This intergovernmental agreement (IGA) was negotiated with the Department of Revenue (DOR) by city representatives including a finance director, a tax administrator, and two attorneys, along with assistance from the League of Arizona Cities and Towns. Additionally, several attorneys and tax experts from many cities and towns reviewed and commented on the language during the process, resulting in a document that provides the maximum level of information and assurances for the cities possible.

Local Transaction Privilege Tax (TPT) administration is governed by A.R.S. § 42-6001. This statute was recently modified for the purpose of tax simplification with the passage of House Bill 2111 in 2013 and House Bill 2389 in 2014. This statute now requires the Arizona Department of Revenue (DOR) to administer the transaction privilege and use taxes imposed by all cities and towns and to enter into a new inter-governmental agreement (IGA) with each city and town to reflect these changes and clearly define the working relationship between DOR and Arizona cities and towns.

State administration for the current self-collecting cities is predicated on DOR having the capability to provide an electronic means for collecting and distributing detailed taxpayer information including specific gross receipts and deductions by classification and by business location. This IGA intends to cover all aspects of administration after DOR takes over for all cities and towns, but it also includes language allowing self-collecting cities to continue their own tax and license programs until such time that DOR is able to perform the administrative functions documented in statute.

Although tax simplification will have the greatest impact on those cities and towns that are currently self-collecting local taxes, there are also considerable improvements for cities and towns in the State collection program as a result of simplification, particularly in the form of receiving much more detailed taxpayer data.

The IGA covers all aspects of local tax administration. First and foremost, the IGA addresses confidentiality, including the authorized handling of confidential taxpayer information, expectations for the discreet use of taxpayer data to prevent unauthorized disclosure, and the process we will follow in the event of a disclosure. There is also clarified and simplified guidance on the use of aggregated taxpayer data for public reporting and analysis.

The IGA includes clear direction regarding the sharing of general taxpayer license information, legal

interpretations and written guidance, rate and fee tables, and any other pertinent tax information that needs to be shared between the cities and towns and DOR.

Importantly, the IGA identifies exactly which license and tax return data fields must be provided by DOR, and identifies in detail a series of new reports DOR will soon provide to all cities, both of which will serve to greatly expand the data available to the city for analysis purposes.

The first changes related to tax simplification that went into effect were new rules dealing with auditing, which DOR and the cities began following in January 2105. The IGA formalizes both the concepts included in statute and the main concepts used in practice by auditors in the field.

Key factors include a commitment to audit for all jurisdictions whenever any audit is being done; the continued authority for any city or town to perform an audit of a taxpayer that is engaged in business only in their town; the general guidance that DOR will lead all multi-jurisdictional audits, coupled with the option for DOR to delegate actual audit performance to a city or town when circumstances indicate it would be the most efficient means of completing the audit.

The IGA also provides guidance for handling voluntary disclosure by taxpayers, closing agreements in lieu of litigation, and sets up the responsibilities and authorities of both parties in terms of code or statute interpretations and legal support for protests.

Most importantly, the new IGA provides for a formal review process using the new "State and Local Uniformity Group" made up of four city and four DOR tax experts who will work together to iron out any problems or conflicts between the cities and the State.

The terms of this IGA run on an annual basis from July 1, 2015 through June 30, 2016 and it renews automatically each year. Either party has the right to reopen and renegotiate the terms according to provisions within the agreement.

**Key Considerations:**

The IGA is required under State statute. If Council does not sign the IGA, the Arizona Department of Revenue will still provide the statutorily required services in the manner described in the IGA. If Council decides not to approve the agreement it might only serve to limit the City's ability to enforce its rights and authorities outlined in the IGA.

**Expanded Financial Considerations:**

None.

**Community Involvement:**

Inform

- 
- Attachments:**    [IGA](#)  
                          [IGA Appendix A](#)  
                          [IGA Appendix B](#)  
                          [IGA Appendix C-1](#)  
                          [IGA Appendix C-2](#)  
                          [ADOR Termination Letter](#)

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE STATE OF ARIZONA AND  
THE CITY/TOWN OF FLAGSTAFF**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of June, 2015, by and between the Arizona Department of Revenue, hereinafter referred to as Department, and the City/Town of Flagstaff, an Arizona municipal corporation, hereinafter referred to as City/Town. This Agreement shall supersede and replace all previous intergovernmental agreements, including amendments thereto, entered into by the Department and City/Town regarding the administration, collection, audit and/or licensing of transaction privilege tax, use tax, severance tax, jet fuel excise and use taxes and rental occupancy taxes imposed by the State, cities or towns.

**R E C I T A L S**

WHEREAS, Title 11, Chapter 7, Article 3 (A.R.S. § 11-952) authorizes two or more public agencies to enter into intergovernmental agreements to contract for services, if authorized by their legislative or governing bodies.

WHEREAS, A.R.S. § 42-6001 et seq. was amended effective January 1, 2015 to provide that the Department shall collect and administer any transaction privilege and affiliated excise taxes imposed by any city or town in Arizona and that the Department and each city or town shall enter into an intergovernmental contract or agreement pursuant to A.R.S. § 11-952 to provide a uniform method of administration, collection, audit and licensing of transaction privilege and affiliated excise taxes imposed by the State, cities or towns.

WHEREAS, City/Town has taken appropriate action by ordinance, resolution or otherwise, pursuant to the laws applicable to the governing body of City/Town, to approve and authorize City/Town to enter into this Agreement.

**A G R E E M E N T**

NOW, THEREFORE, in consideration of the foregoing, the Department and City/Town enter into this intergovernmental agreement as follows:

**1. Definitions**

- 1.1 A.R.S.** means the Arizona Revised Statutes.
- 1.2 Adoption of an Ordinance** means final approval by majority vote of the City/Town council.
- 1.3 Audit** means a review to determine the correct amount of tax owed by a taxpayer and includes, but is not limited to, desk reviews and reviews of claims for refund.
- 1.4 Closing Agreement** means an agreement to compromise or settle a tax liability.

- 1.5 **Confidential Information** means all such information as defined in A.R.S. § 42-2001.
- 1.6 **Confidentiality Standards** means the standards set forth in Appendix A or such other written standards mutually agreed to by the Department and City/Town.
- 1.7 **Federal Tax Information** means federal return or return information the Department receives from the Internal Revenue Service including any information created by the Department derived from that information. Documents obtained from a taxpayer or State records are not considered Federal Tax Information.
- 1.8 **Model City Tax Code** means the document defined in A.R.S. § 42-6051. The official copy of the Model City Tax Code is published at [modelcitytaxcode.az.gov](http://modelcitytaxcode.az.gov).
- 1.9 **Modification** means a change to an assessment required or authorized by statute.
- 1.10 **Municipal Tax(es)** means transaction privilege and affiliated excise taxes, including use tax, severance tax, jet fuel excise and use tax, and rental occupancy tax, imposed by City/Town in accordance with the Model City Tax Code. Unless the context provides otherwise, this definition includes tax, license fees, penalties, interest and other similar charges.
- 1.11 **State** means the State of Arizona.
- 1.12 **State and Local Uniformity Group** (“SLUG”) means an advisory group comprised of four representatives from municipal taxing jurisdictions and four representatives of the Department as set forth in Section 13 below.
- 1.13 **Taxpayer Information** means information protected from disclosure pursuant to Model City Tax Code § 510.

## 2. Disclosure of Information by City/Town to Department

- 2.1 **Qualified Recipients of Information:** The Department shall provide a list of the names and job titles of Department employees authorized to request and receive Taxpayer Information from City/Town. The Department shall inform City/Town of any additions, deletions or changes to this list within fifteen calendar days after the change occurs and shall provide an updated list at least annually. This information shall be sent via email to City/Town at [SalesTax@flagstaffaz.gov](mailto:SalesTax@flagstaffaz.gov). The City/Town will not disclose Taxpayer Information to a Department employee whose name is not included on this list. City/Town may contact the Department with any questions related to qualified recipients by contacting the Cities Unit at [CitiesUnit@azdor.gov](mailto:CitiesUnit@azdor.gov).
- 2.2 **Use of Information:** Any Taxpayer Information released by City/Town to the Department may only be used by the Department for tax administration and collection purposes, and may not be disclosed to the public in any manner that does not comply with the Model City Tax Code. All Taxpayer Information shall be stored and destroyed in accordance with the Confidentiality Standards.

### **2.3 Municipal Ordinance:**

- (a) City/Town shall provide the Department with a copy of its Municipal Tax code or any City/Town ordinances imposing the taxes to be collected hereunder within ten calendar days of a request for such information from the Department. This information shall be sent via email to the Cities Unit at [CitiesUnit@azdor.gov](mailto:CitiesUnit@azdor.gov).
- (b) City/Town shall provide the Department with a copy of any ordinance adopted by City/Town after execution of this Agreement that imposes or modifies the Municipal Taxes to be collected hereunder, including a new or different tax rate as defined by A.R.S. § 42-6053(E), within ten calendar days of Adoption of an Ordinance. This information shall be sent via email to the Cities Unit at [CitiesUnit@azdor.gov](mailto:CitiesUnit@azdor.gov). No such ordinance shall take effect on a date other than the first day of the month that is at least sixty calendar days after city/town provides notice to the Department unless City/Town and the Department agree otherwise. The Department shall add the change to the official copy of the Model City Tax Code within ten business days of receipt of notice from City/Town. City/Town is responsible for confirming the change has been made. Pursuant to A.R.S. § 42-6053(E)(2), changes in tax rates have no effect unless reflected in the official copy of the Model City Tax Code.
- (c) Within fifteen calendar days following the adoption of an annexation ordinance, one copy of the ordinance and notification of the effective date of such ordinance shall be sent to the Department via email at [GIS@azdor.gov](mailto:GIS@azdor.gov). City/Town shall also include with the notice a list of businesses City/Town knows to be located in the annexed area. The Department shall not be obligated to begin collection of Municipal Tax any sooner than the first day of the month that is at least sixty calendar days after the date the Department received notice from City/Town of the annexation.

**2.4 Development and Impact Fees:** Upon request, City/Town shall provide to the Department any information regarding development and impact fees to assist the Department with the auditing of taxpayers and billing and collection of taxes.

**2.5 Audits:** Upon request by the Department, City/Town shall allow inspections and copies of any City/Town tax audits.

**2.6 Other Information:** City/Town shall also provide other relevant information necessary for tax administration and collection purposes as requested by the Department.

**2.7 Statutory Authority:** The disclosure of confidential City/Town tax information is governed by Model City Tax Code Section 510.

### **3. Disclosure of Information by Department to City/Town.**

**3.1 Qualified Recipients of Information:** City/Town shall provide a list of the names and job titles of City/Town employees and any independent auditors acting on behalf of City/Town authorized to receive Confidential Information. City/Town shall inform the Department of any additions, deletions or changes to this list within fifteen calendar days after the change occurs and shall provide an updated list at least annually. This information shall be sent via email to the Cities Unit at [CitiesUnit@azdor.gov](mailto:CitiesUnit@azdor.gov). The Department will not disclose any Confidential Information to a City/Town employee or independent auditor whose name is not included on this list. The Department may contact City/Town with any questions related to qualified recipients by contacting [SalesTax@flagstaffaz.gov](mailto:SalesTax@flagstaffaz.gov).

**3.2 Suspension of Information:** The Department will not withhold Confidential Information from City/Town so long as City/Town complies with A.R.S. § 42-2001 et seq. and the Confidentiality Standards.

(a) If the Department has information to suggest City/Town, or any of its duly authorized representatives, has violated A.R.S. § 42-2001 or the Confidentiality Standards, the Department will send written notice to City/Town detailing the alleged breach as understood by the Department and requesting a response to the allegation within twenty calendar days of the date of the letter.

(b) The Department will review the written response from City/Town and consider the information contained therein and all relevant circumstances surrounding the alleged violation before making a written determination as to whether a suspension of information is warranted and the length of the suspension.

(c) If City/Town is dissatisfied with the Department's determination it may within ten calendar days, submit a written request to SLUG requesting the group review the determination.

(d) If the Department has information to suggest City/Town has violated the Confidentiality Standards, the Department may inspect City/Town's records, facilities, and equipment to confirm whether there has been a violation.

**3.3 Information to be Provided:** Within the restrictions outlined in this Section, the Department shall provide all of the information detailed in Appendix B, which may be modified by the mutual agreement of the parties. The Department shall not provide Federal Tax Information to City/Town. In addition to the information detailed in Appendix B, City/Town may obtain upon request:

(a) Inspections and/or copies of Department tax audits, including all information related to all cities and towns included in the tax audit; and

- (b) Other relevant information necessary for tax administration and collection purposes, including all information necessary to verify City/Town received all revenues collected by the Department on behalf of City/Town.

**3.4 Storage and Destruction of Confidential Information:** All Confidential Information provided by the Department to City/Town shall be stored, protected, and destroyed in accordance with the Confidentiality Standards.

**3.5 Statutory Authority:** The Department may disclose Confidential Information to City/Town pursuant to A.R.S. § 42-2003(H) if the information relates to a taxpayer who is or may be taxable by a county, city or town. Any Confidential Information released to City/Town:

- (a) May only be used for internal tax administration purposes as defined in A.R.S. § 42-2001(4); and
- (b) May not be disclosed to the public in any manner that does not comply with the Confidentiality Standards.

A.R.S. § 42-2003(H)(2) provides that any release of Confidential Information that violates the Confidentiality Standards will result in the immediate suspension of any rights of City/Town to receive taxpayer information pursuant to A.R.S. § 42-2003(H).

**3.6 Specificity of Data:** A.R.S. § 42-6001 provides that taxpayers shall file and pay Municipal Taxes to the Department if the Department has developed the electronic and nonelectronic tools necessary to capture data with sufficient specificity to meet the needs of all taxing jurisdictions, including specific data regarding each tax classification and any corresponding deductions at each business location of the taxpayer. Pursuant to A.R.S. § 42-5015, the electronic system utilized by the Department must be able to capture data with sufficient specificity to meet the needs of the taxing jurisdiction. The Department and City/Town agree that JT2 and TPT2 (as summarized in Appendix C) are required to meet the specificity needs of City/Town.

**(a) Non-Program City/Town:** If City/Town performed its own Municipal Tax administration, collection, and licensing prior to July 1, 2015, then if the Department is unable to commit by September 1, 2015 that the data detail behind the JT2 and TPT2 will be provided to City/Town beginning and from January 1, 2016, the following shall take place:

- (1) The term of the agreement entered into by the Department and City/Town pertaining to City/Town performing municipal licensing services on behalf of the Department shall be extended for one (1) year; and
- (2) All provisions in this Agreement pertaining to the administration, collection, and licensing of Municipal Taxes shall not go into effect until such time as the Department is able to meet the requirements of A.R.S. § 42-6001 and

A.R.S. § 42-5015, however all language in this Agreement related to audit functions shall remain in full force and effect.

**(b) Program Cities/Towns:** If the Department performed Municipal Tax administration, collection and licensing for City/Town prior to July 1, 2015, then if the Department is unable to commit by September 1, 2015 that the data detail behind the JT2 and TPT2 will be provided to City/Town beginning and from January 1, 2016, the Department will continue to perform those functions. The continued provision of such service, however, shall not be deemed waiver of any legal rights or remedies afforded to City/Town including, but not limited to, a failure to meet the requirements of A.R.S. § 42-6001 and A.R.S. § 42-5015.

#### **4. Audit.**

The Department shall administer the audit functions for City/Town in accordance with the following provisions.

4.1 **Training:** All auditors and supervisors shall be trained in accordance with the policies of the Department. Auditors who have not completed the training may only work in connection with a trained auditor and cannot be the only auditor assigned to the audit. The Department shall:

- (a) Provide audit training at least three times per year, or more frequently if there is a demonstrated need, and be responsible for its costs of the training and any associated materials;
- (b) Provide additional training when practical;
- (c) Notify City/Town of any training sessions at least thirty calendar days before the date of the training session;
- (d) Provide copies of State tax statutes, audit reference materials and audit procedures and manuals;
- (e) Permit City/Town auditors and supervisors to attend any scheduled training as space permits at designated training location: and
- (f) Provide additional training as needed to inform auditors and supervisors regarding changes in State law or Department policy.

4.2 **Conflict of Interest:** An auditor or supervisor trained and authorized to conduct an audit may not conduct any of the following prohibited acts:

- (a) Represent a taxpayer in any tax matter against the Department or City/Town while employed or in an independent contractor relationship with the Department or City/Town.
- (b) Attempt to use his/her official position to secure any valuable thing or valuable benefit for himself/herself or his/her family members.

- (c) Represent a taxpayer before the Department or City/Town concerning any matter in which he/she personally participated for a period of one year after he/she ends employment or the independent contractor relationship with the Department or City/Town.
- (d) Use information he/she acquires in the course of the official duties as an auditor or supervisor in a manner inconsistent with his/her official duties without prior written approval from the Department.
- (e) For a period of one year after he/she ends employment or an independent contractor relationship with the Department or City/Town, work in the same firm as a person who represents a taxpayer against the Department or City/Town unless the firm institutes formal barriers to prevent any sharing of information between the trained auditor or supervisor and the remainder of the firm.

The Department may revoke an individual's authority to audit and prohibit the use of any auditor or supervisor who violates this provision.

#### **4.3 Audits and Refunds:**

- (a) City/Town may conduct an audit of a taxpayer engaged in business only in City/Town. Before commencing such audit, City/Town shall notify the Department to ensure the taxpayer is not already scheduled for an audit. The Department will provide City/Town with a written response within fifteen calendar days of the notice from City/Town.
- (b) Except as permitted below, the Department shall conduct all audits of taxpayers having locations in two or more cities or towns. A City/Town auditor may participate in any audit City/Town requested the Department to perform.
- (c) City/Town shall notify the Department if it wants an audit of a taxpayer having locations in two or more Arizona cities or towns and whose primary business activity is in the following business classifications taxable by City/Town, but not a taxable activity under State law:
  - 1. Residential rentals;
  - 2. Commercial rentals;
  - 3. Speculative Builders; or
  - 4. Advertising.

The Department will authorize such audits, to be overseen by the Department, unless there is already an audit of the taxpayer scheduled, or the Department determines the audit selection is discriminatory, an abuse of process or poses other similar defects. The Department will notify City/Town of its determination within thirty calendar days. No initial audit contact may occur

between City/Town and a taxpayer until the Department approves the audit notice.

- (d) City/Town may request the Department conduct an audit of a taxpayer having locations in two or more Arizona cities or towns and whose primary business is subject to both city and state tax. The request must be made using the Department's audit request form. Copies of the form can be obtained from the Department's TPT Hub Unit at [HubUnit@azdor.gov](mailto:HubUnit@azdor.gov). The Department shall notify City/Town of the decision regarding the request within thirty calendar days of receipt of the request.
- (e) The Department may deny a request for an audit for the following reasons:
  - 1. An audit is already scheduled or planned for the taxpayer within six months of the request;
  - 2. The requested audit would interfere with strategic tax administration planning;
  - 3. The audit selection is discriminatory, an abuse of process or poses other similar defects;
  - 4. The request lacks sufficient information for the Department to determine whether it is appropriate;
  - 5. The Taxpayer was audited within the previous two years;
  - 6. The Department lacks sufficient resources to conduct the audit; or
  - 7. The scope or subject of the audit does not justify the use of Department resources.
- (f) If the Department denies a request to conduct an audit because it either lacks resources to conduct the audit itself or the scope or subject of the audit does not justify the use of Department resources then City/Town shall notify the Department if it wants to conduct the audit under the supervision of the Department. No initial audit contact may occur between City/Town and a taxpayer until the Department appoints someone to supervise the audit.
- (g) Any decision by the Department denying City/Town's request to conduct any audit may be referred to SLUG in accordance with Section 13 of this Agreement.
- (h) All audits conducted by City/Town shall be in accordance with standard audit procedures defined in the Department audit manual. All auditors shall be trained in accordance with Section 4.1 above.
- (i) The Department may appoint a manager to supervise any audit conducted by City/Town.

- (j) All audits shall include all taxing jurisdictions in the State regardless of which jurisdiction's auditors participate in the audit. All desk reviews must include all taxing jurisdictions for which there is information available.
- (k) The Department shall issue all audit assessments on behalf of all taxing jurisdictions in a single notice to the taxpayer.
- (l) The Department shall issue Modifications to audit assessments on behalf of all taxing jurisdictions in a single notice to the taxpayer.

#### **4.4 Claims for Refund:**

- (a) When a taxpayer files a request for refund, including refunds requested by filing amended returns, the Department shall process the request and review it for mathematical errors or for the failure of the taxpayer to properly compute the tax based on the taxable income reported on the return or refund request.
- (b) The Department will notify City/Town of all refund requests that are processed involving City/Town's Municipal Taxes within thirty calendar days of processing the refund. City/Town may request an audit of the taxpayer as set forth in Section 4.3 above. .
- (c) The Department may assign an auditor to review requests for refunds. The Department will notify City/Town, within thirty calendar days of initiating a review, of all refunds under review by an auditor pertaining to a taxpayer who engages in business within City/Town's taxing jurisdiction and may request that City/Town assign an auditor to assist with such reviews.
- (d) City/Town is responsible for payment of all amounts to be refunded to taxpayers for Municipal Tax incorrectly paid to City/Town. The Department may offset a remittance to City/Town under this Agreement to cover the amounts of allowed refunds. If there are insufficient funds available to pay the refund, City/Town must pay the Department within sixty days of written demand from the Department.
- (e) The Department shall issue refund approvals/denials on behalf of all taxing jurisdictions in a single notice to the taxpayer. City/Town may request copies of such determinations.

**4.5 Protests:** Taxpayer protests of audit assessments and desk review assessments and refund denials shall be directed to the Department. Appeals of audit assessments, desk review assessments and refund denials shall be administered pursuant to Title 42, Chapter 1, Article 6, Arizona Revised Statutes. Upon request, the Department shall notify City/Town of any appeals within 30 days of receipt of the protest.

- 4.6 Notice of Resolution:** The Department shall notify City/Town when a protest is resolved, including information concerning the resolution of the protest, within 30 days after the resolution of a protest.
- 4.7 Status Reports:** The Department shall keep SLUG apprised of the status of each protested matter involving the imposition of Municipal Taxes. City/Town may request to be on a distribution list for monthly status reports by contacting the Department's Cities Unit.

## **5. Voluntary Disclosure Agreements**

The Department may enter into a voluntary disclosure agreement with a taxpayer. A voluntary disclosure agreement may limit the years subject to audit and waive penalties. City/Town may request to be kept informed of voluntary disclosure agreements involving City/Town Municipal Tax. If City/Town makes that request, the Department will notify City/Town of the Department's intent to enter into an agreement and the Department will provide the taxpayer's identity within thirty calendar days of disclosure. City/Town may request an audit of a taxpayer subject to a voluntary disclosure agreement pursuant to Section 4.3 above.

## **6. License Compliance**

**6.1 License Issuance and Renewal:** The Department shall issue new Municipal Tax licenses and renew such licenses for City/Town Municipal Tax. The Department of Revenue shall provide City/Town with information about all persons obtaining and renewing tax licenses as set forth in Appendix B.

**6.2 License Checks:** The Department and City/Town shall coordinate efforts to conduct tax license compliance checks through canvassing and other compliance methods.

**6.3 Confidentiality:** Any tax license information City/Town obtains from the Department is considered Confidential Information and may only be disclosed as authorized by A.R.S. § 42-2003. Any tax license information City/Town obtains through its own efforts may be disclosed as allowed by applicable City/Town laws.

**6.4 Changes to License Fees:** Within fifteen calendar days following the Adoption of an Ordinance (or official acknowledgment of approval of an ordinance by voters in an election of a charter city) issuing or modifying a tax license fee, one copy of the ordinance and notification of the effective date of such ordinance shall be sent to the Department via email at [CitiesUnit@azdor.gov](mailto:CitiesUnit@azdor.gov). The Department shall not be obligated to begin collection of the new or modified fee any sooner than sixty calendar days after the date the Department received the ordinance from City/Town. Notice of an ordinance concerning a renewal tax license fee must be received by the Department by July 31 in order to be collected the following calendar year.

## **7. Closing Agreements**

- 7.1 **Approval** - The Department shall notify City/Town before entering into a Closing Agreement related to the tax levied and imposed by City/Town. The Department shall seek approval from either City/Town or SLUG before entering into such Closing Agreement. If the Closing Agreement concerns only City/Town, then the Department will attempt to obtain approval from City/Town first, and will only seek approval from SLUG if City/Town is unresponsive or the Department and City/Town cannot reach an agreement. Approval and notice is not required for Modifications of assessments.
- 7.2 **Litigation** - During the course of litigation, the Department shall seek a range of settlement authority from City/Town or SLUG, unless the circumstances prevent such action. The Department may also request a telephonic meeting of SLUG if time and circumstances require immediate action.

## **8. Responsibility for Representation in Litigation.**

- 8.1 **Administrative Proceedings:** The Department shall be responsible for coordinating the litigation and defending the assessment or refund denial in any administrative appeals before the Office of Administrative Hearings or the Director of the Department regardless of who conducted the audit. The Department shall be reasonably diligent in defending the interests of City/Town and City/Town shall assist in such representation as may be requested by the Department.
- 8.2 **Further Appeals:** The Arizona Attorney General is responsible for defending the assessment or refund denial at the Board of Tax Appeals, the Arizona Tax Court and all higher courts. City/Town shall assist the Attorney General in such representation and litigation as requested by the Attorney General's Office.
- 8.3 **Mutual Cooperation:** The Department and City/Town agree they shall cooperate in the appeal and litigation processes and shall ensure their auditors, supervisors, and other necessary employees are available to assist the Department and the Attorney General for informal interviews, providing documents and computer records, preparing for depositions, attending depositions and trial as witnesses, and assisting in trial/hearing preparation as needed.
- 8.4 **Administrative Decisions:** The Department shall provide a copy of any and all administrative hearing level decisions, including Director's decisions issued by the Department to all jurisdictions on a distribution list. City/Town may request to be on the distribution list by contacting the Department's Cities Unit. Administrative decisions are Confidential Information and must be stored and destroyed in accordance with the Confidentiality Standards.

## **9. Collection of Municipal Taxes**

- 9.1 Tax Returns:** Taxpayers who are subject to City/Town Municipal Taxes shall pay such taxes to the Department. Tax payments shall be accompanied by a return prepared by taxpayer on a form prescribed by the Department.
- 9.2 Collection:** The Department shall collect any Municipal Tax imposed by City/Town recorded on the Department's tax accounting system. Amounts the Department collects for delinquent City/Town Municipal Tax accounts after the termination of this Agreement shall be forwarded to City/Town.
- 9.3 Remittance:** All amounts collected by the Department for Municipal Taxes under this Agreement shall be remitted to City/Town weekly on the basis of actual collections. The Department shall initiate the electronic payment by noon on the Monday after the end of the week in which the collections were made. Remittance shall be made in the form of immediately available funds transferred electronically to the bank account designated by City/Town.
- 9.4 Abatement:** The Department, with the approval of the Attorney General, may abate tax under certain circumstances. During the ordinary course of business, the Department may determine for various reasons that certain accounts shall be closed or cancelled. The Department shall seek input from City/Town or SLUG before abating tax or closing accounts. The Department may request a telephonic meeting of SLUG if time and circumstances require immediate action.
- 9.5 Funds Owed to City/Town:** At all times and under all circumstances payments remitted by a taxpayer to the Department for City/Town Municipal Taxes will be considered property of City/Town. The Department may not retain or fail to remit such funds to City/Town for any reason not specifically set forth in this Agreement including, but not limited to, during the course of a dispute between City/Town and the Department.

## **10. Financing Collection of Taxes.**

The costs incurred by the Department in administering this Agreement shall be financed through the State general fund appropriation to the Department.

## **11. Inter-Jurisdictional Transfers.**

All inter-jurisdictional transfers of Municipal Tax monies by the Department shall be handled in the following manner:

- 11.1 Requests:** Requests for inter-jurisdictional transfers shall be made to the Department. The Department will review the request and will not automatically accept the request.

**11.2 Notice:** The Department shall notify City/Town and any other city or town implicated in the requested transfer a minimum of thirty calendar days prior to any inter-jurisdictional transfer of money.

**11.3 Dispute Resolution:** Any city or town subject to an inter-jurisdictional transfer shall resolve any dispute over the allocation of the tax in accordance with A.R.S. § 42-6003 and the Department shall transfer the funds subject to an inter-jurisdictional transfer in accordance with the agreed upon allocation in a timely manner.

## **12. Educational Outreach.**

City/Town may conduct, at its own expense, educational outreach to taxpayers who are conducting business activities within City/Town's taxing jurisdiction concerning the Model City Tax Code and the collection and administration of Municipal Taxes. Educational outreach shall be consistent with applicable law and Department written guidance. Upon request, City/Town shall provide information to the Department concerning such educational outreach efforts.

## **13. SLUG.**

The Department shall create an advisory group to help resolve issues

**13.1 Members:** The members shall consist of four seats representing municipal taxing jurisdictions and four seats representing the Department. Member seats may be split so some people fill the position for only certain issues, such as audit selection or collection abatement. There shall also be a list of alternate members, who may be asked by a regular member who is unable to attend a meeting to take that member's place at a SLUG meeting.

**13.2 Selection:** The Director of the Department shall appoint people to serve as members of SLUG. Municipal taxing jurisdictions shall nominate members from municipal taxing jurisdictions. All members shall serve for a period of one year unless they resign at an earlier date. Members may be appointed to serve consecutive terms. Members appointed to fill vacancies shall serve for the time remaining on the term.

**13.3 Meetings:** SLUG shall meet on a regular basis and at least monthly unless the members agree to cancel the meetings due to a lack of agenda items. It can schedule additional meetings as necessary to timely discuss issues presented. Alternate members may attend meetings, but cannot participate in any discussion or voting, unless filling the seat of a regular member.

**13.4 Issues:** City/Town may refer issues to SLUG involving the following:

- (a) Decisions by the Department to not audit a taxpayer;
- (b) Amendments to Department audit procedures or manuals;
- (c) Closing Agreements or a range of settlement authority;
- (d) Abatement or account closure in collections;
- (e) Suspension of disclosure of information from the Department; and
- (f) Other issues as authorized by the Director of the Department or agreed upon by the parties.

**13.5 Recommendations:** SLUG shall make recommendations to the Director of the Department. If the recommendation is approved by at least five members of SLUG, the Director will accept the recommendation of SLUG. If SLUG cannot reach a recommendation agreeable to at least five members of the group, the Director may act as he deems to be in the best interests of all parties.

**13.6 Voting:** Voting shall be by secret ballot.

**13.7 Procedures:** SLUG may develop procedures concerning the operation of the group as long as they are not inconsistent with this Agreement.

#### **14. Funding of Additional Auditors by City/Town.**

**14.1 Funding:** At the sole discretion of City/Town, City/Town may contribute funding to the Department to pay for additional auditors to assist the Department in the performance of audits of Municipal Tax owed to City/Town. Such additional auditors funded by City/Town shall at all times be deemed to be employees of the Department and under no circumstances shall be deemed to be employees or agents of City/Town. It is the parties' intention that City/Town funding be used to increase the capabilities of the Department to perform Municipal Tax audits and not to subsidize or replace State funding required for audit and collection of taxes.

**14.2 Use of Funds:** City/Town funding for additional auditors under this Section shall be used to fund the auditors' salaries and employee related expenses and shall not be used to pay for Department office space, utilities, equipment, supplies, or similar kinds of overhead.

**14.3 Pool of Funds:** The Department may pool any City/Town funding with any other similar funding provided by other municipal taxing jurisdictions to pay for additional auditors. The Department shall separately account for such funds in its annual budget.

**14.4 Accounting:** The Department shall provide an annual accounting to City/Town, by August 31 each year describing how City/Town funding was used during the prior fiscal year.

**15. Satellite Offices for Department Auditors.**

**15.1 Funding:** City/Town, at its own expense and at its sole discretion, may provide one or more satellite offices and associated amenities for use by Department employees to provide audit and/or customer service to taxpayers. Use of such facilities by Department employees shall be at the sole discretion of the Department. Nothing in this section shall require the Department to make use of such facilities provided by City/Town.

**15.2 Requirements:** Any Department employee using a City/Town satellite office must meet reasonable requirements of City/Town related to the use of the facility. City/Town shall be responsible for notifying the Department of any concerns, and the Department shall be responsible for taking appropriate actions to resolve those concerns.

**15.3 Termination:** Once a satellite office is established, City/Town shall provide at least 180 calendar days written notice to the Department prior to the termination or relocation of a satellite office. The Department may discontinue the use of a satellite office at any time upon notice to City/Town and shall promptly remove all Department property.

**15.4 License:** All requirements of City/Town and the Department related to the satellite office shall be outlined in a mutually acceptable form of license and subject to separate approval.

**16. Non-availability of Funds.**

Every payment obligation of the Department and the City/Town pursuant to this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation, except for the rendering of funds to City/Town paid by a taxpayer for Municipal Taxes or tax license fees of City/Town. If funds are not appropriated, allocated and available or if the appropriation is changed resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this Section. The termination of this Agreement shall not entitle the Department to retain any Municipal Tax collected on behalf of City/Town pursuant to this Agreement.

**17. Waiver.**

Nothing in this Agreement should be interpreted as City/Town relinquishing its legal rights under the Arizona Constitution or other applicable law, nor that City/Town is conceding the administration and collection of its Municipal Tax is not of a local interest or should not be under local control.

**18. Cancellation**

The requirements of A.R.S. § 38-511 apply to this Agreement. The Department or City/Town may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Department or City/Town is, at any time while this Agreement or any extension is in effect, an employee, agent or consultant of the other party with respect to the subject matter of this Agreement.

**19. Notice.**

- (a) When any Notice to City/Town is required under the terms of this Agreement, such Notice shall be mailed to City/Town at the following address, directed to the attention of:

City of Flagstaff  
Attn: Sales Tax  
211 W. Aspen Ave  
Flagstaff, AZ 86001

- (b) When any Notice to the Department is required under the terms of this Agreement, such Notice shall be mailed to:

Arizona Department of Revenue  
Attn: Director, Division Code 20  
1600 W. Monroe  
Phoenix, AZ 85007

Notice to the Department's Hub Unit or City Unit may be mailed to:

Arizona Department of Revenue  
Division Code 16  
1600 W. Monroe  
Phoenix, AZ 85007

**20. Non-discrimination.**

The Department and City/Town shall comply with Executive Order 2009-9, which mandates all persons, regardless of race, color, religion, sex, age, or national origin, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Department and City/Town shall take affirmative action to ensure applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

**21. Compliance with Immigration Laws and A.R.S. § 41-4401.**

- 21.1 The Department and City/Town shall comply with all Federal immigration laws and regulations relating to employees and warrants compliance with A.R.S. § 23-214(A) which reads in part: “After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program.”
- 21.2 A breach of compliance with immigration laws and regulations shall be deemed a material breach of this Agreement and may be grounds for the immediate termination of this Agreement.
- 21.3 The Department and City/Town retain the legal right to inspect the papers of any employee who works on the Agreement to ensure the Department and City/Town is complying with the applicable Federal immigration laws and regulations and State statutes as set forth above.

**22. Audit of Records.**

City/Town and the Department shall retain all data, books, and other records (“Records”) relating to this Agreement for at least six (6) years (a) after termination of this Agreement, and (b) following each annual renewal thereof. All Records shall be subject to inspection by audit by the State at reasonable times. Upon request, the Department and City/Town shall produce any or all such records. This Agreement is subject to A.R.S. §§ 35-214 and -215.

**23. Amendments.**

Any amendments to or modifications of this Agreement must be executed in writing in accordance with the provisions of this Agreement.

**24. Mutual Cooperation.**

In the event of a disagreement between the parties with regard to the terms, provisions and requirements of this Agreement or in the event of the occurrence of any circumstances bearing

upon or affecting this Agreement, parties hereby agree to mutually cooperate in order to resolve the said disagreement or deal with the said circumstance.

**25. Arbitration.**

To the extent required by A.R.S. § 12-1518(B) and as provided for in A.R.S. § 12-133, the parties agree to resolve any dispute arising out of this Agreement by arbitration. The parties agree that any lawsuit filed by City/Town relating to the issues outlined in Section 17 of this Agreement is not considered to be a dispute arising out of this Agreement.

**26. Implementation.**

The implementation and execution of the provisions of this Agreement shall be the responsibility of the Director of the Department or his representative and the Mayor his/her designee, or another party with designated authority pursuant to applicable law or City/Town charter on behalf of City/Town.

**27. Limitations.**

Nothing in this Agreement shall be construed as limiting or expanding the statutory responsibilities of the parties in performing functions beyond those granted to them by law, or as requiring the parties to expend any sum in excess of their appropriations.

**28. Duration.**

- 28.1 The term of this Agreement shall be from July 1, 2015 through June 30, 2016. This Agreement shall automatically be renewed for successive one year terms thereafter unless either party shall terminate this Agreement by notice, in writing, no later than sixty calendar days prior to the expiration of the term then in effect.
- 28.2 If State legislation enacted subsequent to the date of this Agreement substantially affects the performance of this Agreement by either party or substantially diminishes the benefits either party would receive under this Agreement, either party may then terminate this Agreement by giving at least thirty calendar days' notice to the other party. The termination will become effective immediately upon the expiration of the notice period unless otherwise agreed to by the parties.
- 28.3 Notwithstanding any provision to the contrary herein, both parties may by mutual agreement provide for the termination of this contract upon such terms and at such time as is mutually agreeable to them.
- 28.4 Any notice of termination shall be mailed and served on the other party in accordance with Section 19 of this Agreement.

28.5 During the term of this Agreement, the terms and conditions of this Agreement will undergo an annual review to be completed no later than March 1<sup>st</sup> of each year. The review will be performed by a committee made up of equal parts representatives of the Department and representatives of the municipal taxing jurisdictions entering into an IGA with the Department for the administration and collection of Municipal Taxes.

**29. Choice of Law.**

The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Agreement, and any disputes arising from this Agreement.

**30. Entire Agreement.**

This document, including other documents referred herein, and any approved subcontracts, amendments and modifications made thereto, shall constitute the entire Agreement between the parties and shall supersede all other understandings, oral or written.

**31. Signature Authority.**

31.1 By signing below, the signer certifies he or she has the authority to enter into this Agreement on behalf of his or her respective party, and he or she has read the foregoing and agrees to accept the provisions herein on said party's behalf.

31.2 This Intergovernmental Agreement may be executed in counterpart.

Signature _____ Date _____	Signature _____ Date _____
Typed Name and Title _____	Typed Name and Title _____
Entity Name _____	Entity Name _____
Address _____	Address _____
City _____ State _____ Zip _____	City _____ State _____ Zip _____
<b>RESERVED FOR THE ATTORNEY GENERAL:</b>	<b>RESERVED FOR CITY/TOWN ATTORNEY:</b>
<p>This agreement between public agencies has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Arizona Department of Revenue represented by the Attorney General.</p> <p style="text-align: center;"><b>MARK BRNOVICH</b> The Attorney General</p> <hr/> <p style="text-align: center;">Signature Assistant Attorney General</p> <p>Date: _____</p>	<p>APPROVED AS TO FORM AND AUTHORITY:</p> <p>BY: _____ CITY/TOWN ATTORNEY</p> <p>Date: _____</p>

## APPENDIX A

### ARIZONA DEPARTMENT OF REVENUE CONFIDENTIALITY REQUIREMENTS

#### 1. Confidential Information

- 1.1 Confidential Information is defined in A.R.S § 42-2001. Confidential Information may not be disclosed except as provided by statute. A.R.S. § 42-2001(B).
- 1.2 License information obtained from the Department of Revenue is Confidential Information and may only be disclosed as authorized by A.R.S. § 42-2003. License information obtained from other sources is not Confidential Information.
- 1.3 Information about a taxpayer's identity obtained from the Department of Revenue is Confidential information and may only be disclosed as authorized by A.R.S. § 42-2003. Identity information obtained from other sources is not Confidential Information.
- 1.4 Confidential Information includes information about a single taxpayer and also aggregated information about a group of identified or identifiable taxpayers. Aggregated information from fewer than three taxpayers in a grouping on a statewide basis or fewer than ten taxpayers in a grouping for an area that is less than state level (city or town) may be Confidential Information. Such information may not be released unless the City/Town Administrator reviews the relevant information concerning the aggregate data and makes a determination in writing that the aggregate data does not reveal information about any specific taxpayer. Such determination should take into consideration the following:
  - a. The proportionality of the tax information applicable to individual members of the group of taxpayers; no individual taxpayer's information should be discernable due to its relative size/taxable sales, compared to other members of the group;
  - b. The total aggregated tax information; the aggregate information cannot allow viewers to draw conclusions about individual taxpayers (e.g., there are 6 car dealers in the city and the total aggregate sales were \$900,000 and none of them reported individual sales above the \$20,000 mark, which would have qualified for the lower tax rate on large purchases)
  - c. Any other factor that could cause the aggregate data to be used to determine information specific to a single taxpayer.

#### 2. Protecting Information

- 2.1 City/Town must identify all places, both physical and logical, where Confidential Information is received, processed and stored and create a plan to adequately secure those areas.

- 2.2 Confidential Information must be protected during transmission, storage, use, and destruction. City/Town must have policies and procedures to document how it protects its information systems, including Confidential Information contained therein. An example of appropriate protection standards is set forth in National Institute of Standards and Technology Special Publication 800-53. The publication may be found at <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>
- 2.3 Employees are prohibited from inspecting information unless they have a business reason for the information. Browsing information concerning friends, neighbors, family members, or people in the news is strictly prohibited.
- 2.4 All removable media, including paper and CDs, containing Confidential Information must be secured when not in use and after normal business hours by placing all materials in a locked drawer or cabinet. During use, Confidential Information must be protected so that it is not visible to members of the public or anyone without a business need for the information.
- 2.5 All individuals accessing or storing Confidential Information from an alternative work site must enter into a signed agreement that specifies how the Confidential Information will be protected while at that site. Only trusted employees shall be permitted to access Confidential Information from alternative sites. Confidential Information may not be accessed while in public places such as restaurants, lounges, or pools.
- 2.6 Confidential Information may not be sent outside the local area network by unencrypted email. City/Town is responsible for ensuring in-flight email communications containing Confidential Information are sent through a secure process. This may include encryption of the email message, a secure mailbox controlled by City/Town, an encrypted point-to-point tunnel between the correspondents or use of Transport Layer Security (TLS) between correspondents. The acceptable encryption algorithms are set forth in the standards attached as Exhibit 1, which may be updated to accommodate changed technology.
- 2.7 Confidential Information may not be discussed in elevators, restrooms, the cafeteria, or other public areas. Terminals should be placed in such a manner that prohibits public viewing of Confidential Information.
- 2.8 When transporting confidential materials the materials should be covered so that others cannot see the Confidential Information. When sending Confidential Information by fax a cover sheet should always be used.
- 2.9 Any person with unsupervised access to Confidential Information shall receive training on the confidentiality laws and requirements to protect such information before being given access to such Information and annually thereafter. They must sign certificates after the training acknowledging that they understand their responsibilities. City/Town must keep records to document this training and certification.

### 3. Disclosure of Information

- 3.1 Confidential Information may only be disclosed as permitted by A.R.S. § 42-2003.
- 3.2 Confidential Information is confidential by statute and, therefore, does not have to be disclosed in response to a public records request. A state agency may deny inspection of public records if the records are confidential by statute. *Berry v. State*, 145 Ariz. 12, 13 699 P.2d 387, 388 (App. 1985).
- 3.3 A taxpayer may designate a person to whom Confidential Information may be disclosed by completing a Department of Revenue Form 285, or such other form that contains the information included in the Form 285. City/Town may contact the Department of Revenue's Disclosure Officer if there are any questions concerning this requirement.

### Disposal of Information

- 4.1 All removable media containing Confidential Information must be returned to the Department of Revenue or sanitized before disposal or release from the control of City/Town.
- 4.2 Confidential Information may be destroyed by shredding or burning the materials when no longer needed. Confidential Information may not be disposed of by placing the materials in the garbage or recycle bins. Destruction of Confidential Information may be performed by a third party vendor. City/Town must take appropriate actions to protect the Confidential Information in transit and storage before it is destroyed, such as periodic inspections of the vendor.
- 4.3 Computer system components and devices such as copiers and scanners that have been used to store or process Confidential Information may not be repurposed for non-tax administration uses unless the memory or hard drive of the device is sanitized to ensure under no circumstances Confidential Information can be restored or recovered.

# EXHIBIT 1

## ENCRYPTION STANDARDS

**1.0 Acceptable Encryption Algorithms** – The following encryption algorithms are considered acceptable for use in information systems to protect the transmission or storage of Confidential Information and system access.

**1.1.1 Acceptable Security Strength** – the security strength of an encryption algorithm is a projection of the time frame during which the algorithm and the key length can be expected to provide adequate security. The security strength of encryption algorithms is measured in bits, a measure of the difficulty of discovering the key.

a. The current minimum key strength for Confidential Information is 112 bits.

**1.1.2 Symmetric Encryption Algorithms** – The following symmetric encryption algorithms are considered acceptable for use.

Algorithm	Reference	Acceptable Key Strengths
Advanced Encryption Standard (AES)	FIPS 197	128, 192 or 256 bits
Triple Data Encryption Algorithm (TDEA) (three key 3DES)	SP 800-67	168 bits

**1.1.3 Key Agreement Schemes** – The following key agreement schemes are considered acceptable for use

Key Agreement Scheme	Reference	Acceptable Key Strengths	
		Finite Fields	Elliptical Curves
Diffie-Hellman (DH) or MOV	SP 800-56A	P = 2048	N: 224-255 and H=14 N: 256-383 and H=16
	SP 800-135	Q = 224 or 256	N: 384-511 and H=24 N: 512+ and H=32
RSA – based	SP 800-131A	N = 2048	

**1.1.4 Hash Functions** – The following hash functions are considered acceptable for use

Digital Signature Generation	Digital Signature Verification	Non-digital signature generation applications
SHA-224	SHA-224	SHA-1
SHA-256	SHA-256	SHA-224
SHA-384	SHA-384	SHA-256

SHA-512	SHA-512	SHA-384 SHA-512
---------	---------	--------------------

**1.1.5 Digital Signature Algorithms** – The following digital signature algorithms are considered acceptable for use.

Digital Signature Algorithm	FIPS Publication	Digital Signature Generation Settings	Digital Signature Verification Settings	Relative Strengths
Digital Signature Standard (DSA)	FIPS 186-4	p >= 2048 q = 224	p >= 2048 q = 224	>= 112 bits
RSA Digital Signature	FIPS 186-4	2048	2048	>= 112 bits
ECDSA	FIPS 186-4	224	224	>= 112 bits

**1.1.6 Message Signature Algorithms** – The following digital signature algorithms are considered acceptable for use.

Hash Algorithms	Hash Generation	Hash Verification
HMAC	>= 112 bits	>= 112 bits
CMAC	AES, 3DES	AES, 3DES
CCM and GCM/GMAC	AES	AES

## APPENDIX B

From the effective date of this Agreement until the new functionalities set forth below are implemented, the Department of Revenue will provide the following reports:

City Payment Journal Detail;  
City Payment Journal Summary;  
New License Report

Within 30 days after the first month's implementation of the JT2, the Department of Revenue will provide a new License Report and License Update Report containing at least the following fields:

### NEW LICENSE REPORT AND LICENSE UPDATE REPORT

Fields displayed:

- Region Code
- Run Date
- Report Start Date
- Report End Date
- Update Date
- ID Type
- ID
- Account ID
- Entity Name
- Ownership Type
- License ID
- OTO/Applied For indicator
- Bankruptcy Indicator
- Filing Frequency
- Issue Date
- Account Start Date
- Business Start Date
- Arizona Start Date
- Doc Loc Nbr
- Accounting Method
- Close Date
- Close Code
- Business Description
- NAICS1
- NAICS2
- NAICS3
- NAICS4
- Mailing Street1
- Mailing Street2
- Mailing Street3
- Mailing City

- Mailing State
- Mailing ZIP
- Mailing Country
- Mailing Phone Number
- Mailing Address Add date
- Mailing Address End Date
- Audit Street 1
- Audit Street 2
- Audit Street 3
- Audit City
- Audit State
- Audit Zip
- Audit Country
- Audit Phone Number
- Audit Address Add Date
- Audit Address End Date
- Location Code
- Business Codes
- Location Name (DBA)
- Number of Units
- Location Street 1
- Location Street 2
- Location Street 3
- Location City
- Location State
- Location Zip
- Location Country
- Location Phone Number
- Location Start Date
- Location End Date
- Primary Location Street 1
- Primary Location Street 2
- Primary Location Street 3
- Primary Location City
- Primary Location State
- Primary Location Zip Code
- Primary Location Country
- Primary Location Phone Number
- Primary Location Start Date
- Primary Location End Date
- Owner Name
- Owner Title
- Owner Name 2
- Owner Title 2
- Owner Name 3
- Owner Title 3

Within 30 days of the implementation of the TPT2, the Department of Revenue will provide the following reports with at least the fields indicated below:

#### CITY PAYMENT JOURNAL

- Run Date
- Report Start Date
- Report End Date
- GL Accounting Period
- Period End Date
- Payment received date
- Return received date
- Payment process date
- Return process date
- Filing Frequency
- License ID
- Entity Name
- Location Code
- Location Name (DBA)
- Location Street 1
- Location Street 2
- Location Street 3
- Location City
- Location State
- Location Zip
- Location Country
- NAICS
- Business Code
- Doc Loc Nbr
- Pmt Loc Nbr
- Gross Receipts
- Total Deductions
- Tax or Fee Collected
- P & I Collected
- Audit Collections
- Tran Type
- Tran Subtype
- Rev Type

#### CITY PAYMENT JOURNAL SUMMARY

- Region Code
- Run Date
- Report Start Date
- Report End Date
- GL Accounting Period
- Business Code
- Number of Accounts

- Collections

Within 30 days after the first month's implementation of the TPT2, the following reports with at least the fields indicated below:

#### NO MONEY REPORT

- Region Code
- GL Accounting Period
- Period End Date
- Payment received date
- Return received date
- Payment process date
- Return process date
- Filing Frequency
- License ID
- Entity Name
- Location Code
- Location Name (DBA)
- Location Street 1
- Location Street 2
- Location Street 3
- Location City
- Location State
- Location Zip
- Location Country
- NAICS
- Business Code
- Doc Loc Nbr
- Pmt Loc Nbr
- Gross Receipts
- Total Deductions
- Tax or Fee Collected
- P & I Collected
- Audit Collections
- Tran Type
- Tran Subtype

#### DEDUCTION REPORT

- Region Code
- Run Date
- Report Start Date
- Report End Date
- GL Accounting Period
- Period End Date
- License ID
- Entity Name

- Location Code
- Location Name (DBA)
- Business Code
- Doc Loc Nbr
- Deduction Code
- Deduction Amount
- Tran Type
- Tran Subtype
- Rev Type

Within 30 days after taxes (subject to fund distributions) are collected, the Department of Revenue will provide the following report with at least the fields indicated below:

#### FUND DISTRIBUTION REPORT

- Region Code
- Run Date
- Report Start Date
- Report End Date
- GL Accounting Period
- Period End Date
- Payment Received Date
- Return Received Date
- Payment Processed Date
- Return Processed Date
- License ID
- Entity Name
- Location Code
- Location Name (DBA)
- Business Code
- Doc Loc Nbr
- Fund Allocation Code
- Amount Distributed

#### FUND DISTRIBUTION SUMMARY REPORT

- Region Code
- Run Date
- Report Start Date
- Report End Date
- GL Accounting Period
- Fund Allocation Code
- Amount Distributed

# ARIZONA JOINT TAX APPLICATION (JT-2)



**License & Registration**  
**ARIZONA DEPARTMENT OF REVENUE**  
 PO BOX 29032  
 Phoenix, AZ 85038-9032

- IMPORTANT!** Incomplete applications WILL NOT BE PROCESSED.
- Please read form instructions while completing the application. Additional information and forms available at [www.azdor.gov](http://www.azdor.gov)
  - Required information is designated with an asterisk (\*).
  - Return completed application AND applicable license fee(s) to address shown at left.
  - For licensing questions regarding transaction privilege tax, call Taxpayer Information & Assistance: (602) 542-4576

**You can file and pay for this application online at [www.AZTaxes.gov](http://www.AZTaxes.gov). It is fast and secure.**

**SECTION A: Business Information**

<b>1*</b> Federal Employer Identification No. or Social Security No. <small>if sole proprietor without employees</small>		<b>2*</b> License Type – <i>Check all that apply:</i> <input type="checkbox"/> Transaction Privilege Tax (TPT) <span style="float: right;"><input type="checkbox"/> Use Tax</span> <input type="checkbox"/> Withholding/Unemployment Tax <small>(if hiring employees)</small> <span style="float: right;"><input type="checkbox"/> TPT for Cities ONLY</span>																	
<b>3*</b> Type of Organization/Ownership – <i>Tax exempt organizations must attach a copy of the Internal Revenue Service's letter of determination.</i> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Individual/Sole Proprietorship</td> <td><input type="checkbox"/> Subchapter S Corporation</td> <td><input type="checkbox"/> Government</td> <td><input type="checkbox"/> Joint Venture</td> </tr> <tr> <td><input type="checkbox"/> Corporation</td> <td><input type="checkbox"/> Association</td> <td><input type="checkbox"/> Estate</td> <td><input type="checkbox"/> Receivership</td> </tr> <tr> <td>State of Inc. _____</td> <td><input type="checkbox"/> Partnership</td> <td><input type="checkbox"/> Trust</td> <td></td> </tr> <tr> <td>Date of Inc. <u>M,M,D,D,Y,Y,Y,Y</u></td> <td><input type="checkbox"/> Limited Liability Company</td> <td><input type="checkbox"/> Limited Liability Partnership</td> <td></td> </tr> </table>				<input type="checkbox"/> Individual/Sole Proprietorship	<input type="checkbox"/> Subchapter S Corporation	<input type="checkbox"/> Government	<input type="checkbox"/> Joint Venture	<input type="checkbox"/> Corporation	<input type="checkbox"/> Association	<input type="checkbox"/> Estate	<input type="checkbox"/> Receivership	State of Inc. _____	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust		Date of Inc. <u>M,M,D,D,Y,Y,Y,Y</u>	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Limited Liability Partnership	
<input type="checkbox"/> Individual/Sole Proprietorship	<input type="checkbox"/> Subchapter S Corporation	<input type="checkbox"/> Government	<input type="checkbox"/> Joint Venture																
<input type="checkbox"/> Corporation	<input type="checkbox"/> Association	<input type="checkbox"/> Estate	<input type="checkbox"/> Receivership																
State of Inc. _____	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust																	
Date of Inc. <u>M,M,D,D,Y,Y,Y,Y</u>	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Limited Liability Partnership																	
<b>4*</b> Legal Business Name																			
<b>5*</b> Mailing Address – number and street  County/Region		City  State ZIP Code  Country																	
<b>6*</b> Business Phone No. <small>(with area code)</small>	<b>7</b> Email Address	<b>8</b> Fax Number <small>(with area code)</small>																	
<b>9*</b> Description of Business: <i>Describe merchandise sold or taxable activity.</i>																			
<b>10* NAICS Codes:</b> Available at <a href="http://www.azdor.gov">www.azdor.gov</a>																			
<b>11*</b> Did you acquire or change the legal form of an existing business? <input type="checkbox"/> No <input type="checkbox"/> Yes → You must complete Section F.		<b>12*</b> Are you a construction contractor? <input type="checkbox"/> No <input type="checkbox"/> Yes <small>(see bonding requirements)</small>																	
<b>BONDING REQUIREMENTS:</b> Prior to the issuance of a Transaction Privilege Tax license, new or out-of-state contractors are required to post a Taxpayer Bond for Contractors unless the contractor qualifies for an exemption from the bonding requirement. The primary type of contracting being performed determines the amount of bond to be posted. Bonds may also be required from applicants who are delinquent in paying Arizona taxes or have a history of delinquencies. Refer to the publication, Taxpayer Bonds, available online at <a href="http://www.azdor.gov">www.azdor.gov</a> or in Arizona Department of Revenue offices.																			
<b>WITHHOLDING LICENSE ONLY</b>																			
<b>13*</b> Withholding Physical Location <small>Number and street (Do not use PO Box, PMB or route numbers)</small>  County/Region		City  State ZIP Code  Country																	

Continued on page 2 →

FOR AGENCY USE ONLY	
<input type="checkbox"/> New	ACCOUNT NUMBER DLN
<input type="checkbox"/> Change	START TRANSACTION PRIVILEGE TAX
<input type="checkbox"/> Revise	S/E DATE WITHHOLDING / SSN / EIN
<input type="checkbox"/> Reopen	COMPLETED DATE EMPLOYEE'S NAME
	LIABILITY LIABILITY ESTABLISHED

CASHIER'S STAMP ONLY. DO NOT MARK IN THIS AREA.

Name (as shown on page 1)	FEIN or SSN (as shown on page 1)
---------------------------	----------------------------------

**SECTION B: Identification of Owners, Partners, Corporate Officers Members/Managing Members or Officials of this Employing Unit**

*If you need more space, attach Additional Owner, Partner, Corporate Officer(s) form available at [www.azdor.gov](http://www.azdor.gov). If the owner, partners, corporate officers or combination of partners or corporate officers, members and/or managing members own more than 50% of or control another business in Arizona, attach a list of the businesses, percentages owned and unemployment insurance account numbers or provide a Power of Attorney (Form 285) which must be filled out and signed by an authorized corporate officer.*

<b>Owner 1</b>	*Social Security No.	*Title	*Last Name	First Name	Middle Intl.
	*Street Address		*City	*State	* % Owned
	*ZIP Code	*County	*Phone Number (with area code)		*Country

<b>Owner 2</b>	*Social Security No.	*Title	*Last Name	First Name	Middle Intl.
	*Street Address		*City	*State	* % Owned
	*ZIP Code	*County	*Phone Number (with area code)		*Country

<b>Owner 3</b>	*Social Security No.	*Title	*Last Name	First Name	Middle Intl.
	*Street Address		*City	*State	* % Owned
	*ZIP Code	*County	*Phone Number (with area code)		*Country

**SECTION C: Transaction Privilege Tax (TPT)**

1* Date Business Started in Arizona <i>M, M, D, D, Y, Y, Y, Y</i>	2* Date Sales Began <i>M, M, D, D, Y, Y, Y, Y</i>	3 What is your anticipated annual income for your first twelve months of business?	
4 Filing Frequency <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Seasonal <input type="checkbox"/> Annual If seasonal filer, check the months for which you intend to do business: <input type="checkbox"/> JAN <input type="checkbox"/> FEB <input type="checkbox"/> MAR <input type="checkbox"/> APR <input type="checkbox"/> MAY <input type="checkbox"/> JUN <input type="checkbox"/> JUL <input type="checkbox"/> AUG <input type="checkbox"/> SEP <input type="checkbox"/> OCT <input type="checkbox"/> NOV <input type="checkbox"/> DEC			
5 Does your business sell tobacco products? <input type="checkbox"/> Yes → <input type="checkbox"/> Retailer OR <input type="checkbox"/> Distributor		6 TPT Filing Method <input type="checkbox"/> Cash Receipts <input type="checkbox"/> Accrual	
7 Does your business sell new motor vehicle tires or vehicles? <input type="checkbox"/> Yes → You will have to file Motor Vehicle Tire Fee form available at <a href="http://www.azdor.gov">www.azdor.gov</a>			
8* Tax Records Physical Location – number and street <i>(Do not use PO Box, PMB or route numbers)</i>			City
			State
			ZIP Code
County			Country
9* Name of Contact			* Phone Number (with area code)
			Extension

**SECTION D: Transaction Privilege Tax (TPT) Physical Location**

1* Business Name, "Doing Business As" or Trade Name at this Physical Location			
2* Physical Location of Business or Commercial/Residential Rental Number and street <i>(Do not use PO Box, PMB or route numbers)</i>		City	State
			ZIP Code
County/Region		Country	
Residential Rental Only – Number of Units		Reporting City <i>(if different than the physical location city)</i>	
3* Additional County/Region Indian Reservation: County/Region and Indian Reservation Codes available at <a href="http://www.azdor.gov">www.azdor.gov</a>			
County/Region		City	
Business Codes (Include all codes that apply): See instructions. Complete list available at <a href="http://www.azdor.gov">www.azdor.gov</a>			
State/County		City	

*If you need more space, attach Additional Business Locations form available at [www.azdor.gov](http://www.azdor.gov)*

Name (as shown on page 1)	FEIN or SSN (as shown on page 1)
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**SECTION E: Withholding & Unemployment Tax Applicants**

<p>1* Regarding THIS application, Date Employees First Hired in Arizona M, M   D, D   Y, Y, Y, Y</p>	<p>2 Are you liable for Federal Unemployment Tax? <input type="checkbox"/> Yes → First year of liability: Y, Y, Y, Y</p>								
<p>3 Are individuals performing services that are excluded from withholding or unemployment tax? <input type="checkbox"/> Yes → Describe services: _____</p>	<p>4 Do you have an IRS ruling that grants an exclusion from Federal Unemployment Tax? <input type="checkbox"/> Yes → Attach a copy of the Ruling Letter.</p>								
<p>5 Do you have, or have you previously had, an Arizona unemployment tax number? <input type="checkbox"/> No <input type="checkbox"/> Yes → Business Name: _____ Unemployment Tax Number: _____</p>									
<p>6 First calendar quarter Arizona employees were/will be hired and paid (indicate quarter as 1, 2, 3, 4):</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:25%;">Hired Year</th> <th style="width:25%;">Hired Quarter</th> <th style="width:25%;">Paid Year</th> <th style="width:25%;">Paid Quarter</th> </tr> <tr> <td style="text-align: center;">Y, Y, Y, Y</td> <td style="text-align: center;">Q</td> <td style="text-align: center;">Y, Y, Y, Y</td> <td style="text-align: center;">Q</td> </tr> </table>	Hired Year	Hired Quarter	Paid Year	Paid Quarter	Y, Y, Y, Y	Q	Y, Y, Y, Y	Q
Hired Year	Hired Quarter	Paid Year	Paid Quarter						
Y, Y, Y, Y	Q	Y, Y, Y, Y	Q						
<p>7 When did/will you first pay a total of \$1,500 or more gross wages in a calendar quarter? (indicate quarter as 1, 2, 3, 4) <small>Exceptions: \$20,000 gross cash wages Agricultural: \$1,000 gross cash wages Domestic/Household: not applicable to 501(c)(3) Non-Profit.</small></p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:50%;">Year</th> <th style="width:50%;">Quarter</th> </tr> <tr> <td style="text-align: center;">Y, Y, Y, Y</td> <td style="text-align: center;">Q</td> </tr> </table>	Year	Quarter	Y, Y, Y, Y	Q				
Year	Quarter								
Y, Y, Y, Y	Q								
<p>8 When did/will you first reach the 20<sup>th</sup> week of employing 1 or more individuals for some portion of a day in each of 20 different weeks in the same calendar year? (indicate quarter as 1, 2, 3, 4) <small>Exceptions: 10 or more individuals Agricultural; 4 or more individuals 501(c)(3) Non-Profit; not applicable to Domestic/Household.</small></p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:50%;">Year</th> <th style="width:50%;">Quarter</th> </tr> <tr> <td style="text-align: center;">Y, Y, Y, Y</td> <td style="text-align: center;">Q</td> </tr> </table>	Year	Quarter	Y, Y, Y, Y	Q				
Year	Quarter								
Y, Y, Y, Y	Q								

**SECTION F: Acquired Business Information**

If you answered "Yes" to Section A, question 11, you must complete Section F.

<p>1* Did you acquire or change all or part of an existing business? <input type="checkbox"/> All <input type="checkbox"/> Part</p>	<p>2* Date of Acquisition M, M   D, D   Y, Y, Y, Y</p>	<p>3* EIN of Business Under Previous Owner</p>
<p>4* Previous Owner's Telephone Number</p>	<p>5* Name of Business Under Previous Owner</p>	<p>6* Name of Previous Owner</p>
<p>7* Did you change the legal form of all or part of the Arizona operations of your existing business? (e.g., change from sole proprietor to corporation or etc.) <input type="checkbox"/> All <input type="checkbox"/> Part</p>	<p>8* Date of Change M, M   D, D   Y, Y, Y, Y</p>	<p>9* EIN of Previous Legal Form</p>

**SECTION G: AZTaxes.gov Security Administrator (authorized users)**

By electing to register for www.AZTaxes.gov, you can have online access to account information, file and pay Arizona transaction privilege, use, and withholding taxes. You may also designate authorized users to access these services. Please provide the name of the authorized user for AZTaxes.gov.

Name of Authorized User
Title
Email Address
Phone Number (with area code)

**SECTION H: Required Signatures**

This application must be signed by either a sole owner, at least two partners, managing member or corporate officer legally responsible for the business, trustee or receiver or representative of an estate that has been listed in Section B.

**Under penalty of perjury I (we), the applicant, declare that the information provided on this application is true and correct.** I (we) hereby authorize the security administrator, if one is listed in Section G, to access the AZTaxes.gov site for the business identified in Section A. This authority is to remain in full force and effect until the Arizona Department of Revenue has received written termination notification from an authorized officer.

1 Print or Type Name	2 Print or Type Name
Title	Title
Date	Date
Signature	Signature

**This application must be completed, signed, and returned as provided by A.R.S. § 23-722.**

Equal Opportunity Employer/Program

This application available in alternative formats at Unemployment Insurance Tax Office.

**PLEASE COMPLETE SECTION I: STATE/COUNTY & CITY LICENSE FEE WORKSHEET TO CALCULATE AND REMIT TOTAL AMOUNT DUE WITH THIS APPLICATION.**

Name (as shown on page 1)	FEIN or SSN (as shown on page 1)
---------------------------	----------------------------------

**SECTION I: State/County & City License Fee Worksheet**

ALL FEES ARE SUBJECT TO CHANGE. Check for updates at azdor.gov.

To calculate **CITY FEE**: Multiply **No. of Locations** by the **License Fee** and enter sum in **License Subtotal**.

City/Town	Code	No. of Loc's	License Fee	License Subtotal	City/Town	Code	No. of Loc's	License Fee	License Subtotal	City/Town	Code	No. of Loc's	License Fee	License Subtotal
Apache Junction	AJ		\$50.00		Goodyear	GY		\$5.00		Sahuarita	SA		\$5.00	
Avondale	AV		\$40.00		Guadalupe	GU		\$2.00		San Luis	SU		\$2.00	
Benson	BS		\$5.00		Hayden	HY		\$5.00		Scottsdale	SC		\$50.00	
Bisbee	BB		\$1.00		Holbrook	HB		\$1.00		Sedona	SE		\$2.00	
Buckeye	BE		\$2.00		Huachuca City	HC		\$2.00		Show Low	SL		\$2.00	
Bullhead City	BH		\$2.00		Jerome	JO		\$2.00		Sierra Vista	SR		\$1.00	
Camp Verde	CE		\$2.00		Kearny	KN		\$2.00		Snowflake	SN		\$2.00	
Carefree	CA		\$10.00		Kingman	KM		\$2.00		Somerton	SO		\$2.00	
Casa Grande	CG		\$2.00		Lake Havasu	LH		\$5.00		South Tucson	ST		\$2.00	
Cave Creek	CK		\$20.00		Litchfield Park	LP		\$2.00		Springerville	SV		\$5.00	
Chandler	CH		\$50.00		Mammoth	MH		\$2.00		St. Johns	SJ		\$2.00	
Chino Valley	CV		\$2.00		Marana	MA		\$5.00		Star Valley	SY		\$2.00	
Clarkdale	CD		\$2.00		Maricopa	MP		\$2.00		Superior	SI		\$2.00	
Clifton	CF		\$2.00		Mesa	ME		\$30.00		Surprise	SP		\$10.00	
Colorado City	CC		\$2.00		Miami	MM		\$2.00		Taylor	TL		\$2.00	
Coolidge	CL		\$2.00		Nogales	NO		\$25.00		Tempe	TE		\$50.00	
Cottonwood	CW		\$2.00		Oro Valley	OR		\$12.00		Thatcher	TC		\$2.00	
Dewey/Humboldt	DH		\$2.00		Page	PG		\$2.00		Tolleson	TN		\$2.00	
Douglas	DL		\$5.00		Paradise Valley	PV		\$2.00		Tombstone	TS		\$1.00	
Duncan	DC		\$2.00		Parker	PK		\$2.00		Tucson	TU		\$45.00	
Eagar	EG		\$10.00		Patagonia	PA		\$25.00		Tusayan	TY		\$2.00	
El Mirage	EM		\$15.00		Payson	PS		\$2.00		Wellton	WT		\$2.00	
Eloy	EL		\$10.00		Peoria	PE		\$50.00		Wickenburg	WB		\$2.00	
Flagstaff	FS		\$46.00		Phoenix	PX		\$50.00		Willcox	WC		\$25.00	
Florence	FL		\$2.00		Pima	PM		\$2.00		Williams	WL		\$2.00	
Fountain Hills	FH		\$2.00		Pinetop/Lakeside	PP		\$2.00		Winkelman	WM		\$2.00	
Fredonia	FD		\$10.00		Prescott	PR		\$25.00		Winslow	WS		\$10.00	
Gila Bend	GI		\$2.00		Prescott Valley	PL		\$2.00		Youngtown	YT		\$10.00	
Gilbert	GB		\$2.00		Quartzsite	QZ		\$2.00		Yuma	YM		\$2.00	
Glendale	GE		50.00		Queen Creek	QC		\$2.00						
Globe	GL		\$2.00		Safford	SF		\$2.00						

Subtotal City License Fees (column 1)	Subtotal City License Fees (column 2)	Subtotal City License Fees (column 3)
---------------------------------------	---------------------------------------	---------------------------------------

**AA TOTAL City License Fee(s) (column 1 + 2 + 3).....** \$

	No. of Loc's	Fee per Location	TOTAL
<b>BB TOTAL State License Fee(s):</b> Calculate by multiplying number of business locations by \$12.00		<b>\$12.00</b>	\$
<b>Residential Rental License Fees -</b> Multiply the number of units per locations by \$2.00 (\$50.00 Annual Cap per license).			
	No. of Units	No. of Loc's	City Fee
ONLY CHANDLER, PHOENIX, and SCOTTSDALE need to use this section, and NOT the fee chart above, to calculate license fee(s). The amount for each city CANNOT EXCEED \$50.00			\$
			\$
			\$

**CC TOTAL City Residential Rental License Fees (Add Chandler, Phoenix, & Scottsdale).....** \$

**DD TOTAL DUE (Add lines AA + BB + CC).....** \$

- Make check payable to Arizona Department of Revenue.
- Include FEIN or SSN on payment.
- Do not send cash.
- License will not be issued without full payment of fee.



TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX RETURN - (TPT-2)

LICENSE NUMBER: \_\_\_\_\_

PAGE 2 OF \_\_\_\_\_

STATE (AZ) /COUNTY TRANSACTION DETAIL (See Table 1 on the Tax Rate Table, www.azdor.gov)

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)
	REG. CODE	NAME OF REGION	BUS. CODE	DESC. OF BUS. ACTIVITY	GROSS RECEIPTS	DEDUCTIONS FROM SCHEDULE A	(F) - (G) = (H) NET TAXABLE	AZ / COUNTY TAX RATE	(H) X (I) = (J) TOTAL TAX	ACCTNG CREDIT RATE	(H) X (K) = (L) ACCOUNTING CREDIT	(J) - (L) = (M) AZ/COUNTY TAX DUE
1												
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23												
24												
25												
GG SUBTOTAL .....												
HH TOTALS FROM ADDITIONAL AZ/COUNTY PAGE(S) .....												
II TOTAL (LINE GG + LINE HH = LINE II).....												
JJ EXCESS TAX COLLECTED .....												
KK EXCESS TAX ACCOUNTING CREDIT: (SEE INSTRUCTIONS).....												
LL NET AZ/COUNTY EXCESS TAX COLLECTED (LINE JJ, COLUMN (M) - LINE KK, COLUMN (M)) .....												
MM NET AZ/COUNTY TAX (LINE II, COLUMN (M) + LINE LL, COLUMN (M)).....												

FINAL

**TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX RETURN - (TPT-2)**

LICENSE NUMBER: \_\_\_\_\_

PAGE 3 OF \_\_\_\_\_

**CITY TRANSACTION DETAIL (See Table 2 on the Tax Rate Table, www.azdor.gov)**

(A) LOC. CODE	(B) CITY CODE	(C) NAME OF CITY	(D) BUS. CODE	(E) DESC. OF BUS. ACTIVITY	(F) GROSS RECEIPTS	(G) DEDUCTIONS FROM SCHEDULE A	(H) (F) - (G) = (H) NET TAXABLE	(I) CITY TAX RATE	(J) (H) X (I) = (J) TOTAL TAX	(K)	(L) CITY CREDIT	(M) (J) - (L) = (M) CITY TAX DUE
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25												
<b>NN</b>	<b>CITY SUBTOTAL .....</b>											
<b>OO</b>	<b>CITY SUBTOTALS FROM ADDITIONAL CITY PAGE(S) .....</b>											
<b>PP</b>	<b>CITY TOTAL (LINE NN + LINE OO = LINE PP) .....</b>											
<b>QQ</b>	<b>CITY EXCESS TAX COLLECTED .....</b>											
<b>RR</b>	<b>NET CITY TAX (LINE PP, COLUMN (M) + LINE QQ, COLUMN (M)) .....</b>											

FINAL

**TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX RETURN - (TPT-2)**  
**ADDITIONAL TRANSACTIONS**

LICENSE NUMBER: \_\_\_\_\_

PAGE 2A OF \_\_\_\_\_

**STATE (AZ) /COUNTY TRANSACTION DETAIL (See Table 1 on the Tax Rate Table, www.azdor.gov)**

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)
	REG. CODE	NAME OF REGION	BUS. CODE	DESC. OF BUS. ACTIVITY	GROSS RECEIPTS	DEDUCTIONS FROM SCHEDULE A	(F) - (G) = (H) NET TAXABLE	AZ / COUNTY TAX RATE	(H) X (I) = (J) TOTAL TAX	ACCTNG CREDIT RATE	(H) X (K) = (L) ACCOUNTING CREDIT	(J) - (L) = (M) AZ/COUNTY TAX DUE
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22												
23												
24												
25												
<b>AZ/COUNTY SUBTOTAL .....</b>					\$	\$					\$	\$

**ADD SUBTOTALS OF AZ/COUNTY ADDITIONAL TRANSACTIONS TO THE 2ND PAGE OF RETURN**

**TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX RETURN - (TPT-2)**  
**ADDITIONAL TRANSACTIONS**

LICENSE NUMBER: \_\_\_\_\_

PAGE 3A OF \_\_\_\_\_

**CITY TRANSACTION DETAIL (See Table 2 on the Tax Rate Table, www.azdor.gov)**

(A) LOC. CODE	(B) CITY CODE	(C) NAME OF CITY	(D) BUS. CODE	(E) DESC. OF BUS. ACTIVITY	(F) GROSS RECEIPTS	(G) DEDUCTIONS FROM SCHEDULE A	(H) (F) - (G) = (H) NET TAXABLE	(I) CITY TAX RATE	(J) (H) X (I) = (J) TOTAL TAX	(K)	(L) CITY CREDIT	(M) (J) - (L) = (M) CITY TAX DUE
1												
2												
3												
4												
5												
6												
7												
8												
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17												
18												
19												
20												
21												
22												
23												
24												
25												
<b>CITY SUBTOTAL .....</b>					\$	\$				\$	\$	

**ADD SUBTOTALS OF CITY ADDITIONAL TRANSACTIONS TO THE 3RD PAGE OF RETURN**

**TPT-2 – SCHEDULE A DEDUCTIONS – STATE/COUNTY TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX**

LICENSE NUMBER: \_\_\_\_\_

Page \_\_\_\_ of \_\_\_\_

**STATE (AZ) /COUNTY DEDUCTIONS DETAIL**

(A)	(B) REGION CODE	(C) BUSINESS CODE	(D) DEDUCTION CODE	(E) DEDUCTION AMOUNT	(F) DESCRIPTION OF DEDUCTION CODE
1				\$	
2				\$	
3				\$	
4				\$	
5				\$	
6				\$	
7				\$	
8				\$	
9				\$	
10				\$	
11				\$	
12				\$	
13				\$	
14				\$	
15				\$	
16				\$	
17				\$	
18				\$	
19				\$	
20				\$	
21				\$	
22				\$	
23				\$	
24				\$	
25				\$	
26				\$	
27				\$	
28				\$	
29				\$	
30				\$	
31				\$	
32				\$	
33				\$	
34				\$	
35				\$	
<b>AA</b>	<b>SUBTOTAL OF DEDUCTIONS.....</b>			\$	
<b>BB</b>	<b>DEDUCTION TOTALS FROM ADDITIONAL AZ/COUNTY PAGE(S) ...</b>			\$	
<b>CC</b>	<b>TOTAL DEDUCTIONS (LINE AA + LINE BB = LINE CC).....</b>			\$	

**TOTAL MUST EQUAL TOTAL ON PAGE 2, LINE II, COLUMN G**

FINAL

**TPT-2 – SCHEDULE A DEDUCTIONS – CITY  
TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX**

LICENSE NUMBER: \_\_\_\_\_

Page \_\_\_\_ of \_\_\_\_

**CITY DEDUCTIONS DETAIL**

	(A) LOCATION CODE	(B) CITY CODE	(C) BUSINESS CODE	(D) DEDUCTION CODE	(E) DEDUCTION AMOUNT	(F) DESCRIPTION OF DEDUCTION CODE
1					\$	
2					\$	
3					\$	
4					\$	
5					\$	
6					\$	
7					\$	
8					\$	
9					\$	
10					\$	
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26					\$	
27					\$	
28					\$	
29					\$	
30					\$	
31					\$	
32					\$	
33					\$	
34					\$	
35					\$	
<b>AA</b>	<b>SUBTOTAL OF DEDUCTIONS.....</b>				\$	
<b>BB</b>	<b>DEDUCTION TOTALS FROM ADDITIONAL CITY PAGE(S).....</b>				\$	
<b>CC</b>	<b>TOTAL DEDUCTIONS (LINE AA + LINE BB = LINE CC).....</b>				\$	

**TOTAL MUST EQUAL TOTAL ON PAGE 3, LINE PP, COLUMN G**

FINAL

# STATE OF ARIZONA

Department of Revenue



Arizona Department of Revenue  
Program Cities Unit

Tom Johnson  
Assistant Director

Vivian Soza  
Administrator

May 26, 2015

Barbara Goodrich  
City of Flagstaff  
211 W Aspen Ave  
Flagstaff, AZ 86001

RE: Termination of Intergovernmental Agreement

Dear Barbara Goodrich:

The Arizona Department of Revenue hereby provides notice that it elects to terminate the existing Intergovernmental Agreement with City of Flagstaff, including all modifications thereto, at the end of its current term, June 30, 2015. The Department would like to enter into a new Agreement with City of Flagstaff effective July 1, 2015. The new Agreement will be mailed to you soon.

Please contact me at (602) 716-6388 if you have any questions.

Sincerely,

Vivian Soza  
Program Cities Unit  
CitiesUnit@azdor.gov

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Michael Scheu, Building Official  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



---

**TITLE:**

**Consideration and Approval of Contract:** Intergovernmental Agreement (IGA) with the State Office of Manufactured Housing. *(IGA for the City of Flagstaff to perform set-up inspections)*

**RECOMMENDED ACTION:**

Approve the IGA between the City and the State Office of Manufactured Housing regarding the City performing set-up inspections to help owner(s) occupy the home sooner.

**Executive Summary:**

Manufactured housing is one of the few alternatives that provides more affordable housing for those who cannot afford the conventional stick building housing. The IGA with the State Office of Manufactured Housing allows the City to perform set-up inspections that will help the owner(s) occupy the home sooner than if they had to wait for an inspector to come up from the Phoenix area. The proposed IGA will replace the current IGA that expires on June 30th of this year.

**Financial Impact:**

The City charges \$120.00 per Manufactured Home set-up and collected approximately \$2,880 for 24 Manufactured Home permits in 2014.

**Connection to Council Goal and/or Regional Plan:**

4) Explore and adopt policies to lower the costs associated with housing to the end user

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

Council approved the current IGA on 13 April, 2010.

**Options and Alternatives:**

1. Council may allow the current IGA to expire. This would delay the owners from occupying their home for an extended period of time that would be based on when an inspector from Phoenix can come up to inspect the installation of the manufactured home.
2. Council may adopt the Resolution. This would allow the City to inspect the installation of the manufactured home in a more timely manner which would allow the owner(s) to occupy their home faster.

**Community Involvement:**

***Choose which of the following that applies and REMOVE ALL OTHERS:***

Inform  
Consult  
Involve  
Collaborate  
Empower

---

**Attachments:**    Proposed IGA for 2015

**AGREEMENT**

**BETWEEN**

**ARIZONA DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY  
OFFICE OF MANUFACTURED HOUSING**

**AND**

**CITY OF FLAGSTAFF**

**TO ENFORCE INSTALLATION STANDARDS**

This **AGREEMENT** ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the **ARIZONA DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY, OFFICE OF MANUFACTURED HOUSING** ("OMH") and the City of Flagstaff("Agency").

**WHEREAS**, pursuant to A.R.S. § 41-2151 the purpose of OMH is to maintain standards of quality and safety for manufactured homes, factory-built buildings, mobile homes, and the installation of the same.

**WHEREAS**, A.R.S. § 41-2153(B) (5) directs the Deputy Director of OMH to enter into agreements with local enforcement agencies to enforce the installation standards in their respective jurisdictions consistent with the installation standards of OMH; and

**WHEREAS**, it is the desire of both parties to eliminate unnecessary duplication of inspections regarding installation standards within the Agency's jurisdiction;

**NOW, THEREFORE**, in consideration of the premises and mutual promises and undertakings herein contained, and for other good and valuable consideration, the parties agree as follows:

1. Monitoring and Enforcement. For the duration of this Agreement, the Agency will monitor and enforce the installation standards set forth in A.R.S. § 41-2195 and A.A.C. R4-34-102 as they apply to installation standards and accessory structures.
2. Term. The term of this Agreement shall be for five (5) years from the date of this Agreement.
3. Standards of Performance. In exercising the authority delegated hereunder the Agency shall perform to the same standards of performance that the law imposes upon OMH in exercising the authority described in section 1 hereof. In addition, the Agency shall not approve any installation unless the installer affixes a State Insignia of Approval as required by A.A.C. R4-34-802.A and pays to the Agency the fee established by OMH pursuant to the authority by A.A.C. R4-34-501 and as permitted by A.A.C. R4-34-506.
4. Monthly Reporting. The Agency in this Agreement shall submit a Monthly IGA Report to OMH. A copy of each closed mobile home/HUD manufactured home or FBB permit shall be

submitted with the monthly report. The monthly report with copies of permits shall be submitted by mail, fax, or email, on or before the 15<sup>th</sup> of the following month. OMH will provide the monthly report format which will require the following be collected and documented:

- a. ARZ HUD label number(s) or FBB manufacturers insignia number
- b. Unit serial number
- c. Installation insignia or FBB plan approval number
- d. Address of installation
- e. Date of approved final installation inspection

5. Fees Charged by the Agency. Permit fees charged by the Agency shall be the same as the Fee Schedule created by OMH pursuant to its authority under A.R.S. § 41-2144 (4) and A.A.C. R4-34-501 and no more than permitted by R4-34-801(E). All fees collected by the Agency shall be kept by the Agency as compensation for the services performed by the Agency under this agreement. The Agency shall not be entitled to any other compensation for services rendered by it under this Agreement.

6. Termination. Either party may terminate this Agreement at any time without cause by giving the other party thirty (30) days written notice prior to the date of termination. Additionally, OMH may terminate this Agreement immediately and without notice, if OMH determines that the installation standards required in the Agreement are not being maintained, or that local fees are not consistent with the inspection fees established by the Board of Manufactured Housing.

7. Qualifications of Personnel. The personnel that perform the functions delegated to the Agency in paragraph 1 hereof shall each have no less than one year of experience as a building code inspector or manufactured housing installation inspector.

8. Inspector Training. All Agency Inspectors performing under this Agreement shall participate in required initial and/or periodic training as set and coordinated by the State.

9. Duties of OMH. Should OMH require inspections of any portion of the installation of mobile, manufactured homes, accessory structures or factory built buildings not required by the Rules referred to herein and not covered under this Agreement, OMH shall be responsible for the inspections and enforcement thereof.

10. Notices. All notices shall be mailed or delivered to the party to receive such notice to the following address.

- a. If intended for OMH to:

Department of Fire, Building and Life Safety  
Office of Manufactured Housing  
1110 West Washington, Suite #100  
Phoenix, AZ 85007-2935

Attn: Debra Blake  
Title: Deputy Director  
Phone: (602) 364-1022

b. If intended for Agency, to:

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, AZ 86001

Attn: Michael Scheu  
Title: Building Official  
Phone: (928) 213-2620

11. Interpretation and Amendments. This Agreement contains the entire agreement between the parties hereto. This Agreement shall not be amended or modified in any manner, except by an instrument in writing signed by the parties hereto.

12. Headings. Headings are for convenience only and are not to be construed as part of this Agreement.

13. Invalidity of a Term. The parties agree that in the event any term, covenant or conditions herein contained should be held to be invalid or void, the invalidity of any such term, covenant or condition shall in no way affect any other term, covenant or condition of this Agreement.

14. Dispute. In the event of any dispute between the parties under this Agreement, the parties agree that they shall submit the dispute to arbitration pursuant to A.R.S. §§ 12-133(D) and 12-1518.

15. Inspection and Audit. Pursuant to A.R.S. §§ 35-214 and 35-215, all books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona for five (5) years after completion of this Agreement. Such records shall be produced at the Auditor General's Office or such other office as the parties hereto may mutually agree within a reasonable time after request.

16. Conflict of Interest. The parties acknowledge that this Agreement is subject to cancellation by the Governor of Arizona pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein.

17. Prohibition Against Discrimination. In the event that it applies, the parties agree to comply with the Arizona Governor's Executive Order No. 2009-09.

18. Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. The exclusive venue for any litigation, arbitration, administrative hearing or the like concerning this Agreement or any matter arising therefrom shall be in Maricopa County, State of Arizona.

19. Unavailability of Funding. Every payment or financial obligation of the parties under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by any party at the end of the period for which funds are available. No liability shall accrue to any party in the event this provision is exercised,

and neither the OMH or Agency shall be obligated or liable for any future payments nor for any damages as a result of termination under this paragraph.

20. E-verify. To the extent applicable under A.R.S. § 41-4401, each party and its respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to its employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Each party has the right to inspect the papers of the other party or its subcontractors participating in this Agreement and may result in the termination of the Agreement by a non-breaching party under terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto agree to carry out the terms of this Agreement and have executed this Agreement the day, month and year first written above.

OFFICE OF MANUFACTURED HOUSING

CITY OF FLAGSTAFF:

Name: \_\_\_\_\_  
Debra Blake, Deputy Director  
Department of Fire, Building and Life Safety  
Office of Manufactured Housing

Name: \_\_\_\_\_  
Jerry Nabours, Mayor

ATTEST: \_\_\_\_\_  
Elizabeth A Burke, City Clerk

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

This Intergovernmental Agreement has been reviewed by the undersigned attorney for the Agency who has determined that it is in appropriate form and within the powers and authority granted by law to the Agency designed herein.

BY: \_\_\_\_\_  
Michelle D'Andrea, City

Attorney

This Intergovernmental Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General, who has determined that it is in the proper form and is within the powers granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General.

Dated this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BY: \_\_\_\_\_  
Mary D. Williams,  
Assistant Attorney General

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Brandi Suda, Finance Manager  
**Co-Submitter:** Rick Tadder, Finance Director  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



**TITLE:**

**Public Hearing For Proposed FY 2015 – 2016 Budget and Property Tax Levy.**

**RECOMMENDED ACTION:**

- 1) Hold Public Hearing
- 2) Recess Regular Meeting and convene a Special Meeting

**SPECIAL MEETING**

**Consideration and Adoption of Resolution No. 2015-20:** A resolution of the City Council of Flagstaff, Arizona, for the adoption of the Budget for Fiscal Year 2015-16 and Public Hearing for Budget and Levy.

**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2015-20 by title only
- 2) City Clerk reads Resolution No. 2015-20 by title only (if approved above)
- 3) Adopt Resolution No. 2015-20
- 4) Adjourn Special Meeting and reconvene Regular Meeting

**Executive Summary:**

In accordance with State law, a public hearing is required for final adoption of the budget, and the establishment of the property tax levy. This hearing provides for citizen input prior to adoption. Arizona State Statutes require each municipality to adopt a budget as prescribed by A.R.S. Title 42, Chapter 17, Articles 1 through 5. As published in the Tentative Adoption of the Budget, the Final Budget Adoption is to take place on June 16, 2015 (during a Special Meeting) and the Property Tax Levy ordinance will have a first read on June 16, 2015 and will have the second read on July 7, 2015.

**Financial Impact:**

- The final budget adoption allows the City to commit and expend resources as determined to be needed through the FY2015-2016 budget process.
- The City of Flagstaff will levy flat revenue for primary property taxes at a rate of \$0.8234 and a flat rate for secondary property taxes at a rate of \$0.8366. The City will also receive additional revenues related to new construction of \$65,343.

**Connection to Council Goal and/or Regional Plan:**

- Invest in our employees and implement retention and attraction strategies
- Provide sustainable and equitable public facilities, services and infrastructure systems in an efficient and effective manner to serve all population areas and demographics
- As well as impacts many other Council goals

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

- December Budget Retreat on December 9 & 10, 2014
- Mini Budget Advance on January 22 & 28, 2015
- February Budget Advance on February 11 & 12, 2015
- Council Budget Advance on April 21 & 22, 2015

**Options and Alternatives:**

Public Hearing:

- Open the public hearing
- Delay the public hearing

Final Budget Adoption

As the City adopted the tentative budget on June 2, 2015, the maximum appropriation for FY2015-2016 has been set. The Council could choose to make adjustments within that maximum appropriation or make reductions in the maximum appropriation.

**Background/History:**

Budget adoption:

The budget was presented for tentative adoption on June 2, 2015. The tentative adoption established the maximum appropriation for the City for the FY 2015-2016 budget year. The budget legal schedules were published in the Arizona Daily Sun on June 4, 2015 and June 11, 2015.

Property tax levy:

Primary property taxes are accumulated in the General Fund and pay for general services which include but are not limited to public safety, parks and recreation, other public work services, and general administrative and management functions within the City.

Secondary property taxes support debt service payments on numerous city capital projects including the Aquaplex, fire stations, open space, street/utility projects, forest restoration, and the future core facility.

Truth and taxation legislation:

Every year, the Truth in Taxation legislation requires that the county assessor, on or before February 10, transmit to each city and town an estimate of the total net assessed valuation of the city, including new property added to the tax roll. If the proposed primary tax levy amount, excluding amounts attributable to new construction, is greater than the levy amount in the previous year, the City must go through the 'truth in taxation' procedures. It is important to note that it is the levy amount and not the rate which triggers the truth in taxation procedure. The City of Flagstaff has not triggered the 'truth in taxation' notification and hearing for FY2015-2016 and no additional notifications are required.

**Key Considerations:**

The adoption of the tentative budget set forth into motion a legally mandated time sequence of actions of which the Council must adhere to adopt a final budget and to levy property taxes. If this time sequence is not met as required by statute, the tentative budget adoption, the final budget adoption, the property tax levy actions, and related publications must be started over. The final budget adoption must occur after a public hearing and Council must convene into a Special Meeting to adopt the final budget. The budget must be adopted by the third week of July. The County will adopt the property tax levy the first week of August. The key dates in the process have been presented as part of the action summary.

- June 2, 2015 Tentative adoption of budget by Council
- June 16,2015 Proposed budget and property tax levy hearing
- June 16, 2015 Final budget adoption(done in a Special meeting)
- June 16, 2015 First reading property tax ordinance
- July 7, 2015 Final reading and adoption of property tax ordinance

**Expanded Financial Considerations:**

The City of Flagstaff is proposing a flat primary property levy on existing properties for the FY2015-2016 base levy of \$5,561,740 plus new construction levy of \$65,343 for a total levy of \$5,627,083. The maximum allowable primary property revenue for FY2015-2016 is \$6,091,109. The City of Flagstaff is not proposing a change in the secondary property tax rate for FY2015-2016.

Primary property tax rate will decrease from \$0.8418 in FY2014-2015 to \$0.8234 in FY2015-2016 due to the total valuation of all existing properties are increasing 2.2%. The 'truth in taxation' has not been triggered as the levy amount on existing properties is flat and it is not dependent on rate. The table below reflects a five year rate history:

Property Tax Rates	FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016 Proposed
Primary	\$ 0.6917	0.7131	0.8429	0.8418	0.8234
Secondary	0.8366	0.8366	0.8366	0.8366	0.8366
Total	\$ 1.5283	1.5497	1.6795	1.6784	1.6600

The final budget adoption allows the City to commit and expend resources as determined to be needed through the FY2015-2016 budget process. There have been no changes in the final budget recommended for adoption from that presented as the tentative budget. The recommended City of Flagstaff appropriation for FY2015-2016 is \$241,717,597.

**Community Benefits and Considerations:**

Public investment into the budget process is necessary as a tool for the Council to use when determining the current year goals and objectives. The budget translates City Council's priorities into fiscal reality. Timely budget adoption allows the City to commit expenditures as related to the FY2015-2016 budget as needed for ongoing operational consistency to the citizenry. The FY2015-2016 budget is balanced.

**Community Involvement:**

Inform/Involve: This is the public hearing in the budget adoption process and it is open to public comment on the property tax levy and the final budget adoption. Budget legal schedules were published in the June 4, 2015 and June 11, 2015 Arizona Daily Sun to allow for additional community review. In addition, the legal and other budget schedules were made available at City Hall, at both Flagstaff Public Libraries, and on the official city website. The final opportunity for community involvement for the budget adoption is at this public meeting. The final opportunity for public input to the tax levy will be at the July 7, 2015 Council Meeting.

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**Attachments:**      [Res. 2015-20](#)

**RESOLUTION NO. 2015-20**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA  
ADOPTING THE BUDGET FOR THE CITY OF FLAGSTAFF FOR FISCAL YEAR  
2015-2016**

**RECITALS:**

WHEREAS, in accordance with the provisions of A.R.S. Title 42, Chapter 17, Articles 1 - 5, the City Council did, on June 2, 2015 make an estimate of the different amounts required to meet the public expenditures/expenses for the ensuing year, also an estimate of revenues from sources other than direct taxation, and the amount to be raised by taxation upon real and personal property within the City of Flagstaff; and

WHEREAS, in accordance with said sections of said Title, and following due public notice, the Council met on June 2, 2015, at which meeting any taxpayer was privileged to appear and be heard in favor of or against any of the proposed expenditures/expenses or tax levies; and

WHEREAS, it appears that publication has been duly made as required by law, of said estimates together with a notice that the City Council would meet on June 16, 2015, in the Council Chambers at City Hall for the purpose of hearing taxpayers and making tax levies as set forth in said estimates; and

WHEREAS, it appears that the sums to be raised by taxation, as specified therein, do not in the aggregate amount exceed that amount as computed in A.R.S. 42-17051 (A).

**ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

That said estimates of revenues and expenditures shown on the accompanying schedules as now increased, reduced, or changed, are hereby adopted as the budget of the City of Flagstaff for Fiscal Year 2015-2016.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 16<sup>th</sup> day of June, 2015.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

**OFFICIAL BUDGET FORMS**

**CITY OF FLAGSTAFF**

**Fiscal Year 2016**

**CITY OF FLAGSTAFF**  
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**CITY OF FLAGSTAFF**  
**Summary Schedule of Estimated Revenues and Expenditures/Expenses**  
**Fiscal Year 2016**

THE FINAL OPPORTUNITY FOR PUBLIC INPUT ON THE CITY OF FLAGSTAFF FISCAL YEAR 2015-2016 BUDGET WILL OCCUR  
ON JUNE 16, 2015 AT 6:00 P.M. IN THE CITY COUNCIL CHAMBERS, 211 W. ASPEN AVENUE, FLAGSTAFF, AZ  
The budget may be reviewed at the City of Flagstaff in the City Clerks Office, 211 W. Aspen Avenue, Flagstaff AZ 86001  
Or the Flagstaff City-County Public Library, 300 W. Aspen Avenue, Flagstaff AZ 86001  
Or the East Flagstaff Community Library, 3000 N. 4th Street, Flagstaff, AZ 86004 or the official website "flagstaff.az.gov"

Fiscal Year	S c h	FUNDS								
		General Fund	Special Revenue Fund	Debt Service Fund	Capital Projects Fund	Permanent Fund	Enterprise Funds Available	Internal Service Funds	Total All Funds	
2015	Adopted/Adjusted Budgeted Expenditures/Expenses*	E	57,416,299	51,433,188	8,237,044	47,203,426	0	73,894,445	0	238,184,402
2015	Actual Expenditures/Expenses**	E	51,904,628	33,375,402	8,159,689	10,218,299	0	47,785,491	0	151,443,509
2016	Fund Balance/Net Position at July 1***		23,294,618	29,648,252	13,804,264	82,104	256,627	26,683,660		93,769,525
2016	Primary Property Tax Levy	B	5,627,083							5,627,083
2016	Secondary Property Tax Levy	B			5,728,437					5,728,437
2016	Estimated Revenues Other than Property Taxes	C	49,717,762	41,168,005	661,050	10,074,827	25,309	54,359,017	0	156,005,970
2016	Other Financing Sources	D	0	10,000,000	0	27,142,245	0	5,509,996	0	42,652,241
2016	Other Financing (Uses)	D	0	0	0	0	0	0	0	0
2016	Interfund Transfers In	D	3,511,286	13,491,472	7,436,600	6,990,000	0	5,323,933	0	36,753,291
2016	Interfund Transfers (Out)	D	7,987,026	14,382,266	7,436,600	0	0	6,947,399	0	36,753,291
2016	Reduction for Amounts Not Available:									
LESS:	Amounts for Future Debt Retirement:									0
										0
										0
2016	Total Financial Resources Available		74,163,723	79,925,463	20,193,751	44,289,176	281,936	84,929,207	0	303,783,256
2016	Budgeted Expenditures/Expenses	E	60,958,146	61,663,573	8,037,450	39,698,616	0	71,359,812	0	241,717,597

**EXPENDITURE LIMITATION COMPARISON**

1. Budgeted expenditures/expenses
2. Add/subtract: estimated net reconciling items
3. Budgeted expenditures/expenses adjusted for reconciling items
4. Less: estimated exclusions
5. Amount subject to the expenditure limitation
6. EEC expenditure limitation

	2015	2016
1. Budgeted expenditures/expenses	\$ 238,184,402	\$ 241,174,678
2. Add/subtract: estimated net reconciling items	3,219,659	1,000,087
3. Budgeted expenditures/expenses adjusted for reconciling items	241,404,061	242,174,765
4. Less: estimated exclusions	109,152,239	105,668,182
5. Amount subject to the expenditure limitation	\$ 132,251,822	\$ 136,506,583
6. EEC expenditure limitation	\$ 134,251,861	\$ 140,651,422

The city/town does not levy property taxes and does not have special assessment districts for which property taxes are levied. Therefore, Schedule B has been omitted.

\* Includes Expenditure/Expense Adjustments Approved in the current year from Schedule E.

\*\* Includes actual amounts as of the date the proposed budget was prepared, adjusted for estimated activity for the remainder of the fiscal year.

\*\*\* Amounts on this line represent Fund Balance/Net Position amounts except for amounts not in spendable form (e.g., prepaids and inventories) or legally or contractually required to be maintained intact (e.g., principal of a permanent fund).

CITY OF FLAGSTAFF  
EXPENDITURE LIMITATION  
AND  
TAX LEVY INFORMATION  
FISCAL YEAR 2015-2016

	ESTIMATED FY 2014-2015	FY 2015-2016
Expenditure Limitation [Economic Estimates Commission]		\$ 140,651,422
Total Estimated Expenditures Subject to Expenditure Limitation		
1. Maximum Allowable Primary Property Tax Levy [ARS 42-17051.A] rev 6/06 HB 2876	\$ 5,901,999	\$ 6,091,109
2. Amount Received from Primary Property Taxation in FY 2011-2012 in Excess of the Sum of that Year's Maximum Allowable Primary Property Tax Levy [ARS 42-17102.A.18]	\$ -	
3. Property Tax Levy Amounts		
A. Primary Property Taxes	\$ 5,561,740	\$ 5,627,083
B. Secondary Property Taxes	5,611,045	5,728,437
C. Total Property Tax Levy Amount	\$ 11,172,785	\$ 11,355,520
4. Property Taxes Collected (Estimated)		
A. Primary Property Taxes:		
(1) FY 2014-2015 Levy	\$ 5,435,325	
(2) Prior Years' Levies	100,000	
(3) Total Primary Property Taxes Collected	5,535,325	
B. Secondary Property Taxes:		
(1) FY 2014-2015 Levy	5,611,045	
(2) Total Secondary Property Taxes Collected	5,611,045	
C. Total Property Taxes Collected	\$ 11,146,370	
5. Property Tax Rates		
A. City of Flagstaff Tax Rate:		
(1) Primary Property Tax Rate	0.8418	0.8234
(2) Secondary Property Tax Rate	0.8366	0.8366
(3) Total City Tax Rate	1.6784	1.6600
B. Special Assessment District Tax Rates:		

As of the date of the proposed budget, the city was operating one special assessment district for which secondary property taxes are levied. For information pertaining to this districts and its' tax rates, please contact the City Finance Department.

\* Includes actual property taxes collected as of the date the proposed budget was prepared plus estimated property tax collections for the remainder of the fiscal year.

CITY OF FLAGSTAFF  
SUMMARY BY FUND OF REVENUES OTHER THAN PROPERTY TAXES  
FISCAL YEARS 2015 AND 2016  
(WITH ACTUALS FOR FISCAL YEAR 2014)

SOURCE OF REVENUES	ACTUAL REVENUES 2013-2014	BUDGETED REVENUES 2014-2015	ESTIMATED ACTUAL REVENUES 2014-2015	BUDGETED REVENUES 2015-2016	CHANGE (BDGT-BDGT)	% CHANGE
<b>GENERAL FUND</b>						
Local taxes						
City Sales Tax	\$ 16,916,865	16,350,601	17,278,341	17,279,341	928,740	5.68%
Franchise Tax	2,486,617	2,462,093	2,440,000	2,485,140	23,047	0.94%
Licenses and permits						
Business Licenses	29,495	33,000	30,000	30,000	(3,000)	-9.09%
Building Permits	1,444,064	1,141,075	1,300,000	1,324,050	182,975	16.04%
Other Licenses and permits	389,852	218,930	254,600	260,930	42,000	19.18%
Intergovernmental revenues						
State Income Tax Sharing	7,342,048	7,920,000	8,033,971	7,928,250	8,250	0.10%
State Shared Sales Tax	5,733,507	5,760,175	5,850,000	5,958,225	198,050	3.44%
Vehicle License Tax	2,591,413	2,548,750	2,600,000	2,648,100	99,350	3.90%
Federal Grants	996,342	1,596,446	1,317,446	1,410,608	(185,838)	-11.64%
State Grants	812,601	1,853,381	953,381	2,574,479	721,098	38.91%
Local Intergovernmental Agreements	849,088	860,000	860,000	1,124,000	264,000	30.70%
Charges for services						
General Government	538,945	255,300	255,300	342,300	87,000	34.08%
Parks & Recreation	1,539,358	1,646,730	1,646,730	1,762,730	116,000	7.04%
Public Safety	626,926	957,100	957,100	961,766	4,666	0.49%
Cemetery	118,485	135,000	135,000	149,350	14,350	10.63%
Fines and forfeits	1,007,801	1,154,462	1,054,462	1,141,160	(13,302)	-1.15%
Interest on investments	198,515	216,000	218,145	221,050	5,050	2.34%
Miscellaneous revenues	2,879,009	1,717,552	1,670,495	2,116,283	398,731	23.22%
Total General Fund	46,500,931	46,826,595	46,854,971	49,717,762	2,891,167	6.17%
<b>SPECIAL REVENUE FUNDS</b>						
<b>LIBRARY FUND</b>						
Intergovernmental revenues						
State Grants	46,346	79,000	79,000	188,625	109,625	138.77%
Library District Taxes	3,951,377	5,501,560	3,437,196	4,882,490	(619,070)	-11.25%
Interest on investments	28,243	37,624	26,188	37,812	188	0.50%
Miscellaneous revenues	104,202	53,474	63,000	20,474	(33,000)	-61.71%
Total Library Fund	4,130,168	5,671,658	3,605,384	5,129,401	(542,257)	-9.56%
<b>HIGHWAY USER REVENUE FUND</b>						
Intergovernmental revenues						
Federal Grants	105,731	179,924	-	-	(179,924)	-100.00%
Highway User Tax	6,168,101	6,397,818	6,837,347	6,862,720	464,902	7.27%
Interest on investments	20,710	6,000	17,000	5,000	(1,000)	-16.67%
Miscellaneous revenues	1,370,011	442,500	442,500	-	(442,500)	-100.00%
Total Highway User Revenue Fund	7,664,553	7,026,242	7,296,847	6,867,720	(158,522)	-2.26%
<b>TRANSPORTATION FUND</b>						
Transportation Tax	11,769,839	11,459,192	14,410,730	17,585,692	6,126,500	53.46%
Interest on Investments	84,843	53,000	56,000	71,000	18,000	33.96%
Miscellaneous revenues	81,828	2,000,000	2,941,000	-	(2,000,000)	-100.00%
Total Transportation Fund	11,936,510	13,512,192	17,407,730	17,656,692	4,144,500	30.67%
<b>FUTS FUND</b>						
Intergovernmental revenues						
State Grants	-	129,419	151,211	183,597	54,178	41.86%
Interest on investments	7,715	6,640	6,350	6,750	110	1.66%
Miscellaneous revenues	(13,374)	-	-	-	-	0.00%
Total Beautification Fund	(5,659)	136,059	157,561	190,347	54,288	39.90%

CITY OF FLAGSTAFF  
SUMMARY BY FUND OF REVENUES OTHER THAN PROPERTY TAXES  
FISCAL YEARS 2015 AND 2016  
(WITH ACTUALS FOR FISCAL YEAR 2014)

SOURCE OF REVENUES	ACTUAL REVENUES 2013-2014	BUDGETED REVENUES 2014-2015	ESTIMATED ACTUAL REVENUES 2014-2015	BUDGETED REVENUES 2015-2016	CHANGE (BDGT-BDGT)	% CHANGE
<b>BEAUTIFICATION FUND</b>						
Intergovernmental revenues						
State Grants	\$ 15,004	-	-	-	-	0.00%
BBB Tax	1,252,101	1,233,595	1,340,000	1,340,000	106,405	8.63%
Interest on investments	33,790	7,460	7,430	7,800	340	4.56%
Miscellaneous Revenues	124	-	-	-	-	0.00%
Total Beautification Fund	1,301,019	1,241,055	1,347,430	1,347,800	106,745	8.60%
<b>ECONOMIC DEVELOPMENT FUND</b>						
Intergovernmental revenues						
State Grants	54,647	35,000	35,000	200,000	165,000	471.43%
BBB Tax	594,805	585,958	636,500	636,500	50,542	8.63%
Interest on investments	15,251	6,933	6,933	7,257	324	4.67%
Miscellaneous revenues	40,020	97,531	40,531	155,342	57,811	59.27%
Total Economic Development Fund	704,723	725,422	718,964	999,099	273,677	37.73%
<b>TOURISM FUND</b>						
BBB Tax	1,878,334	1,850,393	2,010,000	2,010,000	159,607	8.63%
Retail Sales	79,519	86,000	84,000	85,000	(1,000)	-1.16%
Interest on investments	5,412	8,178	8,178	6,563	(1,615)	-19.75%
Miscellaneous revenues	36,231	65,657	65,657	25,913	(39,744)	-60.53%
Total Tourism Fund	1,999,495	2,010,228	2,167,835	2,127,476	117,248	5.83%
<b>ARTS AND SCIENCE FUND</b>						
BBB Tax	469,584	462,598	502,500	502,500	39,902	8.63%
Interest on investments	2,520	4,524	4,494	4,185	(339)	-7.49%
Total Arts and Science Fund	472,104	467,122	506,994	506,685	39,563	8.47%
<b>RECREATION-BBB FUND</b>						
BBB Tax	2,064,864	2,035,432	2,211,000	2,211,000	175,568	8.63%
Interest on investments	14,569	15,300	16,400	16,900	1,600	10.46%
Total Recreation-BBB Fund	2,079,433	2,050,732	2,227,400	2,227,900	177,168	8.64%
<b>HOUSING AND COMMUNITY SVCS FUND</b>						
Intergovernmental revenues						
Federal Grants	525,480	1,192,034	679,293	1,535,300	343,266	28.80%
State Grants	104,991	803,168	250,000	1,003,168	200,000	24.90%
Interest on investments	7,544	-	8,386	-	-	0.00%
Miscellaneous revenues	394,669	-	126,749	4	4	0.00%
Total Housing and Community Svcs Fund	1,032,684	1,995,202	1,064,428	2,538,472	543,270	27.23%
<b>METRO PLANNING ORGANIZATION FUND</b>						
Intergovernmental revenues						
Federal Grants	397,201	897,579	412,207	966,290	68,711	7.66%
Miscellaneous revenues	5,820	255,000	5,000	560,000	305,000	119.61%
Total Metro Planning Organization Fund	403,021	1,152,579	417,207	1,526,290	373,711	32.42%
<b>EDA REVOLVING LOAN FUND</b>						
Intergovernmental revenues						
Federal Grants	-	-	220,000	-	-	0.00%
Interest on investments	-	2,201	550	-	(2,201)	-100.00%
Miscellaneous revenues	-	-	-	50,123	50,123	0.00%
Total EDA Revolving Loan Fund	-	2,201	220,550	50,123	47,922	2177.28%
<b>TOTAL SPECIAL REVENUE FUNDS</b>	<b>31,718,051</b>	<b>35,990,692</b>	<b>37,138,330</b>	<b>41,168,005</b>	<b>5,177,313</b>	<b>14.39%</b>
<b>DEBT SERVICE FUNDS</b>						
<b>SECONDARY PROPERTY TAX FUND</b>						
Interest on investments	77,285	61,800	80,800	64,000	2,200	3.56%
Total Secondary Property Tax Fund	77,285	61,800	80,800	64,000	2,200	3.56%

CITY OF FLAGSTAFF  
SUMMARY BY FUND OF REVENUES OTHER THAN PROPERTY TAXES  
FISCAL YEARS 2015 AND 2016  
(WITH ACTUALS FOR FISCAL YEAR 2014)

SOURCE OF REVENUES	ACTUAL REVENUES 2013-2014	BUDGETED REVENUES 2014-2015	ESTIMATED ACTUAL REVENUES 2014-2015	BUDGETED REVENUES 2015-2016	CHANGE (BDGT-BDGT)	% CHANGE
<b>SPECIAL ASSESSMENT BONDS</b>						
Special Assessments	\$ 782,214	735,250	2,022,203	595,250	(140,000)	-19.04%
Interest on investments	1,908	1,830	1,900	1,800	(30)	-1.64%
Total Special Assessment Bonds	784,122	737,080	2,024,103	597,050	(140,030)	-19.00%
<b>TOTAL DEBT SERVICE FUNDS</b>	<b>861,407</b>	<b>798,880</b>	<b>2,104,903</b>	<b>661,050</b>	<b>(137,830)</b>	<b>-17.25%</b>
<b>CAPITAL PROJECTS FUNDS</b>						
<b>G.O. BONDS PROJECTS</b>						
Intergovernmental revenues						
Federal Grants	6,000,000	-	-	-	-	0.00%
Interest on investments	14,661	1,880	6,140	630	(1,250)	-66.49%
Miscellaneous Revenue	91,106	9,620,000	-	9,620,000	-	0.00%
Total G.O. Bonds Projects	6,105,767	9,621,880	6,140	9,620,630	(1,250)	-0.01%
<b>MUNICIPAL FACILITIES CORP</b>						
Intergovernmental revenues						
Grant Revenues	231,475	4,394,303	4,394,303	454,197	(3,940,106)	-89.66%
Miscellaneous Revenue	-	635,866	630,000	-	(635,866)	-100.00%
Total Municipal Facilities Corp	231,475	5,030,169	5,024,303	454,197	(4,575,972)	-91.33%
<b>TOTAL CAPITAL PROJECTS FUNDS</b>	<b>6,337,242</b>	<b>14,652,049</b>	<b>5,030,443</b>	<b>10,074,827</b>	<b>(4,577,222)</b>	<b>-31.24%</b>
<b>PERMANENT FUNDS</b>						
<b>PERPETUAL CARE FUND</b>						
Contributions	18,700	22,746	15,580	23,201	455	2.00%
Interest on investments	1,669	2,087	1,682	2,108	21	1.01%
Total Perpetual Care Fund	20,369	24,833	17,262	25,309	476	1.92%
<b>TOTAL PERMANENT FUNDS</b>	<b>20,369</b>	<b>24,833</b>	<b>17,262</b>	<b>25,309</b>	<b>476</b>	<b>1.92%</b>
<b>ENTERPRISE FUNDS</b>						
<b>WATER, WASTEWATER AND RECLAIMED WATER FUND</b>						
<b>OPERATING FUND</b>						
Intergovernmental revenues						
State Grants	-	60,000	60,000	-	(60,000)	-100.00%
Federal Grants	228,679	370,000	332,408	288,394	(81,606)	-22.06%
Water Revenues	14,455,312	16,693,691	15,173,992	16,006,620	(687,071)	-4.12%
Wastewater Revenues	9,826,213	10,885,934	9,849,952	11,360,639	474,705	4.36%
Interest on investments	136,384	116,150	144,000	151,440	35,290	30.38%
Miscellaneous revenues	133,501	-	283,933	200,000	200,000	0.00%
Total Water, Wastewater & Reclaimed Wtr Fund	24,780,089	28,125,775	25,844,285	28,007,093	(118,682)	-0.42%
<b>AIRPORT FUND</b>						
<b>OPERATING FUND</b>						
Intergovernmental revenues						
Federal Grants	2,570,524	7,256,464	1,865,768	2,850,910	(4,405,554)	-60.71%
State Grants	261,838	263,210	91,587	89,825	(173,385)	-65.87%
Airport Revenues	1,734,537	1,656,120	1,662,795	1,669,974	13,854	0.84%
Interest on investments	5,142	2,010	1,613	3,692	1,682	83.68%
Miscellaneous revenues	221,261	239,410	183,806	68,026	(171,384)	-71.59%
Total Airport Fund	4,793,302	9,417,214	3,805,569	4,682,427	(4,734,787)	-50.28%
<b>SOLID WASTE</b>						
Solid Waste Revenues	11,523,489	11,788,712	11,451,904	11,760,588	(28,124)	-0.24%
Interest on investments	58,144	66,500	66,500	67,830	1,330	2.00%
Miscellaneous revenues	69,240	-	-	-	-	0.00%
Total Environmental Services Fund	11,650,873	11,855,212	11,518,404	11,828,418	(26,794)	-0.23%

CITY OF FLAGSTAFF  
SUMMARY BY FUND OF REVENUES OTHER THAN PROPERTY TAXES  
FISCAL YEARS 2015 AND 2016  
(WITH ACTUALS FOR FISCAL YEAR 2014)

SOURCE OF REVENUES	ACTUAL REVENUES 2013-2014	BUDGETED REVENUES 2014-2015	ESTIMATED ACTUAL REVENUES 2014-2015	BUDGETED REVENUES 2015-2016	CHANGE (BDGT-BDGT)	% CHANGE
<b>SUSTAINABILITY AND ENVIRONMENTAL MGMT</b>						
Environmental Services Revenues	\$ 1,028,222	1,002,819	1,011,819	1,029,029	26,210	2.61%
Interest on investments	588	-	1,850	1,800	1,800	0.00%
Miscellaneous revenues	51,898	50,140	50,140	500	(49,640)	-99.00%
Total Environmental Services Fund	1,080,708	1,052,959	1,063,809	1,031,329	(21,630)	-2.05%
<b>STORMWATER UTILITY</b>						
Intergovernmental revenues						
Federal Grants	-	200,000	-	225,000	25,000	12.50%
Stormwater Utility Revenues	1,465,523	1,507,789	1,470,418	1,515,588	7,799	0.52%
Interest on investments	6,013	1,424	2,808	1,089	(335)	-23.53%
Miscellaneous revenues	641	-	749	-	-	0.00%
Total Stormwater Utility Fund	1,472,177	1,709,213	1,473,975	1,741,677	32,464	1.90%
<b>FLAGSTAFF HOUSING AUTHORITY FUNDS</b>						
Intergovernmental revenues						
Federal Grants	4,303,668	5,332,047	4,682,120	5,636,039	303,992	5.70%
Rents and Other Tenant Income	993,909	956,633	968,732	996,000	39,367	4.12%
Miscellaneous revenues	433,018	523,650	416,753	436,034	(87,616)	-16.73%
Total Stormwater Utility Fund	5,730,595	6,812,330	6,067,605	7,068,073	255,743	3.75%
TOTAL ENTERPRISE FUNDS	49,507,744	58,972,703	49,773,647	54,359,017	(4,613,686)	-7.82%
TOTAL REVENUES	\$ 134,945,744	157,265,752	140,919,556	156,005,970	(1,259,782)	-0.80%

CITY OF FLAGSTAFF  
SUMMARY BY FUNDING OF OTHER FINANCING SOURCES  
AND INTERFUND TRANSFERS  
FISCAL YEAR 2015-2016

FUND	PROCEEDS FROM OTHER FINANCING SOURCES	INTERFUND TRANSFERS	
		IN	OUT
GENERAL FUND	\$ -	3,511,286	7,987,026
<b>SPECIAL REVENUE FUNDS</b>			
Library Fund	-	1,641,360	250,000
Highway User Revenue Fund	-	10,026,612	13,000
Transportation Fund	10,000,000	-	11,273,012
FUTS Fund	-	1,550,000	-
Beautification Fund	-	-	420,527
Economic Development	-	251,000	-
Tourism Fund	-	-	67,738
Recreation-BBB Fund	-	-	2,357,989
Housing & Community Services	-	-	-
MPO	-	22,500	-
Total Special Revenue Funds	<u>10,000,000</u>	<u>13,491,472</u>	<u>14,382,266</u>
<b>DEBT SERVICE FUNDS</b>			
Secondary Property Tax Fund	-	-	7,436,600
G.O. Bond Fund	-	7,436,600	-
Total Debt Service Funds	<u>-</u>	<u>7,436,600</u>	<u>7,436,600</u>
<b>CAPITAL PROJECTS FUNDS</b>			
G.O. Bond Funded Projects	19,700,000	4,710,000	-
Non G.O. Bond Funded Projects	7,442,245	2,280,000	-
Total Capital Projects Funds	<u>27,142,245</u>	<u>6,990,000</u>	<u>-</u>
<b>ENTERPRISE FUNDS</b>			
Water, Wastewater & Reclaimed Water Fund	559,996	1,262,979	1,317,438
Stormwater Utility	-	3,331,966	405,817
Airport Fund	-	461,000	-
Solid Waste Fund	4,950,000	-	4,994,466
Sustainability and Environmental Mgmt	-	209,788	229,678
Flagstaff Housing Authority	-	58,200	-
Total Enterprise Funds	<u>5,509,996</u>	<u>5,323,933</u>	<u>6,947,399</u>
TOTAL ALL FUNDS	<u>\$ 42,652,241</u>	<u>36,753,291</u>	<u>36,753,291</u>

CITY OF FLAGSTAFF  
SUMMARY BY DIVISION OF EXPENDITURES/EXPENSES WITHIN EACH FUND  
COMPARISON OF FISCAL YEAR 2015 AND 2016  
(WITH ACTUAL FOR FISCAL YEAR 2014)

FUND/DIVISION	ACTUAL EXPENDITURES/ EXPENSES 2013-2014	ADOPTED BUDGETED EXPENSE 2014-2015	ESTIMATED ACTUAL EXPENSES 2014-2015	PROPOSED BUDGETED EXPENSE 2015-2016	CHANGE (BDGT-BDGT)	% CHANGE
<b>GENERAL FUND</b>						
General Administration	\$ 8,003,390	9,115,681	8,859,100	9,914,497	798,816	8.8%
Community Development	4,126,187	4,350,389	4,288,889	4,294,597	(55,792)	(1.3%)
Management Services	3,185,950	3,357,893	3,356,893	3,633,521	275,628	8.2%
Fire	9,499,943	10,740,696	10,410,696	12,083,375	1,342,679	12.5%
Police	17,091,853	18,378,086	18,333,086	20,237,676	1,859,590	10.1%
Public Works	8,308,989	11,344,740	8,659,930	12,049,297	704,557	6.2%
Economic Vitality	226,897	464,303	464,303	174,071	(290,232)	(62.5%)
Non-departmental	(1,070,830)	(1,810,489)	(2,468,269)	(2,053,888)	(243,399)	13.4%
Contingency	67,643	1,475,000	-	625,000	(850,000)	(57.6%)
Total General Fund	49,440,022	57,416,299	51,904,628	60,958,146	3,541,847	6.2%
<b>SPECIAL REVENUE FUNDS</b>						
<b>LIBRARY FUND</b>						
General Administration	148,678	176,085	176,085	191,757	15,672	8.9%
Management Services	4,803,570	7,182,596	4,706,204	6,879,938	(302,658)	(4.2%)
Public Works	81,044	68,965	68,965	94,591	25,626	37.2%
Economic Vitality	14,800	14,909	14,909	17,485	2,576	17.3%
Non-departmental	89,293	77,765	77,765	73,142	(4,623)	(5.9%)
Contingency	-	100,000	-	100,000	-	0.0%
	5,137,385	7,620,320	5,043,928	7,356,913	(263,407)	(3.5%)
<b>HIGHWAY USER REVENUE FUND</b>						
General Administration	109,645	151,660	151,660	155,859	4,199	2.8%
Community Development	2,981,067	7,929,401	1,940,170	9,565,074	1,635,673	20.6%
Management Services	66,108	91,171	91,171	96,769	5,598	6.1%
Public Works	7,669,163	10,639,677	9,427,957	9,097,549	(1,542,128)	(14.5%)
Economic Vitality	13,892	14,496	14,496	13,729	(767)	(5.3%)
Non-departmental	88,851	116,557	116,557	126,761	10,204	8.8%
Contingency	-	100,000	-	100,000	-	0.0%
	10,928,726	19,042,962	11,742,011	19,155,741	112,779	0.6%
<b>TRANSPORTATION FUND</b>						
General Administration	41,592	39,239	39,239	40,595	1,356	3.5%
Community Development	-	-	-	1,525,600	1,525,600	0.0%
Management Services	251,419	265,318	265,318	302,624	37,306	14.1%
Public Works	-	12,822	3,562,822	6,110,000	6,097,178	47,552.5%
Economic Vitality	5,455	2,952	2,952	1,643	(1,309)	(44.3%)
Non-departmental	6,652,941	5,738,735	6,009,830	7,444,147	1,705,412	29.7%
Contingency	-	2,000,000	-	-	(2,000,000)	(100.0%)
	6,951,407	8,059,066	9,880,161	15,424,609	7,365,543	91.4%
<b>FUTS FUND</b>						
Community Development	344,773	2,871,134	548,710	3,758,780	887,646	30.9%
	344,773	2,871,134	548,710	3,758,780	887,646	30.9%
<b>BEAUTIFICATION FUND</b>						
Economic Vitality	464,966	3,168,036	856,554	3,950,191	782,155	24.7%
Reserve/Contingency	120	10,000	-	10,000	-	0.0%
	465,086	3,178,036	856,554	3,960,191	782,155	24.6%
<b>ECONOMIC DEVELOPMENT FUND</b>						
Economic Vitality	843,661	985,206	1,040,856	1,314,079	328,873	33.4%
Reserve/Contingency	(543)	170,070	-	45,000	(125,070)	(73.5%)
	843,118	1,155,276	1,040,856	1,359,079	203,803	17.6%
<b>TOURISM FUND</b>						
Economic Vitality	1,999,754	1,942,800	1,921,800	2,042,287	99,487	5.1%
Reserve/Contingency	680	50,000	-	70,000	20,000	40.0%
	2,000,434	1,992,800	1,921,800	2,112,287	119,487	6.0%

CITY OF FLAGSTAFF  
SUMMARY BY DIVISION OF EXPENDITURES/EXPENSES WITHIN EACH FUND  
COMPARISON OF FISCAL YEAR 2015 AND 2016  
(WITH ACTUAL FOR FISCAL YEAR 2014)

FUND/DIVISION	ACTUAL EXPENDITURES/ EXPENSES 2013-2014	ADOPTED BUDGETED EXPENSE 2014-2015	ESTIMATED ACTUAL EXPENSES/ 2014-2015	PROPOSED BUDGETED EXPENSE/ 2015-2016	CHANGE (BDGT-BDGT)	% CHANGE
<b>ARTS AND SCIENCE FUND</b>						
Economic Vitality	\$ 425,394	621,023	515,123	815,044	194,021	31.2%
Reserve/Contingency	-	10,000	-	10,000	-	0.0%
	<u>425,394</u>	<u>631,023</u>	<u>515,123</u>	<u>825,044</u>	<u>194,021</u>	<u>30.7%</u>
<b>RECREATION-BBB FUND</b>						
Public Works	26,576	2,664,460	315,444	2,469,216	(195,244)	(7.3%)
<b>HOUSING AND COMMUNITY SERVICES FUND</b>						
Community Development	854,884	2,783,066	999,527	3,332,845	549,779	19.8%
Non-departmental	37,412	39,966	26,209	89,405	49,439	123.7%
	<u>892,296</u>	<u>2,823,032</u>	<u>1,025,736</u>	<u>3,422,250</u>	<u>599,218</u>	<u>21.2%</u>
<b>METRO PLANNING ORG FUND</b>						
Community Development	376,222	903,425	463,425	995,618	92,193	10.2%
Non-departmental	24,827	21,654	21,654	53,172	31,518	145.6%
Contingency	-	250,000	-	500,000	250,000	100.0%
	<u>401,049</u>	<u>1,175,079</u>	<u>485,079</u>	<u>1,548,790</u>	<u>373,711</u>	<u>31.8%</u>
<b>EDA REVOLVING LOAN FUND</b>						
Economic Vitality	-	220,000	-	270,673	50,673	23.0%
Total Special Revenue Funds	<u>28,416,244</u>	<u>51,433,188</u>	<u>33,375,402</u>	<u>61,663,573</u>	<u>10,230,385</u>	<u>19.9%</u>
<b>DEBT SERVICE FUNDS</b>						
<b>GENERAL OBLIGATION BONDS FUND</b>						
Non-departmental	722,784	7,496,194	6,016,461	7,436,600	(59,594)	(0.8%)
<b>SPECIAL ASSESSMENT BONDS FUND</b>						
Non-departmental	593,000	740,850	2,143,228	600,850	(140,000)	(18.9%)
Total Debt Service Funds	<u>1,315,784</u>	<u>8,237,044</u>	<u>8,159,689</u>	<u>8,037,450</u>	<u>(199,594)</u>	<u>(2.4%)</u>
<b>CAPITAL PROJECT FUNDS</b>						
<b>G.O. BONDS FUNDED PROJECTS FUND</b>						
Non-departmental	17,140,982	32,724,917	3,090,783	31,940,644	(784,273)	(2.4%)
<b>MUNICIPAL FACILITIES CORP FUND</b>						
Non-departmental	449,202	14,478,509	7,127,516	7,757,972	(6,720,537)	(46.4%)
Total Capital Projects Funds	<u>17,590,184</u>	<u>47,203,426</u>	<u>10,218,299</u>	<u>39,698,616</u>	<u>(7,504,810)</u>	<u>(15.9%)</u>
<b>ENTERPRISE FUNDS</b>						
<b>WATER, WASTEWATER AND RECLAIMED WATER FUND</b>						
General Administration	621,261	644,370	644,370	614,863	(29,507)	(4.6%)
Management Services	857,869	967,305	967,305	1,063,323	96,018	9.9%
Public Works	48,039	36,925	36,925	43,679	6,754	18.3%
Economic Vitality	44,347	49,629	49,629	43,177	(6,452)	(13.0%)
Utilities	22,470,235	33,474,920	23,997,342	33,899,047	424,127	1.3%
Non-departmental	270,184	370,377	370,377	354,602	(15,775)	(4.3%)
Contingency	171,395	1,800,000	-	1,800,000	-	0.0%
	<u>24,483,330</u>	<u>37,343,526</u>	<u>26,065,948</u>	<u>37,818,691</u>	<u>475,165</u>	<u>1.3%</u>
<b>AIRPORT FUND</b>						
General Administration	61,759	55,329	55,329	55,959	630	1.1%
Management Services	94,151	81,024	81,024	86,555	5,531	6.8%
Public Works	105,195	52,146	52,146	90,405	38,259	73.4%
Economic Vitality	4,681,268	9,513,448	3,430,059	4,940,360	(4,573,088)	(48.1%)
Non-departmental	59,662	44,964	44,964	61,555	16,591	36.9%
Contingency	(20,000)	500,000	-	100,000	(400,000)	(80.0%)
	<u>4,982,035</u>	<u>10,246,911</u>	<u>3,663,522</u>	<u>5,334,834</u>	<u>(4,912,077)</u>	<u>(47.9%)</u>

CITY OF FLAGSTAFF  
SUMMARY BY DIVISION OF EXPENDITURES/EXPENSES WITHIN EACH FUND  
COMPARISON OF FISCAL YEAR 2015 AND 2016  
(WITH ACTUAL FOR FISCAL YEAR 2014)

FUND/DIVISION	ACTUAL EXPENDITURES/ EXPENSES 2013-2014	ADOPTED BUDGETED EXPENDITURE/ EXPENSE 2014-2015	ESTIMATED ACTUAL EXPENDITURES/ EXPENSES 2014-2015	PROPOSED BUDGETED EXPENDITURE/ EXPENSE 2015-2016	CHANGE (BDGT-BDGT)	% CHANGE
<b>SOLID WASTE</b>						
General Administration	\$ 425,155	358,624	358,624	322,088	(36,536)	(10.2%)
Management Services	323,645	349,621	349,621	334,415	(15,206)	(4.3%)
Public Works	8,218,942	11,327,142	8,938,142	13,015,777	1,688,635	14.9%
Economic Vitality	44,291	35,471	35,471	29,313	(6,158)	(17.4%)
Non-departmental	282,110	272,975	272,975	195,906	(77,069)	(28.2%)
Contingency	26,857	612,000	-	612,000	-	0.0%
	<u>9,321,000</u>	<u>12,955,833</u>	<u>9,954,833</u>	<u>14,509,499</u>	<u>1,553,666</u>	<u>12.0%</u>
<b>SUSTAINABILITY AND ENVIRONMENTAL MGMT</b>						
General Administration	18,020	41,635	41,635	65,389	23,754	57.1%
Management Services	21,367	19,186	19,186	37,380	18,194	94.8%
Public Works	790,326	944,622	895,984	992,374	47,752	5.1%
Economic Vitality	4,628	1,735	1,735	2,876	1,141	65.8%
Non-departmental	18,560	10,905	10,905	15,234	4,329	39.7%
Contingency	-	30,000	-	30,000	-	0.0%
	<u>852,901</u>	<u>1,048,083</u>	<u>969,445</u>	<u>1,143,253</u>	<u>95,170</u>	<u>9.1%</u>
<b>STORMWATER UTILITY FUND</b>						
General Administration	37,905	38,614	38,614	39,650	1,036	2.7%
Management Services	53,860	42,471	42,471	44,800	2,329	5.5%
Public Works	9,626	11,663	11,663	4,613	(7,050)	(60.4%)
Economic Vitality	2,035	2,183	2,183	3,101	918	42.1%
Utilities	1,751,086	5,132,723	1,135,453	5,224,050	91,327	1.8%
Non-departmental	14,022	18,312	18,312	15,609	(2,703)	(14.8%)
Contingency	7,033	10,000	-	10,000	-	0.0%
	<u>1,875,567</u>	<u>5,255,966</u>	<u>1,248,696</u>	<u>5,341,823</u>	<u>85,857</u>	<u>1.6%</u>
<b>FLAGSTAFF HOUSING AUTHORITY</b>						
Community Development	6,134,741	6,042,876	5,883,047	6,210,462	167,586	2.8%
Contingency	-	1,001,250	-	1,001,250	-	0.0%
	<u>6,134,741</u>	<u>7,044,126</u>	<u>5,883,047</u>	<u>7,211,712</u>	<u>167,586</u>	
Total Enterprise Funds	<u>47,649,574</u>	<u>73,894,445</u>	<u>47,785,491</u>	<u>71,359,812</u>	<u>(2,534,633)</u>	<u>(3.4%)</u>
<b>TOTAL ALL FUNDS</b>	<u>\$ 144,411,808</u>	<u>238,184,402</u>	<u>151,443,509</u>	<u>241,717,597</u>	<u>3,533,195</u>	<u>1.5%</u>

CITY OF FLAGSTAFF  
 BUDGET SUMMARY BY DIVISION OF EXPENDITURES  
 COMPARISON OF FISCAL YEAR 2015 AND 2016  
 (WITH ACTUAL FOR FISCAL YEAR 2014)

DIVISION/FUND	ACTUAL EXPENDITURES/ EXPENSES 2013-2014	ADOPTED BUDGETED EXPENDITURE/ EXPENSE 2014-2015	ESTIMATED ACTUAL EXPENDITURES * EXPENSES * 2014-2015	PROPOSED BUDGETED EXPENDITURE/ EXPENSE 2015-2016	CHANGE (BDGT-BDGT)	% CHANGE
<b>GENERAL ADMINISTRATION</b>						
General Fund	\$ 8,003,390	9,115,681	8,859,100	9,914,497	798,816	8.8%
Library Fund	148,678	176,085	176,085	191,757	15,672	8.9%
HURF Fund	109,645	151,660	151,660	155,859	4,199	2.8%
Transportation Fund	41,592	39,239	39,239	40,595	1,356	3.5%
Water, Wastewater, and Reclaimed Wtr Fund	621,261	644,370	644,370	614,863	(29,507)	(4.6%)
Airport	61,759	55,329	55,329	55,959	630	1.1%
Solid Waste Fund	425,155	358,624	358,624	322,088	(36,536)	(10.2%)
Sustainability & Environment Mgmt Fund	18,020	41,635	41,635	65,389	23,754	57.1%
Stormwater Utility Fund	37,905	38,614	38,614	39,650	1,036	2.7%
<b>TOTAL</b>	<b>9,467,405</b>	<b>10,621,237</b>	<b>10,364,656</b>	<b>11,400,657</b>	<b>779,420</b>	<b>7.3%</b>
<b>COMMUNITY DEVELOPMENT</b>						
General Fund	4,126,187	4,350,389	4,288,889	4,294,597	(55,792)	(1.3%)
HURF Fund	2,981,067	7,929,401	1,940,170	9,565,074	1,635,673	20.6%
Transportation Fund	-	-	-	1,525,600	1,525,600	0.0%
FUTS Fund	344,773	2,871,134	548,710	3,758,780	887,646	30.9%
Housing and Community Services Fund	854,884	2,783,066	999,527	3,332,845	549,779	19.8%
Metro Planning Organization Fund	376,222	903,425	463,425	995,618	92,193	10.2%
Flagstaff Housing Authority	6,134,741	6,042,876	5,883,047	6,210,462	167,586	2.8%
<b>TOTAL</b>	<b>14,817,874</b>	<b>24,880,291</b>	<b>14,123,768</b>	<b>29,682,976</b>	<b>4,802,685</b>	<b>19.3%</b>
<b>MANAGEMENT SERVICES</b>						
General Fund	3,185,950	3,357,893	3,356,893	3,633,521	275,628	8.2%
Library Fund	4,803,570	7,182,596	4,706,204	6,879,938	(302,658)	(4.2%)
HURF Fund	66,108	91,171	91,171	96,769	5,598	6.1%
Transportation Fund	251,419	265,318	265,318	302,624	37,306	14.1%
Water, Wastewater, and Reclaimed Wtr Fund	857,869	967,305	967,305	1,063,323	96,018	9.9%
Airport Fund	94,151	81,024	81,024	86,555	5,531	6.8%
Solid Waste Fund	323,645	349,621	349,621	334,415	(15,206)	(4.3%)
Sustainability & Environment Mgmt Fund	21,367	19,186	19,186	37,380	18,194	94.8%
Stormwater Utility Fund	53,860	42,471	42,471	44,800	2,329	5.5%
<b>TOTAL</b>	<b>9,657,939</b>	<b>12,356,585</b>	<b>9,879,193</b>	<b>12,479,325</b>	<b>122,740</b>	<b>1.0%</b>
<b>FIRE</b>						
General Fund	9,499,943	10,740,696	10,410,696	12,083,375	1,342,679	12.5%
<b>TOTAL</b>	<b>9,499,943</b>	<b>10,740,696</b>	<b>10,410,696</b>	<b>12,083,375</b>	<b>1,342,679</b>	<b>12.5%</b>
<b>POLICE</b>						
General Fund	17,091,853	18,378,086	18,333,086	20,237,676	1,859,590	10.1%
<b>TOTAL</b>	<b>17,091,853</b>	<b>18,378,086</b>	<b>18,333,086</b>	<b>20,237,676</b>	<b>1,859,590</b>	<b>10.1%</b>
<b>PUBLIC WORKS</b>						
General Fund	8,308,989	11,344,740	8,659,930	12,049,297	704,557	6.2%
Library Fund	81,044	68,965	68,965	94,591	25,626	37.2%
HURF Fund	7,669,163	10,639,677	9,427,957	9,097,549	(1,542,128)	(14.5%)
Transportation Fund	-	12,822	3,562,822	6,110,000	6,097,178	47,552.5%
Recreation-BBB Fund	26,576.00	2,664,460	315,444	2,469,216	(195,244)	(7.3%)
Water, Wastewater, and Reclaimed Wtr Fund	48,039	36,925	36,925	43,679	6,754	18.3%
Airport Fund	105,195	52,146	52,146	90,405	38,259	73.4%
Solid Waste Fund	8,218,942	11,327,142	8,938,142	13,015,777	1,688,635	14.9%
Sustainability & Environment Mgmt Fund	790,326	944,622	895,984	992,374	47,752	5.1%
Stormwater Utility Fund	9,626	11,663	11,663	4,613	(7,050)	(60.4%)
<b>TOTAL</b>	<b>25,257,900</b>	<b>37,103,162</b>	<b>31,969,978</b>	<b>43,967,501</b>	<b>6,864,339</b>	<b>18.5%</b>

CITY OF FLAGSTAFF  
 BUDGET SUMMARY BY DIVISION OF EXPENDITURES  
 COMPARISON OF FISCAL YEAR 2015 AND 2016  
 (WITH ACTUAL FOR FISCAL YEAR 2014)

DIVISION/FUND	ACTUAL EXPENDITURES/ EXPENSES 2013-2014	ADOPTED BUDGETED EXPENDITURE/ EXPENSE 2014-2015	ESTIMATED ACTUAL EXPENSES * 2014-2015	PROPOSED BUDGETED EXPENDITURE/ EXPENSE 2015-2016	CHANGE (BDGT-BDGT)	% CHANGE
<b>ECONOMIC VITALITY</b>						
General Fund	\$ 226,897	464,303	464,303	174,071	(290,232)	(62.5%)
Library Fund	14,800	14,909	14,909	17,485	2,576	17.3%
HURF Fund	13,892	14,496	14,496	13,729	(767)	(5.3%)
Transportation Fund	5,455	2,952	2,952	1,643	(1,309)	(44.3%)
Beautification Fund	464,966	3,168,036	856,554	3,950,191	782,155	24.7%
Economic Development Fund	843,661	985,206	1,040,856	1,314,079	328,873	33.4%
EDA Revolving Loan Fund	-	220,000	-	270,673	50,673	23.0%
Tourism Fund	1,999,754	1,942,800	1,921,800	2,042,287	99,487	5.1%
Arts and Science Fund	425,394	621,023	515,123	815,044	194,021	31.2%
Water, Wastewater, and Reclaimed Wtr Fund	44,347	49,629	49,629	43,177	(6,452)	(13.0%)
Airport Fund	4,681,268	9,513,448	3,430,059	4,940,360	(4,573,088)	(48.1%)
Solid Waste Fund	44,291	35,471	35,471	29,313	(6,158)	(17.4%)
Sustainability & Environment Mgmt Fund	4,628	1,735	1,735	2,876	1,141	65.8%
Stormwater Utility Fund	2,035	2,183	2,183	3,101	918	42.1%
<b>TOTAL</b>	<b>8,771,388</b>	<b>17,036,191</b>	<b>8,350,070</b>	<b>13,618,029</b>	<b>(3,418,162)</b>	<b>(20.1%)</b>
<b>UTILITIES</b>						
Water, Wastewater, and Reclaimed Wtr Fund	22,470,235	33,474,920	23,997,342	33,899,047	424,127	1.3%
Stormwater Utility Fund	1,751,086	5,132,723	1,135,453	5,224,050	91,327	1.8%
<b>TOTAL</b>	<b>24,221,321</b>	<b>38,607,643</b>	<b>25,132,795</b>	<b>39,123,097</b>	<b>515,454</b>	<b>1.3%</b>
<b>NON-DEPARTMENTAL</b>						
General Fund	(1,070,830)	(1,810,489)	(2,468,269)	(2,053,888)	(243,399)	13.4%
Library Fund	89,293	77,765	77,765	73,142	(4,623)	(5.9%)
HURF Fund	88,851	116,557	116,557	126,761	10,204	8.8%
Transportation Fund	6,652,941	5,738,735	6,009,830	7,444,147	1,705,412	29.7%
Housing and Community Services Fund	37,412	39,966	26,209	89,405	49,439	123.7%
Metro Planning Organization Fund	24,827	21,654	21,654	53,172	31,518	145.6%
General Obligation Bonds Fund	722,784	7,496,194	6,016,461	7,436,600	(59,594)	(0.8%)
Special Assessment Bonds Fund	593,000	740,850	2,143,228	600,850	(140,000)	(18.9%)
G.O. Bonds Funded Projects Fund	17,140,982	32,724,917	3,090,783	31,940,644	(784,273)	(2.4%)
Municipal Facilities Corp Fund	449,202	14,478,509	7,127,516	7,757,972	(6,720,537)	(46.4%)
Water, Wastewater, and Reclaimed Wtr Fund	270,184	370,377	370,377	354,602	(15,775)	(4.3%)
Airport Fund	59,662	44,964	44,964	61,555	16,591	36.9%
Solid Waste Fund	282,110	272,975	272,975	195,906	(77,069)	(28.2%)
Sustainability & Environment Mgmt Fund	18,560	10,905	10,905	15,234	4,329	39.7%
Stormwater Utility Fund	14,022	18,312	18,312	15,609	(2,703)	(14.8%)
<b>TOTAL</b>	<b>25,373,000</b>	<b>60,342,191</b>	<b>22,879,267</b>	<b>54,111,711</b>	<b>(6,230,480)</b>	<b>(10.3%)</b>
<b>RESERVES/CONTINGENCIES</b>						
General Fund	67,643	1,475,000	-	625,000	(850,000)	(57.6%)
Library Fund	-	100,000	-	100,000	-	0.0%
HURF Fund	-	100,000	-	100,000	-	0.0%
Transportation Fund	-	2,000,000	-	-	(2,000,000)	(100.0%)
Beautification Fund	120	10,000	-	10,000	-	0.0%
Economic Development Fund	(543)	170,070	-	45,000	(125,070)	(73.5%)
Tourism Fund	680	50,000	-	70,000	20,000	40.0%
Arts and Science Fund	-	10,000	-	10,000	-	0.0%
Metro Planning Organization Fund	-	250,000	-	500,000	250,000	100.0%
Water, Wastewater, and Reclaimed Wtr Fund	171,395	1,800,000	-	1,800,000	-	0.0%
Airport Fund	(20,000)	500,000	-	100,000	(400,000)	(80.0%)
Solid Waste Fund	26,857	612,000	-	612,000	-	0.0%
Stormwater Utility Fund	7,033	10,000	-	10,000	-	0.0%
Sustainability & Environmental Mgmt Fund	-	30,000	-	30,000	-	0.0%
Flagstaff Housing Authority Fund	-	1,001,250	-	1,001,250	-	0.0%
<b>TOTAL</b>	<b>253,185</b>	<b>8,118,320</b>	<b>-</b>	<b>5,013,250</b>	<b>(3,105,070)</b>	<b>(38.2%)</b>
<b>ALL FUNDS TOTAL</b>	<b>\$ 144,411,808</b>	<b>238,184,402</b>	<b>151,443,509</b>	<b>241,717,597</b>	<b>3,533,195</b>	<b>1.5%</b>

\* Includes actual expenditures/expenses recognized on the modified accrual or accrual basis as of the date the proposed budget was prepared, plus estimated expenditures/expenses for the remainder of the fiscal year.

CITY OF FLAGSTAFF  
 FULL-TIME EMPLOYEE AND PERSONNEL COMPENSATION  
 FISCAL YEAR 2016

FUND	FULL-TIME EQUIVALENTS (FTE) 2016	EMPLOYEE SALARIES AND HOURLY COSTS 2016	RETIREMENT COSTS 2016	HEALTHCARE COSTS 2016	OTHER BENEFIT COSTS 2016	TOTAL ESTIMATED PERSONNEL COMPENSATION 2016
GENERAL FUND	543.01	\$ 32,154,703	\$ 8,603,876	\$ 3,484,384	\$ 2,715,664 =	\$ 46,958,627
<b>SPECIAL REVENUE FUNDS</b>						
Library	53.43	2,305,349	235,514	330,692	176,429 =	3,047,984
HURF	35.02	1,654,502	167,095	187,475	224,615	2,233,687
Beautification	1.70	126,550	14,515	13,721	9,828	164,614
Economic Development	2.75	169,468	19,439	21,611	13,569	224,087
Tourism	14.28	721,141	76,677	89,386	55,928	943,132
Arts and Science	0.40	29,792	3,417	3,589	2,253	39,051
Housing and Comm Services	1.00	52,784	6,054	398	3,828	63,064
Metro Planning Organization	2.88	258,355	22,339	20,798	16,346	317,838
Total Special Revenue Funds	<u>111.46</u>	<u>5,317,941</u>	<u>545,050</u>	<u>667,670</u>	<u>502,796 =</u>	<u>7,033,457</u>
<b>ENTERPRISE FUNDS</b>						
Water, Wastewater and Reclaimed Water	65.75	3,957,811	444,836	454,616	367,736 =	5,224,999
Airport	9.75	499,323	209,569	59,116	37,569	805,577
Stormwater	4.75	346,641	36,490	30,432	27,389	440,952
Solid Waste	47.00	2,549,320	274,283	330,404	268,404	3,422,411
Sustainability & Environmental Mgmt	9.25	482,669	54,216	65,449	43,662	645,996
Flagstaff Housing Authority	22.00	1,253,600	143,788	149,066	98,361	1,644,815
Total Enterprise Funds	<u>158.50</u>	<u>9,089,364</u>	<u>1,163,182</u>	<u>1,089,083</u>	<u>843,121 =</u>	<u>12,184,750</u>
<b>CAPITAL PROJECTS FUNDS</b>						
G.O. Bond Funded Projects	1.50	299,199	67,168	10,399	6,027 =	382,793
Total Special Revenue Funds	<u>1.50</u>	<u>299,199</u>	<u>67,168</u>	<u>10,399</u>	<u>6,027 =</u>	<u>382,793</u>
<b>TOTAL ALL FUNDS</b>	<u><u>814.47</u></u>	<u><u>\$ 46,861,207</u></u>	<u><u>\$ 10,379,276</u></u>	<u><u>\$ 5,251,536</u></u>	<u><u>\$ 4,067,608 =</u></u>	<u><u>\$ 66,559,627</u></u>

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Brandi Suda, Finance Manager  
**Co-Submitter:** Rick Tadder, Finance Director  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



**TITLE:**

**Consideration and Adoption of Ordinance No. 2015-11:** An ordinance levying upon the assessed valuation of the property within the City of Flagstaff, Arizona, subject to taxation a certain sum upon each one hundred dollars (\$100.00) of valuation sufficient to raise the amount estimated to be required in the Annual Budget, less the amount estimated to be received from other sources of revenue; providing funds for various bond redemptions, for the purpose of paying interest upon bonded indebtedness and providing funds for general municipal expenses, all for the Fiscal Year ending the 30th day of June, 2016. ***(Property Tax Levy for FY 15-16)***

**RECOMMENDED ACTION:**

Meeting of June 16, 2015

- 1) Read Ordinance No. 2015-11 by title only for the first time
- 2) City Clerk reads Ordinance No. 2015-11 by title only (if approved above)

Meeting of July 7, 2015

- 3) Read Ordinance No. 2015-11 by title only for the final time
- 4) City Clerk reads Ordinance No. 2015-11 by title only ( if approved above)
- 5) Adopt Ordinance No. 2015-11

**Executive Summary:**

Arizona Revised Statutes Section 42-17104 requires that an Ordinance to adopt property tax levies be passed after the adoption of the final budget. The final budget is anticipated to be adopted on June 16, 2015.

**Financial Impact:**

The City of Flagstaff is proposing a flat primary property levy on existing properties for the FY2015-2016 base levy of \$5,561,740 plus new construction levy of \$65,343 for a total levy of \$5,627,083. The primary property tax rate to support this levy is \$0.8234 per \$100 of assessed valuation.

The City of Flagstaff proposing a flat tax rate for secondary property taxes for FY2015-2016 for a total levy of \$5,728,437. The proposed secondary property tax rate is \$0.8366 per \$100 of assessed valuation.

**Connection to Council Goal and/or Regional Plan:**

- Invest in our employees and implement retention and attraction strategies
- Provide sustainable and equitable public facilities, services and infrastructure systems in an efficient and effective manner to serve all population areas and demographics
- As well as impacts many other Council goals

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

- December Budget Retreat on December 9 & 10, 2014
- Mini Budget Advance on January 22 & 28, 2015
- February Budget Advance on February 11 & 12, 2015
- Council Budget Advance on April 21 & 22, 2015
- Tentative Budget Adoption on June 2, 2015
- Final Budget Adoption on June 16, 2015

**Options and Alternatives:**

- Adopt the primary and secondary property tax rates at the proposed amounts,
- Adopt the primary property levy up to the maximum statutory levy; adopt the secondary property tax rate at something greater than proposed above. Increasing above the proposed amount will trigger Truth in Taxation requirements.
- Adopt the primary and secondary property tax rates at something less than that shown above.

**Background/History:**

Both the State Constitution and State law specify a property tax levy limitation system. This system consists of two levies, a limited levy known as the primary property tax levy and an unlimited levy referred to as the secondary property tax levy. The primary levy may be imposed for all purposes, while the secondary levy in cities and towns may only be used to retire the principal and interest or redemption charges on general obligation bonded indebtedness.

The adoption of the property tax levy is the final step in the entire budget approval process.

**Key Considerations:**

The key dates for budget and property tax levy adoption have been determined and have been followed throughout this process. The County adopts the property tax levy as proposed by the City on or about August 1, 2015.

**Expanded Financial Considerations:**

The City has budgeted a total of \$5,527,083 in FY2015-2016 primary property tax, an approximate 1.7% increase over the FY2014-2015 budget. This increase is due to new construction. Primary property tax funds any general purpose use of the city government. The budgeted amount is less than the levy as the City is allowing for approximately 2% in bad debt.

Statutorily, the maximum allowable primary property levy for FY2015-2016 is \$6,091,109. The City can capture this additional levy in future budget years if Council so directs.

The City has budgeted a total of \$5,728,437 in FY2015-2016 secondary property tax, an approximate 2.1% increase over the FY2014-2015 budget. The increase is directly related to the increased assessed valuation and new construction. Secondary property tax funds general obligation debt and debt is issued to manage within the levy.

Five years historical data is shown below:

Property Tax Rates	FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016 Proposed
Primary	\$ 0.6917	0.7131	0.8429	0.8418	0.8234
Secondary	0.8366	0.8366	0.8366	0.8366	0.8366
Total	\$ 1.5283	1.5497	1.6795	1.6784	1.6600

Primary property taxes account for 10% of the General Fund revenues budgeted for FY2015-2016.

**Community Benefits and Considerations:**

Primary property taxes support a number of City services including public safety, parks and recreation, other public works services, and general administrative and management functions within the city.

Secondary property taxes support the debt service payment on numerous city capital projects including: Aquaplex, Fire Stations, Open Space, numerous street/utility projects, Forest Restoration and the future Core Services Facility as well as many others.

**Community Involvement:**

Inform & Involve: Budget legal schedules were published in the June 4, 2015 and June 11, 2015 Arizona Daily Sun to allow for additional community review. In addition, the legal and other budget schedules were made available at City Hall, at both Flagstaff Public Libraries, and on the official city website. A public hearing on June 16, 2015 for both the final budget adoption and the property tax levy is open for public comment and allows citizens to provide input.

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**Attachments:**      2015-11 Property Tax Ordinance

**ORDINANCE NO. 2015-11**

**AN ORDINANCE LEVYING UPON THE ASSESSED VALUATION OF THE PROPERTY WITHIN THE CITY OF FLAGSTAFF, ARIZONA, SUBJECT TO TAXATION A CERTAIN SUM UPON EACH ONE HUNDRED DOLLARS (\$100.00) OF VALUATION SUFFICIENT TO RAISE THE AMOUNT ESTIMATED TO BE REQUIRED IN THE ANNUAL BUDGET, LESS THE AMOUNT ESTIMATED TO BE RECEIVED FROM OTHER SOURCES OF REVENUE; PROVIDING FUNDS FOR VARIOUS BOND REDEMPTIONS, FOR THE PURPOSE OF PAYING INTEREST UPON BONDED INDEBTEDNESS AND PROVIDING FUNDS FOR GENERAL MUNICIPAL EXPENSES, ALL FOR THE FISCAL YEAR ENDING THE 30TH DAY OF JUNE, 2016**

**RECITALS:**

WHEREAS, by the provisions of State law, the ordinance levying taxes for fiscal year 2015-2016 is required to be finally adopted not later than the third Monday in August; and

WHEREAS, the County of Coconino is the assessing and collecting authority for the City of Flagstaff.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:**

SECTION 1. There is hereby levied on each one hundred dollars (\$100.00) of the assessed value of all property, both real and personal within the corporate limits of the City of Flagstaff, except such property as may be by law exempt from taxation, a primary property tax rate of 0.8234 for the fiscal year ending on the 30th day of June, 2016. If this tax rate exceeds the maximum levy allowed by law, the Board of Supervisors of the County of Coconino is hereby authorized to reduce the levy to the maximum allowable by law after providing notice to the City.

SECTION 2. In addition to the rate set in Section 1 hereof, there is hereby levied on each one hundred dollars (\$100.00) of the assessed value of all property, both real and personal within the corporate limits of the City of Flagstaff, except such property as may be by law exempt from taxation, a secondary property tax rate of 0.8366 for the fiscal year ending June 30, 2016.

SECTION 3. Failure by the county officials of Coconino County, Arizona, to properly return the delinquent list, any irregularity in assessments or omissions in the same, or any irregularity in any proceedings shall not invalidate such proceedings or invalidate any title conveyed by any tax deed; failure or neglect of any officer or officers to timely perform any of the duties assigned to him or to them shall not invalidate any proceedings or any deed or sale pursuant thereto, the validity of the assessment or levy of taxes or of the judgment of sale by which the collection of the same may be enforced shall not affect the lien of the City of Flagstaff upon such property for the delinquent taxes unpaid thereon; overcharge as to part of the taxes or of costs shall not invalidate any proceedings for the collection of taxes or the foreclosure of the lien thereon or a sale of the property under such foreclosure; and all acts of officers de facto shall be valid as if performed by officers de jure.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. That the Clerk is hereby directed to transmit a certified copy of this ordinance to the County Assessor and the Board of Supervisors of the County of Coconino, Arizona.

SECTION 6. Effective Date. The tax levies imposed by this Ordinance shall take effect August 6, 2015.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Martin Ince, Multi-Modal Planner  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



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**TITLE:**

**Consideration and Adoption of Resolution No. 2015-27:** A Resolution of the Council of the City of Flagstaff, Arizona, stating its support for the development of U.S. Bicycle Route 66

**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2015-27 by title only
- 2) City Clerk reads Resolution No. 2015-27 by title only (if approved above)
- 3) Adopt Resolution No. 2015-27

**Executive Summary:**

This resolution expresses the Council's approval and support for the designation of U.S. Bicycle Route 66 through Flagstaff. The Arizona Department of Transportation (ADOT) is preparing an application to the American Association of State Highway and Transportation Officials (AASHTO) for designation of four U.S. Bicycle Routes across Arizona, including U.S. Bicycle Route 66, which generally follows the alignment of historic Route 66 and passes through Flagstaff. As part of the application, ADOT must demonstrate that it has the concurrence from all local agencies that have ownership or operational authority over any part of the proposed route; this resolution will provide that concurrence.

**Financial Impact:**

The City is not obligated to make any improvements or add specific bicycle facilities to streets designated as part of the U.S. Bicycle Route system; nor is the City obligated to provide a higher level of maintenance along the designated route. Local jurisdictions can post U.S. Bicycle Route signs along the route, but this is optional.

**Connection to Council Goal and/or Regional Plan:**

**COUNCIL GOALS:**

- 6) Relieve traffic congestion throughout Flagstaff

**REGIONAL PLAN:**

Goal T.6. Provide for bicycling as a safe and efficient means of transportation and recreation.

Policy T.6.1. Expand recognition of bicycling as a legitimate and beneficial form of transportation.

Policy T.6.2. Establish and maintain a comprehensive, consistent, and highly connected system of bikeways and FUTS trails.

Policy T.6.4. Encourage bikeways and bicycle infrastructure to serve the needs of a full range of bicyclist

experience levels.

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

No

**Options and Alternatives:**

- Adopt Resolution No 2015-27 as presented
- Adopt Resolution No 2015-27 with amendments
- Do not adopt Resolution No 2015-27. Because concurrence from the City is a required, if the Resolution is not adopted, ADOT will have to either reroute U.S. Bicycle Route 66 to avoid Flagstaff, or withdraw its application to AASHTO.

**Background/History:**

The U.S. Bike Route System is a national network of bicycle routes that link urban, suburban, and rural areas using a variety of appropriate cycling facilities. These routes are established by State Departments of Transportation (DOTs), and are designated and catalogued by the American Association of State Highway and Transportation Officials (AASHTO) through the Special Committee on U.S. Route Numbering (this is the same committee that assigns numbers to U.S. highways and interstates). To date there are 8,992 miles of U.S. Bicycle Routes in 18 states.

Future routes are depicted on the National Corridor Plan, which was developed by the Adventure Cycling Association and AASHTO in December of 2014. The plan shows 50-mile wide conceptual corridors that can be refined to a specific alignment. There are four corridors identified on the National Corridor Plan in Arizona: Routes 66, 70, 79, and 90. Of the four, only Route 66 travels through Flagstaff.

Beginning last summer, ADOT undertook a process to evaluate options and refine route alignments for the four corridors in Arizona. As part of the process, evaluation criteria were established to identify routes that would provide access to key destinations, create a relatively direct alignment, offer a comfortable and scenic route for cyclists, and gain support from local agencies and stakeholders. It is ADOT's intent to submit its application to AASHTO in late summer or early fall, for review at the October meeting of the Special Committee on U.S. Route Numbering.

Before ADOT can submit its application, concurrence – in the form of a resolution, ordinance, or letter of support – must be obtained from every agency that owns or manages the streets and roads that make up the routes. Locally, concurrence for U.S. Bicycle Route 66 is required from the City of Flagstaff and Coconino County. The Coconino County Board of Supervisors approved Resolution No. 2015-16 in support of U.S. Bicycle Route 66 on April 21, 2015.

**Key Considerations:**

A map of the proposed alignment through Flagstaff is attached. The Flagstaff section of U.S. Bicycle Route 66 would use the following streets:

West Route 66  
Milton Road  
Butler Avenue  
Beaver Street/San Francisco Street  
East Route 66  
Highway 89  
Townsend-Winona Road

Butler Avenue, Beaver Street, San Francisco Street, East Route 66, and Highway 89 are City-maintained streets. The rest belong to either ADOT or Coconino County. For a portion of the route through

Flagstaff, users would also have the option of riding on the FUTS on the south side of Route 66.

Routes can be modified after designation.

Overall, the proposed route follows the historic alignment of Route 66 across northern Arizona for approximately 400 miles from California to New Mexico.

### **Community Benefits and Considerations:**

Designation of U.S. Bicycle Route 66 through Flagstaff will be beneficial to the community in several ways:

- Promotes bicycle tourism in northern Arizona, and supports the local economy
- Provides wayfinding through town for long-distance cyclists
- Enhances Flagstaff's reputation as a bicycle friendly community
- Reinforces the City of Flagstaff's support for bicycling as a mode of transportation

### **Community Involvement:**

Inform

On April 2, 2015, the City's Bicycle Advisory Committee recommended to the Transportation Commission approval of a resolution in support of U.S. Bicycle Route 66 through Flagstaff on the proposed alignment, by a vote of 7-0.

The Transportation Commission is scheduled to review the resolution at its regular meeting of June 3, 2015.

Flagstaff Bicycle Organization, a local bicycle advocacy group, has been involved in the process for determining the final route. City staff has been participating in ADOT's steering committee meetings.

---

**Attachments:**    [Res. 2015-27](#)  
                          [Map showing alignment of U.S. Bicycle Route 66 through Flagstaff](#)  
                          [US Bicycle Route National Corridor Plan Map](#)  
                          [FAQs for Planners from Adventure Cycling Association](#)

**RESOLUTION NO. 2015-27**

**RESOLUTION OF THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA,  
STATING ITS SUPPORT FOR THE DEVELOPMENT OF U.S. BICYCLE  
ROUTE 66**

**RECITALS:**

**WHEREAS**, bicycle tourism is a growing industry in North America, contributing to the economies of communities that provide facilities for such tourists; and

**WHEREAS**, the American Association of State Highway and Transportation Officials (AASHTO) has designated an east/west corridor crossing the state of Arizona to be developed as United States Bicycle Route 66 (USBR 66); and

**WHEREAS**, the Arizona Department of Transportation is supportive of AASHTO designated bicycle routes through Arizona, subject to ongoing collaboration with affected jurisdictions to designate specific facilities the routes will traverse; and

**WHEREAS**, the proposed USBR 66 traverses through Flagstaff and is expected to provide a benefit to local residents and businesses; and

**WHEREAS**, the City has duly considered the proposed route and found it to be a suitable route through the Arizona corridor and desires that the route be formally designated so that it can be appropriately mapped and potentially signed, thereby promoting bicycle tourism in our area.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF FLAGSTAFF  
AS FOLLOWS:**

Section 1. That the Council hereby expresses its approval and support for the development of USBR 66.

Section 2. That Staff is authorized to take action to officially designate the route accordingly using the following City-owned roads and paths:

- Flagstaff Urban Trails System (FUTS)
- U.S. Highway 89
- Route 66
- Beaver Street
- San Francisco Street
- Butler Avenue

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 16<sup>th</sup> day of June, 2015.

---

MAYOR

ATTEST:

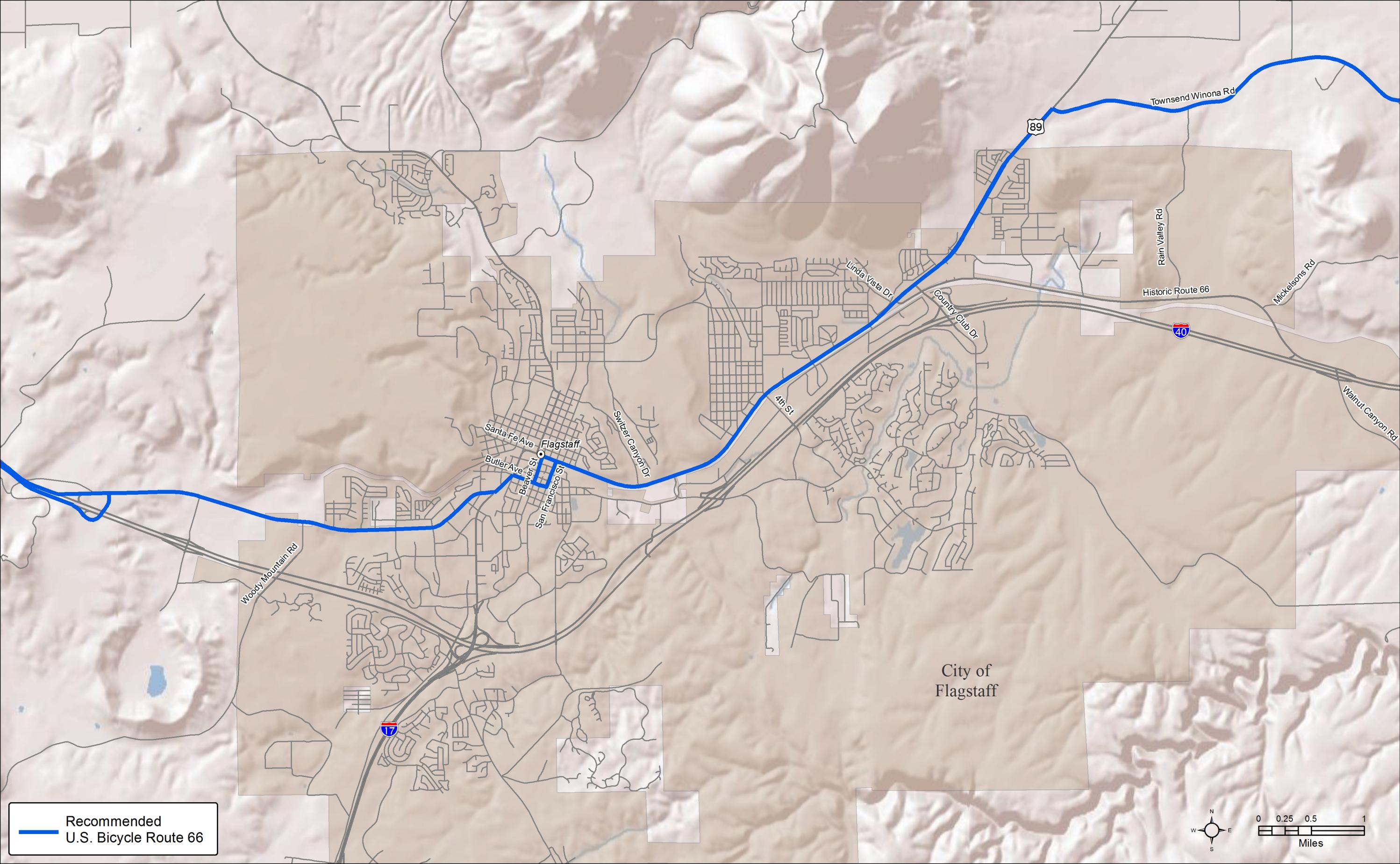
---

CITY CLERK

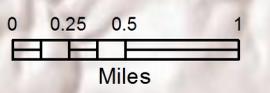
APPROVED AS TO FORM:

---

CITY ATTORNEY



Recommended  
U.S. Bicycle Route 66



City of  
Flagstaff

Flagstaff

Townsend Winona Rd

89

Historic Route 66

40

Mickelsons Rd

Walnut Canyon Rd

Country Club Dr

4th St

Linda Vista Dr

Swizer Canyon Dr

Santa Fe Ave

Butler Ave

Beaver St

San Francisco St

Woody Mountain Rd

40



The goal of The United States Bicycle Route System is to connect America through a network of numbered interstate bicycle routes.

# NATIONAL CORRIDOR PLAN

December 2014



Prioritized Corridors are not routes, but 50-mile wide areas where a route may be developed. These corridors have been assigned route numbers.

Alternate Corridors provide additional consideration for interstate routing. These corridors have not been assigned route numbers but may be prioritized. Corridors may be added or existing corridors shifted as needed.

Established U.S. Bicycle Routes designated by aashto appear as defined lines on the Corridor Map. For specific route information visit [www.adventurecycling.org/routes/usbrs](http://www.adventurecycling.org/routes/usbrs).

PRIORITIZED CORRIDOR

ALTERNATE CORRIDOR

## UNITED STATES BICYCLE ROUTE SYSTEM

PRIVATE OR PUBLIC FERRY

UNITED STATES BICYCLE ROUTE



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## FAQs for Planners



### Definitions

- [What is the U.S. Bicycle Route System?](#)
- [What is AASHTO?](#)
- [What are corridors?](#)
- [What is the National Corridor Plan?](#)
- [What does designation mean?](#)

### Background

- [When and how did the USBRS get started?](#)
- [How was the Corridor Plan developed?](#)
- [How is the USBRS funded?](#)

### Benefits

- [Why implement a USBR in my community/state?](#)
- [Is there demand?](#)

### Implementation

- [How is a USBR designated?](#)
- [Who develops USBRSs?](#)
- [Is there a route criteria that is used to develop a USBR?](#)
- [When does AASHTO review and approve applications?](#)

[Routes and Maps Home](#)[Adventure Cycling Montana Film Series](#)[Adventure Cycling Route Network](#)[U.S. Bicycle Route System](#)

#### [RIDE A U.S. BICYCLE ROUTE](#)

- [FAQs for Cyclists](#)
- [Maps and Route Resources](#)
- [USBRS Interactive Map](#)

#### [IMPLEMENT A U.S. BICYCLE ROUTE](#)

- [FAQs for Planners](#)
- [National Corridor Plan](#)
- [Planning](#)
- [Designation](#)
- [Implementation Resources](#)
- [Benefits & Building Support](#)
- [Best Practices Guide \(PDF\)](#)

#### [PROMOTE A U.S. BICYCLE ROUTE](#)

- [Signing](#)
- [Promotion Resources](#)

WINTER HOLIDAY?  
SHIP YOUR BIKE

IT'S AFFORDABLE  
RELIABLE  
AND CONVENIENT!

**BIKEFLIGHTS**  
Pack. Ship. Ride.

- [Who maintains USBRs and are there requirements for maintenance?](#)
- [Is there any liability from designating a USBR?](#)
- [Are there funding sources for implementing USBRs?](#)

## DEFINITIONS

For more introductory information on the USBRS, see [FAQs for Cyclists](#).

### What is the U.S. Bicycle Route System?

The U.S. Bicycle Route System (USBR) is a developing national network of bicycle routes, which connects urban, suburban, and rural areas using roads, trails, and other facilities appropriate for bicycle travel. Routes are numbered and may be signed.

To date, 8,992 miles of U.S. Bicycle Routes have been established in 18 states: Alaska, Florida, Kentucky, Idaho, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, North Carolina, Ohio, Tennessee, Utah, Virginia, Washington and the District of Columbia.

For maps and other resources to ride an established USBR, visit [Ride a U.S. Bicycle Route](#).

### What is AASHTO?

The American Association of State Highway and Transportation Officials (AASHTO) is a nonprofit, nonpartisan association representing highway and transportation departments in all 50 states, the District of Columbia, and Puerto Rico. AASHTO's [Special Committee on U.S. Route Numbering](#) reviews U.S. Bicycle Route applications from state departments of transportation and assigns a numbered designation, similar to the U.S. highway system. AASHTO's support for the USBRS is crucial to earning the support of federal and state agencies.

### What are corridors?

Corridors are 50-mile wide areas that are used as templates to show planners where a U.S. Bicycle Route could be developed. Corridors are trunk lines that show where and how USBRs will eventually connect states, international borders and other USBRs. They link key destinations, urban centers, and scenic routes, and can be shifted or added by a state department of transportation with concurrence from neighboring states (if affected) and approval from the AASHTO Task Force on U.S. Bicycle Routes. Many corridors suggest development of USBRs along existing bicycle routes or networks, such as the [Adventure Cycling Route Network](#), the East Coast Greenway, the Mississippi River Trail, and the Great Allegheny Passage, among others.

### What is the National Corridor Plan?

The [National Corridor Plan](#) is a template that is used by route planners in each state to show the possible route connections between states. It provides a visual plan for how the USBRS will look when all of the estimated 50,000+ miles of corridors have been completely developed and designated. Undeveloped corridors are depicted as light, colored lines and designated U.S. Bicycle Routes are shown as black, solid lines.

### What does designation mean?

Designation signifies that a route is officially recognized and approved with a route number designated by AASHTO. AASHTO's Special Committee on U.S. Route Numbering does not approve the suitability of the route for bicycle travel; this is determined by state DOTs. The committee reviews the numbered designation to make sure it is standardized. For a route to receive official designation as a U.S. Bicycle Route, it must connect two or more states, a state and an international border, or other U.S. Bicycle Routes. State or international neighbors must provide a letter of acknowledgement for the route's cross-over point.

For information on the implementation process, read the implementation FAQs below and check out our [Implementation](#) pages.

## BACKGROUND

### When and how did the USBRS get started?

In 1982, AASHTO approved two U.S. Bicycle Routes: USBR 1 in Virginia and North Carolina and USBR 76 in Virginia, Kentucky, and Illinois. After these two routes were designated, no additional routes were nominated and the project lay dormant for over 20 years.

In 2003, in an effort to reinvigorate the U.S. Bicycle Route System, AASHTO formed a Task Force on U.S. Bicycle Routes, which included Adventure Cycling Association, among other organizations. By 2009, the Task Force had created the [National Corridor Plan](#) and the AASHTO application, and formalized a process that states could use to designate USBRs. Adventure Cycling began providing staff support help state partners designate routes in 2005 and continues to be the go-to resource for USBRS information and guidance.

To learn more, visit [USBRs History](#).

### How was the Corridor Plan developed?

To get a picture of what already existed, the Task Force on U.S. Bicycle Routes developed an [Inventory Report](#) (PDF) and [Inventory Map](#), which documented existing bicycle routes nationwide. The inventory included national routes like the Adventure Cycling Route Network, state bicycle

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## Building the U.S. Bike Route System



May 29, 2015

**Start Rubbing that Lucky Rabbit's Foot and Cross Your Fingers!**



May 28, 2015

**Announcing New U.S. Bicycle Route System Online Resources**



May 28, 2015

**Today's Giveaway Masters the Science of Keeping You Cool**

## USBRs in the News

January 9, 2015

**New Michigan bike route on U.S.-2 Expands!**

January 6, 2015

**National Groups Approve 193-mile UP Bike Trail**

December 22, 2014

**U.S. Bike Route System Expands to more than 8,000 miles making cross-country biking a whole lot easier.**

routes, and local bike paths and trails. Using the Inventory Map and corridor criteria, they created the [National Corridor Plan](#), which prioritized and defined numbered 'corridors' for cross-country cycling routes linking destinations, cities, and transportation hubs. The National Corridor Plan suggests the best placement for U.S. Bicycle Routes based on the task force's extensive research; it is intended as a guide for states wishing to implement U.S. Bicycle Routes.

### How is the USBRS funded?

There is no dedicated federal funding for the U.S. Bicycle Route System at this time, however federal funding mechanisms exist that are appropriate for USBRS. The USBRS uses existing roads and trails in order to help keep cost of implementation low, and state departments of transportation often build collaborations or use volunteer support when faced with limited staff capacity or funding. Adventure Cycling provides dedicated staff support for system development and receives small grants and donations through our May fundraiser called [Build it. Bike it. Be a Part of it.](#)

### BENEFITS

See our [benefits and building support](#) pages for more information on USBRS and bicycle tourism benefits.

### Why implement a USBR in my community/state?

U.S. Bicycle Route designation brings significant [economic](#), [transportation](#), [environmental](#), and [health](#) benefits and puts your community on the national map as a bicycle tourism destination. Designating a USBR creates interstate connections and possibilities for cross-country travel by bike, bringing out-of-state tourism spending and generating interest in your region. Just think -- you could be on a bicycle route that connects San Francisco to Washington DC! See our [building bicycle tourism](#) pages to learn more about how bike travel and the USBRS can benefit your community/state.

### Is there demand?

Overall, bicycling and bicycle travel are booming in the U.S.

- According to the National Sporting Goods Association 95 million adults ride bicycles. U.S. bicyclists have a mean income of about \$60,000 and there are more bicyclists than skiers, golfers, and tennis players combined.
- Adventure Cycling Association has over 48,000 members. Over the last 10 years, the organization has seen a 27% growth in membership and a 42% growth in sales of bicycle-touring maps.
- The U.S. bicycle industry has annual sales of \$6 billion and employs roughly 100,000 people selling 16M bicycles per year according to the National Bicycle Dealers Association. [Learn more](#) about its economic impact.
- Cycling is the sixth most popular recreational activity in the U.S.
- Other countries that have invested in national systems with success. Visit our [International Bicycle Route Networks](#) page.
- Check out [10 Indicators that Bicycle Travel is Booming](#) press release which documents the growth and trends in bicycle travel and tourism across the world.

### IMPLEMENTATION

See the [Implementation](#) pages for more detailed instruction on the process of developing USBRS.

### How is a USBR designated?

State departments of transportation (DOTs) coordinate the designation process which includes selecting and documenting a route and gaining support from road owners along the route. DOTs submit an application to nominate a USBR for numbered designation through AASHTO. Read more about this process on our [Designation](#) page.

### Who develops USBRS?

State departments of transportation (DOTs) are ultimately responsible for supporting and overseeing U.S. Bicycle Routes; however, it is often volunteers or other organizations that do the legwork to develop, document and gain support for USBR designation in partnership with the DOT. Check out the [USBRS Best Practice Report](#) (PDF) to learn more about various models used by state departments of transportation to leverage partnership support for the designation process and promotion.

### Is there a route criteria that is used to develop a USBR?

State departments of transportation are encouraged to develop and follow their own selection criteria in conjunction with input from local bicycle organizations and are welcome to consult with the Adventure Cycling Association. There are numerous tools and sample evaluation methods available to assist states with this process which are listed on the [Implementation Resources](#) page.

### When does AASHTO review and approve USBR applications?

AASHTO's [Special Committee on U.S. Route Numbering](#) reviews USBRS applications twice per year at their meetings in the spring (usually May) and the fall (usually October). Applications are typically due five weeks before the meeting date.

### Who maintains USBRs and are there requirements for maintenance?

Because USBRs use existing facilities, the roads, trails, or paths along the route are maintained by its current facility owners. Road and trail owners are contacted for their formal support of a USBR before the route is designated through their jurisdiction. The designation of a USBR along a particular roadway does not mandate any changes in maintenance (such as the addition of bicycle-specific infrastructure), but it is highly recommended to maintain the roadways to be suitable for bicyclists and improve infrastructure when possible. USBRs may be realigned if/when new improvements or bicycle-specific infrastructure becomes available.

When new bicycle facilities are developed along designated U.S. Bicycle Routes, AASHTO recommends that states refer to the [AASHTO Guide for Development of Bicycle Facilities](#) for guidance.

### Is there any liability from implementing a USBR?

There is no inherent liability for local agencies in designating bicycle routes, and you can find supporting documents on the [Implementation Resources](#) page.

### Are there funding sources for implementing USBRs?

There is no dedicated funding for the U.S. Bicycle Route System at this time, however federal and state funding mechanisms exist that can be used for U.S. Bicycle Routes. For more information on funding, visit [Advocacy Advance's Federal Funding Resources List](#). The goal of the USBRS is to use existing roads and trails whenever possible and to build collaborations within states in order to help keep cost of implementation low.

Photo by Liz Walton

*Adventure Cycling Association inspires and empowers people to travel by bicycle.*

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**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Elizabeth A. Burke, City Clerk  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



---

**TITLE:**

**Consideration and Adoption of Resolution No. 2015-26:** A resolution of the City Council of the City of Flagstaff, Coconino County, Arizona, calling a Special Election for November 3, 2015, and approving the ballot language for said election

**RECOMMENDED ACTION:**

- 1) Read Resolution No. 2015-26 by title only
- 2) City Clerk reads Resolution No. 2015-26 by title only (if approved above)
- 3) Adopt Resolution No. 2015-26

**Executive Summary:**

The City Council initially gave direction to conduct a comprehensive review of the City Charter through a City Manager-appointed resident committee. This committee met 10 times during 2014 and presented their recommendations to the City Manager in October. On October 28 and November 25, 2014, the City Council discussed these proposals and directed staff to bring back, in resolution form, those proposals which were housekeeping changes that were either clarifying or of a technical nature. Those proposals were placed on the ballot for May 19, 2015. The remaining proposals, which focus more broadly on policy were taken to the residents of Flagstaff for additional input.

At their May 26, 2015, Work Session, the City Council reviewed each of the proposals and respective comments, and directed staff to bring forward three of the questions, which have been included in this resolution along with the three election-related questions.

**Financial Impact:**

Adoption of the resolution will direct staff to move forward with a November 3, 2015, Special Election which has been budgeted in the 2015-2016 budget.

**Connection to Council Goal and/or Regional Plan:**

**COUNCIL GOALS:**

- 8) Improve effectiveness of notification, communication, and engagement with residents, neighborhoods and businesses and about City services, programs, policies, projects and developments

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

Yes, as outlined in the Executive Summary above, these questions have been discussed by the City Council at various times over the past year, most recently at their June 9, 2015, Work Session.

**Options and Alternatives:**

- 1) Adopt Resolution No. 2015-26 as presented
- 2) Adopt Resolution No. 2015-26 as may be amended
- 3) Not adopt Resolution No. 2015-26; thereby not holding a Special Election in November 2015

**Background/History:**

The City Council initially gave direction to conduct a comprehensive review of the City Charter through a City Manager-appointed resident committee. This committee met 10 times during 2014 and presented their recommendations to the City Manager in October. On October 28 and November 25, 2014, the City Council discussed these proposals and directed staff to bring back, in resolution form, those proposals which were housekeeping changes that were either clarifying or of a technical nature. Those proposals were placed on the ballot for May 19, 2015. The remaining proposals, which focus more broadly on policy were taken to the residents of Flagstaff for additional input.

At their May 26, 2015, Work Session, the City Council reviewed each of the proposals and respective comments, and directed staff to bring forward three of the questions, which have been included in this resolution along with the three election-related questions.

**Community Involvement:**

Inform  
Consult  
Involve  
Collaborate  
Empower

---

**Attachments:**     [Res 2015-26](#)

**RESOLUTION NO. 2015-26**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
FLAGSTAFF, COCONINO COUNTY, ARIZONA, CALLING A  
SPECIAL ELECTION FOR NOVEMBER 3, 2015, AND  
APPROVING THE BALLOT LANGUAGE FOR SAID ELECTION**

**RECITALS:**

WHEREAS, at the direction of the Flagstaff City Council, the City Manager appointed members to a Charter Review Committee to review potential amendments to the Flagstaff City Charter; and

WHEREAS, the Charter Review Committee considered potential amendments and provided those to the City Manager; and

WHEREAS, after recommendation by the City Manager, the City Council submitted questions to the voters on some proposed amendments to the Flagstaff City Charter and said election was held on May 19, 2015; and

WHEREAS, the City Council directed staff to obtain further citizen input on other potential amendments to the flagstaff City Charter, which was completed, and after further review by the City Council the following questions are directed to be placed on the ballot for a mail-ballot special election to be held November 3, 2015.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS  
FOLLOWS:**

Section 1. THAT a special mail-ballot election of the qualified electors of the City is hereby called to be held on November 3, 2015, (hereinafter referred to as the "Election"), at which there shall be submitted to the qualified electors of the City questions amending the Flagstaff City Charter.

Section 2. THAT

- (A) notice of the Election shall be given by mailing an informational pamphlet (hereinafter referred to as the "Informational Pamphlet") to each household that contains a registered voter within the City not less than thirty-five (35) days before the date of the Election.
- (B) the Clerk of the City is hereby authorized and directed to cause the Informational Pamphlet to be prepared and mailed according to law and the provisions of this resolution.

Section 3. THAT the official ballot for the Election shall be in substantially the form hereto attached and marked Exhibit 'A.'

Section 4. THAT the Clerk of the City is hereby authorized to request arguments for and against the subject matter of the Election for inclusion in the Informational Pamphlet by providing the notice in substantially the form attached and marked Exhibit 'B' (hereinafter referred to as the "Notice for Arguments") by posting the Notice of Arguments at all places at which notices of meetings of the Council of the City are posted and publishing the Notice of Arguments once in the *Arizona Daily Sun*. The deadline to submit arguments shall be 5:00 p.m. MST on August 5, 2015.

Section 5. THAT the election shall be a Mail Ballot Election unless a polling place election is required for another ballot issue.

Section 6. THAT

(A) the Election shall be held, conducted and canvassed in conformity with the provisions of the general election laws of the State of Arizona, except as otherwise provided by law, and only such persons shall be permitted to vote at the Election who are qualified electors of the City.

(B) all expenditures as may be necessary to order, notice, hold and administer the Election are hereby authorized, which expenditures shall be paid from current operating funds of the City.

(C) the Clerk of the City is hereby further authorized to take all other necessary action to facilitate the Election.

PASSED AND ADOPTED by the City Council of the City of Flagstaff, this 16<sup>th</sup> day of June, 2015.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM

\_\_\_\_\_  
CITY ATTORNEY

**EXHIBIT 'A'**  
**FORM OF OFFICIAL BALLOT**  
OFFICIAL BALLOT

**QUESTION NO. 1**

*Shall the Charter of the City of Flagstaff, Arizona, Article II, Section 13, SPECIAL MEETINGS, be amended as follows:*

*The Mayor **OR CITY MANAGER** may, or, at the request of three (3) members of the Council, shall, by giving notice thereof to all members of the Council then in the City, call a special meeting of the Council for a time not earlier than three (3) hours after the notice is given.<sup>1</sup> Special meetings of the Council may also be held at any time by the common consent of all the members of the Council.*

**OFFICIAL TITLE:** AMENDMENT TO ARTICLE I, SECTION 13, *SPECIAL MEETINGS*, OF THE FLAGSTAFF CITY CHARTER

**DESCRIPTIVE TITLE:** A measure referred to the people by the City Council regarding an amendment to Article II, Section 13, *Special Meetings*, to allow the City Manager to call special meetings.

A **YES** vote shall have the effect of amending Article II, Section 13, of the Charter to allow the City Manager to call special meetings.

**YES**     

A **NO** vote shall have the effect of not amending Article II, Section 13, of the Charter and maintaining that only the Mayor or three members of Council may call special meetings.

**NO**     

---

<sup>1</sup> ARS §38-431.02 preempts the ability of the Mayor or Council to call a special meeting for a time not earlier than three (3) hours; **therefore, twenty-four (24) hours is required.**

**QUESTION NO. 2**

*Shall the Charter of the City of Flagstaff, Arizona Article III, Section 3, POWERS AND DUTIES [of the City Manager], paragraph (c) be amended as follows:*

**Article III, Section 3 – POWERS AND DUTIES [of the City Manager]**

*The City Manager shall:*

*(a)...*

*(b)...*

*(c) Appoint and, when necessary for the good of the service, lay off, suspend, transfer, demote, or remove all officers and employees of the City, except as otherwise provided by this Charter, and except as the Manager may authorize the head of a department or office to appoint and remove subordinates in such department or office, **EXCEPT THAT THE COUNCIL MAY ESTABLISH subject to such merit system regulations REQUIRING NOTICE AND A REVIEW OR HEARING PRIOR TO ANY LAYOFF, SUSPENSION, DEMOTION, AND TERMINATION as the Council may adopt;***

**OFFICIAL TITLE:** AMENDMENT TO ARTICLE III, SECTION 3, *POWERS AND DUTIES [of the City Manager]*, OF THE FLAGSTAFF CITY CHARTER

**DESCRIPTIVE TITLE:** A measure referred to the people by the City Council regarding an amendment to Article III, Section 3, *POWERS AND DUTIES [of the City Manager]*, to provide for the Council to establish regulations requiring notice and review or hearing prior to any layoff, suspension, demotion, and termination.

A **YES** vote shall have the effect of amending Article III, Section 3, of the Charter to allow Council to establish regulations regarding notice and review or hearing prior to any layoff, suspension, demotion, or termination of city employees.

**YES**

A **NO** vote shall have the effect of not amending Article III, Section 3, of the Charter and, if the citizens vote for Question No. 3, a no vote gives the City Manager power over personnel rules. If the citizens vote against Question No. 3, a no vote will have no effect because the Council will continue to establish regulations.

**NO**

**QUESTION NO. 3**

Shall the Charter of the City of Flagstaff, Arizona Article IV, Section 5, PERSONNEL RULES AND REGULATIONS, be amended as follows:

~~The Council shall, by ordinance, provide for the establishment of THE CITY MANAGER SHALL ESTABLISH~~ Personnel Rules and Regulations, **EXCEPT THOSE RESERVED TO THE COUNCIL UNDER THIS CHARTER**, for the purpose of regulating and controlling ~~the appointments, promotions, demotions, discharges, and reinstatements of~~ all officers and employees of the City, except those elected by the people, members of appointive boards and commissions, **and** volunteers who serve without pay, ~~and also except~~ the City Manager, the City Attorney, and the Police Judges.

**OFFICIAL TITLE:** AMENDMENT TO ARTICLE IV, SECTION 5, PERSONNEL RULES AND REGULATIONS, OF THE FLAGSTAFF CITY CHARTER

**DESCRIPTIVE TITLE:** A measure referred to the people by the City Council regarding an amendment to Article IV, Section 5, PERSONNEL RULES AND REGULATIONS, to allow the City Manager to establish personnel rules and regulations.

A **YES** vote shall have the effect of amending Article IV, Section 5, of the Charter to allow the City Manager to establish personnel rules and regulations.

**YES**

A **NO** vote shall have the effect of not amending Article IV, Section 5, of the Charter, and maintaining that the Council shall establish personnel rules and regulations.

**NO**

**QUESTION NO. 4**

Shall the Charter of the City of Flagstaff, Arizona, Article IX, Section 5, PRIMARY ELECTIONS, be amended as follows:

**Article IX, Section 5 –~~PRIMARY ELECTIONS~~ PRIMARY AND GENERAL ELECTIONS**

- (a) ~~The Primary Election shall be held on the first Tuesday in February in even numbered years. THE PRIMARY ELECTION SHALL BE HELD IN THE SUMMER AND THE GENERAL ELECTION SHALL BE HELD IN THE FALL OF EVEN-NUMBERED YEARS, ON DAYS PROVIDED FOR BY ARIZONA STATUTES AS MAY BE AMENDED.~~ *The two candidates receiving the highest number of votes at the Primary Election for each office for which there is a vacancy will be considered nominated for such office, and their names shall be printed on the ballot for the General Election; provided, that if there be any person who, under the provisions of this Section would have been entitled to become a candidate for any office except for the fact that some other candidate received said equal number of votes therefor, then all such persons receiving said equal number of votes shall likewise become candidates for such office.*
  
- (b) *In the event that no more than two candidates file nominating petitions for each vacancy in office, the Primary Election may be dispensed with as to that office.*

*so long as the canvass of election shows that: (a) a majority of the qualified electors voting in this election approve this amendment; and (b) more votes are cast in favor of this amendment than the number of votes cast in favor of the option presented (Ballot Question No. 5).*

**OFFICIAL TITLE:** AMENDMENT TO ARTICLE IX, SECTION 5, *Primary AND GENERAL Elections*, OF THE FLAGSTAFF CITY CHARTER

**DESCRIPTIVE TITLE:** A measure referred to the people by the City Council regarding an amendment to Article IX, Section 3, *Primary AND GENERAL Elections*, to hold candidate elections in the summer/fall of even-numbered years.

A **YES** vote shall have the effect of amending Article IX, Section 5, of the Charter to hold candidate elections in the summer and fall of even-numbered years. **YES**

A **NO** vote shall have the effect of not amending Article IX, Section 5, of the Charter to hold candidate elections in the summer and fall of even-numbered years. If both Question No. 4 and 5 fail, the City will hold another election to determine future election dates. **NO**

**QUESTION NO. 5**

Shall the Charter of the City of Flagstaff, Arizona, Article IX, Section 5, PRIMARY ELECTIONS, be amended as follows:

**Article IX, Section 5 –~~PRIMARY ELECTIONS~~ PRIMARY AND GENERAL ELECTIONS**

- (c) ~~The Primary Election shall be held on the first Tuesday in February in even numbered years.~~ **THE PRIMARY AND GENERAL ELECTIONS SHALL BE HELD IN THE SPRING OF ODD-NUMBERED YEARS, ON DAYS PROVIDED FOR BY ARIZONA STATUTES AS MAY BE AMENDED.** The two candidates receiving the highest number of votes at the Primary Election for each office for which there is a vacancy will be considered nominated for such office, and their names shall be printed on the ballot for the General Election; provided, that if there be any person who, under the provisions of this Section would have been entitled to become a candidate for any office except for the fact that some other candidate received said equal number of votes therefor, then all such persons receiving said equal number of votes shall likewise become candidates for such office.
- (d) In the event that no more than two candidates file nominating petitions for each vacancy in office, the Primary Election may be dispensed with as to that office.

so long as the canvass of election shows that: (a) a majority of the qualified electors voting in this election approve this amendment; and (b) more votes are cast in favor of this amendment than the number of votes cast in favor of the other option presented (Ballot Question No. 4).

**OFFICIAL TITLE:** AMENDMENT TO ARTICLE IX, SECTION 5, *Primary AND GENERAL Elections*, OF THE FLAGSTAFF CITY CHARTER

**DESCRIPTIVE TITLE:** A measure referred to the people by the City Council regarding an amendment to Article IX, Section 3, *Primary AND GENERAL Elections*, to hold candidate elections in the spring of odd-numbered years.

A **YES** vote shall have the effect of amending Article IX, Section 5, of the Charter to hold candidate elections in the spring of odd-numbered years.

**YES**

A **NO** vote shall have the effect of not amending Article IX, Section 5, of the Charter to hold candidate elections in the spring of odd-numbered years. If both Question No. 4 and 5 fail, the City will hold another election to determine future election dates.

**NO**

**QUESTION NO. 6**

*Shall the Charter of the City of Flagstaff, Arizona, Article IX, Section 6, TIME OF HOLDING THE GENERAL ELECTION, be amended as follows:*

**~~Article IX, Section 6 – TIME OF HOLDING THE GENERAL ELECTION~~**

**~~The General Election shall be held on the first Tuesday in March in each even-numbered year.~~**

**OFFICIAL TITLE:** AMENDMENT TO ARTICLE IX, SECTION 6, *Time of Holding the General Election*, OF THE FLAGSTAFF CITY CHARTER

**DESCRIPTIVE TITLE:** A measure referred to the people by the City Council regarding an amendment to Article IX, Section 6, *Time of Holding the General Election*, to eliminate this section of the Charter and combine the primary and general elections in one section.

A **YES** vote shall have the effect of amending Article IX, Section 6, of the Charter to eliminate this section of the Charter and combine the primary and general election dates in one section.

**YES**     

A **NO** vote shall have the effect of not amending Article IX, Section 6, of the Charter and the City will hold another election to remedy the inconsistency in the Charter language.

**NO**

**EXHIBIT 'B'****FORM OF NOTICE FOR ARGUMENTS****REQUEST FOR ARGUMENTS FOR AND AGAINST PROPOSED  
AMENDMENTS TO THE FLAGSTAFF CITY CHARTER**

Pursuant to a resolution adopted by the Council of the City of Flagstaff, Arizona (the "City"), on June 16, 2015, (the "Resolution"), a special election in and for the City was ordered and called to be held on November 3, 2015 (the "Election"). Notice of the Election will be given by mailing an informational pamphlet to each household that contains a registered voter, with such pamphlet to include arguments for and against the proposed amendments to the Flagstaff City Charter to be considered at the Election. Any person interested in providing any such argument is hereby requested to provide the same to the City Clerk, before 5:00 p.m., Arizona time on Wednesday, August 5, 2015.

Arguments must contain the original notarized signature of each person sponsoring it. If the argument is sponsored by an organization, it shall contain the notarized signature of two executive officers of the organization or if sponsored by a political committee it shall contain the notarized signature of the committee's chairman or treasurer. The person or persons signing the argument shall identify themselves by giving their residence or post office address and a telephone number, which information shall not appear in the pamphlet. Each argument shall not exceed three hundred words in length.

If you have any questions about the foregoing, please contact Elizabeth Burke, City Clerk, at 928-213-2076.

/s/ Elizabeth Burke

**CITY OF FLAGSTAFF  
STAFF SUMMARY REPORT**

**To:** The Honorable Mayor and Council  
**From:** Jeff Meilbeck, City Manager  
**Date:** 06/08/2015  
**Meeting Date:** 06/16/2015



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**TITLE:**

**Consideration of Suggested Change to Rules of Procedure for Possible Future Agenda Items**

**RECOMMENDED ACTION:**

Adopt the Rules of Procedure dated June 16, 2015, to: 1) rename the Possible Future Agenda Items (PFAI) to Future Agenda Item Requests (FAIR); and 2) allow for public participation during the FAIR section of the agenda.

**Executive Summary:**

Rule 4 of Flagstaff City Council's Rules of Procedure provides a process for Councilmembers to request that items be placed on a future agenda. This section is currently known as Possible Future Agenda Items (PFAI) and if three members of the Council agree, the item will be moved to a regularly scheduled Council meeting. The PFAI rules have proven to be somewhat confusing and difficult to manage, so staff are suggesting two changes:

- 1) Change the name from Possible Future Agenda Items (PFAI) to Future Agenda Item Requests (FAIR). This recommended change has the simple purpose of providing a more intuitive title and acronym for the public, staff and Council to use.
- 2) Take public comment during the PFAI section of the agenda. This change is recommended to improve meeting flow and increase opportunities for public input. Currently, the Rules of Procedure indicate that public comment on PFAI items can only be taken during the public participation section of the agenda. This approach has led to some confusion because public comment is taken on all other agenda items when those items are called. By taking public comments on the PFAI section of the agenda, our process will be more consistent, more easily understood and therefore more accessible to the public.

**Financial Impact:**

None

**Connection to Council Goal and/or Regional Plan:**

***RELATED COUNCIL GOAL:***

- 8) Improve effectiveness of notification, communication, and engagement with residents, neighborhoods and businesses and about City services, programs, policies, projects and developments

**Previous Council Decision on This:**

No

**Options and Alternatives:**

- 1) Adopt the changes (recommended).
- 2) Postpone adopting the changes until a full review of the Rules of Procedure can be conducted and discussed. This option has the advantage of reviewing all rules comprehensively but has the disadvantage of delaying reasonable changes as they are identified.

**Community Involvement:**

Inform

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**Attachments:**     [Rules of Procedure.Proposed](#)



# FLAGSTAFF CITY COUNCIL RULES OF PROCEDURE

June 2015

**RULES OF PROCEDURE**  
for the  
**FLAGSTAFF CITY COUNCIL**

**Rule 1**  
**GENERAL RULES**

[Flagstaff City Charter Art. II, §14]

**1.01 Rules of Procedure; Journal**

The Council shall determine its own rules and orders of business, and shall provide for keeping a record of its proceedings. The record of proceedings shall be open to public inspection.

**1.02 Written Rules, Order of Business, and Procedure**

These Rules of Procedure of the Council shall be available to all interested citizens.

**Rule 2**  
**CODE OF CONDUCT & CONFLICTS OF INTEREST**

**2.01 Code of Conduct**

City Councilmembers occupy positions of public trust. All actions and business transactions of such officials dealing in any manner with public funds shall be in compliance with all laws or ordinances establishing a code of conduct for public officials or pertaining to conflicts of interest of public officials or employees.

**2.02 Participation and Voting Bar [A.R.S. §38-503]**

Any Councilmember prohibited from participating or voting on any matter before the City by the state conflict of interest laws shall make known such conflict on the record of any meeting where the item is discussed, and shall not enter into discussion, debate, or vote on such matter.

**Rule 3**  
**COUNCIL MEETINGS**

[Flagstaff City Charter Art. II, §12 and 13]

**3.01 Regular Meetings**

The City Council shall hold regular meetings on the first and third Tuesday of January, February, March, April, May, June, July, September, October, November, and December, and on the fourth Tuesday of August unless a majority of the Council decides to postpone or cancel such meeting. No change shall be made in regular meeting times or place without a published seven day notice.

Regular meetings shall consist of a 4:00 p.m. and 6:00 p.m. meeting. The 4:00 p.m. portion of the meeting will include Approval of Minutes, Appointments, Liquor License Hearings, Consent Items, and Routine Items. At the agenda review work session one week prior to the regular Council Meeting, the City Council may direct that any of the agenda items be moved to the 4:00 p.m. or 6:00 p.m. portion of the meeting. At the 4:00 p.m. meeting, the Council may vote to defer any item on that portion of the agenda to the 6:00 p.m. meeting.

The 6:00 p.m. meeting is intended for items of specific interest to the community or items that may require extended discussions, as well as advertised public hearings. The agenda shall include carryover items from the 4:00 p.m. meeting, public hearings, regular agenda items, and discussion items.

If the day fixed for any regular meeting of the Council falls upon a day which the City observes as a legal holiday, the meeting may be cancelled or held at a time and date designated by the Council. All regular meetings of the Council shall be held in the City Hall Council Chambers. No change shall be made in regular meeting times without a published seven-day notice. However, the Mayor or City Manager may change the Council meeting location to adjust to a specific need for additional space required to accommodate a large citizen turnout, upon giving the public notice of such change pursuant to notice requirements. All regular meetings of the Council shall be open to the public.

### **3.02 Special Meetings**

Special meetings may be called by the City Manager, three or more members of the Council, or by the Mayor. The Council may hold any other meetings it deems necessary at such times and locations as it determines appropriate under the circumstances for the purposes of addressing specific issues, specific neighborhood's concerns, strategic planning, budgeting, or for any other purpose allowed by law, so long as notice of such meeting has been given in accordance with the Arizona Open Meeting Law. The City Clerk shall prepare written notice of special sessions, stating time, place, and agenda; this notice shall be given personally, or by telephone, to each member of the Council, the City Manager, and the City Attorney, and shall be posted no later than twenty-four hours in advance of the special meeting. If an emergency requires an earlier meeting of the Council than allowed by this rule, Rule 3.05 pertaining to emergency meetings shall be followed.

### **3.03 Work Sessions and Agenda Review**

Work sessions are public meetings held for the following purposes: (1) briefing Councilmembers on items included on the Council's regular meeting agenda, (2) discussion of long range plans and programs for which no immediate action is required, (3) detailed discussion of matters which may soon be placed on a regular meeting agenda, and (4) exchange of information between the staff and Council. No formal vote shall be taken on any matter under discussion, nor shall any Councilmember enter into a commitment with another respecting a vote to be taken subsequently in a public meeting of the Council, providing that nothing herein shall prevent the Council from giving staff direction on any matter under discussion. Any formal action, however, must be scheduled for Council action at a regular or special Council meeting.

The City Council may hold work sessions every second and fourth Tuesday of each month at 6:00 p.m. When there are five Tuesdays in a month, work sessions will be held on the second and fifth Tuesdays. No meetings will be held on the fourth Tuesday of a five-Tuesday month or, on the last Tuesday of December, unless otherwise agreed to by a majority of the Council.

The work session held the Tuesday prior to a regular Council meeting shall include two reviews of the action items on the next week's regular Council agenda, including a determination as to which items shall be placed on the 4:00 p.m. meeting agenda or the 6:00 p.m. portion of the meeting agenda. The preliminary review of the draft Council meeting agenda shall be placed first on the work session agenda and will have as its purpose the identification of items that the Council designates for more detailed discussion after all other work session items have been discussed. In the final agenda review that shall occur as the last regularly scheduled item on the agenda, the Council may discuss items on the next week's agenda and give direction to the City Manager as to additional information needed. Public comment need not be taken, but may be accepted at the second agenda review, at the discretion of the Chair.

No work sessions will be held during the summer break period beginning on the day following the third Tuesday in July until the fourth Tuesday of August, unless called as a special meeting as provided in Section 3.02 of these Rules.

#### **3.04 Executive Sessions [A.R.S. §38-431.03]**

The Council may meet in, or recess into, executive session for all purposes allowed by law. The City Manager shall schedule any such meetings on the second and fourth Tuesdays at 4:00 p.m., or earlier as the need arises, prior to work sessions, but an executive session may be scheduled at any other time where circumstances require more immediate action. When there are five Tuesdays in a month, executive sessions shall be held on the second and fifth Tuesday at 4:00 p.m., or earlier, as needed. An executive session may be convened at a special meeting called for that purpose on a majority vote of the members of the Council, or during a regular meeting, special session, or work session of the Council for legal advice on matters on a meeting's properly noticed agenda. Attendance at the executive session shall be limited to members of the City Council, the City Manager and City Attorney or their designees, and appropriate City staff or consultants to the City as the Council may invite or as may be required for advice or information. No formal vote involving final action shall be taken on any matter under discussion while in an executive session, except the Council may instruct its attorneys and representatives as allowed by law.

#### **3.05 Emergency Meetings [A.R.S. §38-431.02]**

In case of an actual emergency, the Council may hold a meeting, including an executive session, upon such notice as is appropriate to the circumstances, but shall post a public notice within twenty-four hours declaring that an emergency session has been held, and setting forth the agenda of specific items discussed, considered, or decided.

#### **3.06 Minutes of Meeting [A.R.S. §38-431.01]**

Except as otherwise provided by state law, there shall be minutes of all Council meetings. Such minutes shall include, but need not be limited to: (1) the date, time, and place of the

meeting; (2) the members of the City Council recorded as either present or absent; (3) a general description of the matters considered; (4) an accurate description of all legal actions proposed, discussed, or taken, and the names of members who propose each motion; and (5) the name of persons, as given, making statements or presenting material to the Council and a reference to the legal action about which they made statements or presented material. Minutes of all meetings, except executive sessions, shall be open to public inspection.

## **Rule 4** **THE COUNCIL AGENDA**

### **4.01 Procedures for Preparation of Council Agendas**

All reports, communications, ordinances and resolutions, contracts or other documents, or other matters to be submitted to the Council as part of the Council meeting agenda packet shall be available to the Council, along with a staff summary by the Friday preceding the agenda review work session for the draft agenda and by the Friday preceding the regular meeting for the regular agenda. The City Manager shall review items submitted for timeliness and completeness of information and shall make a preliminary determination whether an item should be placed on the 4:00 p.m. or 6:00 p.m. portion of the regular meeting agenda.

The City Manager shall honor any request by a member of the Council to include an item on the ~~Possible Future Agenda Items~~ **FUTURE AGENDA ITEM REQUEST (FAIR)** portion of the agenda. A Councilmember may submit an item for consideration at any time and the City Manager will place it in a queue with other Council requests to be placed on an agenda. The date and time of scheduling shall be weighted with other Council priority requests. The requesting Councilmember may, but is not required to, specify in a memorandum what discussion, action, or options are proposed. ~~Public participation on an item placed in the Possible Future Agenda Items portion of the agenda will be limited to: 1) verbal comments taken during the public participation section(s) of the agenda; and 2) written comment cards submitted to the City Clerk.~~ After discussion and upon agreement of three members of the Council, the item will be moved to a regularly-scheduled Council meeting.

Those items which are approved for the Council agenda by the City Manager shall be placed on the agenda in accordance with the order prescribed in Rule 5. Copies of the agenda and any background material shall be disseminated to the Mayor and the City Council in the manner prescribed by the Council; to the City Manager, the Deputy City Managers, the City Attorney, and the City Clerk; and shall be made available to the public no later than noon on the Friday preceding the Council meeting at which the agenda will be reviewed.

The agenda shall be made public in advance of the meeting by posting on the regular public posting board at City Hall and on the City's website. Such action shall be taken concurrently with the furnishing of the agenda to the City Council.

**Rule 5**  
**ORDER OF BUSINESS**

**5.01 Regular Meeting Agenda**

The agenda for regular meetings of the City Council shall follow the following order:

**4:00 P.M. MEETING**

Call to Order  
Roll Call  
Pledge of Allegiance and Reading of the Mission Statement  
Approval of Minutes of Previous Meetings  
Public Participation  
Proclamations and Recognitions  
Appointments  
Liquor License Public Hearings  
Consent Items  
Routine Items\*  
Recess

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

Reconvene Regular Meeting  
Roll Call  
Public Participation  
Carryover Items from 4:00 p.m. portion of Meeting  
Public Hearing Items  
Regular Agenda  
Discussion Items  
~~Possible Future Agenda Items~~ **FUTURE AGENDA ITEM REQUEST**  
Informational Items and Reports to/from Council and Staff, and Requests for Future  
Agenda Items  
Adjournment

*\*Routine Items include those agenda items that are common, reoccurring, have been discussed at length in prior Council meetings, or are expected to have little to no public participation. They may include resolutions or ordinances.*

Consent Agenda items may be considered and acted upon by one motion, unless a Councilmember specifically requests that a consent item be considered and voted on separately. If related to a public hearing item on the agenda, ordinances or resolutions shall be placed under Public Hearings. Items requested for consideration and discussion by a Councilmember and placed in the ~~Possible Future Agenda Items~~ **FUTURE AGENDA ITEM REQUEST** Section need not have a staff summary or staff review, but the requesting Councilmember may specify in a memorandum what discussion, action, or options are proposed. There will be no discussion of issues raised during public participation, information items and reports, or requests for future agenda items. The City Clerk shall enter into the minutes all consent items approved with one motion, and shall record separately action taken on those items considered separately.

**Rule 6**  
**PRESIDING OFFICER**

[Flagstaff City Charter Art. II, §7 and §8]

**6.01 Mayor as Chair**

The Mayor, or in his or her absence, the Vice Mayor, shall be the Chair for all meetings of the Council.

**6.02 Temporary Chair**

In case of the absence of the Mayor and the Vice Mayor, the City Clerk shall call the Council to order. If a quorum is found to be present, the Council shall proceed to elect, by a majority of those present, a Chair for the meeting.

**Rule 7**  
**MEETING DECORUM AND ORDER**

**7.01 Decorum and Order among Councilmembers**

The Chair shall preserve decorum and decide all questions of order, subject to appeal to the Council. During Council meetings, Councilmembers shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the order of the Chair or the Rules of the Council. Every Councilmember desiring to speak shall address the Chair, and upon recognition by the Chair, shall confine himself or herself to the question under debate and shall avoid all personal attacks and indecorous language. A Councilmember once recognized shall not be interrupted while speaking unless called to order by the Chair or unless a point of order is raised by another Councilmember. If a Councilmember is called to order while he or she is speaking, he or she shall cease speaking immediately until the question of order is determined. If ruled to be out of order, he or she shall remain silent or shall alter his or her remarks so as to comply with the Rules of the Council. Councilmembers shall confine their questions to the particular issues before the Council. If the Chair fails to act, any member may move to require him or her to enforce the Rules and the affirmative vote of the majority of the Council shall require the Chair to act.

If Council discussion of a matter exceeds one hour, each Councilmember shall limit their subsequent remarks to three minutes.

**7.02 Decorum and Order among City Staff**

The Chair shall have the authority to preserve decorum in meetings as far as the audience, staff members, and city employees are concerned. The City Manager shall also be responsible for the orderly conduct and decorum of all City employees under the City Manager's direction and control. Any remarks shall be addressed to the Chair and to any or all members of the Council. No staff member, other than the staff member having the floor, shall enter into any discussion either directly or indirectly without permission of the Chair.

### **7.03 Decorum and Order among Citizen Participants**

Citizens attending Council meetings should observe the same rules of propriety, decorum, and good conduct applicable to members of the Council. Any person causing a disturbance of the peace and good order during a Council meeting, may be removed from the room if so directed by the Chair, and such person may be barred from further audience before the Council. Unauthorized remarks from the audience, stamping of feet, whistles, yells, and similar demonstrations shall not be permitted by the Chair, if such actions cause a disturbance of the peace and good order the Chair may direct the Sergeant-at-Arms to remove such offenders from the room. Should the Chair fail to act, any member of the Council may move to require the Chair to enforce the Rules, and the affirmative vote of the majority of the Council shall require the Chair to act. Political campaigning is prohibited. Any member of the public desiring to address the Council on any agenda item shall be recognized by the Chair shall state his or her name and city of residence in an audible tone for the record, and shall limit his or her remarks to the questions under discussion. Any remarks shall be addressed to the Chair and to any or all members of the Council.

Citizens are allowed to address the Council a maximum of three times throughout the meeting, including comments made during Public Participation. Other than Public Participation, comments shall be limited to the business at hand. Once the Chair recognizes a speaker, the Chair shall limit the period of speaking to a reasonable period of time of no more than three minutes per person, at the discretion of the Chair and a speaker may address the Council with the speaker's own statements and the statements of other persons within the set time period.

### **Rule 8 RIGHT OF APPEAL FROM THE CHAIR**

#### **8.01 Process for Appeal**

Any Councilmember may appeal to the Council from a ruling of the Chair. If the appeal is seconded, the member making the appeal may briefly state his or her reason for the same, and the Chair may briefly explain the Chair's ruling. There shall be no debate on the appeal, and no other member shall participate in the discussion. The Chair shall then put the question, "Shall the decision of the Chair be sustained?" If a majority of the members present vote "aye", the ruling of the Chair is sustained; otherwise, it is overruled.

### **Rule 9 PUBLIC PARTICIPATION IN COUNCIL DISCUSSIONS**

#### **9.01 Non-Public Hearing Discussions**

Any person wishing to speak on any matter on the agenda before the Council shall fill out a comment card and submit that card to the recording clerk, who will deliver the card to the Chair. The Chair shall limit the period of speaking to a reasonable period of time of no more than three minutes per person, a speaker may address the Council with the speaker's own statements and the statements of other persons within the set time limit. The person desiring to speak shall limit his or her remarks to the matter under discussion and shall address his or her remarks to the Chair. 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.

## **9.02 Public Hearings**

- A. In the case of a public hearing, the Chair shall announce prior to such hearing the total time limit, if any, to be allowed for public debate, depending upon the circumstances and public attendance. The Chair shall also announce the time limits for each individual speaker (normally no more than three minutes), and that no speaker may be heard more than once. There are two exceptions to this rule: 1) if the substance of the matter to be considered in a public hearing changes significantly during the public hearing process, then the Chair shall allow a speaker an opportunity to speak to address the change(s); and 2) when an ordinance is on the agenda for its second read and adoption (two separate meetings).
- B. 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.
- C. Speakers may not cede any portion of their allotted time to another speaker.
- D. The order of presentation and time limits shall be as follows:
  - 1. Staff presentation (ten minute time limit, except with specific Council permission to exceed this limit).
  - 2. Applicant presentation, only upon applicant's specific request (up to ten minutes, except with specific Council permission to exceed this limit).
  - 3. Council's questions to staff and applicant.
  - 4. Public comment (three minutes for individual speakers, up to fifteen minutes for a representative of ten or more persons present at the meeting who have contributed their time to the representative),
  - 5. Applicant's response, only upon applicant's specific request (5 minutes),
  - 6. Staff's response (5 minutes),
  - 7. Council deliberation and questions to staff and applicant.
- E. This rule will not preclude questions from members of the Council to the speaker where it is deemed necessary for purposes of clarification or understanding, but not for purposes of debate or argument.
- F. Public Hearings are opened immediately before the Staff presentation, if any, and close immediately after the final required vote of Council. No motion is necessary.

### **Rule 10**

#### **RULES GOVERNING MOTIONS BY THE COUNCIL**

##### **10.01 Motion to be Stated by the Chair - Withdrawal**

When a motion is made and seconded, it shall be so stated by the Chair before debate commences. A motion may not be withdrawn by the mover without the consent of the member seconding it.

## **10.02 Motion to Suspend Rules**

Suspension of these Rules requires a majority consent of the Councilmembers present. A motion to suspend may not be made while another motion is pending unless it directly applies to the pending motion. Suspension of the Rules may not be appropriate in the context of a Public Hearing.

## **10.03 Motion to Change Order of Agenda**

The Chair may, at his or her discretion, or shall, upon the majority vote of Councilmembers present, change the order of the agenda. However, caution should be given to not changing the order to circumvent the Open Meeting Law.

## **10.04 Motion to Table**

A motion to table is used to delay discussion on an item until later in the meeting or until the next meeting. Neither the motion to table nor other business can be discussed, until a vote has been taken on the motion. If the motion is successful, no further discussion can be had without a motion to take off the table. To take a motion off the table at the same or immediately succeeding meeting, a motion and second must be made to take the item off the table, and it must pass by majority vote.

If not revived by the adjournment of the immediately succeeding meeting, the matter is considered to be dead.

## **10.05 Motion to Postpone**

A motion to postpone is in order when an item is rescheduled to a time certain, when it is delayed with conditions, or when the matter is intended to be disposed of without action. If the motion prevails, the item shall return for Council action at the meeting specified or in accordance with the conditions established in the postponement. A motion to postpone may be debated prior to vote, but no other motion, including a motion to amend, may be offered until the vote is taken and only if the motion to postpone fails.

A motion to postpone indefinitely, if it receives a majority vote, effectively extinguishes an item.

## **10.06 Motion to Divide the Question**

If the question contains two or more divisionable propositions, the Chair may, and upon request of a member shall, divide the same.

## **10.07 Motion to Amend**

On a motion to amend or "strike out and insert", the motion shall be made so that the intent of the amendment is clear to the Council and public, and for the record.

The Council may materially amend an ordinance after the first read of that ordinance and proceed immediately to the second read and adoption. In other words, it is not necessary to proceed as though it is a new ordinance after a material change.

## 10.08 Motion to Amend an Amendment

A motion to amend an amendment shall be in order, but one to amend an amendment to an amendment shall not be introduced. An amendment modifying the intention of a motion shall be in order, but an amendment relating to a different matter shall not be in order.

## 10.09 Motion to Reconsider

After the decision on any question, any member who voted with the majority may move for a reconsideration of any action at the same meeting or at the next regular meeting that occurs at least one week after the date the action was taken. In the event of a tie vote on a motion, any Councilmember may move for reconsideration at the next regular meeting of the City Council that occurs at least one week after the date the action was taken, but not thereafter. To ensure that the matter will be included on the posted agenda in conformance with the Open Meeting Law, any Councilmember who wishes to have a decision reconsidered must alert the city clerk in writing at least five (5) days, exclusive of Saturdays, Sundays, and intermediate holidays, prior to the meeting at which the motion to reconsider will be made, unless the motion to reconsider was made and seconded at a Council meeting. A motion to reconsider shall require the affirmative vote of the majority of the members present at the time of reconsideration. After a motion for reconsideration has once been acted on, no other motion for reconsideration of the same subject shall be made without unanimous consent of all Councilmembers.

After the reconsideration time period has expired, the same matter may be placed on a later Council meeting agenda under ~~Council Possible Future Agenda Items~~ **FUTURE AGENDA ITEM REQUEST** at the request of any Councilmember. It shall require the sponsorship of three Councilmembers during ~~Possible Future Agenda Items~~ **FUTURE AGENDA ITEM REQUEST** to be placed on a future agenda as an action item. If the matter is considered for formal action on a future meeting, the motion for or against taking an action need not be made by a member of the prevailing vote.

## 10.10 Motion for Roll Call Vote

Any Councilmember may request a roll call vote, or the Chair may ask for a roll call vote for purposes of clarifying a vote for the record. The roll may be called for yeas and nays upon any questions before the Council. Unless allowed by the Chair, it shall be out of order for members to explain their vote during the roll call, or to engage in additional debate or discussion on the subject after the vote is taken.

### **Rule 11** **MISCELLANEOUS PROVISIONS**

## 11.01 Prior Approval by Administrative Staff

Except as to matters requested by individual Councilmembers under the ~~Possible Future Agenda Items~~ **FUTURE AGENDA ITEM REQUEST** Section of the agenda, all ordinances, resolutions and contract documents shall, before presentation to the Council, have been approved as to form and legality by the City Attorney or his or her authorized representative, and shall have been examined for practicality by the City Manager or his or her authorized representative.

## **11.02 Placement of Items on Agendas for Council Action**

Pursuant to Council direction received during any Council meeting, the City Manager may present ordinances, resolutions, and other matters or subjects to the Council, and any Councilmember may assume sponsorship thereof by moving that such ordinances, resolutions, matters or subjects be adopted. In addition, ordinances, resolutions and other matters or subjects requiring action by the Council may be introduced and sponsored by a member of the Council through the ~~Possible Future Agenda Items~~ **FUTURE AGENDA ITEM REQUEST** process described in Rule 4.01.

## **11.03 No New Agenda Items after 10:00 p.m. except by Majority Vote.**

No new agenda items shall begin after 10:00 p.m. unless approved by majority vote of the City Council. If, however, discussion on an item commences prior to 10:00 p.m., the Council may continue its deliberation or move to postpone that item. Agenda items on a Council agenda not considered will be placed on the immediately succeeding Council meeting.

## **11.04 Robert's Rules**

Robert's Rules of Order, latest edition, shall serve as a guideline for interpretation of and supplementation for these Rules in all cases to which they are applicable, provided they are not in conflict with these Rules or with the Charter of the City of Flagstaff or the laws of the State of Arizona. The interpretation of these Rules and Robert's Rules shall be guided by the principles underlying Parliamentary law, that is, a careful balance of the rights of individuals and minority subgroups of the council with the will of the majority. In no case shall the strict application of a rule or procedure be interpreted to deny any individual or minority the right to participate in a debate, discussion, or vote, nor shall these rules be interpreted in such a way so as to defeat the will of the majority of the whole of the Council.

## **11.05 Citizen Petitions [Flagstaff City Charter Art. II, §17]**

A citizen or a group of citizens may present a written petition to the City Manager, who shall present it to the Council at its next regular meeting. The Council must act on the petition within 31 days of the City Manager's presentation. Citizen petitions will first be placed on the agenda under ~~"Possible Future Agenda Items"~~ **FUTURE AGENDA ITEM REQUEST** to determine if there is Council interest in placing the item on a future agenda for consideration. Failure to give such direction shall constitute "action" for purposes of this section.